

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Beaufort County
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2007-CP-07-3166

RECEIVED

MAY 04 2012

SC Court of Appeals

Jim Lancaster, Nancy Lancaster, Art
Holland, Jeannette Holland, Wendell
Turner, Phyllis Turner, Jack Bennett, Joan
Bennett, on behalf of themselves and others
similarly situated,

Respondents,

v.

Georgia-Pacific Corporation and/or
Georgia-Pacific LLC, Grayco Home Center,
Inc., Del Webb Communities, Inc., an
Arizona Corporation, Razor Component
Systems, Inc., a South Carolina Corporation,
Razor Enterprises, Inc., a Texas Corporation
and DJ Construction Co., LLC,

Defendants,

Of whom Del Webb Communities, Inc., an
Arizona Corporation, and Georgia-Pacific
Corporation and/or Georgia-Pacific LLC are

Appellants.

**RESPONDENTS' MOTION
TO DISMISS GEORGIA-PACIFIC'S APPEAL
AND SUPPORTING MEMORANDUM**

Case No. 2007-CP-07-3166

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TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA
COURT OF APPEALS

COME NOW the Respondents above named, by and through their undersigned counsel, and move this Honorable Court as follows to dismiss the appeal taken by Appellants Georgia-Pacific Corporation and/or Georgia-Pacific LLC (“Georgia-Pacific”).¹

INTRODUCTION

Like Del Webb before it, Georgia-Pacific has now noticed an appeal from six separate interlocutory orders entered by the circuit court in the conduct of this class action. None of the orders is immediately appealable. To avoid any possibility of undue disruption or delay of the adjudication of this matter in the circuit court, Georgia-Pacific’s appeal should be immediately dismissed.

¹ Before Georgia-Pacific served its notice of appeal, the Respondents had already moved to dismiss the appeal taken in this matter by Appellant Del Webb Communities, Inc., an Arizona Corporation (“Del Webb”). In an effort to avoid any possibility of undue disruption or delay of the adjudication of this matter in the circuit court, contemporaneously with the filing of their motion to dismiss Del Webb’s appeal, the Respondents filed in the Supreme Court a motion asking that Court to certify this matter for immediate and expedited review (and dismissal). The Respondents are again contemporaneously filing such a motion in the Supreme Court with respect to Georgia-Pacific’s appeal.

BACKGROUND

The Respondents are homeowners in Sun City Hilton Head (“Sun City”), a large-scale, planned retirement community in Bluffton, developed by Del Webb, with Del Webb also serving as general contractor for the construction of all of the putative class homes, some 800 in total. (See Third Amended Complaint and Del Webb Communities’ Response to Plaintiffs’ Requests to Admit, copies of which are attached hereto as **Exhibits 1 and 2**, respectively, which are incorporated herein by reference.) The Respondents brought the present action on behalf of themselves and their similarly situated Sun City neighbors to recover damages they allege on account of an inherently defective and unfit building product (an exterior trim-board product known as PrimeTrim[®], which was manufactured, designed, marketed, sold and/or distributed by Georgia-Pacific) and its deficient installation on the putative class homes by Del Webb and its subcontractors.

After a two-day hearing, the Honorable Roger M. Young, Sr.² entered an order granting the Respondents’ motion for class certification and also an order denying Georgia-Pacific’s motion to strike affidavits submitted in support of class certification by the Respondents’ experts Andy W.C. Lee,

Derek Hodgin, and Thomas J. Carlson. (Copies of these orders are attached hereto as **Exhibits 4 and 5**, respectively, which are incorporated by reference herein.) Thereafter, Georgia-Pacific filed motions seeking reconsideration, alteration, or amendment of the class certification order and also of the order denying its motion to strike the Respondents' experts' affidavits as well as a stay of this action pending compliance with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §§ 40-59-810 to -860 (the "Right to Cure Act").

Following another hearing held February 23, 2012, Judge Young entered an order denying Georgia-Pacific's motion for reconsideration, alteration, or amendment of both the class certification order and the order denying Georgia-Pacific's motion to strike the Respondents' experts' affidavits and also entered an order denying Georgia-Pacific's motion to stay this action pending compliance with the Right to Cure Act. (Copies of these orders are attached hereto as **Exhibits 6 and 7**, respectively, which are incorporated herein by reference.) Additionally, Judge Young entered an order approving notice of the pendency of the action to the putative class members as well as a preliminary case management and scheduling order.

² By order entered May 28, 2008, this case was designated complex and assigned to Judge Young, expressly giving him authority to "hear and handle all pre-trial motions,

(Copies of these orders are attached hereto as Exhibits 8 and 9, respectively, which are incorporated herein by reference.)

On or about April 26, 2012, Georgia-Pacific noticed an appeal of the orders above named. (A copy of Georgia-Pacific's Notice of Appeal (omitting its attached orders, which are duplicative in light of the other attachments hereto) is attached hereto as Exhibit 10, which is incorporated herein by reference.)

ARGUMENT

I. Because none of the interlocutory orders identified in Georgia-Pacific's notice of appeal is immediately appealable, Georgia-Pacific's appeal should be dismissed.

