

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

CINDY THOMAS, F. RENEE GATERS, and  
LOREN CHAMBERLAIN, on behalf of,  
themselves and all others similarly situated,

Plaintiffs,

vs.

LOUISIANA-PACIFIC CORPORATION and  
ABT BUILDING PRODUCTS  
CORPORATION a/k/a ABTCO,

Defendants.

Case No. 2:05-1515-PMD

**CLASS ACTION SETTLEMENT  
AGREEMENT**

**I. RECITALS**

Plaintiff Cindy Thomas filed this lawsuit on May 25, 2005 in the United States District Court, District of South Carolina, Charleston Division. Plaintiffs F. Renee Gaters and Loren Chamberlain were added as parties by Amended Complaint filed on March 19, 2007. The Court granted Plaintiffs' Motion for Class Certification by Order filed on June 6, 2007. Class Counsel subsequently provided Court-approved Notice to Class Members. Notice was provided by publication in the Post & Courier newspaper on October 26 and November 2, 2007, as well as direct mailings to 140 addresses made available through the Louisiana-Pacific Corporation Warranty Claims files. The opt-out deadline was December 3, 2007.

The class representative Plaintiffs in this lawsuit represent owners of structures in Charleston County, South Carolina on which a trim product manufactured by the Defendants was installed. The trim product is referred to as TrimBoard. The class representatives allege that the TrimBoard manufactured by Defendants in Roaring River, North Carolina and installed on structures owned by the settlement class members in Charleston County, South Carolina has deteriorated and caused damage to the Trimboard and in some instances other parts of the structures. Plaintiffs allege that Defendants breached express and implied warranties applicable to TrimBoard, and seek money damages as a result.

Defendants deny all such allegations. Defendants assert that TrimBoard is appropriate for use as exterior trim, that the product is performing its intended function on structures in Charleston County and that LP stands behind the product through the Warranty Claims Program. However, Defendants have agreed to enter into this Settlement in order to put to rest all controversy and to avoid the further expense of litigation, without in any way acknowledging

any fault or liability on their part. Plaintiffs and Class Counsel recognize that there are significant legal and factual obstacles to a successful prosecution of this lawsuit, that it would involve time-consuming and lengthy proceedings to resolve them, and that the ultimate outcome would be uncertain.

In order to provide meaningful, immediate relief to the Class Members and to resolve through compromise in a fair, appropriate manner the many contentious legal and factual issues involved in this lawsuit, the class representative Plaintiffs, through Class Counsel, have negotiated a TrimBoard compensation formula available to all Class Members regardless of when the TrimBoard was installed. This Settlement provides immediate payments to Class Members with Damaged TrimBoard.

This Settlement is for settlement purposes only. It has been entered into for the purpose of compromising and settling a disputed matter and is not an admission of a deficiency in the manufacture of TrimBoard.

NOW, THEREFORE, THIS SETTLEMENT is entered into this \_\_\_\_ day of October 2008, by and among (a) the Plaintiffs in this case, for themselves and on behalf of the Class Members as hereinafter defined; and (b) Defendants.

Subject to Court approval, it is hereby stipulated and agreed by the Parties that upon the entry by the Court of a Judgment approving the Settlement and directing its implementation, this Action shall be settled and compromised upon the terms and conditions set forth below.

## II. DESCRIPTION OF THE CLAIMS-MADE SETTLEMENT PROGRAM

### A. Definitions

1. **ABTco** means ABTco, Inc., Abitibi-Price, Inc., Abitibi-Price Corp., ABT Building Products Corp., all of their present or former parents, subsidiaries or affiliates, and/or all of their present or former directors, officers, employees, successors, agents and assigns.
2. **Action** means the case entitled Cindy Thomas, F. Renee Gaters and Loren Chamberlain v. Louisiana-Pacific Corporation and ABT Building Products Corporation a/k/a ABTCO, United States District Court, District of South Carolina, Charleston Division, Case No. 2:05-1515-PMD.
3. **Claim** means a request for compensation for Damaged TrimBoard installed on a home, apartment, condominium, building or other structure under this Settlement. All Claims must be submitted to Defendants by Class Counsel.
4. **Claim Form** means a form submitted by Class Counsel on behalf of a Class Member seeking payment under the Settlement. The Claim Form will be substantially the same as the document attached as Exhibit A to this Settlement.

