

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2013-001367

**RECEIVED**

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**SC Court of Appeals**

Ex parte: William Dixon Robertson III;  
William M. Bowen, W. Jefferson Leath, Jr.;  
Michael S. Seekings; and Timothy W. Bouch,.....Appellants

Timothy J. Treon and his wife, Jane Treon; P. Jennings  
Scarce; and Steven Christian, individually and on behalf  
of other similarly situated in the State of South Carolina,.....Respondents

vs.

Dryvit Systems, Inc., ..... Defendant

**SUPPLEMENTAL  
RECORD ON APPEAL – VOLUME 4**

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STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS  
) FOURTEENTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO: 02-CP-07-1377

JOHN CARDAMONE and his wife,  
SALLY CARDAMONE, and  
BENJAMIN T. CLARK and his wife,  
DIANE M. CLARK, and RAMONA  
GIANNI, and NATHAN W. GORDON  
and his wife, JILL C. GORDON,  
individually and on behalf of others  
similarly situated in the state of South  
Carolina,

Plaintiffs,

vs.

DRYVIT SYSTEMS, INC., ESTATE  
BUILDERS, INC., and AMERICAN  
WAY APPLICATORS OF SOUTH  
CAROLINA, INC.,

Defendants.

**MEMORANDUM IN SUPPORT  
OF PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION  
OR  
IN THE ALTERNATIVE  
FOR AN INJUNCTION**

2002 AUG 29 AM 8 58  
BEAUFORT COUNTY  
CLERK OF COURT  
BEAUFORT, S.C.

Plaintiffs, on behalf of themselves, and on behalf of all others similarly situated, respectfully request that this Court issue an order conditionally certifying as a class all persons who own or have owned a structure in the State of South Carolina who would be members of the Class purportedly created in the action pending in Tennessee, Posey, et al. v. Dryvit Systems, Inc., and/or all persons who own or have owned a structure in the State of South Carolina on which a Dryvit Systems, Inc. (Dryvit) Exterior Insulation and Finish System ("EIF System" or "EIFS") has been installed or are a previous owner of such structures who have incurred any cost or expenses to inspect, repair or replace the EIF System or other property damaged by the EIF System at any time from July 31, 1989 until the date the Defendant's continuing conduct is terminated. Plaintiffs seek conditional class certification to file the forms necessary to exclude

the Class from the Tennessee National Class prior to the deadline of September 3, 2002, imposed by the proposed settlement.

Immediate certification of a conditional class is necessary to avoid irreparable harm to the class. Once the September 3, 2002, deadline passes, this court may be deprived of jurisdiction to do anything to protect homeowners in South Carolina from the actions of Dryvit Systems, Inc. and the attempts to impose a woefully inadequate settlement on the members of the class. This court may even lose the ability to issue a certification order on the merits. This will severely prejudice South Carolina building owners.

Immediate certification of a conditional class is authorized. Rule 23 (d) (1), SCRCF, allows "conditional" class certification which "may be altered or remanded before the decision on the merits." Rule 23 (d) (2), explicitly provides that the court may "at anytime" issue "appropriate orders" which "impose such terms as shall fairly and adequately protect the interests of the persons on whose behalf the action is brought or defended."

Although Plaintiffs have established all class action prerequisites and are entitled to class certification on the merits this motion only seeks conditional class certification

In the alternative, Plaintiffs seek to enjoin Dryvit Systems, Inc., from any further prosecution of the Tennessee Action and the purported settlement.

### **I. Background**

Dryvit Systems, Inc., is the manufacturer and distributor of defective products generically known as Exterior Insulation and Finish System (EIFS), which has been used in residential construction in South Carolina. The use of Dryvit EIFS has and is resulting in damages to thousands of homes costing millions of dollars to the homeowners of South Carolina.

In Tennessee an action has been filed against Dryvit Systems, Inc., resulting in the creation of a purported national class and a proposed settlement. The class consists of "...all persons or entities who, as of June 5, 2002, owned a 1- or 2-family residential dwelling or townhouse in any state other than North Carolina, clad, in whole or in part, with Dryvit EIFS installed after January 1, 1989." The proposed settlement agreement between the parties defines class or class member as "...all persons who, as of the notice date, in any state other than North Carolina, owned property that is clad in whole or in part with Dryvit EIFS installed after January 1, 1989."

The Plaintiffs in this case have filed suit against the Defendant Dryvit Systems, Inc., alleging a class action lawsuit for compensatory, treble and punitive damages and declaratory and injunctive relief on behalf of John Cardamone and his wife, Sally Cardamone, and Benjamin T. Clark, and his wife, Diane M. Clark, individually and on behalf of others similarly situated in the State of South Carolina who own a residence on which was installed Exterior Insulation and Finish System manufactured by the Defendant Dryvit Systems, Inc.

The Complaint asserts, among other things, that because of the defects or deficiencies in the EIFS product which was designed, manufactured, marketed and sold by the Dryvit and installed on property owned by the Plaintiffs and class members, the Plaintiffs and the class members have been damaged by moisture intrusion into their buildings, rot and physical deterioration to the buildings and the building components, such that extraordinary repairs must be performed to these buildings.

The Complaint also asserts that to the detriment of the Plaintiffs and the class, the Defendant has entered into the settlement of an action in the State of Tennessee, Posey, et al. v. Dryvit Systems, Inc., Civil Action Number 17, 725-IV pending in the Circuit Court for Jefferson

County, Tennessee at Dandridge, in an effort to further damages and injure the plaintiffs and class members. In the Complaint, the Plaintiff and class have alleged that the proposed settlement sought to be imposed under the laws of the state of Tennessee deny the Plaintiffs and class their due process rights; prevent the Plaintiffs and class members from recovering the damages necessary for the Plaintiffs and class to be made whole, allowing the Defendant to avoid its joint and several liability and responsibility under South Carolina law; restrict the rights of the Plaintiffs and class as to make the settlement worthless, amounting to a sham; allow Defendant to avoid responsibility for the consequential damages which occur as a result of defective EIF Systems; allow Defendant to avoid its responsibilities under the laws of the State of South Carolina; and allow Defendant and the state of Tennessee 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.

The national class action settlement has a direct and substantial negative effect on the rights of property owners in South Carolina whose properties are clad with EIF Systems manufactured by the Defendant.

Furthermore, the settlement agreement entered into by the parties to the Tennessee action, including the Defendant Dryvit Systems, Inc., is unconscionable in its restriction of the rights of South Carolina homeowners. Defendant Dryvit Systems, Inc., through this class action settlement, is attempting to restrict the rights of South Carolina homeowners, restrict the recoverable and unique damages sustained by South Carolina homeowners, and avoid its legal responsibilities under South Carolina law. Any settlement agreement entered into by the Defendant Dryvit Systems, Inc., in the Tennessee action should be declared null and void as to

the Plaintiffs and class members in the present action so that the legal and equitable rights of the Plaintiffs and class members are preserved.

