

# EXHIBIT T

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2008-CP-07-3145

TIMOTHY TREON, JANIE TREON, P. )  
JENNINGS SCEARCE, STEVE TUCKER, )  
JEANEEN TUCKER, CHARLES H. )  
DAVIS, STEPHANIE H. DAVIS )  
individually and on behalf of Others )  
similarly situated in the State of )  
South Carolina, )

Plaintiffs, )

v. )

LEATH, BOUCHE & CRAWFORD, LLP )  
W. JEFFERSON LEATH, JR., WILLIAM )  
DIXON ROBERTSON, III, MICHAEL )  
S. SEEKINGS, FRANK E. )  
GRIMBALL & MULLENWYLIE, LLC )  
formally MULLEN, WYLIE & )  
SEEKINGS, LLC, WILLIAM M. BOWEN )  
JOHN CARDAMONE and his wife )  
SALLY CARDAMONE, BENJAMIN T. )  
CLARK and his wife, DIANE M. )  
CLARK, RAMONA GIANNI, NATHAN )  
W. GORDON, )

Defendants. )

FIRST AMENDED  
CLASS ACTION COMPLAINT  
(JURY TRIAL DEMANDED)

ELIZABETH M. SMITH  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

2008 OCT 13 PM 1:15

Plaintiffs, by and through their undersigned counsel, on their own behalf and on behalf of all other similarly situated members of a class do complain and allege in this Class Action Complaint as follows:

Description of Case

1. This case is brought as a class action pursuant to Rule 23, SCRCP, to recover monetary and punitive damages for civil conspiracy, breach of fiduciary duty; aiding and abetting breach



of fiduciary duty and fraudulent concealment.

2. The wrongful acts and omissions complained of herein by the Plaintiffs are the result of the Defendants violation of a Court Order and Rule 23 of the SCRCF, and the violation of other laws of the State of South Carolina because the Defendants participated in and facilitated the abandonment of a South Carolina class action known as John and Sally Cardamone, et. al. vs. Dryvit Systems, Inc., et al., Civil Action No. #2002-CP-07-1377, through a scheme wherein the Original Class Attorneys as defined below were paid \$600,000 with a promise of an additional \$225,000 upon dismissal of the Cardamone Action defined below.

#### Definitions

3. In this Complaint the term "Cardamone Action" refers to a class action lawsuit brought in Beaufort County, South Carolina and originally known as John and Sally Cardamone, et. al. vs. Dryvit Systems, Inc., et al., Civil Action No. #2002-CP-07-1377. Whose members comprise the "Cardamone Class"

4. In this Complaint the term "Posey" refers to legal action in Jefferson County, Tennessee that eventually became a class action lawsuit known as Bobby R. and Sabrina Posey, et. al. vs. Dryvit Systems, Inc., et al., Civil Action No. #17,715-IV.

5. In this Complaint the term "EIFS" refers to Exterior Insulation and Finish Systems. EIFS is a synthetic stucco cladding comprised of several components including, but not limited to, (1) an interior substrate (usually either plywood, OSB, or gypsum board) covering the building's frame or superstructure, (2) an adhesive or mechanical attachment, (3) an insulator (usually panels of Expanded Polystyrene) which is held in place by the underlying adhesive or mechanical fastener, (4) a reinforcing mesh embedded into a cementitious base coat which

covers the insulator, and (5) a troweled-on exterior finish coat. Dryvit was a major manufacturer of EIFS and was the Defendant in the Cardamone Action.

**Parties, Capacity and Jurisdiction**

6. This Complaint is filed and these proceedings are instituted pursuant to Rule 23 SCRPC. The parties named herein and the subject matter alleged herein are within the jurisdiction of this Court.

7. Defendant, MullenWylie, LLC formally Mullen, Wylie & Seekings, LLC, is a South Carolina Limited Liability Corporation doing business in South Carolina as a law firm. This firm was appointed as class counsel in the Cardamone action. The firm subsequently entered into a settlement agreement with Dryvit and abandoned its representation of the Cardamone Class and the prosecution of the Cardamone Action.