5. **Claim Period** means the period within which Class Counsel may submit a Claim Form on behalf of a Class Member to Defendants to recover under the Settlement. The Claim Period for all Class Members will commence on the Settlement Date. For Class Members whose Installation Date is after May 25, 1995, the Claim Period will be 10 years from Installation Date, but all such Class Members will have a minimum of 12 months after the Settlement Date to file a Claim. Class Members whose Installation Date is before May 25, 1995 may file a Claim for Prior Unreimbursed Repairs if they are otherwise eligible, but such Class Members may not file any other Claim. For Class Members submitting a Claim for Prior Unreimbursed Repairs, the Claim Period for such claims will expire 12 months after the Settlement Date, irrespective of that Class Member's Installation Date. A Claim shall be deemed "filed" or "submitted" as of the date of its postmark when mailed first class, registered or certified mail, postage prepaid and properly addressed to the Claims Adjuster, or when delivered to any commercial one or two-day delivery service if properly addressed to the Claims Adjuster, or when actually received by the Claims Adjuster, whichever is first.

6. **Claim Report** means a written description of the results of the inspection including photographs prepared by the Claims Adjuster.

7. **Claims Adjuster** means personnel employed by or retained by Defendants to review, inspect, evaluate, calculate and pay Claims submitted by Class Counsel. Defendants may use a combination of employees and non-employees to provide the various functions required of the Claims Adjuster.

8. **Claims Program** means the process that Defendants will provide for evaluating and paying claims submitted by Class Counsel on behalf of Class Members under the Settlement.

9. **Class Counsel** means Paul A. Dominick and Justin O'Toole Lucey.

10. **Class Members** means all Persons defined as follows (other than the Persons listed on Exhibit B who returned a request for exclusion prior to the expiration of the opt-out period on December 3, 2007):

*All persons, firms, corporations and other entities which own homes, apartments, condominiums, buildings and other structures in Charleston County, South Carolina on which Defendants' TrimBoard product is installed and any person who qualifies for Prior Unreimbursed Repairs, excluding any structure owned by any federal, state or local government, and any structure owned by Defendants or any of their subsidiaries, affiliates or employees.*

11. **Damage** means, and is explicitly limited to, Excessive Swelling, Delamination or Decay. Damage does not include (i) intentional, reckless or negligent physical damage to TrimBoard resulting from mechanical force caused directly or indirectly by a Class Member or other Person; or (ii) damage to

TrimBoard to the extent resulting from natural disaster including, but not limited to, fire, hurricane, flood, earthquake, earth movement, or other similar force majeure events.

**12. Decay** means TrimBoard that has deteriorated to the point that the surface or edge of the TrimBoard visibly deforms under moderate thumb or thumbnail pressure.

**13. Defendants** means LP and ABTco.

**14. Delamination** means a separation at the edge of the TrimBoard such that a feeler gauge of 0.025" thickness and one-half inch width can be inserted one-half inch into the suspected delaminated edge with moderate hand pressure.

**15. Excessive Swelling** refers to an aesthetic issue that qualifies as Damage. Where it is practical to take a physical measurement, Excessive Swelling means that the portion of the TrimBoard with Swelling measures 15% thicker than the portion of the TrimBoard without Swelling. Where it is not practical to take a physical measurement (i.e., the TrimBoard is not accessible), Excessive Swelling means TrimBoard with a deformation caused by swelling that is visible to the unaided eye and that a reasonable person deems to be an aesthetic problem on the home.

**16. Threshold for Total Trim Replacement** means the percentage of Damage at which all of the TrimBoard on the home will be treated as Damaged for purposes of calculating the Settlement Payment Amount. As explained below, in calculating the Threshold for Total Trim Replacement, the linear feet of TrimBoard with Damage on the entire house will be compared to the total linear feet of TrimBoard on the entire house.

**17. Installation Date** means the date on which the TrimBoard is deemed to have been installed for purposes of the Settlement. For TrimBoard installed as part of the original construction of the home, the Installation Date is the date on which the local building official issued the Certificate of Occupancy. For TrimBoard installed as a replacement for original trim, the Installation Date is the date established by reasonable proof such as a Certificate of Occupancy, contractor invoices, building permits, or other contemporaneous records, or a builder's affidavit or other reliable evidence.

**18. Judgment** means the Final Order and Judgment in a form substantially the same as Exhibit C to this Settlement.

**19. Long Form Settlement Notice** means a form substantially the same as the document attached as Exhibit D to this Settlement.

**20. LP** means LP Corp. and Louisiana-Pacific Corporation and all of their present or former parents, subsidiaries or affiliates, and/or all of their present or former directors, officers, employees, successors, agents and assigns.