The terms of the settlement create a complicated system for claim resolution whose ultimate goal is to cap the amount that a property owner may be reimbursed for repairs to the residence. That amount is woefully inadequate. See attached affidavits. The most that a homeowner in South Carolina may recover is up to Six and No/100 (\$6.00) Dollars per square foot of Dryvit EIFS on the claimant's property, with a number of limitations.

This is inadequate to remove Dryvit EIFS, repair the underlying structures damaged by water intrusion, rot, and deterioration, and replace the Dryvit EIF System with a different type of cladding. See attached affidavit of Peter Sherratt.

There are a number of problems with this settlement, procedurally, legally, and substantively.

A. Procedural Issues

1. The procedure is a trap for the unwary.

The fairness of the proposed settlement in the Tennessee action cannot be attacked unless a homeowner agrees to remain in the Tennessee Class. Once in the Class, a homeowner cannot opt out if the proposed settlement is approved, even if the settlement bears no relation to that homeowner's damages. This is inherently unfair. The effect is to trap unwary homeowners in a settlement that is woefully inadequate.

An example of this trap involves homeowners who do not know the identity of the manufacturer of the EIFS applied to their home. Homeowners who may have observed the otherwise inadequate notice of the proposed settlement and the date by which the homeowner may opt out will not opt out or even object to the proposed settlement. Those who know that

their house is clad with Dryvit will opt out because of the inadequacies of the settlement. Thus, the proposed settlement traps innocent South Carolina homeowners in a situation in which their property rights are trampled and they are exposed to damages for which there is no adequate compensation.

2. The plaintiffs in the Tennessee class action do not represent homeowners in South Carolina.

From a procedural standpoint, the parties agreed to the settlement before the certification of the national class either conditionally or on the merits. The settlement agreement is inadequate to compensate South Carolina homeowners. The settlement agreement buys off the named plaintiff for \$10,000 per home. As soon as the settlement agreement was reached between the parties the named Tennessee plaintiffs' position became adverse to that of South Carolina homeowners. This was before any class certification.

Further, South Carolina's coastal climate is significantly different from that in Tennessee or other areas of the country. When water gets behind the exterior cladding of a building rot and deterioration quickly occur resulting in hundreds of thousands of dollars of damages. What may be an appropriate settlement amount in Tennessee, which is extremely doubtful, is not appropriate for South Carolina.

**B. Legal Issues**

1. The Indemnity Provisions render the proposed settlement a sham.

Perhaps the most insidious aspect of the entire settlement agreement is the indemnity provision. The settlement agreement requires that homeowners fully and completely indemnify Dryvit Systems, Inc. from claims that are brought against Dryvit Systems, Inc. by other parties

such as contractors and applicators. For example, an owner may sue a contractor, which may add Dryvit to that litigation or file a later action for indemnity. The Tennessee settlement agreement requires that the homeowner indemnify Dryvit dollar for dollar. If the homeowner gets a \$100,000.00 judgment against the contractor and that contractor then obtains a \$100,000.00 judgment against Dryvit, the homeowner owes Dryvit \$100,000.00.

2. The Proposed Settlement does not provide any benefit to South Carolina homeowners concerning the Statute of Repose; the Statute of Limitations or the Economic Loss Rule.

South Carolina has a history of protecting homeowners from shoddy construction and defective construction products. For example, the statute of repose in South Carolina is thirteen years, one of the longest in the United States. The suspension of the statutes proposed by the settlement agreement is of no benefit to homeowners in South Carolina.

Our Statute of Limitations and the discovery rule combine to give homeowners sufficient time within which to act to protect themselves from the harsh economic effects of defective products such as Dryvit EIFS. Although the settlement agreement suspends these Statutes the real effect is to reduce the time that Dryvit proposes to act to eighteen months. A homeowner must file a claim within eighteen months or lose his rights forever. This is the type of contractual provision that is void. See e.g. S.C. Code Ann. § 15-3-140; Barringer v. Fidelity & Deposit Co. of Maryland, 161, S.C. 4, 159 S.E. 373 (1931).

This eighteen month claim period violates S.C. Code § 15-3-140 which prohibits any shortening of the statute of limitations. It is fundamental that a homeowner without damages has no cause of action. In the proposed Tennessee settlement that type of homeowner is a member of the class. If any damages manifest themselves during the claim period that the homeowner has a

case that may be brought within three years in South Carolina but a claim that must be brought within an eighteen month period. The eighteen month claim period becomes a statute of limitations violating § 15-3-140. Further, South Carolina has essentially rejected the economic loss rule. The settlement agreement may be a great benefit to consumers in states that have adopted the economic loss rule but not in South Carolina.

C. Substantive Issues – Inadequate Repairs

The settlement agreement creates the Moisture Warranty Corporation which has a contract with the Claims Administrator and the Residential Warranty Corporation Stucco Warranty Company, LLC. Under the proposed agreement the homeowner must first establish that the property is clad with Dryvit EIFS. If that is successfully done then MWC inspects the property in accordance with an inspection protocol and issues an inspection report.

The homeowner then falls into one of three categories, assuming that there is not a dispute with the homeowner about the product identification, the necessity for certain repairs, or the estimated repair costs. Those categories are:

1. The estimated repair costs are \$15,000 or less;
2. The estimated repair costs are over \$15,000; or
3. No repairs are necessary.

There are numerous problems with this scheme.

1. The repair scheme violates Dryvit's own installation recommendations.

The repairs contemplated by Dryvit do not include the use of backer rods in the joints around windows and doors and other penetrations. Dryvit's own specifications for the installation of its EIFS require that backer rods be used. That Dryvit would now voluntarily enter into an agreement that includes a repair protocol that knowingly violates their own

installation procedures demonstrates the necessity for this court to take all action necessary to protect South Carolina homeowners.

2. The repair scheme reimbursement is grossly out of proportion to the actual damages.

The repair standards and options are found at Exhibit 9 to the settlement agreement. Exhibit 9 does not discuss the removal and replacement of those portions of the home that have been damaged because of the defective Dryvit EIFS. The repair scheme apparently includes only what is minimally necessary to attempt to create a water tight exterior cladding. It does not contemplate any reimbursement for the removal and replacement of the deteriorated construction components caused by the defective Dryvit EIFS. All of this must be removed and repaired. Thus, the estimated repair costs have no relationship to the actual repair costs. The entire scheme of the settlement agreement is for Dryvit to limit its responsibility so that it only pays to repair or replace a small portion of the EIFS.

The homeowner is left to pay for the cost to remove and replace any damaged windows, doors, framing members, sheathing, and any interior finishes that may have been damaged by water intrusion. This cost is so much greater than the maximum reimbursement that the agreement is a sham.

Further, the settlement agreement requires the homeowner to make repairs necessary to obtain a moisture free warranty but does not reimburse for those repairs. If the repairs are not performed to the satisfaction of the MWC then the MWC has the right not to issue the warranty, leaving the homeowner without any recourse.

This scheme sets up a situation by which the estimated repair costs have no bearing to the actual repair costs for which the homeowner is required to pay prior to receiving any

reimbursement through the settlement and prior to receiving a moisture free warranty. Furthermore, the amount that the homeowner may receive from the settlement agreement is limited to maximum of \$6.00 per square foot of Dryvit EIFS on a claimant's property. This is inadequate.

