

notwithstanding the requirements of Paragraph 4.33 of the Settlement Agreement, CertainTeed shall no longer be required to provide claimant-specific information identifying the claimants whose claims have been resolved in the prior 12 months, the amount distributed to each eligible claimant, the basis for denying any claims, and the identity of any claimants who appealed to either the Independent Claims Administrator or the Special Master. Instead, the report shall set forth the total number of claims that have been resolved in the applicable 12-month period, the amount distributed in the aggregate to all Eligible Claimants, and the number of claims denied. Should CertainTeed's resolution of any claims be appealed either to the Independent Claims Administrator or the Special Master, the report should set forth the results of such appeals, without identifying the individual Claimants whose claims have been resolved.

BY THE COURT:

Timothy J. Savage, U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: CERTAINTEED CORPORATION : MDL DOCKET NO. 1817
ROOFING SHINGLES PRODUCTS :
LIABILITY LITIGATION :
: :
: :
This Memorandum relates to: :
: :
ALL CASES :
: :
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**CERTAINTEED LLC'S UNOPPOSED MOTION FOR AN ORDER MODIFYING
CERTAINTEED'S ANNUAL REPORTING OBLIGATION TO THE COURT
REGARDING THE ADMINISTRATION OF THE SETTLEMENT**

CertainTeed LLC, a Delaware limited liability company, successor to certain assets and liabilities of defendant CertainTeed Corporation (“CertainTeed”), by and through its counsel, moves the Court for an Order modifying its obligation to report Claimant-specific information in the annual report required by Paragraph 4.33 of the Settlement Agreement as approved by the Honorable Louis Pollak on August 31, 2010. Inasmuch as CertainTeed has been administering the claims process pursuant to the Settlement Agreement for more than ten years and the number of claims filed has declined each year to the point that fewer than 1% of the number of claims filed in the first year of claims administration were filed in the tenth year, CertainTeed and Class Counsel have agreed to seek this Court’s approval to reduce the burden and cost on CertainTeed of filing annual reports to the Court by eliminating the requirement that the annual reports contain claimant specific information. In support thereof, CertainTeed avers as follows:

1. On December 29, 2009, Class Counsel and CertainTeed filed an Agreement of Settlement and Compromise as Amended (the “Settlement Agreement”).

2. On August 31, 2010, Judge Pollak entered an Order granting final approval of the Settlement Agreement (the “Final Approval Order”). The Settlement Agreement became effective on October 2, 2010, pursuant to Section 12 of the Settlement Agreement.

3. Paragraph 6 of the Final Approval Order provides in relevant part:

Consummation of the settlement shall proceed as described in the Settlement Agreement and the Court hereby retains jurisdiction of this matter in order to resolve any disputes which may arise in the implementation of the Settlement Agreement or the implementation of this Final Judgment and Order.

4. Paragraph 4.33 of the Settlement Agreement provided:

On the first anniversary of the Effective Date, and annually thereafter until one year after the expiration of the last of the warranty periods identified on Exhibit A hereto, 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.

5. While preparing the first annual report required under Paragraph 4.33 of the Settlement Agreement, CertainTeed determined that data concerning claims resolved in September could not be compiled in time for the October 3, 2011, first anniversary of the Effective Date. Although CertainTeed timely filed a Preliminary Report that provided the required data to the extent it was then available with the intent of filing a more complete report thereafter, and anticipating that there would be a similar lag time in compiling the data in subsequent years, CertainTeed filed a motion requesting that, in the interests of judicial economy and efficiency, the Court allow the annual report required in Paragraph 4.33 of the Settlement Agreement to be filed annually on the first business day in November in order to give

CertainTeed sufficient time to compile and verify all data for the preceding 12-month period running from October 1 through September 30.

6. In that same motion, because Paragraph 4.33 of the Settlement Agreement required CertainTeed's annual report to include personal information (including names, addresses, phone numbers, and claim disposition information) regarding the claimants whose claims were resolved in the prior twelve month period, CertainTeed requested, pursuant to Local Civil Rule 5.1.5(a)(2), that the Court authorize the claimant lists containing individual identifying information accompanying each annual report to be filed under seal, absent further order of the Court. CertainTeed argued that filing under seal was appropriate under *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 787-90 (3d Cir. 1994), because the claimants have an interest in the preservation of the privacy of their personal information, the public disclosure of which could lead to embarrassment or inconvenience, and the claimants' identifying information has no bearing on public health or safety and is in no way important to the public at large.

