

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA

RONALD LEE HARRISON and  
BRENDA G. HARRISON,

PLAINTIFFS,

v.

CIVIL ACTION NO. 05-C-50  
Hon. Thomas C. Evans, III

SKYLINE CORPORATION, and  
GEORGIA-PACIFIC CORPORATION,

DEFENDANTS.

**ORDER CERTIFYING QUESTIONS OF LAW**

On June 19, 2007, came the parties before the Court for the purpose of a pre-trial conference and Defendants' motions to reconsider the Court's denial of their motions for summary judgment. By separate order, the Court granted the Defendants' motions to reconsider and granted summary judgment in part and denied summary judgment in part. By that Order, the Court determined to certify questions of law to the Supreme Court of Appeals regarding the Defendants' federal preemption defense to the sole remaining negligence counts against both Defendants.

After reviewing the briefs of record, considering the evidence of record, and hearing legal arguments by counsel, the Court believes there are three potentially dispositive legal questions of first impression to be answered:

1. Does the preemption provision found at 42 U.S.C. § 5403(d)<sup>1</sup> preempt and bar Plaintiffs' common law negligence claim based upon formaldehyde exposure when the Plaintiffs do not claim, and cannot establish, that the Defendants failed to comply with the formaldehyde standards established in 24 CFR §§ 3280.308 and 3280.309?

**ANSWER: NO.**

2. May the Plaintiffs present evidence of ambient air testing for the presence of formaldehyde in support of their common law negligence claim when HUD specifically considered and rejected the ambient air standard that plaintiffs want to present to a court and jury as the standard of care.

**ANSWER: YES.**

3. Does the "savings clause" of 42 U.S.C. § 5409(c) preclude the Court from granting the Defendants' motions for summary judgment when despite the legislative history which establishes that it was HUD's intention that federal standards preempt State and local formaldehyde standards in accordance with 42 U.S.C. 5403(d)?

**ANSWER: YES.**

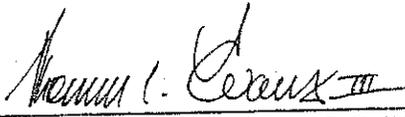
Accordingly, it is hereby ORDERED that the parties, shall, if desired, certify the above three questions to the West Virginia Supreme Court of Appeals in accordance with state law and the rules of the West Virginia Supreme Court of Appeals.

It is further ORDERED that the Clerk of this Court shall transmit an attested copy of this Order, once entered, to the counsel of record listed below and a courtesy copy of this Order to Rory L. Perry, II, Clerk, Supreme Court of Appeals of West Virginia, State Capitol, Room E-317, 1900 Kanawha Boulevard, East, Charleston, West Virginia, 25305.

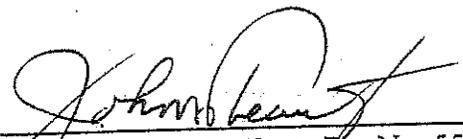
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<sup>1</sup> 42 U.S.C. § 5403(d) provides that whenever a federal manufactured home construction and safety standard is in effect, no State shall have any authority either to establish, or to continue in effect, any standard regarding the construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

ENTERED: 8-11-08  
(without objection)

  
HONORABLE THOMAS C. EVANS, III  
JUDGE OF THE FIFTH JUDICIAL CIRCUIT

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