3. The repair scheme is a sham because it is based upon the proposition that Dryvit EIFS can be repaired.

Dryvit EIFS is a defective product. The existence of Dryvit EIFS on a home results in a diminution in the value of that home. That diminution in value can only be removed by removing all of the Dryvit EIFS and replacing it with some other type of exterior cladding.

The settlement agreement and repair scheme do not allow for the removal of the EIFS and the replacement with some other type of siding. (It actually helps Dryvit's profitability by promoting the use of additional defective EIFS products to the benefit of Dryvit Systems, Inc. and its suppliers.)

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Further, the settlement agreement does not contemplate the payment of any damages caused by the diminution of value of the property. This is another example of the manner in which the settlement agreement fails to properly compensate South Carolina homeowners.

4. The repairs encourage code violations.

The building code requires that flashing be used at the heads of windows. Exhibit 9 to the settlement agreement contains the repair standards and options. In the discussion of head flashing for windows Dryvit discourages retrofitting head flashing on windows. This is obviously improper.

5. The warranty is essentially worthless.

The warranty does not cover incidental or consequential damages.

Although the warranty claims to pay up to \$10,000.00 per year for three (3) years it contains severe limitations. For example, the warranty will only pay \$500.00 per moisture location.

The warranty contains exclusions that are so broad as to exclude almost everything.

Once the warranty expires the homeowners are left with no recourse.

The term of the warranty is for three (3) years only. South Carolina's Statute of Repose and South Carolina's Statute of Limitations combined with the discovery rule demonstrate the sophisticated understanding that latent construction defects may take years to manifest themselves. To limit the warranty to three (3) years is to severely limit a homeowner's statutory rights. Although the reduction of the Statutes of Repose and Limitation may be proper under class action law, it demonstrates the depth of the problems created by this Tennessee class action settlement and violates § 15-3-140.

The problems created by the Tennessee proposed class certification and proposed settlement are so manifest that the plaintiffs in this case respectfully request that this Court take immediate action to protect themselves and, more importantly, all South Carolina homeowners.

## II. LEGAL ANALYSIS

### A. CONDITIONAL CLASS CERTIFICATION

Determining whether an action is maintainable as a class action under S.C. Rule of Civil Procedure 23(a) is within the discretion of the trial court. Waller, et al. v. Seabrook Island Property Owners Association, 300 S.C. 465, 468, 388 S.E.2d 799, 800 (1990). Therefore, the Court's decision to certify a proposed class can only be reversed for abuse of discretion. Class certification is appropriate if proponents have met the burden of satisfying all the requirements of

S.C. Rule of Civil Procedure 23(a). *Id.* at 467. Since the South Carolina Rules of Procedure are based on the Federal Rules, the courts should look to the construction placed on the Federal Rules of Civil Procedure when there is no South Carolina case law on point. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 404 S.E.2d 200 (1991).

Class certification of this proposed class is appropriate under the applicable provisions of the South Carolina Rules of Civil Procedure and the defining case law. The prerequisites for the maintenance of a class action are set forth in Rule 23(a). The prerequisites are:

- 1) the class is so numerous that joinder is impracticable;
- 2) there are questions of law or fact that are common to the class;
- 3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
- 4) the representative parties will fairly and adequately protect the interests of the class; and
- 5) the amount in controversy exceeds one hundred dollars for each class member.

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*Id.* and S.C. R. Civ. P. 23 (a) (2000). The proposed class in this case satisfies each of these criteria.

1. Rule 23(a)(1) - Numerosity

Rule 23 (a)(1) is met by the proponent if it would be impractical to bring all the members before the court. Knowles v. Standard Sav. & Loan Ass'n., 271 S.C. 217; 246 S.E.2d 879 (1979). The sufficiency of the total number of class members is dependant upon the circumstances of the case. Cypress v. Newport News, et al., 375 F.2d 648, 653 (4<sup>th</sup> Cir. 1967)(finding a class of eighteen sufficient to meet the requirement). The proposed class in this case clearly meets the numerosity requirement.

The Plaintiffs bring this action as a class action pursuant to Rule 23(a) in that there is a putative class of people like the Plaintiffs who have suffered losses and damages as a result of the Defendant's acts and/or omissions, more fully described hereinabove. These persons represent a class that is so numerous that joinder of all members who have suffered losses and damages would be impractical. Although large, the proposed class is manageable since all affected by the acts and/or omissions of the Defendants are easily identifiable.

In this action the class is limited to the owners of residences clad with Dryvit EIFS in South Carolina. This is a much smaller class than that certified in Tennessee.

2. Rule 23(a)(2) - Commonality

SCRCP 23(a)(2) requires that the case involve a question of law or fact common to all class members. Rule 23(a)(2) does not require that all questions of law and fact be common to the entire class, only that there be common issues or a single significant common issue among the class. McGann v. Mungo, 287 S.C. 561, 568, 340 S.E.2d 154, 158 (1986). This case clearly meets the commonality requirement of Rule 23(a)(2).

The Plaintiffs' claims in this case involve common questions of law and fact which are applicable to all members of the class and are typical of the claims of the class. All members of the proposed class are owners of one and two family residences on which Dryvit EIFS has been applied. All claims arise from the same wrongful acts and/or omissions of the defendant. For example, some of the issues include:

1. Is the Dryvit EIFS defective?
  
2. Did Defendant Dryvit breach warranties in placing a defective product into the stream of commerce?

3. Was the Defendant Dryvit negligent, reckless, willful and wanton in placing in the stream of commerce a defective product?

4. Did Defendant Dryvit know or should it have known that EIFS Systems would fail prematurely?

5. Did Defendant Dryvit misrepresent EIFS Systems as durable, effective and superior to other siding materials?

6. Did Dryvit breach its implied warranty its fitness for a particular purpose;

7. Did Dryvit negligently misrepresent the quality of its products and services?

8. Has Defendant Dryvit entered into a proposed settlement that is unconscionable because the settlement attempts 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; because Dryvit is attempting to avoid its responsibility under the laws of the State of South Carolina; and because Dryvit is attempting to avoid its responsibility for the consequential damages which occur because of defective EIFS Systems because the amount to be reimbursed for damages suffered by plaintiffs in the Class are woefully inadequate?

From the perspective of all of the Plaintiffs' class members, the facts that will determine the answers to each of these questions will be established by common proof. For each class member, the same actions or failures to act on the Defendant's part led to the water intrusion, rot, and deterioration of the class members homes necessitating repairs. Clearly there are many significant common questions, the resolution of which will affect all class members similarly.

### 3. Rule 23(a)(3) – Typicality

Rule 23(a) (3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class. “S.C. R. Civ. P. 23 (a) (2000). “A claim is typical if it arises from the same course of conduct that gives rise to the claims of the class members and if the claims are based on the same legal theories.” Wesleyan College v. W.R. Grace & Co., 143 F.R.D. 628, 637 (D.S.C. 1992) and H. Newberg, Newberg on Class Actions §§ 3.13 n.202 (1985) (cases collected).