7. Judge Pollak, pursuant to his retention of jurisdiction as set forth above, granted that motion on November 3, 2011.

8. CertainTeed has now filed ten Annual Reports concerning the claims data for the period from October 2010 through September 2020.

9. During the more than ten years that CertainTeed has been administering the Settlement Agreement, the number of claims filed has decreased annually from 68,565 claims in the claims year ending September 30, 2011, to 378 claims in the claims year ending September 30, 2020. See Exhibit 1 attached hereto.

10. In small part, this decline is attributable to the fact that certain categories of claims – Transferee claims and Releaser claims as described below – were cognizable under the Settlement Agreement for only a short period of time after the Effective Date of the Settlement Agreement:

- a. *Transferee claims* were claims of class members whose organic shingles, as of the Effective Date of the Settlement Agreement, were 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 were required to be postmarked or otherwise received by CertainTeed within 12 months of the Effective Date of the Settlement Agreement – that is, by October 3, 2011. As shown in Exhibit 1, in the first year of the administration of the Settlement Agreement, 4,979 Transferee claims were paid and no such claims have been paid after the fifth year of claims administration.
- b. *Releaser claims* were 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. 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. In the first year of the administration of the Settlement Agreement, 11,112 Releaser claims were paid and no such claims have been paid after the fourth year of claims administration. See Exhibit 1.

11. The third category of claims allowed under the Settlement Agreement are *Warranty claims*. These 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. These claims constitute more than two-thirds of the claims filed under the Settlement Agreement during the first ten years of its administration -- 104,620 claims of the total 141,537 claims filed. See Exhibit 1. Under the Settlement Agreement, these claims can continue to be filed as long as there are organic roofing shingles under warranty. The last of the warranties for the organic roofing shingles that are the subject of the Settlement Agreement will expire in 2034 because (i) CertainTeed manufactured and sold organic roofing shingles until 2005, (ii) the longest warranties for organic roofing shingles were 30 years long, (iii) organic shingles with thirty-year warranties were last manufactured and sold in 2004, and (iv) organic shingles that were manufactured and sold after 2004 had shorter warranties that will expire before 2034.

12. As shown on both Exhibits 1 and 2 attached, the number of Warranty Claims allowed under the Settlement Agreement has declined from 45,548 in the first year of the claims administration to 141 claims in the tenth year. During that same time period the average amount paid to allowed Warranty claimants has declined from \$1,538.49 in the first year of the administration of the settlement to \$795.05 in the tenth year of claims admiration. See Exhibit 2. This is not surprising as the amount paid to Warranty claimants under the terms of the Settlement Agreement is prorated to reflect the claimants' use of the shingles. In the future years of the administration of the Settlement Agreement, the average amount paid to allowed Warranty claimants can be expected to further decline in light of the declining useful life of the shingles under the warranties. Further, it has been CertainTeed's experience in the administration of its

warranty program outside of this Settlement Agreement that in the later years of a shingle's warranty, as the amount recoverable under the warranty declines because of proration, the number of warranty claims asserted declines.

13. At the same time as the number of allowed claims has declined each year, so too have the number of denied claims. As shown on Exhibit 1 attached, the number of claims denied under the Settlement Agreement has declined from 6,926 in the first year of the claims administration to 237 claims in the tenth year.

14. Similarly, the number of claimants who have appealed to the Independent Claims Administrator has declined over the years of the settlement's administration. As shown on Exhibit 3 attached, while 86 appeals were filed in the first year after the appointment of the Independent Claims Administrator, no appeals were filed in the most recent completed year. In the eighth year of settlement administration (ending September 30, 2018) – the only year in which there were more appeals submitted to the Independent Claims Administrator than in the prior year – seventeen (17) of the twenty (20) filed appeals were filed by a single claimant which owned numerous buildings.

15. As also shown on Exhibit 3, during the ten years of settlement administration, only one appeal has been filed with the Settlement Master.

16. In light of the number of years that have passed since the Settlement Agreement was initially approved by Judge Pollak, and the decline in the number of claims filed and expected to be filed in future years, CertainTeed requests modification of its reporting obligation under the Settlement Agreement to reduce the burden and cost of its preparation of the Annual Reports to the Court.