Rule 201(a), SCACR, addresses judgments, orders and decisions subject to appeal, and, in pertinent part, provides that "[a]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision." "As a general rule, only final judgments are appealable." Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005). "To promote judicial efficiency and orderly adjudication of disputes on appeal, this rule seeks to prevent multiple appeals of non-final matters." Jean Hoefer Toal et al., Appellate Practice in South Carolina 83 (2002).

scheduling matters, and other matters pertaining to this case." (A copy of this order is attached hereto as Exhibit 3, which is incorporated herein by reference.)

“Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final.” Wilson, 367 S.C. at 12, 625 S.E.2d at 208; Mid-State Distribs, Inc. v. Century Imps., Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993) (“South Carolina case law has established what constitutes an interlocutory appeal. If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory.”); *see also* Toal, supra at 86 (“‘Final judgment’ is a term of art denoting the disposition of all issues in the action.”). Here, Georgia-Pacific has appealed six separate orders (each of which will be more particularly identified and analyzed below), none of which are final judgments; they are all interlocutory (and not immediately appealable).

“Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within [S.C. Code Ann.] § 14-3-330.” Wilson, 367 S.C. at 13, 625 S.E.2d at 208.

In pertinent part, § 14-3-330 provides as follows:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process

or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action; . . .

Accordingly, “[i]ntermediate orders involving the merits may be immediately appealed pursuant to § 14-3-330(1).” Wilson, 367 S.C. at 13, 625 S.E.2d at 208. “An order which involves the merits is one that ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense.’” Id. (citing Mid-State Distribs., 310 S.C. at 334, 426 S.E.2d at 780). Also, “[i]nterlocutory orders affecting a substantial right may be immediately appealed pursuant to § 14-3-330(2).” Id. “Orders affecting a substantial right ‘discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.’” (citing Mid-State Distribs., 301 S.C. at 335, 426 S.E.2d at 780 n. 4).

With more particular respect to subsection (2) of § 14-3-330, “[g]enerally, this subsection has only been used when the trial order affected

the ‘mode of trial’ because if those orders are not immediately appealed, no appellate review is available to correct any error.” Toal, supra at 87. “[T]he ‘mode of trial’ exception to the general rule that only final orders are appealable is confined to orders which abridge a party’s constitutional right to trial by jury.” Fulmer v. Cain, 380 S.C. 466, 470, 670 S.E.2d 652, 654 (2008) (citing Salmonsens v. CGD, Inc., 377 S.C. 442, 461, 661 S.E.2d 81, 91 (2008) (Pleicones, J., dissenting)).

As is more particularly set forth below, none of the orders Georgia-Pacific purports to appeal are final judgments. None involves the merits. None discontinues this action, prevents a later appeal, grants or refuses a new trial, or strikes out an action or defense. None abridges Georgia-Pacific’s constitutional right to a jury trial. None is immediately appealable. And Georgia-Pacific’s appeal should be immediately dismissed, so as to avoid any possibility of undue disruption or delay of the adjudication of this matter in the circuit court.

- **Order Denying Georgia-Pacific’s Motion to Stay Action Pending Compliance with South Carolina Code § 40-59-810, *et seq.* (i.e., Exhibit 7)**

This order is not immediately appealable because it is not a final order, and the denial of a motion for a stay is not otherwise immediately appealable. See Carolina Water Service, Inc. v. Lexington County Joint

Mun. Water and Sewer Com'n, 373 S.C. 96, 644 S.E.2d 681 (2007) (holding that an order lifting a stay is not immediately appealable); Edwards v. SunCom, 369 S.C. 91, 94-5, 631 S.E.2d 529, 530-31 (2006) (“The order here does not discontinue the proceeding. It merely temporarily stays the matter pending a ruling by the FCC. Accordingly, we find an order granting a stay is not immediately appealable.”).

Moreover, the stay denied by this order relates to compliance with the Right to Cure Act in the context of a class action. The relationship between the Right to Cure Act and class actions under Rule 23, SCRCF, was recently addressed by our Supreme Court in Grazia v. South Carolina State Plastering, LLC, 390 S.C. 562, 703 S.E.2d 197 (2010). In Grazia, the Supreme Court harmonized the stay and notice provisions within the Right to Cure Act, found the Right to Cure Act to be compatible with Rule 23, and reversed the circuit court’s decision to strike the class action allegations from the plaintiffs’ complaint. In so doing, the Court rejected the notion that the Right to Cure Act did not allow for representative compliance, and explained that, in an action containing class allegations, after the circuit court has determined that the Rule 23(a) prerequisites to a class action are met, the circuit court may then find that representative notice under the Right to Cure Act is appropriate. Id. at 575-76, 703 S.E.2d at 204. The

Court also explained that “rights under the Right to Cure Act notice provisions are not new substantive rights . . . ,” expressly noting that, under the Right to Cure Act, “the claimant is not required to accept any offer by the contractor/subcontractor to remedy the alleged defect, and he or she is not required to accept an offer of settlement of the claim.” Id. at 573, 703 S.E.2d at 202. Under the Grazia Court’s holding, the rights afforded under the Right to Cure Act are not substantive and are akin to discovery rights. And discovery orders are not immediately appealable. Hamm v. South Carolina Public Service Com’n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) (“Discovery orders, however, are interlocutory and are not immediately appealable.”).