In this case, the claims of the named Plaintiffs, all of whom are property owners, are clearly typical claims of the class. The claims of the class members arise from the same events, conduct, acts and failures to act of the Defendants as the Plaintiffs' claims. Additionally, the claims of the class members would be based on identical legal theories as the claims of the Plaintiffs, which include negligence, breach of warranty, negligent misrepresentation, and violations of the Unfair Trade Practices Act. The typicality requirement is thus easily satisfied.

### 4. Rule 23(a)(4) - Protection of the Interests of the Class

South Carolina requires that no Plaintiff have an interest that is antagonistic to the interest of a member of the class. Waller, 300 S.C. 468, 388 S.E.2d 800. Rule 23(a)(4) states that the

representative member of a class action must "... fairly and adequately protect the interests of the class..." S.C. R. Civ. P. 23 (a) (2000). The antagonism must relate to the subject matter in controversy. Waller, 300 S.C. 468, 388 S.E.2d 800. For example, if the named Plaintiffs have a claim that is adverse to the economic interest of the class, then that would defeat maintenance of the class.

In this case, everyone in the class will benefit by the named Plaintiffs' efforts to establish clear liability on the part of the Defendants. There are no claims of the representative plaintiffs that are antagonistic or economically adverse to the interests of the class. The representative class members' claims are identical to the claims of the unnamed class members. The type of injury to each class member is uniform. The opting out of South Carolina Class members from the Tennessee Class uniformly protects all South Carolina homeowners. South Carolina cannot do any worse than the pitiful excuse for a settlement being rammed down the throats of all homeowners in the Tennessee action. Therefore, this class meets the requirements of Rule 23(a)(4).

#### 5. Rule 23(a)(5) - Amount in Controversy

The last requirement of Rule 23(a) is the amount in controversy. All class members must have been injured in an amount that exceeds one hundred dollars. "The sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." *Gardner*, 304 S.C. 328, 404 S.E.2d 200. This requirement is liberally construed in South Carolina.

In this case, the amount on controversy far exceeds the required amount. Cost estimates to repair buildings damaged from the use of defective Dryvit EIFS always exceed one hundred dollars.

As demonstrated above, class certification should be granted unconditionally. At this time, however, plaintiffs only seek conditional class certification to avoid irreparable harm to the class.

#### B. INJUNCTION

In the alternative, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, these Plaintiffs and the class members request this Honorable Court issue a Temporary Injunction preventing the defendant Dryvit Systems, Inc. and/or its agents and/or employees from imposing the settlement terms of Posey, et al. v. Dryvit Systems, Inc., Civil Action Number 17, 725-IV on the Plaintiffs and its class members which severely restricts the rights and interests of the Plaintiffs and its class members. See Collins v. Collins, 64 S.E. 2<sup>nd</sup> 811 (S.C. 1951). The purpose of this is to suspend the September 3, 2002, deadline for the South Carolina homeowners.

#### III. CONCLUSION

All of the facts and circumstances of this case lead to the conclusion that Plaintiffs' class should be certified particularly in light of the fact that Plaintiffs only seek conditional certification at this time. Plaintiffs pray that the Court enter an Order conditionally certifying Plaintiff's class as described hereinabove pursuant to Rule 23(a).

In the alternative, this Plaintiff and its class members respectfully request a temporary injunction preventing the Defendant Dryvit Systems, Inc. its employees and/or servants and

agents from further action by Dryvit Systems, Inc in the class action settlement in particular suspending the September 3, 2002, deadline.

Respectfully Submitted,

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August 28, 2002

COUNTY OF BEAUFORT

BEAUFORT COUNTY

CLERK OF COURT

BEAUFORT, S.C.

Civil Action No. 2002-CP-07-1377

JOHN CARDAMONE and his wife, SALLY CARDAMONE, and BENJAMIN T. CLARK and his wife, DIANE M. CLARK, individually and on behalf of others similarly situated in the state of South Carolina,

Plaintiffs,

vs.

DRYVIT SYSTEMS, INC., ESTATE BUILDERS, INC., AND AMERICAN WAY APPLICATORS OF SOUTH CAROLINA, INC.

Defendants.

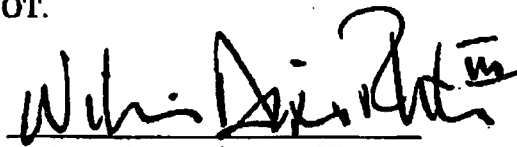
**AFFIDAVIT OF WILLIAM DIXON ROBERTSON III**

Personally appeared before me, William Dixon Robertson III, who, being duly sworn, deposes and states as follows:

1. That he is an attorney licensed to practice law in the State of South Carolina.
2. That he has been involved in the defense and prosecution of construction defect cases in South Carolina for 17 years.
3. That he has been involved in cases in which Dryvit Systems, Inc., has been a party.
4. That in settlement negotiations, Dryvit Systems, Inc., has almost uniformly paid as much or more than any other party to the settlement.
5. That he has reviewed the proposed settlement agreement in the Tennessee Class Action. 000550
6. That the proposed settlement is grossly out of proportion to the damages sustained by the

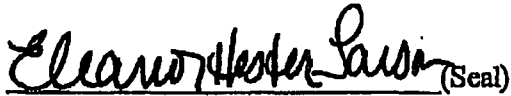
by Dryvit Systems, Inc.

FURTHER AFFIANT SAYETH NOT.



William Dixon Robertson III

SWORN TO before me this  
21st day of August, 2002.



Eleanor Hester Lawton (Seal)  
Notary Public for South Carolina

My Commission Expires: 9-18-07

000551

**Exhibit A**

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS  
) FOURTEENTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO: 02-CP-07-

JOHN CARDAMONE and his wife,  
SALLY CARDAMONE, and  
BENJAMIN T. CLARK and his wife,  
DIANE M. CLARK, individually and on  
behalf of others similarly situated in the  
state of South Carolina,

Plaintiffs,

vs.

DRYVIT SYSTEMS, INC., ESTATE  
BUILDERS, INC., and AMERICAN  
WAY APPLICATORS OF SOUTH  
CAROLINA, INC.,

Defendants.

**AFFIDAVIT OF  
PETER EDWIN SHERRATT**

*Put these  
with the  
other things  
you're holding  
to this  
T/KOR*

Personally appeared before me, Peter Sherratt, who, being duly sworn, deposes and states  
as follows:

1. That he is an architect licensed to practice architecture in the States of South  
Carolina, North Carolina, Georgia, Florida, Alabama and holds an NCARB certificate to practice  
in the remaining states.

2. That he is a forensic architect who has been retained in numerous matters to  
investigate the sources of water intrusion and the causes of rot in numerous structures in South  
Carolina and other states, including one and two family residences.

3. That, in the performance of this work, he has investigated one and two family  
residences clad with Exterior Insulation and Finish Systems, also known as EIFS.

4. That, in particular, he has investigated numerous residences and other structures clad with EIFS manufactured and distributed in South Carolina by Dryvit Systems, Inc.

