

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: CERTAINTEED
CORPORATION ROOFING
SHINGLES PRODUCTS LIABILITY
LITIGATION**

MDL DOCKET NO. 1817

This Order relates to:

ALL CASES

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ORDER

AND NOW, this _____ day of _____, 2013, upon consideration of the Joint Motion of CertainTeed Corporation and Class Counsel for an Order Appointing the Honorable Louis C. Bechtle as the Special Master, it is hereby ORDERED that:

1. The motion is GRANTED;
2. Pursuant to section 5 of the Settlement Agreement and paragraph 13 of the Memorandum of Understanding among Class Counsel, CertainTeed, and counsel for the Objectors, the Honorable Louis C. Bechtle is hereby APPOINTED, pursuant to Rule 53 of the Federal Rules of Civil Procedure, to serve as the Special Master and to supervise the implementation of the Settlement Agreement in accordance with the terms of the Settlement Agreement as modified by the Memorandum of Understanding.

BY THE COURT:

Robert F. Kelly, U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

**IN RE: CERTAINTEED
CORPORATION ROOFING
SHINGLES PRODUCTS LIABILITY
LITIGATION**

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MDL DOCKET NO. 1817

This Motion relates to:

ALL CASES

**JOINT MOTION OF CERTAINTEED CORPORATION AND CLASS COUNSEL
FOR AN ORDER APPOINTING THE HONORABLE LOUIS C. BECHTLE
AS THE SPECIAL MASTER**

Defendant CertainTeed Corporation (“CertainTeed”), by and through its counsel, and Class Counsel, on behalf of the Settlement Class, jointly move the Court for an Order Appointing the Honorable Louis C. Bechtle as the Special Master pursuant to Section 5 of the Settlement Agreement approved by this Court on August 31, 2010. In support thereof, the parties aver as follows:

1. In December 2009, CertainTeed entered into a Settlement Agreement for the resolution of the claims asserted in this litigation. (Dkt. No.116-1, and, as amended, Dkt. No. 121.)

2. On August 31, 2010, the late Honorable Louis H. Pollak of this Court entered an Order granting final approval of the Agreement of Settlement and Compromise as Amended (the “Settlement Agreement”) between Class Counsel and CertainTeed. (Dkt. No. 214.)

3. Section 5 of the Settlement Agreement provides for the appointment of a Special Master, stating as follows:

The Parties shall jointly propose a Special Master to be appointed by the Court to preside over disputes between the Parties on an as-needed, part-time basis. The Special Master shall have the power to make decisions in all matters brought to him or her by Class Counsel or CertainTeed pertaining to the administration, implementation, and enforcement of the Agreement and to resolve those issues that are to be resolved by the Special Master in accordance with the terms of this Agreement, subject to review by the Court. The Special Master shall have a continuing obligation to be neutral and unbiased for the duration of the Agreement and shall inform Class Counsel and CertainTeed in the event of any conflict of interest.

4. Pursuant to paragraph 13 of the Memorandum of Understanding among Class Counsel, CertainTeed, and counsel for the Objectors, “the Special Master shall be appointed pursuant to Rule 53 of the Federal Rules of Civil Procedure to supervise the implementation of the Settlement Agreement.” (Exhibit P-3 to June 8, 2010, Transcript of Hearing at Paragraph 13).

5. Other paragraphs of the Settlement Agreement outline the issues to be resolved by the Special Master to be appointed by the Court:

a. Paragraph 4.18(i) provides that the final decision of the Independent Claims Administrator will be non-appealable, except that if either Class Counsel or CertainTeed concludes that the Independent Claims Administrator’s decision is not consistent with the terms of this Settlement Agreement, the Claim can be presented to the Special Master.

b. Paragraph 4.23 then explains that should Class Counsel or CertainTeed reasonably believe that the Independent Claims Administrator is not properly applying any of the terms of the Agreement, or should Class Counsel reasonably believe CertainTeed is not properly applying any of the terms of the Agreement, or in the event there is a question concerning the application of the terms of this Agreement generally or with respect to an individual Claim by any of them, such issues are to be presented to the

Special Master. Further, pursuant to paragraph 13 of the Memorandum of Understanding among Class Counsel, CertainTeed, and counsel for the Objectors, a question concerning CertainTeed's or the Claims Administrator's application of the terms of the Settlement Agreement to an individual Claim may be submitted to the Special Master by the Claimant's personal counsel, if any, after consultation with CertainTeed.

c. Paragraph 3.5 provides that when CertainTeed becomes aware that it has received multiple claims on account of Damage relating to the same CertainTeed Organic Shingles on the same home or structure before it has paid compensation on any of the multiple claims, the Special Master shall determine which Claimant, if any, is to be compensated.

d. Section 4.32 provides that any dispute concerning the validity of fees, expenses, and any other costs incurred by the Independent Claims Administrator(s) or the Independent Inspectors shall be resolved by the Special Master.

6. CertainTeed and Class Counsel have agreed to propose that the Honorable Louis C. Bechtle, previously of this Court and now a partner of Conrad O'Brien PC, be appointed as the Special Master.

7. In light of Judge Bechtle's substantial experience with the administration of settlements resolving class action claims and the parties' agreement concerning his selection as the Special Master, the parties jointly request that the Court appoint Judge Bechtle as the Special Master.

NOW THEREFORE, for the reasons stated above, the parties respectfully request this Honorable Court to enter the attached Proposed Order appointing the Honorable Louis C. Bechtle as the Special Master.