21. **Notice Date** means the date on which the Settlement Notice is first published under the Notice Program.
22. **Notice Program** means the program described in Exhibit E to this Settlement.
23. **Parties** means Defendants, Plaintiffs and Class Members.
24. **Person** means a person, corporation, association or other entity, and it includes the singular and plural.
25. **Piece** means TrimBoard installed in a single, continuous, un-cut segment on the subject home.
26. **Plaintiffs** means the three named plaintiffs designated to serve as class representatives in this action: Cindy Thomas, F. Renee Gaters and Loren Chamberlain.
27. **Preliminary Approval Order** means an order executed by the Court in this Action prior to commencement of the Notice Program. The Preliminary Approval Order shall be substantially in the form of Exhibit F to this Settlement.
28. **Prior Unreimbursed Repairs** means the reasonably documented out-of-pocket expenses reasonably incurred by the Class Member (and not any collateral source such as the Class Members' insurance or builder) between December 1, 2001 and the Notice Date to repair or replace TrimBoard that had sustained Damage.
29. **Releasees** means Defendants, including their successors, parents, subsidiaries, divisions, or affiliates, and their officers, directors, stockholders, partners, agents, servants, successors, subrogees and assigns and their respective insurers.
30. **Releasing Parties** means any Person who met the definition of Class Member when this Action was pending or meets the definition of Class Member at the time his or her Claim is submitted and who did not timely opt out of the Action.
31. **Settled Claim or Settled Claims** means every claim, action, cause of action, liability, right, demand, suit, matter, obligation, damage, loss or cost, including consequential damages and any claim for other damages, losses or costs, of every kind and description, that the releasing parties now have, have had in the past or may have in the future against any of the Defendants arising out of the subject matter of the Action, whether known or unknown, asserted or unasserted, which if known to the Releasing Parties would have materially affected their settlement with the Releasees and which accrue or have accrued as a result of having Defendants' TrimBoard on the Releasing Parties' property. Without limiting the scope of the foregoing, "Settled Claims" shall include:

- a. property damage to Class Members' TrimBoard or to the structure on which the TrimBoard is installed or to any surrounding property resulting from TrimBoard;
- b. any claim for breach or violation of or for benefits conferred by any federal, state, common or other law or statute, regulation or ordinance relating to TrimBoard;
- c. any claim for breach of any duty imposed by law, by contract or otherwise, including, without limitation, breach of warranty (express or implied) or any other contract, promissory or equitable estoppel or principles of unjust enrichment relating to TrimBoard;
- d. any claim based on principles of tort law or other kind of liability, including without limitation, those based on principles of strict product liability, negligence, reliance, racketeering, fraud, conspiracy, concerted action aiding and abetting, veil-piercing liability, alter-ego or successor liability, consumer fraud, negligent misrepresentation, intentional misrepresentation, or other direct or derivative liability relating to TrimBoard;
- e. any claim related to alleged defects or inadequacies in the design, manufacture, advertising, product literature, sale, distribution or marketing of TrimBoard;
- f. any claim for declaratory or injunctive relief associated with the above;
- g. any claim for diminution in value of or consequential or collateral damage including, but not limited to, claimed damage to the TrimBoard or to any component of the structure on which the TrimBoard is installed or to any surrounding property;
- h. any claim for emotional damages, mental anguish, or similar claim arising out of Damage to the TrimBoard or because of the installation of the TrimBoard on the property; and
- i. any claim for penalties, punitive damages, exemplary damages, or any claim for damages based upon a multiplication of compensatory damages associated with the above.

32. **Settlement** means this settlement agreement and the rights and obligations described within it.

33. **Settlement Date** means the date on which all of the following have occurred: (a) the entry of the Judgment without material modification, and (b) the Judgment becomes final and non-appealable through (i) the expiration of the allowable appeal periods without an appeal having been filed; (ii) final affirmance

of the Judgment on appeal, or final dismissal of all such appeals with prejudice, or denial of all such appeals, including petitions for review, rehearing or certiorari.

**34. Settlement Notice** means a form substantially the same as the document attached as Exhibit G to this Settlement.

**35. Settlement Payment Amount** means the amount paid by Defendants on a Claim under the Settlement.

**36. Side Threshold** means the percentage of Damage at which all of the TrimBoard on a single side of the home will be treated as Damaged for purposes of calculating the Settlement Payment Amount for that side of the home. As explained below, in calculating the Side Threshold, the linear feet of TrimBoard with Damage on *only* that side of the house will be compared to the total linear feet of TrimBoard on *only* that side of the house.

**37. Subsequent Claims** means claims submitted under Paragraph II(E) of this Settlement for TrimBoard for which compensation has not been previously paid.

**38. Swelling** means a change in thickness resulting from exposure to moisture after installation. Swelling that is not Excessive Swelling is not compensable. Swelling that progresses to Excessive Swelling is compensable under the Settlement.

**39. TrimBoard** means any and all material (including, without limitation: trim, soffit, fascia, lattice, fencing, handrails, vents, risers and stringers) manufactured by Defendants at the Roaring River plant as trim and sold as "TrimBoard," "ChoiceTrim," "ProTrim," or "Trim", at any time up to and including December 3, 2007. TrimBoard does not include siding used as trim.

