

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

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IN RE: CERTAINTEED CORPORATION  
ROOFING SHINGLES PRODUCTS  
LIABILITY LITIGATION

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MDL DOCKET NO. 1817

This Report relates to:

ALL CASES

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**CERTAINTEED CORPORATION'S SEVENTH 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 Seventh Report covering claims data for the period from October 2016 through September 2017.

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 2016 through September 2017, CertainTeed reviewed, processed, and paid a total of \$1,554,470.28 to claimants who submitted claims pursuant to the Settlement Agreement. This total included \$44,070.81 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, Claims Summary tab); a total of 879 claimants received such payments.

Virtually all of the balance of the compensation –a total of \$1,508,717.01-- was paid to building owners whose organic shingles were covered by a CertainTeed warranty and who did not resolve their warranty claims prior to the Effective Date of the Settlement Agreement. The recipients of these payments include not only Class Members but also individuals who purchased the building on which the shingles were installed after the execution of the Settlement

Agreement and who succeeded 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 qualified to assert a warranty claim in accordance with the transferability provisions of the CertainTeed warranty applicable to their shingles. 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 (10) 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 2016 through September 2017, 1,639 warranty claims (coded as RCW in column D of Exhibit A, Claim Summary tab) were paid under the provisions of the Settlement Agreement. Payments for these claims averaged approximately \$920.51 per claim.

The Settlement Agreement also provided for compensation to be paid to two other categories of claimants:

- *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.
- *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.

Under the Settlement Agreement, both Transferee and Releaser 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. During the period October 2016 through September 2017, no Releaser claims were submitted or paid. During the same period, a total of 46 Transferee claims were denied because the claims were not filed within one year of the

Settlement Effective Date as required by Section 6.7 of the Settlement Agreement. In preparing this report, CertainTeed determined that six (6) claims were erroneously paid as Transferee claims, even though none of these six claims was filed within 12 months of the Effective Date of the Settlement Agreement (coded as RCT in column C of Exhibit A, Claim Summary tab). A total of \$1,682.46 was paid to these six claimants. Of this amount, \$1,589.04 was erroneously paid to five (5) claimants whose claims should have been denied both because they were not timely as Transferee claims and because they were not qualified to assert a warranty claim in accordance with the transferability provisions of the CertainTeed warranty applicable to their shingles. The sixth claimant – claimant number 668323 – was sent a check for \$93.42 as his settlement compensation, with the compensation calculated at the rate of \$34/square prorated from the date of installation applicable to Transferee claims, rather than the \$74/square prorated applicable to Warranty claims, even though the applicable warranty provided warranty coverage to the claimant as a transferee. Upon discovering this mistake, CertainTeed has sent a supplemental check to this claimant in the amount of \$109.87; that supplemental payment will be included in the totals reported in CertainTeed's Eighth Report to the Court to be filed in November 2018.

During the period October 2016 through September 2017, CertainTeed has denied a total of 705 claims. More than 81.4% of the denied claims – a total of 574 – were denied because the claimant was not a Class Member: 441 of these claimants had fiberglass rather than organic shingles; 102 had shingles not manufactured by CertainTeed; 15 had not submitted evidence demonstrating that the shingles had been manufactured by CertainTeed; and 16 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, 125 claims were denied because the claims involved shingles with warranties that had previously expired, including 79 claims of purchasers of the shingles themselves and, as discussed above, 46 claims of transferees. Additionally, six (6) 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.

No claims were denied either because the shingles did not exhibit “Damage” as defined in Section 3.6 of the Settlement Agreement or on the basis of any 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, 2016, six (6) claim 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 Sixth Report to the Court. In the subsequent year, CertainTeed has submitted eight (8) additional claim 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 2016 through September 2017, the Independent Claims Administrator

issued claim determinations with respect to thirteen (13) of these fourteen (14) appeals, denying all thirteen (13) appeals. None of CertainTeed's determinations of the claims were reversed and CertainTeed was not required to make any additional payments to any of the appealing claimants. As of September 30, 2017, Heffler Claims Administration was still in the process of reviewing the claim file for the remaining appellant whose file 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.

From 2010 through 2016, CertainTeed issued 416 checks to claimants in connection with the Settlement that have never been cashed. Seventy-two (72) of the payees of those checks are payees on more than one check, bringing the total number of claimants who had not cashed their checks to 342. All of the uncashed checks issued since 2012 (a total of 212) were in an amount of \$50.00 or more. In the prior two years (2010 and 2011), 140 checks were issued in an amount of \$50.00 or greater; the other 64 checks were in smaller amounts, ranging from \$0.01 to \$48.30. Because CertainTeed moved its class action account to another bank and, therefore, needed to close out the account on which these checks were drawn, in April 2017, CertainTeed, with Class Counsel's agreement, notified claimants to whom \$50.00 or more was owed<sup>1</sup> that their checks would not be honored and that new checks will be issued. Sending letters to these claimants and requiring them to contact CertainTeed permitted CertainTeed to confirm that the claimant still resides at the last known address. Since that notice was sent, 126 claimants have contacted CertainTeed and requested that their checks be re-issued. Checks totaling \$59,377.72 have been

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<sup>1</sup> CertainTeed concluded and Class Counsel concurred that it did not make economic sense to write letters about and re-issue checks that were drawn in an amount less than \$50 more than five years ago. The total value of the checks

issued to these claimants. These totals are not included in the totals discussed above on pages 2 to 4 of this Report.

Pursuant to Section 9.11 of the Settlement Agreement, CertainTeed is required to maintain a website about the Settlement so long as it is processing claims under the Settlement Agreement. During the course of this past year, CertainTeed concluded that, in light of the passage of time, the settlement website should be substantially updated. To that end, at CertainTeed's direction, and with Class Counsel's consent, Jeff Johnson of CAC Services Group, which initially prepared the website and has had responsibility for maintaining it, revised the website and the new website went live as of October 27, 2017. The revised website continues to be available at the same address as has been used since the website was initially created: <http://www.certainteedsinglesttlement.com/>.

Respectfully submitted,

s/Arlene Fickler  
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Corporation

Dated: November 1, 2017

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that were issued to the 63 claimants whom CertainTeed did not contact was \$772.49, or less than 0.4% of the total value of all the uncashed checks (\$197,302.02).

**CERTIFICATE OF SERVICE**

I, Arlene Fickler, hereby certify that I caused a true and correct copy of CertainTeed Corporation's Seventh Report to the Court under Section 4.33 of the Agreement of Settlement and Compromise as Amended to be filed and served today, November 1, 2017, 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 1, 2017, in connection with the electronic filing.

s/Arlene Fickler  
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**EXHIBITS A – C**  
**FILED UNDER SEAL**