Further still, this order, by its express terms reflects a lack of finality with respect to the substance of its ruling, providing that, “[t]he Court further notes that, in accordance with its authority to maintain continual control over class action proceedings and the Supreme Court’s decision in Grazia v. South Carolina State Plastering, LLC, 390 S.C. 562, 703 S.E.2d 197 (2010), it will address issues pertaining to S.C. Code Ann. §§ 40-59-810 to -860 in this case in due course.” This is consistent with the broad and continuing case management authority granted the circuit court under Rule 23(d), and also with the specific managerial role conferred upon Judge

Young by the Order Establishing Complex Case Designation and Appointment of Judge Roger M. Young as Case Manager. (See **Exhibit 3.**)

- **Preliminary Case Management and Scheduling Order (i.e., Exhibit 9)**

This order is, by its express terms, a “preliminary” order pertaining to procedural issues of case management and scheduling. While it does address compliance with the Right to Cure Act and the timing thereof, as explained above, the Right to Cure Act does not create substantive rights in Georgia-Pacific. Grazia, 390 S.C. at 573, 703 S.E.2d at 202.

- **Order Approving Notice of Class Action (i.e., Exhibit 8)**

This is a procedural order approving notice of the pendency of this action to the putative class members. Generally, orders under Rule 23 are interlocutory and not immediately appealable. See Eldridge v. City of Greenwood, 308 S.C. 125, 127, 417 S.E.2d 532, 534 (1992) (“Orders under Rule 23, SCRPC are interlocutory and thus, immediately appealable only in certain circumstances.”); see also Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 565, 564 S.E.2d 94, 98 (2002) (“Usually, an order denying class certification is interlocutory and not immediately appealable.”); Schein v. Lamar, 274 S.C. 329, 331, 263 S.E.2d 383, 384 (1980) (finding issue of class certification sought to be raised on appeal was interlocutory and appeal regarding that issue was dismissed); Knowles v.

Standard Sav. & Loan Ass'n, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979) (dismissing class certification order as interlocutory on the grounds that “[c]lass certification, essentially procedural in nature, does not involve substantial or essential legal rights which require attention prior to final judgment”).

- **Order Granting Class Certification (i.e., Exhibit 4)**

This is a procedural order granting class certification. Again, generally, orders under Rule 23 are interlocutory and not immediately appealable. *See* Salmonsens, 377 S.C. 442, 661 S.E.2d 81 (refusing to entertain interlocutory appeal of class certification despite express argument against precedent to do so, and also despite Court simultaneously addressing the merits of another issue in the case on appeal); Eldridge, 308 S.C. at 127, 417 S.E.2d at 534 (1992); *see also* Ferguson, 349 S.C. at 565, 564 S.E.2d at 98; Schein, 274 S.C. at 331, 263 S.E.2d at 384; Knowles, 274 S.C. at 59, 261 S.E.2d at 49.

- **Order Denying Georgia-Pacific’s Motion to Strike Affidavits of Any W.C. Lee, Derek Hodgin, and Thomas J. Carlson (i.e., Exhibit 5)**

This order, by which the circuit court declined to strike the expert affidavits that the Respondents submitted in support of their motion for class certification, is another order relating to the circuit court’s decision on class

certification, which, again, is generally a type of order that is interlocutory and not immediately appealable. *See* Salmonsens, 377 S.C. 442, 661 S.E.2d 81; Eldridge, 308 S.C. at 127, 417 S.E.2d at 534 (1992); *see also* Ferguson, 349 S.C. at 565, 564 S.E.2d at 98; Schein, 274 S.C. at 331, 263 S.E.2d at 384; Knowles, 274 S.C. at 59, 261 S.E.2d at 49.

- **Order Denying Georgia-Pacific's Motion to Reconsider, Alter or Amend the Judgment (i.e., Exhibit 6)**

This order merely denied reconsideration, alteration, or amendment of the circuit court's prior procedural order granting class certification and order denying Georgia-Pacific's motion to strike the Respondents' experts' affidavits in support of class certification. Once again, generally, orders under Rule 23 are interlocutory and not immediately appealable. *See* Salmonsens, 377 S.C. 442, 661 S.E.2d 81; Eldridge, 308 S.C. at 127, 417 S.E.2d at 534 (1992); *see also* Ferguson, 349 S.C. at 565, 564 S.E.2d at 98; Schein, 274 S.C. at 331, 263 S.E.2d at 384; Knowles, 274 S.C. at 59, 261 S.E.2d at 49.

CONCLUSION

For the foregoing reasons, the Respondents ask that the Court immediately dismiss Georgia-Pacific's appeal.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

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Dated: 5/3/12

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

JIM LANCASTER, NANCY)
LANCASTER, ART HOLLAND,)
JEANNETTE HOLLAND, WENDELL)
TURNER, PHYLLIS TURNER, JACK)
BENNETT, JOAN BENNETT, ON)
BEHALF OF THEMSELVES AND)
OTHERS SIMILARLY SITUATED,)
)
Plaintiffs,)

vs.)

