

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: CERTAINTEED CORPORATION	:	MDL DOCKET NO. 1817
ROOFING SHINGLES PRODUCTS	:	
LIABILITY LITIGATION	:	
This Report relates to:	:	
ALL CASES	:	
	:	

**CERTAINTEED CORPORATION’S FIFTH REPORT TO THE COURT
UNDER SECTION 4.33 OF THE AGREEMENT OF
SETTLEMENT AND COMPROMISE AS AMENDED**

CertainTeed Corporation (“CertainTeed”) files this report pursuant to Section 4.33 of the Agreement of Settlement and Compromise as Amended (the “Settlement Agreement”) and pursuant to the Court’s Order entered November 3, 2011 (the “November 3, 2011, Order”).

Section 4.33 of the Settlement Agreement provides:

On the first anniversary of the Effective Date, and annually thereafter until one year after the expiration of the last of the warranty periods [pertaining to the shingles at issue in the case] CertainTeed shall file with the Court and serve on a designee of Class Counsel a report identifying the Claimants whose claims have been resolved in the prior 12 months, the amount distributed to each Eligible Claimant, and the basis for denying any claims.

Because claims data for the full twelve month period is not available by the anniversary of the Effective Date of the Settlement, this Court in its November 3, 2011, Order authorized the filing on November 1 of a report containing detailed claims data for the full twelve month period ending September 30 of the year of the report. Accordingly, CertainTeed now files this Fifth Report covering claims data for the period from October 2014 through September 2015.

Accompanying this report is a computer disc containing a list (Exhibit A), in electronic format, showing each claimant whose claim has been accepted and the amounts paid to the claimant, as well as a list (Exhibit B), also in electronic format, identifying each claimant whose claim has been denied and the reason for the denial. These exhibits, as well as Exhibit C discussed below, are being filed under seal in order to maintain the claimants' privacy in accordance with the November 3, 2011, Order.

Class members in this case are defined as follows:

All individuals and entities that own, as of [December 15, 2009], homes, residences, buildings, or other structures located in the United States or Canada whose roofs contain or contained roofing shingles made with a felt reinforcement base material that is saturated with asphalt, also known as organic roofing shingles, manufactured by CertainTeed after July 1, 1987; all individuals and entities who previously owned such a building and who, prior to [December 15, 2009] sold or transferred the building and at the time of the sale or transfer retained the right to make a claim for the shingles pursuant to a valid documented assignment; and all individuals and entities who owned such a building and who, between August 1, 2006, and [October 1, 2010], have settled . . . their warranty claims for such shingles.

During the period October 2014 through September 2015, CertainTeed reviewed, processed, and paid a total of \$6,279,543.83 to approximately 8,730 Class Members. These payments included a total of \$156,910.00 in payments of up to \$50 per claim to defray the cost of removing and shipping shingle samples to CertainTeed pursuant to Section 4.6 of the Settlement Agreement (coded as RSS in column E of Exhibit A, Payment Summary tab). The remaining amount, \$6,122,633.83, was paid to class members in accordance with the character of their claims under the Settlement Agreement. Specifically, there are three categories of claims for which the Settlement Agreement provides: warranty claims, transferee claims, and releaser claims.

Warranty claims are claims of class members whose organic shingles are covered by a CertainTeed warranty and who did not resolve their warranty claims prior to the Effective Date

of the Settlement Agreement. Under the Settlement Agreement, these claims are being paid at the rate of \$74/square, with \$34/square prorated from date of installation, and \$40/square not prorated for the first ten years following installation and, thereafter, prorated in accordance with the regular proration schedules for each warranty. Where the SureStart provision of the warranty is still applicable, however, the full SureStart amount is being paid. During the period October 2014 through September 2015, 5,583 warranty claims (coded as RCW in column D of Exhibit A, Payment Summary tab) were paid under these provisions of the Settlement Agreement. Payments for these claims totaled \$6,119,918.31, or an average of approximately \$1,096.17 per claim.

Transferee claims are claims of class members whose organic shingles are not covered by CertainTeed's warranties because they purchased, on or before December 15, 2009, a previously occupied building and the applicable warranty did not provide warranty coverage to transferees. Under the Settlement Agreement, transferee claims are being paid \$34/square prorated from the date of installation, provided that the claims were postmarked or otherwise received by CertainTeed within 12 months of the Effective Date of the Settlement Agreement – that is, by October 3, 2011. During the period October 2014 through September 2015, four (4) transferee claims (coded as RCT in column C of Exhibit A, Payment Summary tab) were paid under these provisions of the Settlement Agreement. Payments on transferee claims totaled \$2,715.52, or an average of approximately \$678.88 per claim. A total of 322 transferee claims were denied because the transferees did not file their claims within one year of the Settlement Effective Date as required by Section 6.7 of the Settlement Agreement.