Dated: October 25, 2013

s/ Charles E. Schaffer
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Counsel for CertainTeed Corporation

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

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

**MEMORANDUM IN SUPPORT OF THE PARTIES’ JOINT MOTION FOR AN ORDER
APPOINTING THE HONORABLE LOUIS C. BECHTLE
AS THE SPECIAL MASTER**

On August 31, 2010, the late Honorable Louis H. Pollak of this Court granted final approval of the Agreement of Settlement and Compromise as Amended (the “Settlement Agreement”) between CertainTeed Corporation (“CertainTeed”) and Class Counsel, on behalf of the Settlement Class, relating to claims of allegedly defective roofing shingles manufactured by CertainTeed. (Dkt. No. 214, attaching the Settlement Agreement at Ex. 1).

The Settlement Agreement sets forth the procedures for claimants to submit claims to determine whether they are entitled to compensation. The claims are first submitted to a Claims Office established by CertainTeed, which subsequently advises the Claimants in writing “whether and to what extent the claim has been approved or denied.” Settlement Agreement at ¶ 4.17. If the Claims Office denies all or part of a claim, the Claimant has the right to appeal the denial to an Independent Claims Administrator. Upon receipt of such an appeal, the Independent Claims Administrator determines whether it concurs with the determination of the Claims Office or whether the Claimant is eligible for compensation. *Id.* at ¶ 4.18(c). In order to make this determination, the Independent Claims Administrator, the Claimant, Class Counsel, or

CertainTeed may request that the Independent Inspector either visit the premises at issue or examine the shingle sample submitted by the Claimant and submit a report evaluating the claim.

Id. at ¶ 4.18(d).

Although the decision of the Independent Claims Administrator is generally final and not appealable, the Settlement Agreement provides for the review of certain issues by a Special Master. Specifically:

- Paragraph 4.18(i) provides that if either Class Counsel or CertainTeed concludes that the Independent Claims Administrator's decision is not consistent with the terms of this Settlement Agreement, the Claim can be presented to the Special Master.
- Paragraph 4.23 explains that should Class Counsel or CertainTeed reasonably believe that the Independent Claims Administrator is not properly applying any of the terms of the Agreement, or should Class Counsel reasonably believe CertainTeed is not properly applying any of the terms of the Agreement, or in the event there is a question concerning the application of the terms of this Agreement generally or with respect to an individual Claim by any of them, such issues are to be presented to the Special Master.
- Paragraph 13 of the Memorandum of Understanding among Class Counsel, CertainTeed, and counsel for the Objectors (Exhibit P-3 to June 8, 2010, Transcript of Hearing at Paragraph 13) provides that a question concerning CertainTeed's or the Claims Administrator's application of the terms of the Settlement Agreement to an individual Claim may be submitted to the Special Master by the Claimant's personal counsel, if any, after consultation with CertainTeed.
- Paragraph 3.5 provides that when CertainTeed becomes aware that it has received multiple claims on account of Damage relating to the same CertainTeed Organic Shingles on the same home or structure before it has paid compensation on any of the multiple claims, the Special Master shall determine which Claimant, if any, is to be compensated.
- Section 4.32 provides that any dispute concerning the validity of fees, expenses, and any other costs incurred by the Independent Claims Administrator(s) or the Independent Inspectors shall be resolved by the Special Master.

The procedures for the selection and appointment of the Special Master are set forth in Section 5 of the Settlement Agreement and Paragraph 13 of the Memorandum of Understanding among Class Counsel, CertainTeed, and counsel for the Objectors. Specifically, Section 5 of the Settlement Agreement provides as follows:

The Parties shall jointly propose a Special Master to be appointed by the Court to preside over disputes between the Parties on an as-needed, part-time basis. The Special Master shall have the power to make decisions in all matters brought to him or her by Class Counsel or CertainTeed pertaining to the administration, implementation, and enforcement of the Agreement and to resolve those issues that are to be resolved by the Special Master in accordance with the terms of this Agreement, subject to review by the Court. The Special Master shall have a continuing obligation to be neutral and unbiased for the duration of the Agreement and shall inform Class Counsel and CertainTeed in the event of any conflict of interest.

Furthermore, Paragraph 13 of the Memorandum of Understanding among Class Counsel, CertainTeed, and counsel for the Objectors provides that “the Special Master shall be appointed pursuant to Rule 53 of the Federal Rules of Civil Procedure to supervise the implementation of the Settlement Agreement.”

CertainTeed and Class Counsel have agreed that the Honorable Louis C. Bechtle, previously of this Court and now a partner of Conrad O’Brien PC, should be appointed as the Special Master. Judge Bechtle has substantial experience with the administration of settlements resolving class action claims and the parties have agreed that he is uniquely qualified to serve as the Special Master.

Accordingly, the parties jointly request that the Court grant this motion and appoint the Honorable Louis C. Bechtle as the Special Master.

Respectfully Submitted,

Dated: October 25, 2013

s/ Charles E. Schaffer
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Counsel for CertainTeed Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing Joint Motion of CertainTeed Corporation and Class Counsel for an Order Appointing the Honorable Louis C. Bechtle as the Special Master and the proposed form of order to be filed electronically and made available for viewing and downloading from the ECF system of the United States District Court for the Eastern District of Pennsylvania.

Date: October 25, 2013

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