GEORGIA-PACIFIC CORPORATION)
AND/OR GEORGIA-PACIFIC LLC,)
GRAYCO HOME CENTER, INC., DEL)
WEBB COMMUNITIES, INC., AN)
ARIZONA CORPORATION, RAZOR)
COMPONENT SYSTEMS, INC., A)
SOUTH CAROLINA CORPORATION,)
RAZOR ENTERPRISES, INC., A)
TEXAS CORPORATION AND DJ)
CONSTRUCTION CO, LLC)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
2009 APR 30 PM 4: 04
FOURTEENTH JUDICIAL CIRCUIT
BEAUFORT COUNTY
CLERK OF COURT
CASE NO. 2007-CR-073166

**THIRD AMENDED COMPLAINT
(JURY TRIAL DEMANDED)**

The Plaintiffs above-named, on behalf of themselves and all others similarly situated, allege, upon information and belief, as follows:

PARTIES AND JURISDICTION

1. Plaintiffs, Jim Lancaster, Nancy Lancaster (both of 143 Robert E. Lee Lane, Bluffton, SC 29909) (the "Lancasters"), Art Holland, Jeannette Holland (both of 148 Colonel Thomas Heyward Road, Bluffton, SC 29909) (the "Hollands"), Wendell Turner, Phyllis Turner (both of 145 Robert E. Lee Lane, Bluffton, SC 29909) (the "Turners"), and Jack Bennett, Joan Bennett (both of 139 Robert E. Lee Lane) (the "Bennetts"), (collectively "Plaintiffs"), are citizens and residents of the County of Beaufort, State of South Carolina, and are the owners of

Exhibit 1

the real property and improvements thereon located at the above-referenced addresses, which are within in a development briefly described as Sun City, South Carolina.

2. Upon information and belief, the Lancasters' home was built in 1996, and the homes of the Bennetts, Hollands and the Turners were built in 1997. Upon information and belief, all Plaintiffs' homes were constructed with an exterior of fiber cement siding.

3. These homes contain an exterior trim board product known as PrimeTrim (hereinafter "PrimeTrim" or the "product") that, upon information and belief, was designed, manufactured, marketed, sold and/or distributed by the Defendants Georgia-Pacific Corporation and/or Georgia-Pacific LLC ("Georgia-Pacific") and Grayco Home Center, Inc. ("Grayco"). Defendant Del Webb Communities, Inc., an Arizona Corporation, was the developer, builder and supervisor of the subcontractors who built the Plaintiffs' homes located in Sun City, Beaufort County, South Carolina. Defendant Razor Component Systems, Inc., a South Carolina corporation, Razor Enterprises, Inc., a Texas corporation, hereinafter "Razor", and Defendant DJ Construction Co., LLC, hereinafter "DJ" or "DJ Construction" an entity organized under the laws of the State of Georgia, were the subcontractors who installed the PrimeTrim material on all of the Plaintiffs' homes doing so as subcontractors to Defendant Del Webb Communities, Inc.

4. The Plaintiffs bring this action both individually and as representatives on behalf of a class of homeowners in Sun City, Beaufort County, South Carolina, which have homes that contain the exterior trim product known as PrimeTrim. This class is more specifically defined below.

5. PrimeTrim is a registered trademark of Georgia-Pacific. Defendant Georgia-Pacific is a company organized and existing under the laws of a state other than South Carolina. Upon information and belief, Georgia-Pacific is organized and existing under the laws of the

State of Georgia and/or the State of Delaware. Upon information and belief, Grayco is a South Carolina corporation with locations in Beaufort County and was, during the relevant times, a local distributor of PrimeTrim products. Upon information and belief, Grayco was a distributor of the PrimeTrim product for Sun City, Bluffton, South Carolina, during its initial construction phase in which all of the homes of the Plaintiffs and class are located. Moreover, Grayco has continued to distribute and provide the PrimeTrim product to certain individual Plaintiffs and to other members of the class since the initial construction of the homes. Defendant Georgia Pacific also distributed its product directly to the Sun City project.

6. This Court has subject matter jurisdiction over this action because the real properties are located in Beaufort County, the commercial transactions involving the PrimeTrim product took place in Beaufort County and the damage to the subject residences occurred, and is occurring, in Beaufort County.

7. This Court maintains personal jurisdiction over the parties in this action because Defendants Georgia Pacific and Grayco regularly do transact and have transacted business in Bluffton, South Carolina in the development known as Sun City, Beaufort County, South Carolina and regularly market, sell and/or distribute products for use or consumption in Beaufort County, South Carolina. Further, all Plaintiffs, class members and representatives, have property interests in Beaufort County. Likewise, Defendants Del Webb, Razor and DJ have transacted and do transact business in Beaufort County, South Carolina.

8. Venue is proper in that the homes of the class members are situated in Beaufort County, the Plaintiffs have property interests in Beaufort County, and the sales and installation of the products in question took place in Beaufort County.

9. The Plaintiffs demand a jury trial.

FACTUAL BACKGROUND

10. Defendant Georgia Pacific holds themselves out to both the construction industry and the public at large as being knowledgeable in the design, manufacture, distribution, and sale of exterior building products and as being providers of quality building products, including the exterior wood trim product that is the subject of this litigation, namely, PrimeTrim, designed, manufactured, marketed, sold and/or distributed by Defendants Georgia Pacific and Grayco.

11. Prior to 1994, when the oldest house built in Sun City was constructed, Defendant Georgia Pacific designed, manufactured, tested, marketed, sold and/or distributed a manufactured and engineered wood exterior trim product they refer to as PrimeTrim for use as fascia, soffit, corner board, window trim, door trim and for general exterior use on homes, apartments, multi-family buildings and other structures.

12. This product was marketed, sold and/or distributed by the Defendants in Bluffton (Sun City), Beaufort County, South Carolina for use in the construction of many homes in Sun City.

13. Defendants represented and marketed the PrimeTrim product as being a low maintenance product that would save on painting costs that was superior to real cut lumber wood trim products for exterior use as fascia, soffit, corner board, window trim or door trim.

