

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

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

MDL DOCKET NO. 1817

This Agreement relates to: :

ALL CASES :

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by the Undersigned Counsel in connection with certain Objections to the Agreement of Compromise and Settlement, as Amended ("the Settlement Agreement"), entered into on the 29th day of December 2009, by and between Plaintiffs Catherine Barrett, Roger Dunker, and Sherwood Wolfson (hereinafter "Plaintiffs"), in their individual and representative capacities on behalf of themselves and the Settlement Class, and Defendant CertainTeed Corporation (hereinafter "CertainTeed").

WHEREAS, on December 29, 2009, Plaintiffs and CertainTeed, by and through their duly authorized counsel, entered into the Settlement Agreement to resolve the claims of the Settlement Class (as defined in the Settlement Agreement) concerning CertainTeed Organic Shingles (as defined in the Settlement Agreement) manufactured by CertainTeed between 1987 and 2005;

WHEREAS, in accordance with the Order of Preliminary Approval of the Settlement Agreement approved by the Honorable Louis Pollak of the United States District Court for the Eastern District of Pennsylvania on December 29, 2009 (hereinafter the "Preliminary Approval Order"), clients who are identified on Exhibit A hereto of Attorneys James T. Capretz and/or

Willard P. Techmeier, and their associated counsel, ("Objectors") filed Objections to the Settlement Agreement raising concerns, *inter alia*, about the terms and conditions of the Settlement Agreement;

WHEREAS, the Plaintiffs and CertainTeed have agreed to enter into this Memorandum of Understanding to address concerns raised by the Objectors;

WHEREAS, in light of the provisions of this Memorandum of Understanding, Counsel for the Objectors have agreed to recommend the withdrawal of the Objections to their clients;

NOW, THEREFORE, in consideration of the foregoing, the undersigned counsel have reached the following understanding with respect to the Settlement Agreement:

1. With respect to Sections 3.2 and 3.7 of the Settlement Agreement, CertainTeed shall not deny any claim based on the Causation Defenses unless it can establish that one of the Causation Defenses was the principal cause of any damage to the CertainTeed Organic Shingles that are the subject of the claim. In that regard, CertainTeed will have to prove not only that the claimed defense was the principal cause of the damage (not just a cause), but also that the defense principally and directly caused damage to shingles for which CertainTeed is denying payment of a Claim.

2. With respect to Sections 4 and 5 of the Settlement Agreement, Class Counsel, as defined in the Settlement Agreement, have a continuing responsibility and obligation to assure that CertainTeed, the Independent Claims Administrator, and the Special Master are properly applying all of the terms of the Settlement Agreement; to assist individual Settlement Class Members (hereinafter also sometimes referred to as Claimants) with the submission and pursuit of their Claims; and to advocate good faith claims on behalf of Claimants over the life of the

agreement.

3. With respect to Section 4.19 of the Settlement Agreement, Class Counsel shall notify Counsel for the Objectors with the identification and background information for the Independent Claims Administrator(s). Class Counsel shall consider in good faith any objection from Counsel for the Objectors to the appointment of the proposed Independent Claims Administrator(s).

4. With respect to Section 4.9 of the Settlement Agreement, if a Settlement Class Member has submitted a warranty claim for the CertainTeed Organic Shingles on his or her building, whether or not CertainTeed has offered a warranty claim payment, that Settlement Class Member may initially submit an Abbreviated Claim Form, seeking to have the claim considered based on the information submitted in the previously submitted warranty claim. However, nothing herein shall obviate the burden on such Settlement Class Member to satisfy the requirements of subsections 3.2(a) and 3.2(b) of the Settlement Agreement; and if CertainTeed concludes that the previously submitted information does not provide the information necessary to proceed with the processing of the claim, CertainTeed shall so advise the Settlement Class Member in accordance with Section 4.13 and shall afford the Settlement Class Member three (3) opportunities to remedy the deficiencies.

5. Nothing in Section 4.10 of the Settlement Agreement shall preclude Settlement Class Members from being assisted by Class Counsel or personal counsel of their own choosing in the completion of their Claim Forms and the pursuit of their Claims.

