

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

In Re: FEMA TRAILER  
FORMALDEHYDE PRODUCTS  
LIABILITY LITIGATION

MDL NO. 07-1873

SECTION "N" (5)

THIS DOCUMENT RELATES TO  
ALL CASES

**ORDER AND REASONS**

Before the Court is the Defendant United States of America's Motion for a Protective Order to Prevent Plaintiffs' Depositions of Patrick Preston and Mary Martinet (Rec. Doc. 1613). In the motion, the United States of America ("United States") moves for a protective order pursuant to 26(c) of the Federal Rules of Civil procedure to prevent Plaintiffs' deposition of Patrick Preston ("Preston") and Mary Martinet ("Martinet"), who are lawyers in the Office of Chief Counsel ("OCC") for the Federal Emergency Management Agency ("FEMA"). This motion is opposed.

After considering all the positions of the parties, the Court held a telephone conference on June 12, 2009, wherein the motion was discussed. During that call, the Court took this motion under advisement and stated that it would be revisited after the completion of the depositions of the following five individuals: Kevin Souza, David Porter, David Garratt, Joseph Little, and Martin McNeese, who were non-attorney individuals the United States identified as having knowledge of the information believed sought by Plaintiffs. (Rec. Doc. 1755).

On numerous occasions thereafter (and presumably after the above depositions were taken), the Court inquired as to when and if a supplemental memorandum could be expected from Plaintiffs. On August 3, 2009, the undersigned's law clerk sent emails to counsel inquiring as to the status of this motion. See Attachments A and B. On that same day, Plaintiffs' liaison

counsel responded that the PSC would most likely not pursue the deposition of Martinet but likely would pursue the deposition of Preston. See Attachment C. Based on the somewhat inconclusive response, the Court, by email, instructed that any supplemental memoranda either in support of or in opposition to Rec. Doc. 1613 were due on Friday, August 7, 2009, at noon. See Attachment D. At Plaintiffs' counsel's request (Attachment E), the Court allowed Plaintiffs an extension until Monday, August 10, 2009 to file supplemental memoranda (Attachment F) and allowed the United States until Wednesday, August 12, 2009 to file a response. Attachment G.

When it did not receive a supplemental memorandum from Plaintiffs regarding the instant motion, the Court attempted to confirm with Plaintiffs' counsel that Plaintiffs no longer intended to pursue the depositions of Preston and Martinet. See Attachment H. However, the Court was then notified by email that Plaintiffs were still pursuing the depositions of Preston and Martinet.

Plaintiffs' August 11, 2009 email specifically stated:

The PSC continues to seek the depositions of Patrick Preston and Mary Martinet. A supplemental memorandum was not filed as we believe nothing has been discovered in the intervening depositions to add or subtract from our previously submitted memorandum as it relates to the these lawyer witnesses. The PSC continues to reiterate the arguments set forth in its original memorandum in opposition.

However, the PSC respectfully asks that the Court continue to defer its ruling on the U.S.'s Motion for Protective Order to prevent these depositions until the remaining depositions of FEMA witnesses have been completed. We have again emailed Henry [Miller, counsel for the United States] requesting the depositions not only of witnesses listed on the U.S.'s witness list for the Alexander trial, but also for their designated witness for 30(b)(6) purposes. We believe that information obtained at these depositions may be pertinent to the Court's decision on the instant matter.

See Attachment I. Based on this request, the Court gave Plaintiffs a couple of weeks and then, again, inquired as to the status of this motion. See Attachment J. Plaintiffs' liaison counsel

responded that Plaintiffs intended to file a supplement to Rec. Doc. 1613 as soon as transcripts were received for depositions that had been taken in the preceding week. Plaintiffs' counsel stated. "[w]e anticipate receiving the transcripts no later than Wednesday." See Attachment K. Once again, the Court allowed additional time and stated that the supplement should be filed "ASAP after receiving the transcripts." See Attachment L. On October 6, 2009, after hearing nothing from Plaintiffs for over one month, the Court, once again, asked for an update on the instant motion and gave Plaintiffs until Thursday, October 8, 2009 to file any supplemental memorandum. See Attachment M. The Court received neither an update or a supplemental memorandum from Plaintiffs. Thus, no supplemental memoranda, despite *numerous* opportunities for such, were filed after this Court took this motion under advisement in June 2009.