14. Upon information and belief, a large number of homes in Sun City (exceeding hundreds of homes) were constructed by Defendants Del Webb and its subcontractors Razor and DJ with a fiber cement siding and with the PrimeTrim exterior product designed, manufactured, marketed, sold and/or distributed by Defendants Georgia Pacific and Grayco. While the fiber cement siding on these homes appears to be performing in a satisfactory manner, the trim boards,

the PrimeTrim product used in conjunction with the fiber cement siding, have begun to fail and deteriorate as further described below.

15. PrimeTrim is defective and has failed to perform as intended because it prematurely deteriorates, rots, swells, buckles, splits, checks, cracks, delaminates, absorbs water, warps, and/or bulges under normal weather conditions and exposure; causes consequential water and structural damage; and promotes the growth of health-threatening mold, mildew, fungi, termites and other wood-destroying insects in the structure and substrate on which it is installed.

16. Defendant Georgia Pacific designed, manufactured, marketed, sold and/or distributed PrimeTrim without adequate installation instructions and warnings regarding the product's problems, risks, dangers and suitability of the product for use as an exterior simulated wood trim board. Further upon information and belief, Defendants' product warranted expressly for as long as thirty years, but at least ten years, that "Prime Trim would not crack, chip, split or delaminate in a manner that renders the trim materially unable to perform its function; buckle shrink, or swell in a manner that materially affects its appearance".

17. PrimeTrim is not merchantable, is not of fair average quality, fails to comply with applicable industry standards and building codes, is not fit for the ordinary purposes for which the product was sold and used, and will not pass without objection in the trade.

18. Defendants knew or should have known that the PrimeTrim product they designed, manufactured, marketed, sold and/or distributed was defective, would fail and absorb water, deteriorate, crack, chip, split or delaminate prematurely under normal weather/exterior conditions, and that it was not suitable for use as an exterior trim building product in Bluffton (Sun City), Beaufort County, South Carolina area.

19. Upon information and belief, the majority of Georgia-Pacific's sales of the PrimeTrim product were made through building products distributors to developers, contractors and subcontractors, who in turn sold the PrimeTrim product to the end user of the product, the homeowner. It is also believed that large quantities of the PrimeTrim material used at Sun City was directly shipped to the installers, Defendants Del Webb, Razor and DJ by Defendant Georgia Pacific.

20. Defendant Grayco, despite actual and constructive knowledge that the PrimeTrim product was defective and failed to perform as intended because it prematurely deteriorates, rots, swells, buckles, splits, checks, cracks, delaminates, absorbs water, warps, and/or bulges under normal weather conditions and exposure; causes consequential water and structural damage; and promotes the growth of health-threatening mold, mildew, fungi, termites and other wood-destroying insects in the structure and substrate on which it is installed, continued up until 2006 to distribute and market the PrimeTrim product to residents of Sun City, Beaufort County, South Carolina.

21. As a direct and proximate result of the defects of the product as described hereinabove, the PrimeTrim installed on Plaintiffs' residences in Sun City, which have a fiber cement siding envelope, has prematurely failed and deteriorated, and this is causing consequential property damage to the homes and is causing the value of the homes to be diminished. Upon information and belief, hundreds of homes were clad with a fiber cement siding which siding appears to be performing as an adequate building envelope with the exception of the trim material known as PrimeTrim. Upon information and belief, property damage and water intrusion has occurred as a direct result of the failing Prime Trim in every year since these homes were constructed in Sun City, Bluffton, South Carolina. Upon information

and belief, the first homes were constructed in 1994. Property damage has also occurred in all years since original construction as a direct result of the Defendants Del Webb and its subcontractors, Razor and DJ, failing to install flashing as appropriate over the PrimeTrim material in certain locations on all homes of the class members.

22. That during the course of this litigation and upon information and belief Plaintiffs have become aware that the actual installation of the PrimeTrim material on all class members homes was performed by either Defendant Razor Enterprises, Inc., a Texas corporation, and/or Razor Component systems, Inc., a South Carolina corporation (hereinafter "Razor") or by DJ Construction Co., LLC, an entity organized under Georgia law (hereinafter "DJ" or "DJ Construction").

23. Upon information, between 1994 and 2002, all of the Plaintiffs class homes were constructed which total more than 700 homes utilizing PrimeTrim by Defendant Georgia Pacific which material was installed by either Defendant Razor or Defendant DJ and under the supervision of Defendant Del Webb.

24. That upon information recently learned, the PrimeTrim material manufactured by Defendant Georgia Pacific was installed contrary to Georgia Pacific's installation instructions existing at the time of installation and upon information this improper installation was called to the attention of Defendants Razor, DJ and Del Webb as early as 1995 and 1996 by Defendant Georgia Pacific.

25. Georgia Pacific recently produced documents in this lawsuit indicating that during the construction of these homes it had meetings with Defendant Razor and instructed Razor that they were installing the PrimeTrim incorrectly in that they were not installing flashing nor applying sealant as required in the Georgia Pacific installation instructions.

26. That upon information, and according to the documents, Razor acknowledged to Georgia Pacific officials during 1996 that Razor had in fact passed along “all information” and Georgia Pacific’s concerns to Del Webb management and Razor in communicating back to Georgia Pacific indicated that “no remedial action has been taken and no design changes” had been made by Del Webb concerning the lack of appropriate flashing.