6. With respect to Section 4.13 of the Settlement Agreement, a Claim Form will be considered "complete" when a Settlement Member has submitted sufficient information for CertainTeed to be able to determine whether or not the Settlement Class Member is an Eligible

Claimant pursuant to Section 3.2 of the Settlement Agreement. To that end, CertainTeed agrees to remove from the copy of the Claim Forms on the Settlement website the instruction that "All questions must be answered." Further, Settlement Class Members may submit evidence not otherwise enumerated in the Settlement Agreement; and CertainTeed and the Independent Claims Administrator, if an appeal is taken, shall consider such evidence in determining whether or not the Settlement Class Member is an Eligible Claimant pursuant to Section 3.2 of the Settlement Agreement; provided, however, that an affidavit, without any other documentary evidence, shall not be considered sufficient to demonstrate a Class Member's eligibility for compensation. "Other documentary evidence" includes, but shall not be limited to, items specified in Section 4.6 of the Settlement Agreement. The claim form on the website shall be amended to so provide. Nothing in this paragraph shall affect CertainTeed's authority pursuant to Section 4.13 of the Settlement Agreement to request Settlement Class Members to submit additional information when the Settlement Class Member, in CertainTeed's view, has failed to provide sufficient information for CertainTeed to be able to determine whether or not the Settlement Class Member is an Eligible Claimant pursuant to Section 3.2 of the Settlement Agreement. CertainTeed will not deny a claim simply because a question or portion of the form was not completed or a shingle sample or photograph not provided so long as other sufficient evidence, in CertainTeed's judgment, was provided. The issue of sufficiency of evidence is reviewable by the Independent Claims Administrator on a de novo basis.

7. The inclusion of the Release in the Claim Forms, as noted in Section 4.17 of the Settlement Agreement, was intended by CertainTeed and Class Counsel to expedite the claims resolution process. Nevertheless, to make clear that the release is predicated on the

Settlement Class Member's receipt of compensation, the following language in the Release in the Claim Forms "In consideration of the benefits provided by the Settlement" shall be replaced with the following language: "In the event that I receive compensation under the Settlement Agreement, and then in consideration thereof." A Question and Answer explaining the effect of the release shall be added to the website. Furthermore, CertainTeed agrees (i) to evaluate the Claim Forms of those Settlement Class Members who have been represented by Objectors' Counsel and who do not execute the release by checking the appropriate box on the Claim Form and (ii) to provide a release for execution by any such Settlement Class Member when CertainTeed advises the Settlement Class Member concerning the settlement offer. Upon receipt of that executed release from the Settlement Class Member, CertainTeed will then pay the settlement amount to the Settlement Class Member.

8. Notwithstanding the last sentence of Section 4.16 of the Settlement Agreement, if Class Counsel or a roofing professional obtained by a Claimant determines that there is a good faith basis in the information and materials in the Claim Package submitted to CertainTeed by the Claimant to challenge CertainTeed's measurement determination, the Settlement Class Member may elect to proceed to review by the Independent Claims Administrator on the issue of measurement.

9. With respect to Section 4.17 of the Settlement Agreement, should CertainTeed deny a claim, its letter communicating that decision to the Settlement Class Member shall advise the Settlement Class Member and Class Counsel of the basis of the denial of the Claim. Should the denial be appealed to the Independent Claims Administrator, CertainTeed agrees not to raise any reason for its denial of the Claim that was not identified in its claim denial notice, provided, however, if the Settlement Class Member submits additional or new information to the

Independent Claims Administrator, CertainTeed can respond to any such new information.

10. With respect to Section 4.18(b) of the Settlement Agreement, a Claimant shall be obligated to pay US\$200 for the Independent Review only when the Independent Claims Administrator determines that the request for an independent review was fraudulent or that the shingles at issue were not manufactured by CertainTeed or were not CertainTeed Organic Shingles.

11. Section 4.18(f) of the Settlement Agreement is replaced with the following provision: "CertainTeed, Class Counsel, or a Claimant's personal counsel may request a meeting (telephonic or otherwise) with the Independent Claims Administrator in connection with the review of any Claim or present testimony, declarations, or other evidence. A Settlement Class Member may consult with Class Counsel concerning a request for such a meeting."

12. With respect to Section 4.31(b) of the Settlement Agreement, a Settlement Class Member who, prior to December 15, 2009, removed the entire roof of his or her building and sold or transferred the building shall be deemed to have retained the right to make a claim for the shingles pursuant to a valid documented assignment at the time of the sale or transfer if (i) the Claimant put CertainTeed on notice of his or her claim by filing a warranty claim for CertainTeed Organic Shingles or as a result of the Claimant's name appearing on an exhibit to a Tolling Agreement with CertainTeed; (ii) the removal and replacement of the CertainTeed Organic Shingles took place no more than one hundred eighty (180) days before the sale or transfer of the building; and (iii) the buyer or transferee provides a written acknowledgement that the Claimant's roof was replaced prior to the sale or transfer.

13. With respect to Section 5 of the Settlement Agreement, 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. Further, with respect to Section 4.23 of the Settlement Agreement, 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.