5. That he has observed evidence of massive amounts of water intrusion causing deterioration of these structures caused in part by the failure of Dryvit EIFS.

6. That he has been qualified as an expert witness in the federal and state courts of the State of South Carolina in the field of architecture, forensic architecture, and construction.

7. That, in his opinion as an expert, the Dryvit EIFS is defective.

8. That the use of defective Dryvit EIFS on residences in South Carolina has resulted in water intrusion, decay of structural building components, and the deterioration of interior finishes.

9. That, in his work as a forensic architect, he has provided cost estimates for the work necessary to repair damages caused by the defective Dryvit EIFS, has participated in the repair of buildings, has reviewed cost estimates prepared by others, and prepared plans for the reconstruction of deteriorated buildings.

10. The cost to properly repair houses clad with Dryvit EIFS is substantial. Typical repair costs exceed one hundred thousand (\$100,000.00) dollars for a moderate size home.

11. That he has reviewed the proposed settlement of the Tennessee Class Action.

12. That, based on his knowledge of Dryvit and the cost to repair structures damaged by the defective Dryvit EIFS, the proposed settlement is woefully inadequate.

13. That he has served as an expert in litigation in which the architect and/or the general contractor and/or the subcontractor who applied the EIFS and/or other potentially responsible parties have been unable to respond to a judgment or to participate in settling the case.

14. That Dryvit has participated in settling the cases in which he has been involved.

FURTHER AFFIANT SAYETH NOT.



Peter Edwin Sherratt

SWORN TO before me this  
22nd day of August, 2002.

Kathryn M. Macomber (Seal)  
Notary Public for South Carolina  
My Commission Expires: 12/16/2003

**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 other similarly situated, )

Plaintiffs, )

Case No. 17,715-IV

v. )

DRYVIT SYSTEMS, INC. )

Defendant. )

**AFFIDAVIT OF RICHARD R. GLEISSNER, ESQ.**

Comes now the Affiant, after being duly sworn and hereby states based on personal knowledge as follows:

1. My name is Richard R. Gleissner. I am an attorney with the law firm of Finkel & Altman, LLC, Suite 1800, 1201 Main Street, Columbia, South Carolina 29201. Phone Number: 803-765-2935.

2. I am a member in good standing of the Bar of South Carolina, and I am licensed and admitted to practice in the courts of South Carolina, including the federal courts of South Carolina and the Fourth Circuit, and in various other courts.

3. Since 1998, for four (4) years, I have, as part of my practice, represented homeowners in South Carolina, who have been involved in litigation as a result of having purchased homes with an Exterior Insulation and Finish System (commonly known as EIFS) as the cladding.

4. Over the last four (4) years, Finkel & Altman, LLC has been personally been responsible for or involved in the settlement of approximately two-hundred (200) EIFS cases, of which I have represented homeowners in over one hundred (100) cases.

5. The overriding factor for each of these settlements was the actual or estimated cost for the homeowner to remove the EIFS and have a different exterior cladding installed. Of those approximately 200 settled and/or tried cases, approximately 75<sup>000564</sup> have involved homes in South Carolina constructed with EIFS manufactured by Dryvit Systems, Inc. Dryvit is

\$30,000 and \$200,000, for each house. The majority of these settlements were between \$50,000 and \$150,000.

6. One objective number to analyze the settlement is to compare the total settlement amount to the square footage of EIFS on the houses. Utilizing that method, the vast majority of the settlements range from \$15.00 to \$30.00 per square foot of EIFS on the houses. In South Carolina, a repair that leaves the EIFS on the home is not a viable solution for homeowners with EIFS-related moisture intrusion due to the stigma associated with an EIFS home. Additionally, some real estate agents in South Carolina will not market or sell an EIFS home. However, the proposed settlement agreement in the above-referenced *Posey* case only contemplates a repair, rather than a tear off and reclad, which will not be an adequate resolution for homeowners faced with the above restrictions.

7. I have worked with architects, remediation contractors and engineers in South Carolina all of whom have independently reached the conclusion that Dryvit's barrier Outsulation and Sprint system, which is the subject matter of this *Posey* litigation, as designed and marketed cannot prevent water intrusion or water entrapment due to the failure of the facial barrier design. These same experts have consistently opined that a proper remediation on a home of an average size cannot be completed for \$6,000 to \$7,500.

8. I am also very familiar with the *Ruff* class action settlement in North Carolina wherein Dryvit agreed to pay North Carolina homeowners \$6.00 per square foot, which is considerably more than Dryvit will pay in the proposed settlement for this action. The \$6.00 per square foot settlement in North Carolina, based on information I received from attorneys I have associated with in North Carolina, was less than adequate to compensate the average North Carolina homeowner.

9. The average cost of reclads in South Carolina with which I am familiar have been \$18.00 to \$35.00 per square foot, with some very large houses exceeding that amount.

10. In my opinion, this history of Dryvit's EIFS litigation clearly establishes and well documents that this proposed Tennessee National Settlement is woefully inadequate, and will only benefit Dryvit and Class Counsel and will adversely affect Dryvit homeowners nationwide.

This 22<sup>nd</sup> day of August, 2002.



Richard R. Gleissner, Esq.

000565

SUBSCRIBED AND SWORN TO before me  
this 2nd day of August, 2002.

Christel G. Pickens  
Notary Public

My commission expires: August 26, 2008

LOUIS/73218.1

000566

**FINKEL**  
STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO. 02-CP-07-1433

JOHN CARDAMONE and his wife, )  
SALLY CARDAMONE, and )  
BENJAMIN T. CLARK, and his wife, )  
DIANE M. CLARK, individually and )  
on behalf of all others similarly situated )  
in the state of South Carolina )

Plaintiffs, )  
vs. )

DRYVIT SYSTEMS, INC., ESTATE )  
BUILDERS, INC., and AMERICAN )  
WAY APPLICATORS OF SOUTH )  
CAROLINA, INC. )

AFFIDAVIT OF J. J. ANDERSON,

2002 AUG 30 PM 4 26  
BEAUFORT COUNTY  
CLERK OF COURT  
BEAUFORT, S.C.

Comes now the Affiant, after being duly sworn and hereby states based on personal knowledge as follows:

1. My name is Jonathan J. Anderson. I am an attorney with Anderson & Segul, LLC, 37-1/2 Broad Street, Charleston, South Carolina 29402. Phone Number: 843-723-0185.
2. For four years, I have, as part of my practice, defended general contractors and stucco applicators in South Carolina, who have been involved in litigation as a result of having constructed homes with an Exterior Insulation and Finish System (commonly known as EIFS) as the cladding. A number of these cases have involved Dryvit.
3. I have been involved in approximately 40 cases, of which twelve have resulted in settlements based on reasonable remediation costs. All the settlements were well in excess of \$7,500. The usual remediation costs for residential properties in all these cases have been in the range of \$25,000 to \$100,000.

This 30 day of August, 2002.

