

EXHIBIT B

IN THE CIRCUIT COURT FOR
JEFFERSON COUNTY, TENNESSEE
AT DANDRIDGE

BOBBY R. POSEY, and wife, SABRINA
POSEY and DALE TEAGUE, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

DRYVIT SYSTEMS, INC.,

Defendants.

STATE OF TENNESSEE
COUNTY OF JEFFERSON
I, Kathy B. Carpenter, Clerk, Circuit Court of said County
certify the foregoing is a true and correct copy of the
case as filed in my office this 11th day of October, 2003.
Witness my hand and official seal at Dandridge,
Tennessee, this 11th day of October, 2003.
Kathy B. Carpenter, Clerk

Case No. 1

CLASS ACTION

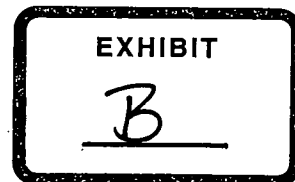
ORDER AND JUDGMENT GRANTING FINAL
APPROVAL OF SETTLEMENT

THIS CAUSE coming on for hearing before the undersigned Superior Court Judge on October 1, 2002, pursuant to this Court's April 8, 2002 Order of Preliminary Approval of Settlement ("April 8 Order"), in order for this Court to conduct a final fairness hearing to determine whether the proposed Settlement with Settling Defendant Dryvit Systems, Inc. (hereafter "Settling Defendant") is fair, reasonable and adequate, and to address Class Counsel's application for an award of attorney's fees and costs; and the Settlement Class Members being represented by Class Counsel and Settling Defendant being represented by its attorneys;

AND THE COURT having read and fully considered the Settlement Agreement, the Notice Plan, and Memoranda submitted by Class Counsel, having received evidence at the hearing and post-hearing, having heard arguments from Class Counsel, the

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AT 9:30 O'CLOCK P.M.
KATHY B. CARPENTER, CLERK



Settling Defendant, and all submissions filed as objections and comments to the proposed Settlement, and being further advised in the premises, now makes the following:

FINDINGS OF FACT

1. This Order Approving Class Action Settlement incorporates the Stipulation of Settlement, with exhibits, filed with this Court on April 8, 2002.
2. This action was commenced on November 14, 2000, as a class action.
3. After more than two (2) years of intensive litigation in this action and other related actions, as a result of more than sixteen (16) months of intensive, arm's length negotiations between Class Counsel and Settling Defendant, the parties have reached accord with respect to a Settlement that provides substantial benefits to Settlement Class Members, in return for a release and dismissal of the claims at issue in this case against the Settling Defendant ("Settlement Agreement"). The resulting Settlement Agreement was preliminarily approved by the Court on April 8, 2002.
4. The law firms of Dofferyre, Shields, Canfield, Knowles & Devine and The Mason Law Firm, PC ("Co-Lead Counsel") and other counsel-of-record for Plaintiffs herein, and the Class representatives have fully and adequately represented the Class for purposes of entering into and implementing the settlement, and have satisfied the requirements of Tenn. R. Civ. P. 23.01(4).
5. As part of its April 8 Order, this Court approved a proposed Notice Plan and Class Notice, which provided Settlement Class Members notice of this proposed settlement with the Defendant. The Notice Plan provided an opportunity for class members to file objections to the Settlement.

6. As of the deadline for the filing of objections, only ten (10) timely "objections" were filed. Given the magnitude of this Settlement, and notice described above, this Court finds that the comparatively low number of objections is indicative of the fairness, reasonableness and adequacy of the Settlement with the Settling Defendant.

7. The settling Parties have filed with the Court declaration from Andrew Novak declaring that the mailing of the Court-approved notice, consistent with the Notice Plan, has been completed.

8. The Court finds that the distribution of the Class Notice and publication of the Legal Notice, in accordance with the terms of the Settlement Agreement and this Court's Preliminary Approval Order: (a) constituted the best practicable notice to Class Members under the circumstances of this action; (b) was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of this class action, their right to exclude themselves from the Class and the proposed settlement, their right to object to any aspect of the proposed settlement, their right to appear at the Final Fairness Hearing — either on their own or through counsel hired at their own expense — if they did not exclude themselves from the Class, and the binding effect of the Orders and Judgment in this action, whether favorable or unfavorable, on all persons who do not request exclusion from the Class; (c) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and (d) otherwise fully satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution (with specific reference to the Due Process Clause), the Tennessee Constitution, the Tennessee Code as well as the state constitutions, statutes, regulatory and case law in all states where a cause of action arising under or related to the litigation may accrue, as described in, among other things, in the pleadings, in the Settlement Agreement, and

in the persuasive authorities presented to the Court by the parties in support of approval of the Settlement Agreement.