14. For purposes of calculating prorated compensation under Sections 6.6 and 6.7 of the Settlement Agreement, the date of CertainTeed's first receipt of a claim from Settlement Class Members shall be the earliest of (i) the date determined pursuant to Section 6.10 of the Settlement Agreement; or (ii) the date that CertainTeed received a warranty claim for the CertainTeed Organic Shingles on the Claimant's building for which CertainTeed offered a warranty claim payment to the Claimant; or (iii) the date that CertainTeed received a warranty claim for the CertainTeed Organic Shingles on the Claimant's building which CertainTeed denied with a written acknowledgement that should a subsequent problem occur, any warranty settlement would be made based on the date on which the Claimant originally notified CertainTeed of the presence of the problem with the shingle; or (iv) the date that CertainTeed originally received a warranty claim for the CertainTeed Organic Shingles on the Claimant's building which CertainTeed denied if CertainTeed or, if there is an appeal, the Independent Claims Administrator, determines that the information previously submitted by the Claimant demonstrates that the Claimant is an Eligible Claimant and entitled to compensation pursuant to Section 3.2 of the Settlement Agreement. In addition, with respect to the Settlement Class Members represented by Objectors' Counsel, the date of CertainTeed's first

receipt of a claim shall be the earliest of (i) through (iv) above or the date that CertainTeed first learned about the potential claim as a result of the Settlement Class Member's name appearing on an exhibit to a Tolling Agreement with CertainTeed. CertainTeed shall be reasonable in determining the Claimants who should have rightfully been included on the tolling agreement submitted to CertainTeed by Objectors' Counsel. Objectors' Counsel can show rightful inclusion by presenting a redacted version of an executed retainer agreement. Any dispute regarding the date of claim submission for the purpose of calculating the compensation due under the terms of the Settlement Agreement will be resolved by the Independent Claims Administrator.

15. With respect to Sections 6.9 and 6.10 of the Settlement Agreement, for purposes of calculating prorated compensation under Sections 6.6 and 6.7 of the Settlement Agreement, if CertainTeed received a warranty claim for the CertainTeed Organic Shingles on the Claimant's building which CertainTeed denied with a written agreement to extend the warranty period by a specified time period, CertainTeed will continue to honor such warranty extensions and the extended warranty periods will be used to calculate the amount of compensation to be awarded, including the appropriate pro-rata formula, under the terms of the Settlement Agreement.

16. Upon receipt of a Claim Form from a Claimant, CertainTeed shall make a good faith effort to determine if the Claimant previously submitted a warranty claim; shall deem all evidence that it locates regarding that particular Claimant to be part of the Claims Package submitted in accordance with the Terms of the Settlement Agreement; and upon request of a Claimant, CertainTeed shall provide to that Claimant copies of all correspondence between the Claimant and CertainTeed with respect to that previously submitted Claim. A Question and

Answer will be added to the Frequently Asked Questions page of the website setting forth the period of time that CertainTeed has retained portions of shingle samples in previously denied claims and advising that CertainTeed will continue to hold these retained shingle samples in accordance with Section 4.34 of the Settlement Agreement.

17. With respect to Section 4.20 of the Settlement Agreement, the Independent Claims Administrator must confirm that each Independent Inspector to be appointed is bonded and/or insured and is in compliance with applicable state or local licensing requirements, including those relating to bonding and insurance.

18. With respect to Sections 4.26 of the Settlement Agreement, any property damage insurance payment made to a Claimant by a homeowner's insurance company will not be deducted from the compensation owed under the Settlement; provided, however, that once CertainTeed has made a payment with respect to Organic Shingles on a particular building, CertainTeed shall not be obligated to make any duplicate payments for the same shingles on that building pursuant to the Settlement Agreement.

19. This Memorandum of Understanding is an addendum to the Settlement Agreement. With respect to Section 9.11 of the Settlement Agreement, this Memorandum of Understanding, without the attached exhibit, shall be posted on the Case Documents page of the Settlement website. Further, questions and answers concerning the issues addressed in this Memorandum of Understanding shall be drafted by CertainTeed with equal input from Class Counsel and Objectors' Counsel and included on the Frequently Asked Questions page of the website.

20. In consideration of the foregoing, Counsel for the Objectors will recommend to the Objectors that, subject to the approval of the Court pursuant to Fed. R. Civ. Pro. 23(e) (5),