8. Defendant, Michael S. Seekings (Seekings), was a Partner in Mullen, Wylie & Seekings, LLC and was appointed as Class Counsel, but in violation of his fiduciary duties to the Cardamone Class, Rule 23 SCRPC, and of a Court Order, he subsequently entered into a settlement agreement with Dryvit and abandoned his representation of the Cardamone Class and the prosecution of the Cardamone Action.

9. Defendant, Frank E. Grimbball, was appointed as Class Counsel, but in violation of his fiduciary duties to the Cardamone Class, Rule 23 SCRPC, and of a Court Order, he subsequently entered into a settlement agreement with Dryvit and abandoned his representation of the Cardamone Class and the prosecution of the Cardamone Action.

10. Defendants, William M. Bowen and William Dixon Robertson, III, were appointed as Class Counsel, but in violation of their fiduciary duties to the Cardamone Class, Rule 23,

SCRCP, and of a Court Order, they subsequently entered into a settlement agreement with Dryvit and abandoned their representation of the Cardamone Class and the prosecution of the Cardamone Action.

11. Defendant, Leath, Bouche & Crawford, LLP, is a South Carolina Limited Liability Partnership doing business in South Carolina as a law firm. This firm was appointed as class counsel in the Cardamone Action. The firm subsequently entered into a settlement agreement with Dryvit and abandoned its representation of the Cardamone Class and the prosecution of the Cardamone Action.

12. Defendant, W. Jefferson Leath, Jr., was a partner in the above firm and was appointed as Class Counsel, but in violation of his fiduciary duties to the Cardamone Class, Rule 23 SCRCP, and of a Court Order, he subsequently entered into a settlement agreement with Dryvit and abandoned his representation of the Cardamone class and the prosecution of the Cardamone Action.

13. Defendants, John and Sally Cardamone (hereinafter collectively referred to as the "Cardamones") are residents of Beaufort County, South Carolina and were appointed as named class representatives to the Cardamone Action, but in violation of their fiduciary duties to the Cardamone Class, Rule 23, SCRCP, and of a Court Order, the Cardamones subsequently entered into a lucrative individual settlement with Dryvit and abandoned their representation of the Cardamone class.

14. Defendants Benjamin T. and Diane M. Clark, (hereinafter collectively referred to as the "Clarks") are citizens and residents of Beaufort County, South Carolina. The Clarks were appointed as named class representatives to the Cardamone Action, but in violation of their

fiduciary duties to the Cardamone class, Rule 23, SCRCP, and a Court Order, the Clarks subsequently entered into a lucrative individual settlement with Dryvit and abandoned their representation of the Cardamone class.

15. Defendant, Ramona Gianni ("Gianni") is a citizen and resident of South Carolina. Ms. Gianni was appointed as a named class representative to the Cardamone Action, but in violation of her fiduciary duties to the Cardamone Class, Rule 2,3 SCRCP, and a Court Order, subsequently entered into a lucrative individual settlement with Dryvit and abandoned her representation of the Cardamone class.

16. Defendant, Nathan W. Gordon ("Gordon") is a citizen and resident of South Carolina. Mr. Gordon was appointed as a named class representative to the Cardamone Action, but in violation of his fiduciary duties to the Cardamone Class, Rule 23 SCRCP, and a Court Order, subsequently entered into a lucrative individual settlement with Dryvit and abandoned his representation of the Cardamone class.

17. In abandoning the class, the Defendants allowed Dryvit to reach final judgment in *Posey* in September of 2005 over three years after the Cardamone Action was filed. Dryvit's primary defense in the Cardamone Class is now that *Posey* is a "final judgment" and it has a preclusive, *res judicata* effect and that all claims in the "Cardamone Action" are barred. Plaintiffs have been left without a remedy. Additionally, while Dryvit has historically settled claims such as the Plaintiffs', Dryvit's position now is that it has already settled this case by payments to these Defendants and "bought its peace." As a result, the Plaintiffs have lost the settlement value of their claims.