**40. Warranty Claims Program** means the ABTco TrimBoard warranty claim program that was in effect prior to this Settlement and was provided by Louisiana-Pacific Corporation Warranty Technical Services to address TrimBoard claims in Charleston County.

**B. Timing of Rights and Obligations.** The Settlement will proceed as follows:

1. Following the execution of the Settlement, the Parties shall jointly seek preliminary approval of the Settlement and the Notice Program.

2. As soon as practical after execution and filing of the Preliminary Approval Order, Defendants shall provide notice to the Class Members consistent with the Notice Program.

3. After completion of the Notice Program, the Parties will jointly request that the Court grant final approval of the Settlement and enter the Judgment.

4. Upon the Settlement Date, Defendants will begin the Claims Program. Defendants may, in their sole discretion, elect to implement this Settlement prior to the Settlement Date.

5. When a Class Member's Claim Period expires, the Claims Program will end for that Class Member, and the Class Member will no longer be permitted to submit a Claim. However, the Release and other obligations under the Settlement will remain in effect.

**C. The Claims Program.** Commencing on the Settlement Date, Defendants will provide the Claims Program to Class Members during the Class Members' respective Claim Period. The Claims Program will consist of the following process:

1. All Claim Forms must be signed by the Class Member who owns the Claim. Only a Person who meets the definition of Class Member at the time the Claim is submitted may pursue a Claim. Only Class Counsel may submit a Claim Form to Defendants. All Settlement Payment Amounts will be paid to the Class Member in the form of a check made out to Nexsen Pruet, LLC and sent to the offices of Nexsen Pruet, LLC.

2. Class Members will complete a Claim Form. The Claim Form will include proof of the following:

a. the Persons signing the Claim Form are Class Members (i.e., the Persons own the home which is the subject of the claim and the trim currently installed on the home is TrimBoard); and

b. the Persons signing the Claim Form own all claims relating to the TrimBoard and have the responsibility and authority to act on such claims on behalf of all other owners of such claims (e.g., no other Person owns all or part of the Claim and the Class Member has not transferred or released his claims relating to the TrimBoard); and

c. the amount that the Class Member has previously been paid from any source for repair or replacement of TrimBoard; and

d. the linear feet of TrimBoard installed on each Side of the house (if the Class Member already has this information); and

e. for Claims regarding TrimBoard currently on the house, photographic evidence of the existence of *some* Damage to TrimBoard, or new Damage to TrimBoard in the case of Subsequent Claims and claims that were inspected under the Warranty Claims Program; and

f. the Claim Period has not expired (i.e., evidence of the Installation Date.)



3. The Class Members will sign the Claim Form verification, verifying all of the information provided.

4. Class Counsel will submit the completed Claim Forms to the Claims Adjuster. All Claims by Class Members shall be submitted by Class Counsel. Claims submitted by any Person other than Class Counsel will be directed to Class Counsel, and such Claims will not be processed or paid until they are submitted by Class Counsel.

5. If a Class Member or a Class Member's designee (such as a third-party claim filing organization, attorney, or designee under a power of attorney) contacts Defendants regarding Damage to TrimBoard during the applicable Claim Period, the Claims Adjuster will provide the Class Member with contact information for Class Counsel.

6. The Claims Adjuster will review the Claim Form to determine whether the required information is complete. If the Claim Form is deemed incomplete, the Claims Adjuster will notify Class Counsel of any deficiency. Class Counsel will make good faith efforts to (1) remedy any agreed upon deficiency in the information provided by Class Members as required in the Claim Form and (2) resolve any disputed deficiency with the Claims Adjuster. After Class Counsel has submitted the Claim Form, and with the consent of Class Counsel, the Claims Adjuster may communicate directly with the Class Member (with copy to class counsel when the communication is in writing) in order to obtain the information required by the Claim Form. Email is the preferred method of communication. To assist with tracking, email communication should include prior emails in the chain.

7. When the information required by the Claim Form has been provided to the Claims Adjuster and the Claims Adjuster deems the Claim Form complete, the Claims Adjuster shall initiate an inspection of the TrimBoard on the Class Member's home, subject to paragraph 10, below. The Class Member shall provide safe access to the TrimBoard on the home for the inspection.

8. The Class Member shall indicate on the Claim Form whether the Class Member requires that the inspection take place while the Class Member is present. If the Class Member requires that he or she be present, then Class Counsel shall coordinate an inspection time convenient for both the Claims Adjuster and the Class Member, unless permission has been given for direct communication with Class Members.