Based on the Court's consideration of the applicable law and of the memoranda of the parties, for all the reasons stated by the United States in support of this motion,

**IT IS ORDERED** that the **Defendant United States of America's Motion for a Protective Order to Prevent Plaintiffs' Depositions of Patrick Preston and Mary Martinet (Rec. Doc. 1613)** is **GRANTED**. Plaintiffs are prohibited from depositing Patrick Preston and Mary Martinet.

New Orleans, Louisiana, this 16<sup>th</sup> day of October, 2009.



**KURT D. ENGELHARDT**  
**UNITED STATES DISTRICT JUDGE**

FEMA MDL

Amanda Ballay o t gmeunier, jwoods, andreww, henry.miller, dkurtz,  
: TThagard

08/03/2009 09:24 AM

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Good Morning.

Can someone please give us an update on the status of the depositions of Preston, Martinet, Souza, Garratt, and Lapinski? Judge Engelhardt deferred ruling on Rec. Docs. 1613 and 1756 until after these depositions were taken. If these depositions have been taken, what is the status of these motions? Are they now moot?

Please let us know.

Thanks!

Amanda

Amanda J. Ballay  
Law Clerk to the Hon. Kurt D. Engelhardt  
United States District Court, Eastern District of Louisiana  
500 Poydras Street, Room C-367  
Telephone: (504) 589-7645  
Facsimile: (504) 589-4457

A

RE: FEMA MDL 

t  
Amanda Ballay o Miller, Henry (CIV)

08/03/2009 09:57 AM

Cc: "Dinnell, Adam (CIV)", andreww, dkurtz, gmeunier, jwoods, TThagard

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I'm sorry, Henry - you're right. We are inquiring about the status of the depositions of Souza, Porter, Garratt, Little, McNeese, and Lapinski (not Preston and Martinet) and about the status of the motions at Rec. Docs. 1613 and 1756. Thanks! Amanda

**B**



RE: FEMA MDL

Justin Woods t 'Amanda\_Ballay@laed.uscourts.gov', Gerald E.  
o Meunier, andrew@duplass.com,  
: henry.miller@usdoj.gov,  
dkurtz@bakerdonelson.com,  
TThagard@maynardcooper.com

08/03/2009 02:24 PM

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History: This message has been replied to and forwarded.

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Amanda,

The PSC took the depositions of Souza, Garratt and Lapinski (among others) and we will still pursue our effort to depose Admiral Harvey Johnson (Doc. 1756). We most likely will not pursue deposing Mary Martinet but will most likely pursue deposing Rick Preston.

Justin.

C

RE: FEMA MDL 

Amanda Ballay o Justin Woods

08/03/2009 02:48 PM

Cc: "andreww@duplass.com", "dkurtz@bakerdonelson.com", "Gerald E. Meunier",  
"henry.miller@usdoj.gov", "TThagard@maynardcooper.com"

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Everyone, based on Justin's response below, Judge Engelhardt has instructed that any supplemental memoranda either in support of or in opposition to the motions at Rec. Docs. 1613 and 1756 (based on the recent depositions that were taken) are due on or before Friday, August 7, 2009, at noon.

Thanks.  
Amanda

D

FEMA - Deposition of Admiral Harvey Johnson

Justin Woods

to:

'Amanda\_Ballay@laed.uscourts.gov'

08/05/2009 03:12 PM

Cc:

"Miller, Henry (CIV)", "Gerald E. Meunier" , Denise Martin, Tara Gilbreath

Show Details

History: This message has been replied to.

Amanda,

We were preparing to file a Motion to Compel the deposition of Admiral Harvey Johnson and Rick Preston unfortunately one of the deposition transcripts that we plan to rely heavily upon (Michael Lapinski) will not be ready until Friday morning. Our motion is due Friday at noon. Michael Lapinski is one of the individuals that the Government touted as being aware of information to which Admiral Johnson would testify.

Could we possibly have an extension until Monday to file our motion?

Justin.

E

Re: FEMA - Deposition of Admiral Harvey Johnson 

Amanda Ballay o Justin Woods

08/05/2009 03:26 PM

Cc: Denise Martin, "Gerald E. Meunier", "Miller, Henry (CIV)", Tara Gilbreath  
Bcc: Kurt Engelhardt

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Justin - Judge Engelhardt will allow the extension until Monday - however, he does NOT want a new motion (i.e., a motion to compel these depositions). Still pending are the Govt's Motions for Protective Orders relating to these depositions (See Rec. Docs. 1613 and 1756). As I mentioned in my 8/3/09 email to you all, Judge Engelhardt has requested supplemental memoranda either in support of or in opposition to the motions at Rec. Docs. 1613 and 1756 (based on the recent depositions that were taken). Practically speaking, filing a new motion will require setting a new hearing date 15 days out and waiting on oppositions to be filed. Judge Engelhardt wants to handle this issue as expeditiously as possible, and the filing of these supplemental memoranda will accomplish this. However, you all may have until Monday close of business to file any supplemental memoranda to Rec. Docs. 1613 and 1756.