18. Unless otherwise indicated, the Defendant attorneys and firms are hereinafter referred to collectively as the "Original Class Counsel." and the Cardamones, Clarks, Gianni and Gordon are collectively referred to as "Original Class Representatives."

19. Named Plaintiffs, Timothy J. Treon, Janie Treon and P. Jennings Scarce, were absent members of the Cardamone Class (i.e. not Court Appointed Class Representatives) who intervened in the Cardamone Action as named class representatives because the Original Class Representatives, and Original Class Counsel under the belief that they were not being adequately represented. Subsequently they discovered that these Defendants failed to represent the absent class members' interests in favor of individual settlements for themselves and payment of fees to Original Class Counsel. Charles H. Davis, Stephanie H. Davis, Steve Tucker and Jeaneen Tucker are South Carolina residents and absent class members who were damaged by the acts of these Defendants.

#### **Factual Background**

20. Dryvit manufactures various products to be used as the exterior wall cladding of commercial and residential structures. These cladding systems are designed to look like cementitious stucco exteriors and are generally known as Exterior Insulation Finish Systems or by its acronym, EIFS. As a result of defects in the product, from 1989 to 2002, Dryvit was the defendant in numerous legal actions involving allegations that its EIFS products were defective.

21. In order to contain its liability on a nationwide basis, Dryvit agreed to the certification of a National Settlement Class in Jefferson County Tennessee. On April 8, 2002, the Circuit Court for Jefferson County, Tennessee at Dandridge entered an order granting preliminary approval to a settlement class in the Posey Action.

22. The settlement class created by the Posey Court's April 8<sup>th</sup> Order included all persons who, as of June 12, 2002, in any state other than North Carolina, own property that is clad in whole or in part with Dryvit EIFS installed after January 1, 1989. Persons who had already prosecuted or settled an EIFS claim with Dryvit were excluded from the *Posey* conditional settlement class. Notice of the proposed settlement class was disseminated beginning in or about June of 2002.

23. Posey class members wishing to opt-out of the proposed settlement had until September 3, 2002 to file an opt-out form with the Posey claims administrator.

24. Original Class Representatives and Original Class Counsel instituted the Cardamone Action in the Beaufort County Court of Common Pleas on August 12, 2002, wherein the Original Class Representatives sought class certification to represent the interests of all South Carolina citizens whose claims against Dryvit were about to be subsumed in *Posey* because the Original Class Members claimed that the *Posey* settlement was wholly inadequate to compensate South Carolina Class Members for their damages. The Cardamone Class Amended Complaint alleged that the *Posey* Settlement injured Cardamone class of homeowners by:

- a. denying the Plaintiffs and the Class their due process rights;
- b. imposing on the Plaintiffs and the Class the law of a state other than South Carolina;
- c. preventing the Plaintiffs and the Class from recovering the damages necessary for the Plaintiffs to be made whole;
- d. attempting to avoid its joint and several liability and responsibility;
- e. so restricting the rights of the Plaintiffs and the Class as to make the settlement worthless, amounting to a sham;

- f. avoiding responsibility for the consequential damages which occur because of defective EIFS Systems;
- g. avoiding its responsibility under the laws of the State of South Carolina; and
- h. attempting to impose a uniform settlement on Plaintiffs and members of the Class who have suffered, continue to suffer, and will suffer damages that are unique to each Plaintiff and member of the Class.