9. In inspecting the Class Member's home, the Claims Adjuster shall apply the definitions of Damage contained in this Settlement.

a. Damage to any portion of a continuous piece of TrimBoard will be deemed Damage to the entire piece.

b. If the condition of TrimBoard meets the definition of Damage, that Damage will not be subject to other exclusions or limitations. All TrimBoard with Damage is compensable under the Settlement.

c. The Claims Adjuster will apply the Threshold for Total Trim Replacement as follows: where 25% of the TrimBoard is Damaged on a house, the Claims Adjuster will pay the Settlement Payment Amount as if all of the TrimBoard on the house had Damage. For purposes of this paragraph, the percentage of Damage will be calculated as follows: the linear feet of all of the pieces of TrimBoard with some Damage on the entire house divided by the linear feet of all of the TrimBoard on the house.

d. Where the Threshold for Total Trim Replacement is not satisfied, the Claims Adjuster will apply the Side Threshold as follows: where 25% of the TrimBoard is Damaged on one side of a house, the Claims Adjuster will pay the Settlement Payment Amount as if all of the TrimBoard on that side of the house had Damage. For purposes of this paragraph, a house has four sides: front, back, left side and right side. The amount of TrimBoard on a side is all of the TrimBoard on the house facing the direction that the side faces. For purposes of this paragraph, the percentage of Damage will be calculated as follows: the linear feet of all of the pieces of TrimBoard with some Damage on that side alone divided by the linear feet of all of the TrimBoard on that side alone.

10. The Claims Adjuster may, in its sole discretion, award the Settlement Payment Amount based on total replacement without conducting an inspection.

11. The Claims Adjuster will report the findings from the inspection by email to Class Counsel. The Claim Report will provide the following: (1) the Settlement Payment Amount; (2) the amount of TrimBoard in linear feet determined to be compensable under the Settlement; (3) photographic documentation of the TrimBoard that the Claims Adjuster determined to be Damaged; and (4) an explanation of the calculation of the Settlement Payment Amount.

12. If a Claim submitted in the final year of the applicable Claim Period results in a determination of Damage to some TrimBoard at issue in the Claim, but less than the Threshold for Total Trim Replacement, Defendants shall in their sole discretion elect between:

a. Paying the Claim using a Settlement Payment Amount as if all of the TrimBoard had Damage (i.e., the total linear feet of TrimBoard on the home times \$14 less any credit for prior payments); or

b. Paying the Claim using a Settlement Payment Amount based on the linear feet of TrimBoard found to have Damage and granting a two-year extension of the Claim Period for that Class Member.

This Paragraph 12 does not apply to the final year of the two-year extension of the Claim Period under paragraph b, above. In other words, Paragraph 12 is only applied one time: in year 10 of the 10 year warranty duration.

13. The Settlement Payment Amount will be calculated as follows.

a. Where application of the Settlement results in a determination that the Class Member will be compensated for all of the TrimBoard on the home, the Settlement Payment Amount shall be calculated using the total linear feet of TrimBoard on the home times \$14.

b. Where application of the Settlement results in a determination that the Class Member will be compensated for less than all of the TrimBoard on the home, the Settlement Payment Amount shall be calculated using the total linear feet of TrimBoard pieces with some Damage times \$17.

c. In all cases where the Threshold for Total Trim Replacement has not already been met, Defendants may elect to conclude their Settlement obligations to a Class Member by paying the Settlement Payment Amount of the total linear feet of TrimBoard on the home times \$14 (i.e., as if all of the TrimBoard had Damage). Defendants' election to pay the Claim as if all of the TrimBoard on the home had Damage may be made at any stage in the process at Defendants' sole discretion.

d. TrimBoard for which Defendants previously paid under the Settlement, the Warranty Claim Program, a prior settlement or otherwise may not be the subject of a Claim. Any such TrimBoard will be excluded from consideration by the Adjuster in determining the Settlement Payment Amount. Claims made by a Class Member who has previously submitted a claim under the Warranty Claim Program must be supported by Damage that was not compensated under the Warranty Claim Program. If a Class Member makes a Claim, and it is determined that the Class Member had previously been compensated for all of the Damage, the Class Member will be responsible for either: (a) the actual cost of the inspection incurred by Defendants where Defendants use an outside inspection firm; or (b) \$150 where Defendants perform the inspection internally, subject to an annual adjustment agreed to between Class Counsel and Defendants or by the Court. To the extent that Class Counsel does not already have documentation of the Damage previously compensated, Class Counsel may request a copy of such existing documentation from Defendants on an as-needed basis.

e. Where a Class Member has received compensation from a third party relating to the TrimBoard which is the subject of the Claim, and Defendants demonstrate that some or all of that compensation covers the cost of replacing TrimBoard that is subject to the Claim, Defendants shall receive a credit for that portion of the compensation. The Claims Adjuster

shall apply this credit to the Settlement Payment Amount before sending payment to Class Counsel.

f. Beginning one year after the Settlement Date, the Claims Adjuster will adjust the price factors (\$14 per linear foot and \$17 per linear foot) annually thirty days after the Annual National Consumer Price Index adjustment is published, in accordance with the percent change from the prior year for "All items" in the Consumer Price Index for All Urban Consumers.