27. That Defendants Del Webb, Razor and DJ’s actions in applying the PrimeTrim material without proper flashing was not in conformance with the building codes in effect at the time in Beaufort County, South Carolina, and was not in accordance with good and acceptable building practices.

28. That upon information, the above improper installation of the PrimeTrim material in all of the Plaintiff class members homes has caused and will cause the class members to suffer significant additional costs associated with repairing and replacing the PrimeTrim material when repairs are made. Plaintiffs will be required to include flashing and to repair consequential damages which were caused due to the original lack of flashing at the original installation by Defendants Del Webb, Razor and DJ.

CLASS ACTION ALLEGATIONS

29. Plaintiffs bring this action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure on their own behalf and as the representatives of a class of all persons, firms, corporations, and other entities, excluding Defendants, and their respective parents, subsidiaries, and affiliates who own fiber cement siding homes in Bluffton (Sun City), Beaufort County, South Carolina on which Defendants’ PrimeTrim product is installed, excluding any structure owned by any federal, state or local government, and any structures owned by Defendants or any of their subsidiaries, affiliates or employees.

30. Members of the class are so numerous, estimated to be the homeowners of hundreds of homes, that joinder of all class members in this action is impracticable.

31. Plaintiffs' claims are typical of the claims of the members of the class because the claims of Plaintiffs and all class members arose out of and were damaged by the same wrongful conduct of the Defendants.

32. There are a number of questions of law and fact common to class members. Questions of law and fact common to members of the class are important and predominate over questions, if any, which may affect only individual members. Among the questions of law and fact common to the class are: (a) whether Prime Trim is a defective product from the time of its manufacture through its normal life when used for its intended purpose and, therefore, unsuitable for use as an exterior building product; (b) the liability of Defendants for the design, development, manufacture, production, marketing, selling, distribution, and installation of the Prime Trim product; (c) whether Defendants breached warranties with respect to PrimeTrim; (d) whether the installation of the PrimeTrim was deficient causing increased costs of repair; (e) whether Plaintiffs and class members are entitled to actual, consequential and punitive damages from Defendants; and (f) whether Plaintiffs and class members are entitled to prejudgment interest, attorneys' fees, and costs from Defendants.

33. Plaintiffs will fairly and adequately protect the interests of the class. The interests of Plaintiffs are coincident with and not antagonistic to those of the class. In addition, Plaintiffs are represented by counsel who are experienced and competent in the handling of complex class actions, products liability and construction litigation.

34. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein. Plaintiffs estimate that there are over

700 property owners in Bluffton (Sun City), Beaufort County who purchased Prime Trim as a part of their fiber-cement-sided house and who were, as a result, injured by the defective product and by its improper installation. Such treatment will permit this large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of claims by many class members who could not afford to individually litigate such a claim against large corporate defendants like Georgia-Pacific, Grayco and the installers/builders, Defendants Del Webb, Razor and DJ. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action and no superior alternative exists for the fair and efficient adjudication of this controversy.

35. The prosecution of separate actions by individual members of the class would create the risk of adjudications with respect to individual members of the class that would establish incompatible standards of conduct for Defendants and, as a practical matter, be dispositive of the interests of other members not parties to the adjudication of this controversy.

36. The amount in controversy exceeds one hundred (\$100.00) dollars for each member of the class.

**FOR A FIRST CAUSE OF ACTION AS TO DEFENDANTS GEORGIA PACIFIC AND
GRAYCO**
(Breach of Express Warranty)

37. The allegations in the previous paragraphs are repeated and incorporated herein by reference as if set forth verbatim.

38. In designing, manufacturing, marketing, selling and/or distributing PrimeTrim, via affirmation(s) of fact, promise(s), description(s), and/or samples/models relating to the

product, Defendants Georgia Pacific and Grayco made or adopted express warranties as to the condition, durability and performance of Prime Trim; including, but not limited to, expressly warranting that the PrimeTrim product would be free from defects and perform as was marketed and represented by Defendant Georgia Pacific and that Prime Trim would not “crack, chip, split or delaminate in a manner that renders the trim materially unable to perform its function; buckle shrink, or swell in a manner that materially affects its appearance” for a period of up to thirty years, but, at least, for a period of ten years.

39. Further, Defendants expressly warranted that PrimeTrim was “perfect for exterior and interior applications such as fascia, rake board, corner board, shingle mould, band board, base board, soffit or anywhere defect-free, non-structural trim lumber is required. Denser than wood, it can be nailed directly to structural members or applied over siding or other materials”.

40. Such express warranties became part of the basis of Defendants’ bargain with Plaintiffs and/or others in the chain of commerce leading to the ultimate installation of the product on Plaintiffs’ homes.

41. As the intended and expected ultimate consumers of PrimeTrim, the Plaintiffs are covered by the express warranties made or adopted by Defendants.

42. Defendants breached such express warranties because Defendants’ PrimeTrim product is defective; fails to perform as intended; prematurely deteriorates, rots, swells, buckles, splits, checks, delaminates, and absorbs water under normal atmosphere conditions; causes consequential water, structural and property damage. It further promotes fungi and termites and other wood destroying organisms in the structures on which it is installed; and does not perform as represented and warranted.

43. Despite no substantial change in the condition in which the product was sold, and reasonable and proper maintenance of the product and the Plaintiffs' homes, the PrimeTrim product installed on the Plaintiffs' homes has failed to perform as warranted.