9. The Settling Defendant has paid the cost and expense of implementing the Notice Plan.

10. Any persons who wished to be excluded from this Action were provided an opportunity to individually "opt out," pursuant to the Notice and Paragraph 12 of the Court's April 8 Order. A list of all of the individuals who timely filed a valid exclusion is on file with the Court as an exhibit to the Affidavit of Matthew B. Potter. All such listed persons have no rights under the Settlement Agreement and shall not be bound by the Settlement Agreement or the final judgment herein.

11. Settlement Class Members (*i.e.*, members of the Settlement Class who did not timely file such valid individual "opt-out" requests) are bound by the Settlement, the Settlement Agreement and releases contained therein, and the Final Order and Judgment, and do not have any further opportunity to opt out of the Action, except as otherwise provided by Paragraph 6.7 of the Settlement Agreement (the "Post-Inspection Exclusion Request").

12. Any Settlement Class Member who did not timely file and serve an objection in writing to the Settlement Agreement, to the entry of Final Order and Judgment, or to Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in the Order Granting Preliminary Approval of Settlement, is deemed to have forever waived any such objection by appeal, collateral attack, or otherwise.

13. The Court has fully considered all objections filed by Class Members and Non-Class Members (regardless whether they have standing to object) and finds that these objections lack merit and are without any basis of law or fact. Nonetheless, one objector has

expressed the opinion that Class Members should be notified of the possibility that they or a subsequent purchaser of their home might not be able to obtain insurance so long as the house is clad with EIFS. Although Class Counsel and Dryvit do not agree with this proposition, they have agreed to supplement the notice to Claimants with notice regarding homeowners' insurance, substantially in the form attached as Exhibit A, hereto. The Court is satisfied that this notice fairly and adequately addresses this issue.

14. The Court has expressed its concern with the duration of the Claims Period and mold issues that may be encountered by Class members. The Court is satisfied that the amendments to the Settlement, together with the fact that the Settlement does not release personal injury claims, fairly and adequately address the mold issue in the context of this Settlement. As for the Notice, Dryvit has agreed to, and the Court shall so order, a six (6) month extension of the Claims Period.

15. This conclusion is particularly true in light of amendments to the Settlement Agreement and various related clarifications that have been made since the Fairness Hearing. Class Counsel, together with counsel for certain objectors, including those representing a proposed litigation class in South Carolina, have been engaged in numerous substantial discussions and negotiations since the Fairness Hearing with Counsel for the Settling Defendant and persons who will be responsible for overseeing inspection, repair, and warranties under the Settlement Agreement. These negotiations and discussions have resulted in an enhancement of the rights and options of Class Members and a substantial increase in the value of the benefits made available to persons who make claims under the Settlement.

16. On the basis of all of the issues in this litigation, and the provisions of the Settlement Agreement, the Court is of the opinion that the Settlement is a fair, reasonable and

adequate compromise of the claims against the Settling Defendant in this case, pursuant to Rule 23 of the Tennessee Rules of Civil Procedure. There are a number of factors which the Court has considered in affirming this Settlement, including:

- a. The liability issues in this case have been vigorously contested.
- b. The Court notes that for settlement purposes, this Settlement has the benefit of providing relief to homeowners now, without the further costs, delays, risks, and other burdens of litigation, under circumstances where the liability issues are still vigorously contested among the parties to this litigation and among the parties to the individual litigation.
- c. This Settlement is clearly a byproduct of hard-fought litigation between the parties, and not a result of any collusion on the part of Class Counsel or Counsel for the Settling Defendant.
- d. The Settlement Agreement does not impair, and indeed preserves, the rights of Class Members to pursue claims against non-settling parties such as homebuilders and applicators.

17. Class Counsel submitted to the Court and served on the Settling Defendant their application for reasonable attorneys' fees, costs, and expenses consistent with the terms of the Settlement Agreement. This Court has considered Class Counsel's request and hereby grants the request in full.

18. The claims procedure established under the Settlement Agreement is fair, a simplified process and workable. In any event, the Court will retain jurisdiction over the Settlement Agreement to work out any unanticipated problems.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND THE COURT HEREBY MAKES THE FOLLOWING:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter of this proceeding.
2. Pursuant to Rule 23 of the Tennessee Rules of Civil Procedure, the following Settlement Class is certified for purposes of final settlement:

All Persons who, as of June 5, 2002, in any State other than North Carolina, in whole or in part, with Dryvit EIFS installed after January 1, 1989, except persons who (1) prior to June 5, 2002, have settled with Dryvit, providing a release of claims relating to Dryvit EIFS; or (2) have not obtained a judgment against Settling Defendant for a Dryvit EIFS claim, or had a judgment entered against them on such a claim in Settling Defendant's favor; and (3) any employees of Dryvit.

