

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

PRODUCT DEVELOPMENT GROUP  
INCORPORATED,

Plaintiff,

v.

6:10-cv-01240-JTM

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the United States' motion to determine trial forum (Dkt. 42). The motion seeks an order determining that the action will be tried to the court rather than to a jury pursuant to 28 U.S.C. § 2402.

The United States' memorandum in support alleges that, in accordance with the court's scheduling order (Dkt. 39), the United States sought plaintiff's agreement to a stipulation for a bench trial, but that no response was received. Dkt. 43 at 2. The United States thereafter filed and served its motion for determination of the trial forum. Dkts. 42, 43. Plaintiff has not responded to the motion and the time for doing so under the Rules of Civil Procedure has now expired.

In addition to the fact that the United States' motion is uncontested, trial to the court is required on plaintiff's claims by virtue of the Federal Tort Claims Act (FTCA) , 28 U.S.C. § 1346(b), and 28 U.S.C. § 2402, which provides in part that any action under

the FTCA “shall be tried by the court without a jury....” Plaintiff has shown no basis for a jury trial and has not otherwise contested the United States’ motion.

**IT IS THEREFORE ORDERED** this 7<sup>th</sup> day of December, 2015, that the United States’ Motion for Order Determining Trial Forum (Dkt. 42) is GRANTED. The trial of this action will be to the court rather than to a jury.

s/ J. Thomas Marten  
J. THOMAS MARTEN, JUDGE