25. In paragraph 25 of their Complaint, the Original Class Representatives stated:

**Plaintiffs will fully and adequately protect the interest of Class Members. Plaintiffs have retained counsel experienced in complex class action, unfair or deceptive trade practice litigation and construction defect litigation. Plaintiffs and Plaintiffs Counsel have the necessary financial resources to adequately and vigorously litigate this class action. Plaintiffs are aware of their fiduciary responsibilities to the Class and are determined to diligently discharge those duties, and have no interest in conflict with other members of the Class.**

26. In response to the Original Class Members Motion for Class Certification, by Order dated August 30, 2002 and entered on September 3, 2002 (hereinafter referred to as the "August 30<sup>th</sup> Order", Judge Thomas Kemmerlin, Jr. certified a class in the Cardamone Action and designated the Original Class Representatives as Class Representatives for a class designated as:

**"all persons in South Carolina who were members of the Posey class and who own, or have owned a one- or two-family residential dwelling or townhouse (hereinafter "structure") in South Carolina on which an Exterior Insulation and Finish System (hereinafter "EIFS") have been installed or any previous owner of such structures who incurred any costs or expenses to inspect, repair, or replace the EIFS or other EIFS-related property damage from January 1, 1989 until the date Dryvit's continuing conduct is terminated."**

27. On September 3, 2003, the Original Class Representative, John Cardamone filed an opt-out in *Posey* in Tennessee, effectively opting the State of South Carolina (Cardamone Class Members) out of the *Posey*.

28. Subsequent to Judge Kemmerlin's Order certifying a Class Action in South Carolina and the Opting Out of the South Carolina Class, the Original Class Representatives and Original Class Attorneys undertook the settlements with Dryvit in order to eliminate the Cardamone Action.

29. In violation of the August 30<sup>th</sup> Order requiring, *inter alia*, that a proposed class notice plan be presented to the Court within thirty (30) days after entry of the order, and in an attempt to conceal their individual settlements, the Defendants failed and refused to file any notice plan with the Court.

#### Class Action Allegations

30. This action is brought by the Plaintiffs on their own behalf and all other persons similarly situated, pursuant to Rule 23, SCRPC, as representatives of the Class defined herein below.

31. The Class of the instant action is comprised of members of the class created by the Cardamone Action and include those members of the Cardamone action:

**Who without formal notice, settled their claims against Dryvit for reduced compensation based on the assertion that the Posey settlement ended their right to make claims against Dryvit.**

32. Plaintiffs estimate the size of the aforementioned Class to exceed one-hundred (100) individuals and the amount in controversy for each exceeds One Hundred Dollars (\$100). The Class is sufficiently numerous that joinder of all its members is impracticable.

33. There are numerous common questions of law and fact regarding the wrongful acts and omissions complained of herein.

34. Class action treatment provides a fair and efficient method for the adjudication of the controversy herein described, affecting a large number of persons, joinder of whom is impracticable. The class action provides an effective method whereby the enforcement of the rights of Plaintiffs and class members can be fairly managed without unnecessary expense or duplication.
35. If class members were to pursue individual litigation, it would be unduly burdensome to the South Carolina courts. Individual litigation would magnify the delay and expense to all parties in resolving the controversy engendered by Defendants' course of conduct with respect to EIFS. By contrast, the class action device presents far fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court.
36. Notice for the pendency and any resolution of this action can be provided by publication of notice to Class Members.
37. The expense and burden of individual litigation of a case of this magnitude make it impractical for individual Class Members to seek redress for the wrongs done to them and, therefore, requires consolidation of all such claims in one action.
38. The claims of Plaintiffs, as the Class Representatives, are typical of the claims of the various members of the Class.
39. The Plaintiffs will fairly and adequately protect the interests of the Class they represent. The interests of Named Plaintiffs, as the Class Representatives, are consistent with those of the members of the Class. In addition, the Named Plaintiffs are represented by experienced and able counsel who have represented plaintiff classes.

40. Given the scope of harm inflicted by the Defendants and the egregiousness of the misconduct, rendering an award of punitive/exemplary damages appropriate, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent adjudications with respect to individual members of the Class.
41. An adjudication of an individual class member's claim would, in the absence of a class action, be dispositive of the interests of the other members not parties to the adjudication or would substantially impair or impede the other members' ability to protect their interests thus creating the possibility of a rush to judgment as individuals seek to avoid the dispositive effect of earlier judgments.
42. A substantial claim for punitive/exemplary damages exists on behalf of all Class Members, including the Named Plaintiffs. In order to achieve maximum judicial economy and fairness to litigants, a class action is desirable to assure that an award of punitive damages is made in a single proceeding and fairly and uniformly allocated among all members of the Class.
43. Prosecution of this matter as a class action will significantly reduce the possibility of repetitious litigation, while providing redress for Class Members who would not or could not prosecute this complex litigation on an individual basis.
44. The Named Plaintiffs and Class Members envision no unusual difficulty in the management of this action as a class action.
45. Certification is appropriate under Rule 23 of the SCRCF.