17. A significant aspect of the burden and cost of the preparation of the Annual Reports relates to the preparation of the exhibits to the report which identify 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. The exhibits to the previously filed ten reports were quite voluminous and the data was therefore submitted to the Clerk's office on computer discs to be filed under seal to protect the confidential information of the claimants. Should the Court grant this motion, these exhibits will no longer need to be prepared.

18. Further, CertainTeed respectfully believes that this modification to the reporting requirement should also ease any burden on the Clerk of Court's office with respect to the filing of these reports, as CertainTeed will no longer be providing any information to be filed under seal. Should the Court grant this motion as requested, all of the information concerning the claims resolved -- whether allowed, denied or appealed -- will be contained within the report to the Court, which CertainTeed will file electronically through the ECF system.

19. CertainTeed has consulted with Class Counsel concerning the relief requested in this motion and has been authorized to represent to the Court that Class Counsel has no objection to the entry of the proposed order accompanying this motion, especially inasmuch as they receive on a regular basis, during the course of the year, information about the denial of any claims so that they may assist those claimants in contesting the denial of their claims should Class Counsel deem it appropriate to do so.

20. Therefore, CertainTeed respectfully requests that this Court enter an Order providing that, with respect to the annual report required in Paragraph 4.33 of the Settlement Agreement, notwithstanding any provision to the contrary in the Settlement Agreement, CertainTeed shall no

longer be required to provide claimant specific information identifying the claimants whose claims have been resolved in the prior 12 months, the amount distributed to each eligible claimant, the basis for denying any claims, and the identity of any claimants who appealed to either the Independent Claims Administrator or the Special Master.

NOW THEREFORE, for the reasons stated above, CertainTeed respectfully requests this Honorable Court to enter the attached Proposed Order Modifying CertainTeed's Annual Reporting Obligation to the Court Regarding the Administration of the Settlement.

Dated: July 30, 2021

s/ Arlene Fickler
Arlene Fickler (20327)
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EXHIBIT 1

ORGANIC ROOFING CLAIMS FILED BY CATEGORY OF CLAIM

Report	All Claims	Allowed			Denied Claims
		Warranty Claims	Allowed Transferee Claims	Allowed Releaser Claims	
1	68,565	45,548	4,979	11,112	6,926
2	28,215	23,860	943	34	3,378
3	18,056	15,247	62	2	2,745
4	11,559	8,318	22	4	3,215
5	6,942	5,583	4	0	1,355
6	4,127	3,229	0	0	898
7	2,344	1,639	0	0	705
8	873	771	0	0	102
9	478	284	0	0	194
10	378	141	0	0	237
	141,537	104,620	6,010	11,152	19,755

ALLOWED WARRANTY CLAIMS

Report	Number of Allowed Warranty Claims	Amount Paid to		Roofing Shingle Sample Payments*
		Allowed Warranty Claimants	Average Award to Allowed Warranty Claimants	
1	45,548	\$70,074,964	\$1,538.49	\$711,503
2	23,860	\$32,861,503	\$1,377.26	\$579,367
3	15,247	\$19,106,957	\$1,253.16	\$389,190
4	8,318	\$9,755,153	\$1,172.78	\$212,875
5	5,583	\$6,119,918	\$1,096.17	\$156,910
6	3,229	\$3,279,937	\$1,015.77	\$91,295
7	1,639	\$1,508,717	\$920.51	\$44,070
8	771	\$718,381	\$931.75	\$41,892
9	284	\$226,043	\$795.93	\$9,200
10	141	\$112,102	\$795.05	\$6,200
	104,620	\$143,763,675		\$2,242,502

*Claimants who submit CertainTeed shingle samples in support of their claims receive 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. Some of the amounts included here may have been paid to Transferee claimants

EXHIBIT 3

APPEALS FROM DECISIONS OF CLAIMS ADMINISTRATOR

Report	Independent	Independent	Independent	Independent	Special	
	Administrator	Administrator	Administrator	Administrator	Master	
	Appeals Filed	Appeals Decided	Appeals Allowed	Appeals Paid \$	Appeals Denied	Appeals
1	0	0	0	\$0	0	0
2	86	0	0	\$0	0	0
3	42	86	24	\$35,879	62	0
4	55	80	5	\$6,059	75	1
5	52	63	3	\$1,749	60	0
6	27	27	0	\$0	27	0
7	8	13	0	\$0	13	0
8	20	21	0	\$0	21	0
9	2	2	0	\$0	2	0
10	0	0	0	\$0	0	0
	292	292	32	\$43,687	260	1