3. The Court finds that, for the purpose of this Settlement, the requirements of Rule 23 of the Tennessee Rules of Civil Procedure are satisfied, and that a class action is an appropriate method for resolving the disputes in this litigation. In particular, the Court finds (a) that the numerosity, commonality, typicality, and adequacy requirements of Rule 23.01 are satisfied, and (b) that the "predominance" and "superiority" requirements of Rule 23.02 are likewise satisfied. As to the latter requirements, the Court notes that it need not consider the trial manageability problems that would exist if this action were not being settled and that a settlement class is a superior method for resolving the claims of Settlement Class Members.

4. Settlement Class Representatives are entitled to and are hereby awarded an additional payment of \$10,000.00 over and above their claim under the Settlement Agreement, in recognition of the efforts they have undertaken and the risk they have incurred in connection with this Action.

5. The Court grants final approval of the Settlement Agreement – as amended – as being fair, reasonable and adequate, pursuant to Rule 23 of the Tennessee Rules of Civil Procedure. The Court notes in particular that the Second Amendment to Settlement Agreement Between Plaintiffs and Dryvit Systems, Inc. enhances and expands the rights and options of Class Members, among other things, by providing additional options for claimants with estimated repair costs in excess of \$15,000.

6. The Court finds that the request for attorneys' fees is reasonable. The Court has considered the requested fee and expenses from Class Counsel in light of the appropriate factors outlined by courts in this and other states and grants the request in full. Here, Class Counsel has achieved an excellent result for Class members and have devoted a substantial amount of time, energy, creativity and monetary resources in prosecuting and resolving this extremely complex case. In addition, given the nature of the settlement, Class Counsel will be obligated to devote additional time and energy and resources assisting Class Members in the Settlement program. Class counsel are some of the most experienced class action counsel in the country and have developed, over the years, an expertise in EIFS litigation. Accordingly, the Court finds the amount sought is reasonable.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Motion for Final Approval of the Proposed Settlement is GRANTED.
2. The Claims Period shall be extended by an additional six (6) months.
3. The Parties shall provide notice by mail and by the settlement website to Claimants regarding homeowners' insurance, substantially in the form as Exhibit A, hereto.
4. Settlement Class Representatives are entitled to and are hereby awarded an additional payment of \$10,000.00 over and above their claims for damages, in recognition of the efforts they have undertaken and the risk they incurred in connection with this Action.
5. The Class Counsel's application for attorneys' fees and expenses is granted in the amount set forth in the Settlement Agreement.
6. All Class Members who have not validly excluded themselves from the Class in accordance with the April 8 Order are hereby permanently barred and enjoined from (i) filing, commencing, prosecuting, intervening in, participating in as Class members or otherwise, or receiving any benefits or other relief from, any other lawsuit, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action (as that term is defined in the Settlement Agreement) and (ii) organizing, or attempting to organize, such non-excluded Class Members into a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action in any jurisdiction) any lawsuit based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action. The Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's jurisdiction over the action and to protect and effectuate the Court's Final Judgment.

7. This Action and all claims against the Settling Defendant are hereby dismissed with prejudice, but the Court shall retain exclusive and continuing jurisdiction of the Action, all Parties, and Settlement Class Members, to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

8. Co-Lead Counsel and Counsel for the Class, as set forth in the Settlement Agreement, are hereby awarded attorneys' fees and reimbursement of their disbursements and expenses in the amount of \$11,600,000 to be paid by the Defendant to Co-Lead Counsel. Such fees and expenses are to be paid by the Defendant pursuant to the Settlement Agreement. Co-Lead Counsel, in its sole discretion, shall allocate and distribute this award of attorneys' fees and expenses among counsel for the Class.

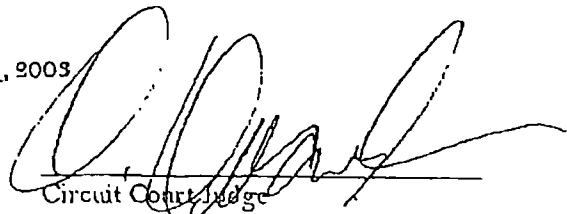
9. The Motion to Intervene filed by Barton-Riley Company, LLC, Blazer Homes, Inc., James Edward Pee, Poly-M Contractors, Inc., Reeve Construction Company, Inc. and Thornton Construction Company, Inc. is DENIED as untimely and upon other grounds;

10. The Motion to Continue The Fairness Hearing And Request To Conduct Discovery Regarding The Adequacy Of The Proposed Settlement filed by Nancy Seats is DENIED.

11. The Motion to Continue the Fairness Hearing filed by Barton-Riley Company, et al is DENIED.

12. The Motion to Continue the Fairness Hearing filed by Tom and Maria Smith is DENIED.

This the 14 day of January _____, 2009


Circuit Court Judge