14. If Class Counsel agrees with the Claims Adjuster's determination of the Settlement Payment Amount, Class Counsel promptly will forward to the Class Member the complete Claim Report as well as the Settlement Payment Amount less any fees and expenses that Class Counsel is authorized to deduct.

15. If Class Counsel notifies the Claims Adjuster that the Class Member is in the process of selling the house and provides evidence of that fact, the Parties will work together in good faith to expedite the Claim.

16. If Class Counsel does not agree with the Claims Adjuster's determination of the Settlement Payment Amount, Class Counsel shall return the check for the Settlement Payment Amount and promptly notify the Claims Adjuster of the dispute. By depositing or cashing the check for the Settlement Payment Amount, Class Counsel and the Class Member accept the findings of the Claims Adjuster and release Defendants from their obligations under the Settlement with respect to the TrimBoard addressed in the Claim Report. Should Class Counsel notify the Claims Adjuster of a dispute and return the Settlement Payment Amount within 30 days of its receipt, the dispute shall be handled in accordance with Paragraph VI below.

17. After the Claims Program has been in operation for 120 days, the following deadlines apply:

a. the Claims Adjuster has on average 20 days after receipt of a Claim Form to notify Class Counsel of any deficiency;

b. the Claims Adjuster has on average 20 days after completion of the Claim Form to instruct the inspector to schedule an inspection;

c. if the Class Member does not request to be present, the inspection will be conducted on average within 45 days from the instruction to inspect;

d. the Claims Adjuster will provide the Claims Report to Class Counsel on average within 20 days of the inspection;

e. where the Claims Adjuster proves that a delay in the process was attributable to causes outside of its control, the above deadlines shall not apply to the delay period.

**D. Claims for Prior Unreimbursed Repairs**

1. If a Class Member, during the applicable Claim Period but prior to the Notice Date and without knowledge of the Settlement, incurred expenses for repair or replacement of TrimBoard, the Class Member may seek reimbursement for such expenses by submitting a claim to the Claims Adjuster through Class Counsel. Only a Person who met the definition of Class Member at the time the Prior Unreimbursed Repairs were made may pursue a Claim for Prior Unreimbursed Repairs. Any such Claim for Prior Unreimbursed Repairs must be submitted within the one-year period specified in the definition of Claim Period, above.
2. Entitlement to compensation under a Claim for Prior Unreimbursed Repairs shall be based on the Settlement Payment Amount that would have been determined by an inspection conducted on the day before the repairs were made.
3. A Class Member submitting a Claim for Prior Unreimbursed Repairs is required to provide reasonable evidence of the same elements that would be necessary to recover a Settlement Payment Amount for TrimBoard currently on the building. Such a Class Member must provide the information required by the Claim Form and reasonable evidence of the quantity of Damaged TrimBoard at the time of the repair.

**E. Subsequent Claims**

1. Class Members may submit Subsequent Claims for Damage to TrimBoard that was not determined to have Damage in any prior Claim. Only a Person who meets the definition of Class Member at the time the Subsequent Claim is submitted may pursue a Subsequent Claim.
2. Subsequent Claims will be limited to: a total of 4 Claims under the Settlement and no more than 1 Claim in any 12 month period.
3. In calculating the Threshold for Total Trim Replacement and the Side Threshold in a Subsequent Claim, the Claims Adjuster shall consider all prior claims. The linear feet of TrimBoard with Damage in prior claims (including both Claims made pursuant to this Settlement and claims made through the Warranty Claims Program) will be added to the linear feet of TrimBoard with Damage in the pending Claim. The linear feet of TrimBoard that did not have Damage but for which compensation was previously paid based on a Side Threshold award will not be included as TrimBoard with Damage for the purpose of calculating the Threshold for Total Trim Replacement, unless it has since suffered damage.
4. The Claims Adjuster may, at its sole discretion, determine that all of the remaining TrimBoard on the home will be treated as Damaged for purposes of determining the Settlement Payment Amount.

**F. Unclaimed Settlement Payment Amounts.**

1. In the event that any Class Member fails to cash his claim check within 120 days of mailing by Class Counsel, such un-cashed amounts will be returned to Defendants.
2. Each year on or before May 1<sup>st</sup>, Class Counsel will provide a report to Defendants identifying each check from Class Counsel to a Class Member that remains un-cashed from the prior year, its amount, and the date on which it was sent to the Class Member.

