

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. 09-2977

ORDER AND REASONS

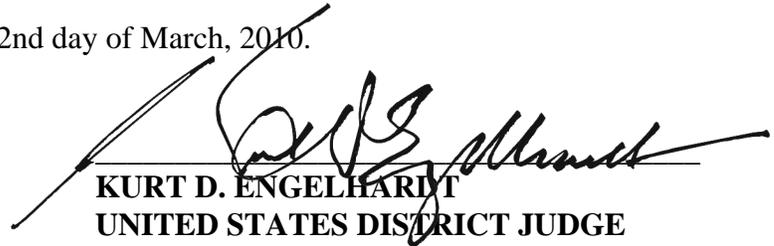
Before the Court is Shaw Environmental, Inc.'s Motion for Partial Summary Judgment Regarding "Blocking" (Rec. Doc. 10935). In this motion, Shaw Environmental, Inc. ("Shaw") seeks a dismissal of the claims relating to the improper "blocking" of Plaintiff's emergency housing unit ("EHU"). Shaw argues that it blocked the EHU in strict compliance with FEMA's design. To be clear, this Court has already denied Shaw's motion relating to government contractor status because the specifications from FEMA regarding the jacking-up procedure were not specific and left the discretion to Shaw as to how to jack up the EHU. (Rec. Doc. 11910). The instant motion relates to the decision to block the EHU - not how to go about blocking the EHU. In other words, Shaw focuses on the completed, or "blocked," state of the EHU, rather than the process that Shaw (or its subcontractors) used to achieve that state.

After considering the memoranda of the parties and the applicable law, the Court concludes that, while this is admittedly a "close call", there are genuine issues of material fact that exist relating to, *inter alia*, whether the EHU was blocked in compliance with the FEMA

specifications (for example, testimony reveals that on some EHUs, only solid blocks were used - as opposed to both solid and hollow blocks, as required by the FEMA specifications). However, at the conclusion of Plaintiff's case at trial, Shaw may, if it deems appropriate, avail itself of the proper motion under Rule 50 of the Federal Rules of Civil Procedure.

IT IS ORDERED that the **Shaw Environmental, Inc.'s Motion for Partial Summary Judgment Regarding "Blocking" (Rec. Doc. 10935)** is **DENIED**.

New Orleans, Louisiana, this 2nd day of March, 2010.



KURT D. ENGELHART
UNITED STATES DISTRICT JUDGE