**Common Deficiencies Relating to Defendants' Conduct**

46. By undertaking to serve the Cardamone Class as its attorneys and class representatives, the Original Class Counsel and Class Representatives owed a fiduciary duty to the class which

included all unnamed class members.

47. The Original Class attorneys in reaching individual settlements for the class representatives and for certain clients of theirs which Dryvit conditioned on the dismissal of the Cardamone Action, knew or should have known would violate their fiduciary duties, Rule 23 SCRPC and the duties imposed by Judge Kemmerlin's August 30<sup>th</sup> Order.

48. Upon information belief, the Original Class Counsel and Original Class Representatives failed and refused to give notice to the Court because they knew these acts could not withstand judicial scrutiny required by Rule 23 SCRPC and other authority, because such settlements were conditioned on the abandonment and elimination of the Cardamone Action.

49. Cardamone through his counsel Seekings of Mullen, Wylie & Seekings, LLC agreed to settle their individual case against Dryvit and dismiss the South Carolina Class Action for cash which included a "bonus reflecting Cardamone's status as a named Plaintiff in the South Carolina Class Action."

50. In an email dated April 25, 2004, Dryvit's attorney Peter Morgan memorialized Dryvit's agreement to contribute \$225,000.00 towards a fee of \$825,000.00 for "S.C. Counsel" that would be fully payable "after the final dismissal of the" *Cardamone* action. (In addition to Dryvit's \$225,000.00 contribution towards this fee, *Posey's* class counsel pledged \$600,000.00 to *Cardamone's* original class counsel thus totaling the \$825,000).

51. In addition to the cash settlements with the Original Class Representatives and its contribution toward the \$825,000.00 attorneys' fee, Dryvit also agreed to settle cases brought against it by certain *Cardamone* class members who were being represented by the Original Class Counsel who were then representing the *Cardamone* class.

52. On February 5, 2003, settlement conferences were agreed to by Original Class Class Counsel. On or about April 22, 2003, Dryvit, Original Class Counsel and various class members and class representatives held settlement conferences wherein the outstanding cases were resolved. As a result of these settlements, the remaining members of the Cardamone class (i.e. the Plaintiffs and those similarly situated) were left without active representation.

53. As a result of the lack of prosecution of the Cardamone Action, *Posey* became final. Until that time South Carolina residents routinely settled their cases against Dryvit. Rarely if ever did a case require a trial. As a result of these Defendants' acts, Dryvit no longer settles such cases as they have in the past and in fact now asserts that all claims of the class are barred by *Posey*.

#### **Common Allegations Relating to Damages**

54. As a result of aforementioned acts and omissions, Plaintiffs and class members have suffered direct, actual, special and consequential damages in an amount to be proven at trial because the harm to the Plaintiffs and those similarly situated arises from the same operative set of circumstances surrounding the Defendants' participation in and facilitation of the abandonment of the Cardamone Class and the damages to be awarded to the class alleged herein are either uniform or capable of uniform calculation.

#### **Claims for Relief**

#### **For a First Cause of Action As To All Defendants (Civil Conspiracy)**

55. The foregoing paragraphs are hereby re-alleged as if fully set forth.

56. The Defendants combined together and engaged in improper and wrongful conduct for the purpose of injuring the Plaintiffs and all those similarly situated by proximately causing actual, special and consequential damages by agreeing to abandon and eliminate the claims of

the unrepresented Cardamone Class members in exchange for individual cash settlements and the payment of \$825, 000 in attorneys fees.