44. PrimeTrim is not merchantable; is not of fair average quality; fails to comply with applicable industry standards relating to such material and violates building codes applicable in Bluffton, Beaufort County, South Carolina; is not fit for the ordinary and intended purposes for which the product was sold and used; and will not pass without objection in the trade.

45. As a direct and proximate result of the failure of the PrimeTrim to perform as warranted and represented, Plaintiffs and Class members have suffered actual, consequential, and incidental damages; including, but not limited to, damages arising from the need to remove and replace the Prime Trim and damages arising from the cost of repairing water damage and structural damage caused by the defects in, and failure, of the PrimeTrim.

46. To the extent reasonable and practical, Plaintiffs have sufficiently complied with any applicable terms and conditions of the warranties made or adopted by Defendants.

47. Any notice of the above-described breach of warranty that may have been required was provided by Plaintiffs in a legally sufficient manner by, including but not limited to, notifying their immediate sellers of the defects/damages caused by PrimeTrim and in notifying Georgia Pacific directly.

**FOR A SECOND CAUSE OF ACTION AS TO DEFENDANTS GEORGIA PACIFIC
AND GRAYCO**
(Breach of Implied Warranty of Merchantability)

48. The allegations in the previous paragraphs are repeated and incorporated herein by reference as if set forth verbatim.

49. At all times relevant to this matter, Defendants Georgia Pacific and Grayco were merchants of the PrimeTrim product.

50. In designing, manufacturing, marketing, selling and/or distributing PrimeTrim, Defendants impliedly warranted that PrimeTrim was merchantable, including impliedly warranting that PrimeTrim would be free from defects and perform as marketed and represented by Defendants and that it was suitable as being "perfect for exterior and interior applications such as fascia, rake board, corner board, shingle mould, band board, base board, soffit or anywhere defect-free, non-structural trim lumber is required. Denser than wood, it can be nailed directly to structural members or applied over siding or other materials".

51. As the intended and expected ultimate consumers of PrimeTrim, Plaintiffs are covered by the Defendants' warranties and, to the extent reasonable and practical, have sufficiently complied with any applicable terms and conditions of such warranties.

52. Defendants breached such implied warranty because PrimeTrim is defective; fails to perform as intended, prematurely deteriorates, rots, swells, buckles, splits, checks, delaminates, absorbs water, warps, and/or bulges under normal conditions and exposure; causes consequential water and structural damage; promotes the health-threatening growth of mold, mildew, fungi, termites and other insects in the structures on which it is installed; and does not perform as represented and warranted.

53. At the time of sale, PrimeTrim was not merchantable; was not of fair average quality; failed to comply with applicable industry standards and building codes; was not fit for the ordinary and intended purposes for which the product was sold and used; and/or would not pass without objection in the trade.

54. As a direct and proximate result of the above-described breach of the implied warranty of merchantability, Plaintiffs and Class members have suffered actual, consequential, and incidental damages; including, but not limited to, damages arising from the need to remove and replace the Prime Trim, damages arising from the cost of repairing water damage and structural damage caused by the defects in, and failure of, the PrimeTrim.

55. Any notice of the above-described breach of warranty that may have been required was provided by Plaintiffs in a legally sufficient manner by, including but not limited to, notifying their immediate sellers of the defects/damages caused by PrimeTrim and in notifying Georgia Pacific directly.

**FOR A THIRD CAUSE OF ACTION AS TO DEFENDANTS GEORGIA PACIFIC AND
GRAYCO**

(Breach of Implied Warranty of Fitness for a Particular Purpose)

56. The allegations in the previous paragraphs are repeated and incorporated herein by reference as if set forth verbatim.

57. Defendants designed, manufactured, marketed, sold and/or distributed PrimeTrim for use by ultimate consumers as fascia, soffit, corner board, window trim, door trim and for general exterior use on homes, apartments, multi-family buildings and other structures.

58. Defendants designed, manufactured, marketed, sold and/or distributed PrimeTrim that reached Plaintiffs, the ultimate consumers of the product, through the normal and intended/expected chain of commerce, and such product was incorporated into the homes that are the subject of this litigation without any material alteration of the product from its state while in Defendants' control.

59. In causing PrimeTrim to move along the chain of commerce that ultimately led Plaintiffs' homes, Defendants impliedly warranted that PrimeTrim was fit for use as fascia,

soffit, corner board, window trim, door trim and for general exterior use on homes, apartments, multi-family buildings and other structures, the purpose for which it was designed, that it was a safe and suitable product to be used in the construction of the Plaintiffs' homes, and that PrimeTrim was fit and suitable for the particular use of the construction of the Plaintiffs' homes.

60. Defendants' skill and judgment and the implied warranty of fitness for the purpose of using PrimeTrim in the construction of the Plaintiffs' homes was relied upon by those persons/entities to whom Defendants' marketed, sold and/or distributed PrimeTrim for the ultimate installation of the product in the Plaintiffs' homes, and Defendants had, at the time of contracting, reason to know that those persons/entities were relying on Defendants' skill or judgment to furnish suitable goods for said purpose.

61. As the intended and expected ultimate consumers of PrimeTrim, Plaintiffs are covered by the Defendants' warranties and, to the extent reasonable and practical, have sufficiently complied with any applicable terms and conditions of such warranties.