**III. RELEASES**

A. Upon entry of the Judgment, each Class Member who has not timely opted out shall, on behalf of him/herself and any Person claiming by or through him/her as his/her heir, administrator, devisee, predecessor, successor, representative of any kind, shareholder, partner, director, owner or co-tenant of any kind, affiliate, subrogee, assignee, or insurer (the "Releasing Parties"), and regardless of whether any Class Member executes and delivers a written release, be deemed to and does hereby release and forever discharge Defendants, and all of their present and former divisions, predecessors, affiliates, subordinates, parents and all of their present or former directors, officers, attorneys, employees, servants, agents, successors, assigns, subsidiaries and insurers (including co-insurers and re-insurers) solely with regards to policies held by Defendants (all the foregoing parties being referred to as "Releasees"), of and from any and all Settled Claims and related subrogation claims of the Releasing Party's subrogees or insurance carriers not protected from waiver of subrogation by the provisions of applicable insurance policies (or assigned or subrogated prior to final approval of this Agreement and not subject to compromise or settlement by the policyholder), except as may otherwise be provided in this Agreement.

B. The Releasing Parties specifically release and forever discharge any other Person from any and all claims that arise out of TrimBoard on the property of a Releasing Party to the extent such claims are based on alleged defects or inadequacies in the design, manufacture, advertising, product literature, sale, distribution or marketing of TrimBoard, all of which claims have been compromised and settled in their entirety by Defendants under the terms of this Settlement.

C. If any Releasing Party brings an action or asserts a claim against a Releasee contrary to the terms of this Release, the counsel of record for such Releasing Party shall be provided with a copy of this Settlement. If such Releasing Party does not within thirty (30) days thereafter dismiss his or her action or claim and the action or claim is subsequently dismissed or decided in favor of the Releasee, the Releasing Party shall indemnify and hold harmless the Releasee from any and all costs and expenses, including reasonable attorney's fees, incurred by the Releasee in the defense of the action or claim.

D. Settled Claims shall not include (a) any claim for bodily injury (including wrongful death) or (b) claims for pain and suffering, emotional distress, mental anguish, or similar injuries associated with such bodily injury to the extent allowed by law.

#### **IV. NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

A. Defendants will pay for implementation of the Notice Plan. Plaintiffs may provide additional notice at their own expense.

B. The Notice Plan is intended to provide Class Members with an opportunity to appear and be heard at the Fairness Hearing. Class Members previously received notice of this Action, and Class Members were given an opportunity to opt-out. The period for submitting a request for exclusion expired on December 3, 2007. Defendants, Plaintiffs, and Class Counsel on behalf of the Class Members agree and hereby stipulate that the prior notice satisfied due process, and that the period for requesting exclusion from the class has expired.

C. Defendants, Plaintiffs, and Class Counsel on behalf of the Class Members agree and hereby stipulate that the prior notice and the Notice Plan satisfy due process and that the Settlement is binding upon all Class Members regardless of whether any individual Class Member received actual notice.

#### **V. FEES, COSTS AND EXPENSES**

A. Other than as expressly provided in this Settlement, the Parties will each bear their own fees, costs and expenses.

B. Defendants will pay Class Counsel \$100,000 within 14 days of the Settlement Date to compensate Class Counsel for the time, effort and cost of administering the claims. Each named representative Plaintiff will receive a \$5,000 stipend. Defendants will pay Class Counsel \$7,500 within 14 days of the Settlement Date to fund 50 percent of these stipends. Class Counsel will pay the other \$7,500 to fund the stipends. Aside from these payments, Defendants shall have no obligation to pay Class Counsel or Plaintiffs for time or expenses incurred in the Action or in satisfying their obligations under the Settlement.

C. Class Counsel represent that they are employed by the class representative Plaintiffs on a one-third contingency basis. Class counsel will be compensated out of each class member's recovery at the time each Claim is paid.

#### **VI. DISPUTE RESOLUTION**

A. Any disputes that arise out of the Settlement may be submitted by Defendants or Class Counsel to the Court in this Action for final, binding resolution.

B. Before any dispute may be submitted to the Court, the party intending to submit the dispute shall make a good faith effort to resolve the dispute. At a minimum, this good faith effort shall include providing the other side with a written description of the dispute and attempting to confer with the other side in an attempt to resolve the matter. Except in the case of emergency, a party shall not submit any dispute to the Court until 30 days after providing the other side with a written description of the dispute.

C. Where the dispute reasonably requires an appearance before the Court, the Parties shall schedule a hearing at a mutually convenient date and time. Where the dispute reasonably requires submission of briefs to the Court, the Parties shall agree upon a schedule for such briefing.

D. In the event of a breach by Class Members or Defendants under this Settlement, the Court may exercise all equitable powers over the breaching Party(ies) to enforce this Settlement and the Judgment irrespective of the availability or adequacy of any remedy at law. Such powers include, among others, the power of specific performance, contempt and injunctive relief.