57. The damages to the Class are a natural and proximate result of the civil conspiracy between the Original Class Representatives and Original Class Counsel. Such conduct on the part of the Defendants was in willful, intentional, and wanton disregard for the rights of the absent class members so as to entitle the absent class members (i.e. the Plaintiffs and those similarly situated) to actual, special, consequential and punitive damages.

**For a Second Cause of Action as to all Defendants**  
**(Breach of Fiduciary Duty)**

58. The foregoing paragraphs are realleged as if fully set forth herein verbatim.

59. The Original Class Representatives and Original Class Counsel owed a fiduciary duty to all of the unnamed members of the class created by the Cardamone Action. As fiduciaries, both the representatives and their counsel have an absolute obligation to notify class members of: (1) the existence of the class action, (2) any proposed compromises of the action, and (3) the settlement or dismissal of the action.

60. The aforementioned Defendants violated their fiduciary duty by acting in bad faith and without due regard to the interests of the Plaintiffs and class members because in exchange for individual settlements and attorney fees, the Original Class Representatives and Original Class Counsel agreed to abandon the Cardamone Class and as a result failed and refused to provide the class with notice of the Cardamone Action, and the rights of class members there under, as required by the certifying court and Rule 23 of the SCRCF.

61. The aforementioned Defendants also breached their fiduciary duty to the Plaintiffs and class members by failing to prosecute the Cardamone Action while and after they negotiated and

entered into settlement with Dryvit.

62. The aforementioned Defendants further breached their fiduciary duty to the Plaintiffs and Cardamone Class members by failing to fully inform the Plaintiffs and class members regarding the status and proceedings of both the Cardamone and Posey Actions.

63. The numerous acts and omissions of the Defendants as set forth in this Complaint have deprived the Plaintiffs and Class Members of the ability to fully exercise their lawful rights against Dryvit.

64. As a result of the Defendants' aforementioned breaches of fiduciary duty, Plaintiffs and class members have been damaged in an amount to be proven at trial. Damages may include but are not limited to the following: 1) the loss settlement value of their claims; and 2) the loss of the right to receive damages through the litigation of claims against Dryvit.

65. Additionally, an attorney or class representative who breaches a fiduciary duty must disgorge the benefits to the client and under no circumstances are they to be permitted to profit from the breach of their duty as fiduciaries.

**For a Third Cause of Action as to Original Class Counsel**  
**(Inducing, Aiding, and Abetting a Breach of Fiduciary Duty)**

66. The foregoing paragraphs are re-alleged as if fully set forth herein verbatim.

67. Original Class Counsel are sophisticated legal entities with extensive experience in EIFS litigation.

68. At all times relevant to this Complaint, the Original Class Counsel had a significant financial interest in resolving the claims of the South Carolina Class.

69. The Original Class Counsel knew that the Original Class Representatives owed a fiduciary duty to the Plaintiffs and the unnamed members of the class and that they knew or

should have known that settling the Original Class Representatives' claims with individual cash settlements and accepting the promise of the payment of \$825,000 in attorneys fees induced them to violate Rule 23, SCRCP, a Court Order and other controlling authority, was improper and was an act of encouraging, participating in, aiding and abetting the Original Class Representatives in their breach of their fiduciary duties to the absent Cardamone Class members.

70. As a condition of settlement, Dryvit required that the Cardamone Action be dismissed or eliminated and at the time it imposed such condition, these Original Class Attorneys knew or should have known that they were requiring the Original Class Representatives to breach their fiduciary duty to the Plaintiffs and unnamed class members by settling their individual claims and by abandoning the Cardamone Class. By accepting settlements, bonuses and substantial payments to Original Class Representatives' counsel, the Original Class Counsel knowingly participated in, encouraged and aided and abetted Original Class Representatives' breach of their fiduciary duties.

71. Plaintiffs were damaged by the Original Class Representatives' breach of their fiduciary duty to Plaintiffs as set forth in this Complaint.