  
J. J. Anderson

*notary appears on next page*

**COLUMBIA**  
1201 Main Street, Suite 1800  
Post Office Box 1799 (29202)  
Columbia, SC 29201  
Tel: (803) 765-2935  
Fax: (803) 252-0786

**CHARLESTON**  
Litigation, Real Estate & REO  
3955 Faber Place Drive, Suite 200  
Post Office Box 1 (29402)  
North Charleston, SC 29405  
Tel: (843) 577-5460  
Fax: (843) 577-000729 **1227**

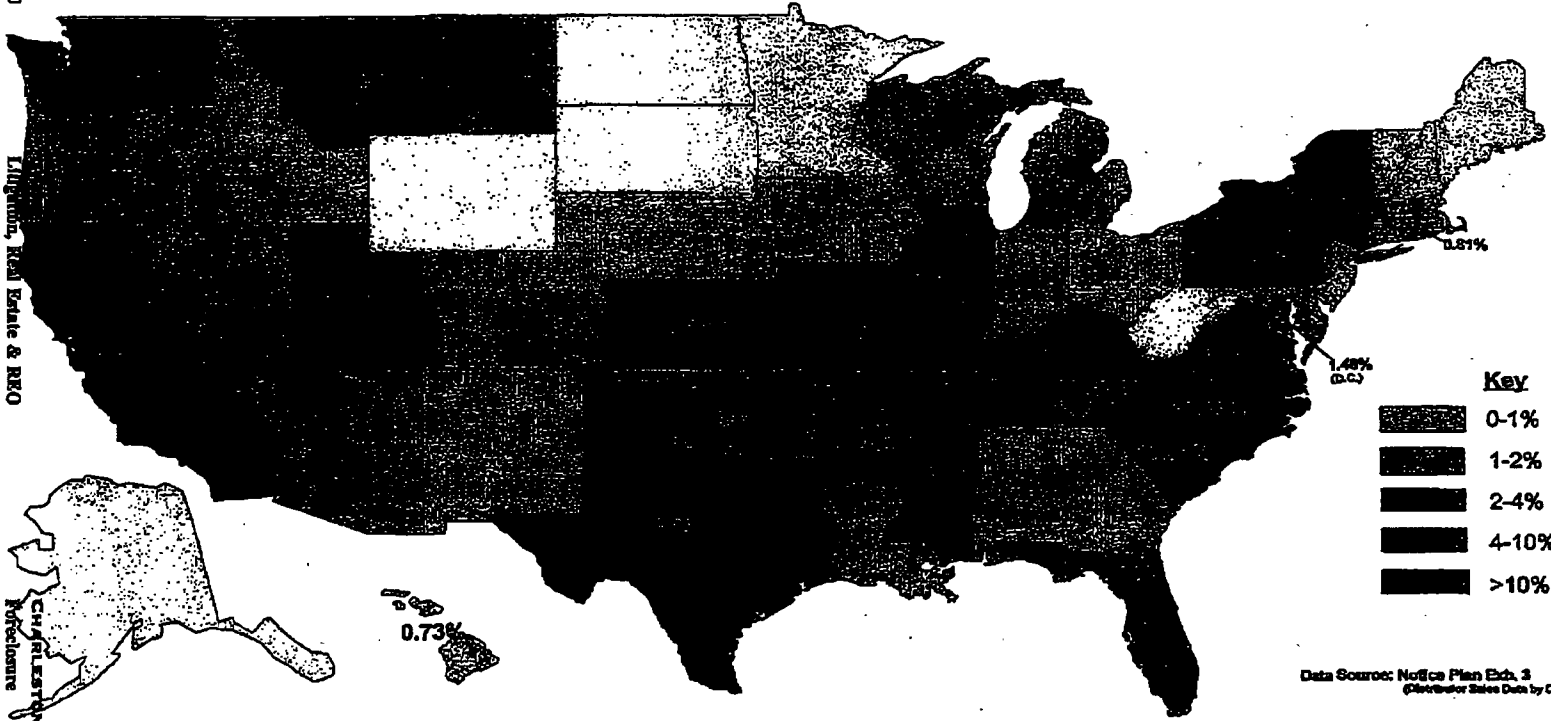
**CHARLESTON**  
Foreclosure  
3955 Faber Place Drive, Suite 200  
Post Office Box 71727 (29415)  
North Charleston, SC 29405  
Tel: (843) 577-5460  
Fax: (843) 725-0015

**Dryvit EIFS Distributor Sales**  
(January 1989 to February 2002)

**COLUMBIA**  
1201 Main Street, Suite 1800  
Post Office Box 1799 (29202)  
Columbia, SC 29201  
Tel: (803) 765-2935  
Fax: (803) 252-0786

**LILGEMIN, REAL ESTATE & BRO**  
3955 Faber Place Drive, Suite 200  
Post Office Box 225 (29402)  
North Charleston, SC 29405  
Tel: (843) 577-5460  
Fax: (843) 577-5000/730

**CHARLESTON**  
Professional  
3955 Faber Place Drive, Suite 200  
Post Office Box 11727 (29415)  
North Charleston, SC 29405  
Tel: (843) 577-5460  
Fax: (843) 725-0015



Data Source: Notice Plan Exh. 3  
(Distributor Sales Data by DMA)

**1228**

**FINKEL**  
STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO. 02-CP-07-1433

SUBSCRIBED AND SWORN TO before me  
this 30 day of August, 2002.

*Mia Woodfield Cassie*  
Notary Public for South Carolina

My commission expires: 08/19/09

**COLUMBIA**  
1201 Main Street, Suite 1800  
Post Office Box 1999 (29202)  
Columbia, SC 29201  
Tel: (803) 765-2935  
Fax: (803) 252-0786

**CHARLESTON**  
Litigation, Real Estate & REO  
3955 Faber Place Drive, Suite 200  
Post Office Box 8272 (29402)  
North Charleston, SC 29405  
Tel: (843) 577-5460  
Fax: (843) 577-000731

**1229**

**CHARLESTON**  
Foreclosure  
3955 Faber Place Drive, Suite 200  
Post Office Box 71727 (29415)  
North Charleston, SC 29405  
Tel: (843) 577-5460  
Fax: (843) 725-0015

**FINKEL**  
**LAW FIRM, L.L.C.**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

JOHN CARDAMONE and his wife, )  
SALLY CARDAMONE, and )  
BENJAMIN T. CLARK and his wife, )  
DIANE M. CLARK, individually and on )  
behalf of others similarly situated in the )  
State of South Carolina, )

Plaintiffs )

vs. )

DRYVIT SYSTEMS, INC., ESTATE )  
BUILDERS, INC., and AMERICAN )  
WAY APPLICATORS OF SOUTH )  
CAROLINA, INC., )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 02-CP-07-1377

**CERTIFICATE OF SERVICE**

2002 AUG 30 PM 4 22  
BEAUFORT COUNTY  
CLERK OF COURT  
BEAUFORT, S.C.

I. Robin A. Ford, paralegal for Jonathan J. Anderson of Anderson and Segui, LLC hereby certify that on August 30, 2002, I have served counsel for all parties in the above captioned matter with a copy of the Estate Builder's Response to Plaintiffs' Motion for Conditional Class Certification, or in the Alternative, for Injunction by facsimile transmission and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon to the following:

Michael S. Seekings, Esquire  
George E. Mullen, Esquire  
Mullen, Wylie & Seekings, L.L.C.  
134 Meeting Street, Suite 500  
Charleston, SC 29401-1544

W. Jefferson Leath, Jr., Esquire  
Timothy W. Bouch, Esquire  
Leath, Bouch & Crawford, L.L.P.  
Post Office Box 59

**COLUMBIA**  
1201 Main Street, Suite 1800  
Post Office Box 1799 (29202)  
Columbia, SC 29201  
Tel: (803) 765-2935  
Fax: (803) 252-0786

**CHARLESTON**  
Litigation, Real Estate & REO  
3955 Faber Place Drive, Suite 200  
Post Office Box 225 (29402)  
North Charleston, SC 29405  
Tel: (843) 577-5460 **1230**  
Fax: (843) 577-5 000732

**CHARLESTON**  
Foreclosure  
3955 Faber Place Drive, Suite 200  
Post Office Box 71727 (29415)  
North Charleston, SC 29405  
Tel: (843) 577-5460  
Fax: (843) 725-0015

Charleston, South Carolina 29402

William Dixon Robertson, Esquire  
Post Office Box 11401  
Columbia, South Carolina 29211-1401

Ralph E. Tupper  
Tupper, Grimsley & Dean, P.A.  
Post Office Box 2055  
611 Bay Street  
Beaufort, South Carolina 29901-2055



Robin A. Ford

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS  
) FOURTEENTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO: 02-CP-07-+133 1377

JOHN CARDAMONE and his wife,  
SALLY CARDAMONE, and  
BENJAMIN T. CLARK and his wife,  
DIANE M. CLARK, individually and on  
behalf of others similarly situated in the  
state of South Carolina,

Plaintiffs,

vs.

DRYVIT SYSTEMS, INC., ESTATE  
BUILDERS, INC., and AMERICAN  
WAY APPLICATORS OF SOUTH  
CAROLINA, INC.,

Defendants.

*AFFIDAVIT OF W. JEFFERSON  
LEATH, JR., ESQUIRE*

2002 AUG 27 PM 1 46  
BEAUFORT COUNTY  
CLERK OF COURT  
BEAUFORT, S.C.

Personally appeared before me, W. Jefferson Leath, Jr., who, being duly sworn, deposes  
and states as follows:

1. That he is an attorney licensed to practice law in the State of South.
2. That he has been involved in the defense and prosecution of construction defect cases in South Carolina for 17 years.
3. That he has been involved in cases in which Dryvit Systems, Inc., has been a party.
4. That in settlement negotiations, Dryvit Systems, Inc., has almost uniformly paid as much or more than any other party to the settlement.
5. That he has reviewed the proposed settlement agreement in the Tennessee Class Action.



6. That the proposed settlement is grossly out of proportion to damages directly caused by Dryvit's EIFS Systems sustained by Plaintiffs in matters in which he has been involved.

7. That the proposed settlement is grossly out of proportion to the settlement amounts paid by Dryvit Systems, Inc. in matters in which he has been involved.

8. That the proposed settlement, limiting damaged homeowners to a maximum of \$6.00 per square foot is wholly inadequate, unreasonable, and would only accomplish a fraction of the costs normally associated with water intrusion damage and re-cladding expense always associated with the installation of Dryvit's Barrier EIFS Systems.


9. That he has been made aware of the multiple insurers, policies, and layers of insurance coverage for Dryvit, and he's never been informed of either

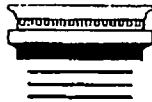
1. any probability of exhaustion of coverage; or
2. potential economic bankruptcy of Dryvit Systems, Inc.

FURTHER AFFIANT SAYETH NOT.

  
W. Jefferson Leath, Jr.

SWORN TO before me this  
22 day of August, 2002.

 (Seal)  
Notary Public for South Carolina  
My Commission Expires: 1-31-10



**LEATH, BOUCH & CRAWFORD LLP**  
PRACTICE LIMITED TO COMMERCIAL LITIGATION & CREDITORS RIGHTS  
WITH EMPHASIS ON CONSTRUCTION & ENVIRONMENTAL LAW

September 3, 2002

Settlement Claims Administrator  
P.O. Box 1626  
Faribault, MN 55021-1626

RE: John Cardamone, et al., individually and on behalf of all others similarly situated  
v. Dryvit Systems, et al.  
Case No. 02-CP-07-1433  
LBC File No. 1198.0001

Dear Sir or Madam:

Enclosed please find an executed "Request for Exclusion" form which has been completed on behalf of our clients in the above-referenced matter. These clients have chosen to opt out of the Dryvit System, Inc.'s Class Action Settlement. Should you have any questions, please do not hesitate to contact me.

With kind regards I am

Very truly yours,

LEATH, BOUCH & CRAWFORD, LLP

W. Jefferson Leath, Jr.

WJL/lf  
Enclosures

cc. Ralph E. Tupper, Esq. (w/enc.)  
Peter Morgan, Esq. (w/enc.)  
Lisa A. Reynolds, Esq. (w/enc.)  
Gary E. Mason, Esq. (w/enc.)  
Gary K. Shipman, Esq. (w/enc.)

William M. Audet, Esq. (w/enc.)  
Gordon Ball, Esq. (w/enc.)  
Andrew N. Friedman, Esq. (w/enc.)  
Everette L. Doffermyre, Esq. (w/enc.)  
Samuel D. Heins, Esq. (w/enc.)

RECEIVED SEP 09 2002



GEORGE E. MULLEN  
ROBERT L. WYLIE, IV  
MICHAEL S. SEEKINGS\*  
GLYNN L. CAPELL\*\*  
ALLISON BURKE THOMPSON  
KATHARINE N. KEATON

\* ALSO ADMITTED IN NY AND DC  
\*\* ALSO ADMITTED IN ND AND FL



MULLEN, WYLIE & SEEKINGS, LLC

134 MEETING STREET, SUITE 500  
CHARLESTON, SC 29401

MICHAEL S. SEEKINGS  
ALLISON B. THOMPSON

PHONE: (843) 853-5353  
FAX: (843) 853-8994

September 3, 2002

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Stucco Settlement Claims Administrator  
Post Office Box 1626  
Faribault, MN 55021-1626

RE: Dryvit Class Action Lawsuit  
Order from Judge Kemmerlin  
Opt out form for Class

Administrator:

Enclosed please find an Order from Judge Kemmerlin signed today. Also enclosed is a signed Request for Exclusion form for the Class listed in this Order.

Please call me if you have any questions. With best regards, I am

Yours very truly,

Michael S. Seekings

Enclosures

MSS/hdh

HILTON HEAD ISLAND OFFICE:  
2 PARK LANE  
POST OFFICE BOX 5969  
HILTON HEAD ISLAND, SC 29928  
(843) 785-6969

RECEIVED SEP 09 2002

MYRTLE BEACH OFFICE:  
4710 OLEANDER DRIVE  
POST OFFICE BOX 1980  
MYRTLE BEACH, SC 29577  
(843) 449-4800

**REQUEST FOR EXCLUSION**

I, We own a one- or two-family residential dwelling or townhouse in a State other than North Carolina (the "Property") clad in whole or in part with an Exterior Insulation and Finish System ("EIFS") manufactured by Dryvit Systems, Inc., and

I/We hereby elect to opt out of (be excluded from) the Settlement Class in accordance with the provisions of the Notice of Proposed Settlement of Class Action and the Settlement Agreement. By submitting this Form, I/We realize that I/we will not receive the benefits of the proposed Settlement.