E. The Party asserting a violation of the Settlement shall bear the burden of proving the violation. In any dispute brought to the Court for resolution, the Parties shall act in good faith. If the Court determines that any motion or opposition was not made in good faith, the Court shall award as sanctions against the Party not acting in good faith the reasonable attorneys' fees and expenses incurred by the prevailing Party.

## **VII. MISCELLANEOUS PROVISIONS**

A. The terms and conditions of this Settlement shall constitute the sole and exclusive remedy for any and all Settled Claims of Class Members against Defendants; and upon entry of the Judgment by the Court, each Class Member shall be barred from initiating, asserting or prosecuting any Settled Claims against Defendants.

B. From and after the entry of the Judgment, no action or proceeding may be brought by any Person on behalf of a Class Member in which any Settled Claim is asserted or the subject of inquiry; nor may any Class Member commence or remain a member of a class action or be the beneficiary of any state or federal proceeding in which any of the Settled Claims is asserted against any of the Defendants or is the subject of inquiry.

C. The United States District Court for the District of South Carolina, Charleston Division, shall retain exclusive and continuing jurisdiction of the Action, all Parties and Class Members, to interpret and enforce the terms, conditions, and obligations of this Settlement, including any question regarding the proper administration of the Settlement.



D. The Parties agree and hereby stipulate that neither the execution of this Settlement, nor any of its provisions or attachments, nor any action taken pursuant to its terms shall be admitted in this or any other action or proceeding as evidence or construed as an admission by either Party of the validity of any claim or of any defense or of any facts alleged in this or any other action. The Parties further agree and stipulate that this Settlement shall not constitute, and shall not be construed as, an admission on the part of Defendants that this lawsuit, or any other proposed or class action, is appropriate for certification as a litigation class pursuant to Federal Rule of Civil Procedure 23, South Carolina Rule of Civil Procedure 23, or any similar state or federal class action statute or rule. This Settlement, however, may be admitted as evidence in any action to enforce its terms.

E. Defendants represent and warrant that (i) they have all requisite corporate power and authority to execute, deliver, and perform this Settlement and to consummate the transactions contemplated hereby, (ii) the execution, delivery, and performance of this Settlement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of such Defendants; (iii) their signatories to the Settlement have full authority to sign on behalf of and to bind such Defendants to the terms of the Settlement, and (iv) this Settlement has been duly and validly executed and delivered by such Defendants and constitutes their legal, valid and binding obligation.

F. This Settlement has been negotiated at arm's length by Class Counsel and counsel for the Defendants. If a dispute should later arise regarding any of its terms, no Party shall be deemed to be the drafter of any particular provision of the Settlement; and no part of the Settlement shall be construed against any Party. The Parties further acknowledge and agree that the obligations and releases contained in the Settlement are fair and reasonable in the context of the compromises negotiated.

G. This Settlement shall be construed under and governed by the laws of the State of South Carolina, applied without regard to its laws applicable to choice of law.

H. This Settlement, including all attached Exhibits, shall constitute the entire agreement among the Parties with regard to the subject matter of this agreement and shall supersede any previous agreements and understandings between the Parties. This Settlement may not be changed, modified, or amended except in writing signed by Class Counsel and Defendants' counsel and subject to Court approval. The Parties contemplate that the Exhibits may be modified by subsequent agreement of counsel for all Defendants and Class Counsel prior to use.

I. This Settlement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.


J. This Settlement, if approved by the Court, shall be binding upon and inure to the benefit of the Class, the Parties, and their representatives, heirs, successors, and assigns.

K. Each Class Member who files a Claim under the Settlement and does not repair or replace the TrimBoard for which a Settlement Payment Amount was made shall advise any direct, subsequent purchaser of the property in writing of the existence of this Settlement and the amount of the Settlement Payment Amount.

**FOR DEFENDANTS:**

DATED: October 1, 2008

BUIST MOORE SMYTHE McGEE P.A.

By:   
C. Allen Gibson, Jr.  
James E. Weatherholtz  
Attorneys for Defendants

DATED: October \_\_\_\_\_, 2008

BINGHAM MCCUTCHEN, LLP

By: \_\_\_\_\_  
Michael I. Begert  
Attorneys for Defendants

**FOR PLAINTIFFS AND CLASS MEMBERS:**

DATED: October \_\_\_\_\_, 2008

NEXSEN PRUET, LLC

By: \_\_\_\_\_  
Paul A. Dominick  
Attorneys for Plaintiffs and Class Members

DATED: October \_\_\_\_\_, 2008

JUSTIN O'TOOLE LUCEY, PA

By: \_\_\_\_\_  
Justin O. Lucey  
Attorneys for Plaintiffs and Class Members