Thanks.  
Amanda

Justin Woods <jwoods@gainsben.com>

F

Re: FEMA - Deposition of Admiral Harvey Johnson 

Amanda Ballay o Miller, Henry (CIV)

08/05/2009 03:47 PM

Cc: "Bain, Adam (CIV)", "Dinnell, Adam (CIV)", dmartin, gmeunier, jwoods, tgilbreath

Bcc: Kurt Engelhardt

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Yes. Judge Engelhardt will allow the Govt. until close of business Wednesday, 8/12, to file a supplemental memorandum in response to the PSC's supplemental memorandum that it will file on Monday, 8/10.

Thanks.  
Amanda

G

Fw: FEMA - Deposition of Admiral Harvey Johnson

Amanda Ballay o jwoods

08/11/2009 03:21 PM

Cc: Denise Martin, "Gerald E. Meunier", "Miller, Henry (CIV)", Tara Gilbreath

Bcc: Kurt Engelhardt

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Justin - We received the PSC's Supplemental Memorandum in Opposition to Defendant U.S's Motion for Protective Order to Prevent Plaintiffs' Deposition of Harvey E. Johnson, Jr. (Rec. Doc. 2577) relating to the motion at Rec. Doc. 1756. Because we did not receive a supplemental memo from PSC relating to the motion at Rec. Doc. 1613, are we to assume that the PSC no longer intends to pursue the depositions of Preston and Martinet?

Please let us know.

Thanks!

Amanda

H



RE: FEMA - Deposition of Admiral Harvey Johnson

Tara Gilbreath o Amanda\_Ballay@laed.uscourts.gov, Justin Woods

08/11/2009 04:30 PM

Cc: Denise Martin, "Gerald E. Meunier" , "Miller, Henry (CIV)"

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History: This message has been replied to and forwarded.

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Amanda,

The PSC continues to seek the depositions of Patrick Preston and Mary Martinet. A supplemental memorandum was not filed as we believe nothing has been discovered in the intervening depositions to add or subtract from our previously submitted memorandum as it relates to the these lawyer witnesses. The PSC continues to reiterate the arguments set forth in its original memorandum in opposition.

However, the PSC respectfully asks that the Court continue to defer its ruling on the U.S.'s Motion for Protective Order to prevent these depositions until the remaining depositions of FEMA witnesses have been completed. We have again emailed Henry requesting the depositions not only of witnesses listed on the U.S.'s witness list for the Alexander trial, but also for their designated witness for 30(b)(6) purposes. We believe that information obtained at these depositions may be pertinent to the Court's decision on the instant matter.

Thanks,  
Tara

I

RE: FEMA - Deposition of Admiral Harvey Johnson 

Amanda Ballay o Tara Gilbreath

08/24/2009 01:27 PM

Cc: Denise Martin, "Gerald E. Meunier", "Miller, Henry (CIV)", Justin Woods

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Is there an update on the status of the motion at Rec. Doc. 1613? Thanks. Amanda

5



RE: FEMA - Deposition of Admiral Harvey Johnson 

Amanda Ballay o Justin Woods

08/24/2009 01:32 PM

Cc: Denise Martin, "Gerald E. Meunier", "Miller, Henry (CIV)", Tara Gilbreath  
Bcc: Kurt Engelhardt

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Ok. Please go ahead and file the supplement ASAP after receiving the transcripts. Thanks. Amanda

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L

RE: FEMA - Rec. Doc. 1613 

Amanda Ballay o Justin Woods

10/06/2009 02:19 PM

Cc: Denise Martin, "Gerald E. Meunier", "Miller, Henry (CIV)", Tara Gilbreath, Adam Michael Dinnell

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Justin - Please see your email of 8/24. I don't think we ever received a supplement from you all. If the PSC still plans to file a supplemental memo to Rec. Doc. 1613, Judge Engelhardt has instructed that it be filed by Thursday, 10/8 at 5:00 p.m. Also, all - please let me know if Rec. Doc. 1613 is now moot for some reason unknown to the Court.

Thanks!  
Amanda

M