Releaser claims are claims of class members who resolved their warranty claims between August 1, 2006, and the Effective Date of the Settlement Agreement, and who executed a release

in favor of CertainTeed. Releaser claims are paid an amount equal to 20% of the difference between the amount received on the warranty claim and the amount that would have been received had the releaser made a warranty claim under the Settlement Agreement. Pursuant to Section 6.8 of the Settlement Agreement, all releaser claims were to have been submitted within one year of the Effective Date – that is, on or before October 3, 2011. During the period October 2014 through September 2015, no releaser claims were compensated under these provisions of the Settlement Agreement, as all timely releaser claims were previously compensated. One Releaser claim was denied because it was filed by a releaser who did not file his claim within one year of the Settlement Effective Date.

During the period October 2014 through September 2015, CertainTeed has denied a total of 1,355 claims, almost 24% of which were the untimely claims of transferees and releasers, as discussed above. Slightly more than 70% of the denied claims – a total of 954 – were denied because the claimant was not a class member: 678 of these claimants had fiberglass rather than organic shingles; 192 had shingles not manufactured by CertainTeed; one (1) had signed a release prior to August 1, 2006; four (4) had shingles that were installed prior to July 1, 1987; and 79 claimants purchased the building on which the shingles were installed after the execution of the Settlement Agreement and they did not succeed to the rights of the class members from whom they purchased the buildings in accordance with Section 4.31(a) of the Settlement Agreement because they were not qualified to assert a warranty claim in accordance with the transferability provisions of the CertainTeed warranty applicable to their shingles.

As to the other denied claims, 69 claims were denied because the claims involved shingles with warranties that had previously expired. Additionally, eight (8) claims were denied, pursuant to Section 3.5 of the Settlement Agreement, because CertainTeed had paid the claims of

previous owners of the same buildings for the same shingles on those buildings. Only one claim was denied because the shingles did not exhibit “Damage” as defined in Section 3.6 of the Settlement Agreement. No claims were denied on the basis of the causation defenses set forth in Section 3.7 of the Settlement Agreement.

On June 19, 2012, this Court approved the parties’ selection of Heffler Claims Administration to serve as the Independent Claims Administrator pursuant to Section 4.19 of the Settlement Agreement and BrightClaim, Inc. as the Independent Inspector pursuant to Section 4.20 of the Settlement Agreement. As of September 30, 2014, seventeen (17) claims files had been submitted to the Independent Claims Administrator for independent review of CertainTeed’s denial of all or part of the claims, which remained unresolved as of the filing of the Fourth Report to the Court. In the subsequent year, CertainTeed has submitted 52 additional claims files to the Independent Claims Administrator for independent review of CertainTeed’s denial of all or part of the claims.

As set forth in the report of Heffler Claims Administration, attached hereto as Exhibit C, during the period October 2014 through September 2015, the Independent Claims Administrator issued claims determinations with respect to 63 of these 69 appeals, denying 60 of the appeals and reversing CertainTeed’s denials of the claims in connection with three (3) appeals. As a result of the Independent Claims Administrator’s claims determinations, CertainTeed has paid a total of \$1,748.93 to a total of three (3) claimants; these totals are included in the total payments set forth on page 2 of this Report. As of that same date, Heffler Claims Administration was still in the process of reviewing the claim files for the remaining six (6) appellants whose files had been submitted for appeal.

On October 28, 2013, this Court approved the parties' selection of the Honorable Louis C. Bechtle to serve as the Special Master pursuant to Section 5.1 of the Settlement Agreement. No issues have been submitted to Judge Bechtle for resolution during this past year.

Respectfully submitted,

s/Arlene Fickler
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Attorneys for Defendant CertainTeed
Corporation

Dated: November 2, 2015

CERTIFICATE OF SERVICE

I, Arlene Fickler, hereby certify that I caused a true and correct copy of CertainTeed Corporation's Fifth Report to the Court Under Section 4.33 of the Agreement of Settlement and Compromise as Amended to be filed and served today, November 2, 2015, via the Court's ECF system, where it is available for viewing and downloading. Copies of the accompanying exhibits, which are being filed under seal, were served upon Class Counsel Charles Schaffer, Esq. by hand delivery and upon Class Counsel Robert Shelquist, Esq. by UPS on November 2, 2015, in connection with the electronic filing.

s/Arlene Fickler
Arlene Fickler (Pa. I.D. #20327)
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EXHIBITS A, B AND C

**TO CERTAINTIED CORPORATION'S FIFTH
REPORT TO THE COURT UNDER SECTION
4.33 OF THE AGREEMENT OF SETTLEMENT
AND COMPROMISE AS AMENDED**

FILED UNDER SEAL