72. As a result, Plaintiffs are entitled to the appropriate relief as set forth below.

**For A Fourth Cause of Action As To All Defendants**  
**(Fraudulent Concealment)**

73. The foregoing paragraphs are re-alleged as if fully set forth.

74. Defendants in their capacities as participants in the Cardamone Class Action case and based on the August 30<sup>th</sup> Order of Judge Kemmerlin were in a fiduciary relationship or a relationship that was intrinsically fiduciary, to the absent Cardamone Class members.

75. Defendants had knowledge of material facts that were relevant to the interest of the unnamed, absent Cardamone Class members.
76. Defendants owed a duty to make those material facts and information known to the Cardamone unnamed, absent Class Members.
77. Defendants breached their duties and or obligations to the Cardamone unnamed, absent class members by failing to disclose material information regarding the prosecution of and attempted compromise of the Cardamone Action and by failing to implement a Notice Plan as ordered by the Court.
78. As a proximate result of the Defendants' fraudulent concealment of their abandonment of the class, the failure and refusal to give notice, the Plaintiffs and those similarly situated have been damaged in an amount to be proven at trial. Because the Defendants' acts of fraudulent concealment were willful, intentional, and wanton, the Plaintiffs and those similarly situated are entitled to an award of punitive damages.

**For A Fifth Cause of Action As to Original Class Counsel**  
(Negligence)

79. The foregoing paragraphs are hereby re-alleged as if fully set forth.
80. These Defendants as Class Counsel owed a duty of care to the Plaintiffs. They were negligent, grossly negligent, wanton and willful and breached their duty of care in one or more of the following particulars:
- a) Failure to give notice to the Plaintiffs of the pending action;
  - b) Failure to allow Class Members to opt-out of settlement;
  - c) Failure to prosecute the pending action;
  - d) Settlement of the action without notice;

- e) Failure to understand the procedural history of the *Posey* action;
- f) Failure to ensure that class representatives adequately represented the absent class members;
- g) Failure to seek court approval of the settlement;
- h) Receiving fees for their representation of the class without notice to class or Court approval.

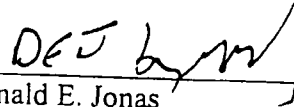
81. As a proximate result of the Defendants' negligence, the Plaintiffs and those similarly situated have been damaged in an amount to be proven at trial. Damages may include but are not limited to the following: 1) the loss settlement value of their claims; and 2) the loss of the right to receive damages through the litigation of claims against Dryvit. Because the Defendants' acts were grossly negligent and wanton, the Plaintiffs and those similarly situated are entitled to an award of punitive damages.

### RELIEF REQUESTED

Wherefore, Plaintiffs and class members pray the Court to hold Defendants jointly and severally liable for the conduct complained of herein, to enter judgment against Defendants and in favor of Plaintiffs and class members, and to award the following relief:

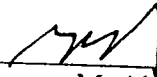
- A. Disgorgement of all fees and settlements paid as a result of the breach of fiduciary duty.
- B. Awarding Plaintiffs and class members special, compensatory and punitive damages, and other damages, for the acts complained of herein, in an amount to proven at trial, plus interest;
- C. Awarding Plaintiffs and class members' attorneys' fees and costs against Defendants, as allowed by law; and
- D. Granting such other and further relief as the Court deems just and proper.

DONALD E. JONAS  
1328 Blanding Street  
Columbia, SC 29202  
(803) 254-1570



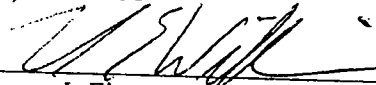
Donald E. Jonas

ALFORD & WILKINS, PC  
Post Office Drawer 8008  
Hilton Head Island, SC 29938  
(843) 842-5500



Gregory M. Alford

THE FINN LAW FIRM, PC  
Post Office Box 6003  
Hilton Head Island, SC 29938  
(843) 682-3555



Thomas J. Finn  
Thomas E. Williams

October 10<sup>th</sup>, 2008  
Hilton Head, SC