they withdraw their Objections to the Settlement Agreement in light of the material changes to the settlement that have been made pursuant to this Memorandum of Understanding. Objectors' Counsel cannot withdraw objections without consent of the Objectors. Any Objector who does not agree to be bound by the Settlement Agreement as modified and clarified by this Memorandum of Understanding, if approved by the Court, shall have the right to elect to request exclusion from the Class, provided that such election is exercised on or before July 16, 2010. On or before July 16, 2010, Objectors' Counsel shall provide counsel for CertainTeed, by electronic mail, facsimile, and/or hand delivery, with a list identifying each person who has requested exclusion from the Settlement Class. Within a reasonable period of time thereafter, Objectors' Counsel shall provide to CertainTeed copies of all such requests for exclusion, which shall include the information required by Section 10.1 of the Settlement Agreement. In the sole discretion of CertainTeed, this Memorandum of Understanding may be unilaterally voided if the number of Settlement Class Members opting out reaches a level that, in CertainTeed's judgment, threatens to frustrate the essential purpose of the Settlement Agreement. CertainTeed shall advise Class Counsel, Objectors' Counsel, and the Court, in writing, of this election on or before July 21, 2010. In such event, this Memorandum of Understanding and any negotiations, statements, communications, or proceedings relating thereto may not be offered or received into evidence or utilized for any other purpose in the MDL Litigation or in any other action, suit, or proceeding; and the Objectors, Plaintiffs, CertainTeed, and the Settlement Class Members shall be restored without prejudice to their respective positions as if the Memorandum of Understanding had not been agreed to. If any Objector elects to continue to assert their objection to the Settlement Agreement, such Objector must present written notification of their intent to continue to pursue their objection to the Court, with copies to Class Counsel and CertainTeed's counsel, on or

before July 16, 2010. Nothing in this agreement affects or otherwise limits any non-consenting remaining Objectors' ability to access and use any and all documents previously filed with the Court. Objectors' Counsel shall make its best efforts to contact all of the Objectors as expeditiously as possible to obtain their consent to withdraw their Objections and to determine the Objectors' elections. Objectors' Counsel (James Capretz) shall report to CertainTeed's counsel on a weekly basis, starting on Monday, June 7, 2010, concerning the results of their efforts. If any Objector fails to respond to Objectors' Counsel on or before July 16, 2010, the Court shall determine the status of such person's Objections. The parties agree that they will jointly request a status conference with the Court on July 21, 2010, or an alternate date set by the Court, to address the status of the Memorandum of Understanding and the status of any Objections that have not been withdrawn.

21. CertainTeed and Class Counsel agree that Objectors' Counsel have conferred a common benefit on the Settlement Class and are entitled to compensation. Objectors' Counsel shall petition the Court for an award of compensation pursuant to Fed. Rule Civ. Pro. 23(h). In accordance with the terms of the agreement between CertainTeed and Class Counsel, set forth in Section 7.1 of the Settlement Agreement dated 12/29/09, CertainTeed, Class Counsel, and Counsel for the Objectors agree to seek to reach agreement on the amount of attorneys' fees and reasonable expenses to be requested by Objectors' Counsel. CertainTeed, Class Counsel, and Counsel for the Objectors further agree that if they cannot reach such an agreement, the provisions of Section 7.1 of the Settlement Agreement shall govern Objectors' Counsel's application for attorneys' fees and reasonable expenses, with both Class Counsel and CertainTeed retaining the right to object to the amount of the application and all parties agreeing that they will not appeal or otherwise challenge Judge Pollak's ruling on fees. Further, Class

Counsel, CertainTeed, and Objectors' Counsel all agree that the parties did not discuss the amounts of attorneys' fees and costs to be requested by Objectors' Counsel until after all of the material terms of this Memorandum of Understanding were agreed upon.

22. This Memorandum of Understanding may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute one agreement, regardless of whether all parties are signatories to the same counterpart, but the Memorandum of Understanding will be without effect until and unless all parties have executed a counterpart.

23. This Memorandum of Understanding shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to conflicts of law.

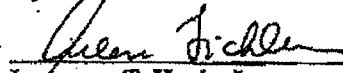
24. This Memorandum of Understanding, which serves as an addendum to the Settlement Agreement, constitutes the entire agreement of the parties with respect to the subject matter thereof. Any agreement purporting to change or modify the terms of this Memorandum of Understanding must be in writing, signed by counsel for each of the parties to this Memorandum of Understanding.

25. In the event the Court does not find the Class Action Settlement Agreement dated 12/29/2009 to be fair, adequate and reasonable, the Memorandum of Understanding shall become null and void.


WHEREFORE, the undersigned have executed this Memorandum of Understanding as of


the 6th day of June, 2010.

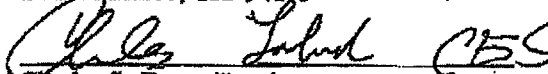
**CertainTeed Corporation
By Its Counsel:**

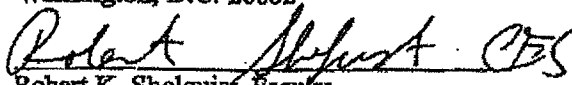

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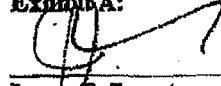

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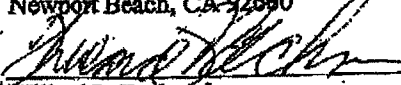

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