

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
Member Case No. 07-9228

ORDER AND REASONS

Before the Court is Defendant Fleetwood Enterprises, Inc.'s Motion to Limit Paul Hewett, Ph.D's Testimony (Rec. Doc. 6644). In this motion, Defendant Fleetwood Enterprises, Inc. ("Fleetwood") seeks to exclude the expert testimony of Paul Hewett, Ph.D ("Dr. Hewett"), Plaintiffs' statistical analysis expert. Specifically, Fleetwood seeks to limit Dr. Hewett's testimony on the following limited grounds:

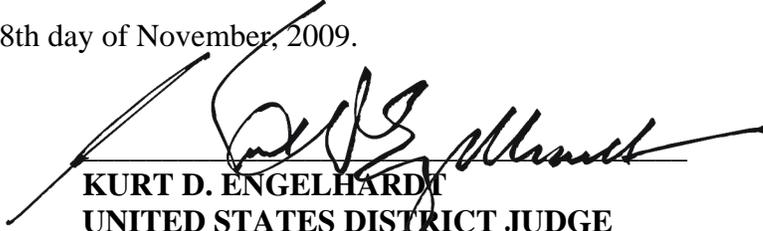
- (1) Dr. Hewett should not be permitted to testify to the principle that formaldehyde exposures tend to decrease with age. Fleetwood notes that this Court excluded this testimony in the *Alexander* case because Dr. Hewett himself stated the jury would not need his expertise on this point.
- (2) More specifically, Dr. Hewett should not be allowed to offer testimony regarding the "formaldehyde decay coefficient." Fleetwood notes that Plaintiffs' counsel has stated that he would not offer opinions regarding the "formaldehyde decay coefficient."

After considering the memoranda of the parties and the applicable law, the Court partially grants and partially denies this motion. Generally, regarding Dr. Hewett's opinion that formaldehyde exposure levels decline with time, to the extent that Dr. Hewett intends on supporting that opinion by relying on the CDC report that he states did not analyze the age of the unit at the time of the sampling, Fleetwood may vigorously cross-examine him on this subject at trial, such that it is established that this opinion may only be as good as the underlying data, which is a common method of scrutinizing the opinion of a testifying expert. This Court will not limit his testimony in this regard.

As for Dr. Hewett's more specific testimony regarding the "formaldehyde decay coefficient", Plaintiffs' counsel, Chris Pinedo, unequivocally withdrew Dr. Hewett's opinion on this subject. (Exhibit E to Rec. Doc. 6644, pp. 64-65). Thereafter, Hewett issued a Third Affidavit on October 26, 2009, removing the opinion on the "formaldehyde decay coefficient." (Exhibit C to Rec. Doc. 6644). Plaintiffs have clearly and unequivocally withdrawn this opinion; it is too late to attempt to revive it. Thus, Fleetwood's motion should be granted in this respect.

Considering the foregoing, **IT IS ORDERED** that **Defendant Fleetwood Enterprises, Inc.'s Motion to Limit Paul Hewett, Ph.D's Testimony (Rec. Doc. 6644)** is **GRANTED IN PART and DENIED IN PART**, as expressed herein.

New Orleans, Louisiana, this 18th day of November, 2009.



KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE