

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: CERTAINTEED CORPORATION
ROOFING SHINGLES PRODUCTS
LIABILITY LITIGATION

MDL DOCKET NO. 1817

This Report relates to:

ALL CASES

**NINTH REPORT TO THE COURT SUBMITTED BY
CERTAINTEED LLC UNDER SECTION 4.33 OF THE AGREEMENT OF
SETTLEMENT AND COMPROMISE AS AMENDED**

CertainTeed LLC, a Delaware limited liability company, successor to certain assets and liabilities of 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 Ninth Report covering claims data for the period from October 2018 through September 2019.

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 2018 through September 2019, CertainTeed reviewed, processed, and paid a total of \$235,243.32 to claimants who submitted claims pursuant to the Settlement Agreement. This total included \$9,200.00 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 D of Exhibit A, Summary tab); a total of 184 claimants received such payments.

The balance of the compensation – a total of \$226,043.32 – 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 2018 through September 2019, 284 warranty claims (coded as RCW in column C of Exhibit A, Summary tab) were paid under the provisions of the Settlement Agreement. Payments for these claims averaged approximately \$795.93 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 2018 through September 2019, no Releaser claims or Transferee claims were submitted or paid.

During the period October 2018 through September 2019, CertainTeed has denied a total of 194 claims. Approximately 9% of the denied claims – a total of 17 claims – were denied because the claims involved shingles with warranties that did not provide coverage to the claimants, including (i) thirteen (13) claimants whose warranties had expired and (ii) four (4) claimants whose warranty did not provide coverage to them as purchasers of the buildings from building owners other than those who had installed the shingles. The rest of the claims were denied because the claimant was not a Class Member: 159 of these claimants had fiberglass rather than organic shingles, and 18 had shingles not manufactured by CertainTeed. 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. During the period October 2018 through September 2019, CertainTeed submitted two (2) 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, the Independent Claims Administrator issued claim determinations with respect to these two (2) appeals, denying them both. None of CertainTeed’s determinations of the claims were reversed and CertainTeed was not required to make any additional payments to either of the appealing claimants.

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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Dated: October 30, 2019

CERTIFICATE OF SERVICE

I, Arlene Fickler, hereby certify that I caused a true and correct copy of the Ninth Report to the Court Submitted by CertainTeed LLC Under Section 4.33 of the Agreement of Settlement and Compromise as Amended to be filed and served today, October 30, 2019, 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 October 30, 2019, in connection with the electronic filing.

s/Arlene Fickler
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EXHIBITS A THROUGH C

FILED UNDER SEAL