

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 Nos. 09-3943 and
09-3944

ORDER AND REASONS

Before the Court is Bechtel National, Inc.'s Motion to Certify for Interlocutory Review Pursuant to 28 U.S.C. § 1292(B) the Court's October 1, 2009 Order (Rec. Doc. 6082). After reviewing the memoranda of the parties and the applicable law, the Court denies this motion.

Before a district court may certify an order for interlocutory appeal, the moving party must demonstrate that the matter involves (1) a controlling question of law, (2) as to which there is substantial ground for difference of opinion, and (3) an immediate appeal from the order would materially advance the ultimate termination of the litigation. See 28 U.S.C. § 1292(b). See also *Complaint of L.L.P. & D. Marine, Inc.*, Nos. Civ. A. 97-1668, 97-2992, 97-3349, 1998 WL 66100, at *1 (E.D.La. Feb. 13, 1998) (explaining that the moving party bears the burden of "demonstrating the necessity of an interlocutory appeal"). An interlocutory appeal, however, is "exceptional" and assuredly does not lie simply to determine the correctness of a judgment." *Clark-Dietz & Assocs.-Eng'rs, Inc. v. Basic Constr. Co.*, 702 F.2d 67, 68, 69 (5th Cir.1983).

Here, the Court determines that an immediate appeal from the order, which deals with Plaintiffs' claims in only two of the thousands of member cases in this MDL, would not materially advance the ultimate termination of this litigation. This is a massive MDL, and if the Court begins allowing piece-meal appeals of issues applicable to only certain few member cases just to determine the correctness of its Orders therein, progress of this matter will be impeded. Thus, the ultimate termination of this litigation would not be advanced; instead, it would be prolonged. For these reasons, the Court concludes that the request to certify this particular issue under § 1292(b) is not appropriate.

III. CONCLUSION

Considering the foregoing, **IT IS ORDERED** that **Bechtel National, Inc.'s Motion to certify for Interlocutory Review Pursuant to 28 U.S.C. § 1292(B) the Court's October 1, 2009 Order (Rec. Doc. 6082)** is **DENIED**.

New Orleans, Louisiana, this 30th day of March 2010.



KURT D. ENGELHARDY
UNITED STATES DISTRICT JUDGE