Name(s): John Cardamone and his wife, Sally Cardamone, and Benjamin T. Clark and his wife, Diane M. Clark, individually and on behalf of others similarly situated in the State of South Carolina.

Contact Address: 134 Meeling Street, Suite 500

Street Address

Charleston

S.C.

29401

City

State

Zip Code

Address of

The Property:

16 Brams Point Road and 21 Castlebridge Court and all South Carolina Dryvit EIFS structures. See attached Complaint.

Street Address

Hilton Head Island

S.C.

29926

City

State

Zip Code

A SEPARATE EXCLUSION REQUEST MUST BE SUBMITTED FOR EACH PROPERTY COVERED BY THE SETTLEMENT. EXCLUSION REQUESTS MUST BE SENT BY U.S. MAIL TO THE CLAIMS ADMINISTRATOR AT THE ADDRESS BELOW.

I/We choose not to receive any benefits from this Settlement and will not be bound by any judgment. I/We understand that this request must be postmarked on or before September 3, 2002 to be considered a valid request for exclusion.

<u>[Signature]</u> Michael S. Seakings, as Attorney for the Class	<u>9/3/02</u> Date	<u>(843) 853-5353</u> Telephone
<u>[Signature]</u> Jeff Leath, as Attorney for the Class	<u>9/3/02</u> Date	<u>(843) 937-8811</u> Telephone
<u>[Signature]</u> Frank Gimball, as Attorney for the Class	<u>9/3/02</u> Date	<u>(843) 853-5353</u> Telephone
<u>[Signature]</u> Dixon Robertson, as Attorney for the Class	<u>9/3/02</u> Date	<u>(843) 988-0040</u> Telephone

Stucco Settlement Claims Administrator  
P.O. Box 1626  
Faribault, MN 55021-1626

REQUEST FOR EXCLUSION

I, We own a one- or two-family residential dwelling or townhouse in a State other than North Carolina (the "Property") clad in whole or in part with an Exterior Insulation and Finish System ("EIFS") manufactured by Dryvit Systems, Inc., and

I/We hereby elect to opt out of (be excluded from) the Settlement Class in accordance with the provisions of the Notice of Proposed Settlement of Class Action and the Settlement Agreement. By submitting this Form, I/we realize that I/we will not receive the benefits of the proposed Settlement.

Name(s): All persons who own or have owned a one- or two-family residential dwelling, or townhouse (hereinafter "structure") in the State of South Carolina who would be a member of the Class purportedly created in the action pending in Tennessee, Posey, et al. v. Dryvit Systems, Inc. and/or All persons who own or have owned a structure in the State of South Carolina on which an Exterior Insulation and Finish System ("EIF system") has been installed or any previous owner of such structures who incurred any costs or expenses to inspect, repair or replace the EIF system or their property damages by the EIF system at any time from January 1, 1989, until the date Defendants' continuing conduct is terminated (the "Class Period").  
 By Michael S. Seekings, Attorney for the class.

Contact Address: 134 Meeting Street, Suite 500  
Street Address  
Charleston S.C. 29401  
City State Zip Code

Address of The Property: All structures noted above located in the State of South Carolina. See Complaint attached.  
Street Address  
City State Zip Code

A SEPARATE EXCLUSION REQUEST MUST BE SUBMITTED FOR EACH PROPERTY COVERED BY THE SETTLEMENT. EXCLUSION REQUESTS MUST BE SENT BY U.S. MAIL TO THE CLAIMS ADMINISTRATOR AT THE ADDRESS BELOW.

I/We choose not to receive any benefits from this Settlement and will not be bound by any judgment. I/We understand that this request must be postmarked on or before September 3, 2002 to be considered a valid request for exclusion.

<u>Michael S. Seekings</u> Michael S. Seekings, as Attorney for the Class	<u>9/3/02</u> Date	<u>(843) 953-5353</u> Telephone
<u>Jill Leath</u> Jill Leath, as Attorney for the Class	<u>9/3/02</u> Date	<u>(843) 937-8811</u> Telephone
<u>Frank Grimball</u> Frank Grimball, as Attorney for the Class	<u>9/3/02</u> Date	<u>(843) 853-5353</u> Telephone
<u>Dixon Robertson</u> Dixon Robertson, as Attorney for the Class	<u>9/3/02</u> Date	<u>(843) 988-0040</u> Telephone

Stucco Settlement Claims Administrator  
 P.O. Box 1626  
 Faribault, MN 55021-1626



RECEIVED SEP 6 9 2002

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2002-CP-07-1377

**RECEIVED**

JUL 07 2014

**SC Court of Appeals**

Ex parte: William Dixon Robertson III, William M. Bowen, W.  
Jefferson Leath, Jr., Michael S. Seekings, and Timothy W. Bouch,.....Appellants.

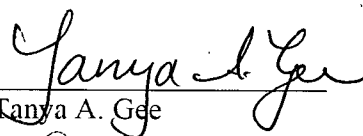
Timothy J. Treon and his wife, Jane Treon, and P. Jennings Scarce  
and Steven Christian individually, and on behalf of other similarly  
situated in the State of South Carolina,.....Respondents,

v.

Dryvit Systems, Inc., ..... Defendant.

**CERTIFICATE OF COUNSEL**

Pursuant to Rules 210(g) of the South Carolina Appellate Court Rules, the undersigned, as counsel for Appellants, hereby certifies that, to the best of my knowledge and belief, the Supplemental Record on Appeal contains material that was inadvertently excluded from the Record on Appeal (as designated by the parties) and not any other material.



Tanya A. Gee  
tgee@nexsenpruet.com  
NEXSEN PRUET, LLC  
Post Office Drawer 2426  
Columbia, SC 29202  
Tel: 803-771-8900

July 7, 2014

**RECEIVED**

JUL 07 2014

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2013-001367

Ex parte: William Dixon Robertson III;  
William M. Bowen, W. Jefferson Leath, Jr.;  
Michael S. Seekings; and Timothy W. Bouch,.....Appellants

Timothy J. Treon and his wife, Jane Treon; P. Jennings  
Searce; and Steven Christian, individually and on behalf  
of other similarly situated in the State of South Carolina,.....Respondents

vs.

Dryvit Systems, Inc., ..... Defendant

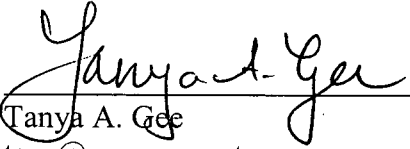
**PROOF OF SERVICE**

I certify that this 7<sup>th</sup> day of July, 2014, I have served the foregoing  
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