62. PrimeTrim was/is not fit for use for its intended purpose and as a direct and proximate result of Defendants' breach of warranty of fitness of the product for use in the construction of the Plaintiffs' homes, Plaintiffs have suffered actual, consequential, and incidental damages, including but not limited to, damages arising from the need to remove and replace the PrimeTrim and damages arising from the cost of repairing water damage and structural damage caused by the defects in, and failure, of the PrimeTrim.

63. Any notice of the above-described breach of warranty that may have been required was provided by Plaintiffs in a legally sufficient manner by, including but not limited to, notifying their immediate sellers of the defects/damages caused by PrimeTrim and in.

notifying Georgia Pacific directly. As a direct result of the breach of this warranty, Plaintiffs have suffered damage.

FOR A FOURTH CAUSE OF ACTION AS TO DEFENDANT GEORGIA PACIFIC
(Strict Liability)

64. The allegations in the previous paragraphs are repeated and incorporated herein by reference as if set forth verbatim.

65. Defendant Georgia Pacific is engaged in the business of designing, manufacturing, marketing, selling and/or distributing PrimeTrim.

66. Defendant Georgia Pacific expected that their PrimeTrim product would reach Plaintiffs, the ultimate consumers of PrimeTrim, without substantial change in the condition in which they sold it.

67. Defendants' PrimeTrim product did, in fact, reach Plaintiffs, the ultimate consumers of the product, without substantial change in the condition in which they sold it.

68. Without substantial change in the condition in which it was sold by Defendant Georgia Pacific, Defendants' PrimeTrim product was installed in/on Plaintiffs' homes and such homes were reasonably and properly maintained thereafter.

69. At the time it left Defendants' control, Defendants' PrimeTrim product was in a defective and/or unfit condition unreasonably dangerous to Plaintiffs and their property in that it, among other things, fails to perform as intended, prematurely deteriorates, rots, swells, buckles, splits, checks, delaminates, absorbs water, warps, and/or bulges under normal conditions and exposure; causes consequential water and structural damage; promotes the health-threatening growth of mold, mildew, fungi, termites and other insects in the structures on which it is installed; and does not perform as represented and warranted.

70. As a direct and proximate result of the defective and unreasonably dangerous condition of PrimeTrim when it left Defendants' control, Plaintiffs and Class members have suffered actual, consequential, and incidental damages; including, but not limited to, damages arising from the need to remove and replace the Prime Trim, damages arising from the cost of repairing water damage and structural damage caused by the defects in, and failure of, the PrimeTrim.

**FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS DEL WEBB, RAZOR
AND DJ CONSTRUCTION**
(Negligent and Grossly Negligent Construction)

71. That all previous allegations of the Complaint are incorporated by reference and made a part of the cause of action.

72. That Defendant Del Webb as general contractor/developer, designer, and seller of the Plaintiffs' homes had a duty to supervise the construction of the Plaintiffs' homes and to properly instruct the installers of the PrimeTrim material, Defendant Razor and Defendant DJ, on the proper application of the PrimeTrim material.

73. That Defendant Del Webb failed in this duty in that in all of the Plaintiffs' homes exterior flashing is missing and was never installed over the PrimeTrim material which failure constitutes a breach of the duty imposed by the building code in effect in Beaufort County at the time. Further, the application of the PrimeTrim material by Defendants Del Webb, builder/developer, and Razor and DJ as installers was not in conformance with good construction practice. Defendant Del Webb failed in its duty to properly supervise the installation of the PrimeTrim material by its subcontractors.

74. Defendant Del Webb failed to adequately communicate with its subcontractors, Defendants Razor and DJ, the proper method of installing flashing at the heads of the exterior

windows and doors after it had been put on notice that its subcontractors were not installing the PrimeTrim material in accordance with the Georgia Pacific installation instructions.

75. As subcontractors, Defendants DJ and Razor had a duty to comply with the building code in effect at the time and with good construction practice which required installing flashing at certain horizontal locations on the exteriors of Plaintiffs' homes above windows and doors and providing adequate sealant to prevent water intrusion into the building envelopes. Further DJ and Razor failed to comply with Defendant Georgia Pacific's installation instructions.

76. That Defendants Del Webb, DJ, and Razor were aware or should have been aware of their improper installation of PrimeTrim and failed to take action to avoid or minimize damage constitutes clear and convincing evidence of negligence, gross negligence, recklessness, willfulness and wantonness.

77. As a direct result of this negligent and grossly negligent breach of duty owed to the Plaintiff Class by Defendants Del Webb, Razor and DJ, the Plaintiff Class has been directly damaged in that property damage occurred and that when repairs and replacement of the PrimeTrim material is accomplished, Plaintiff class members will be required to expend significant additional money to repair consequential damage to areas which were not flashed and to pay for the proper application of flashing material which was never installed.

**FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS DEL WEBB, RAZOR
AND DJ CONSTRUCTION**
(Breach of Implied Warranty of Workmanlike Service)

78. That all previous allegations of the Complaint are incorporated by referenced and made a part of the cause of action.

79. Defendants Del Webb Communities, Inc., Razor and DJ owed a duty and gave an implied warranty to the Plaintiff homeowners that they would install the PrimeTrim material in accordance with good construction practice and the building code applicable in effect.

80. That Defendants Del Webb, Razor and DJ breached the implied warranty of workmanlike service they gave the homeowners in that they failed to properly install the PrimeTrim material in accordance with the building code and in accordance with good construction practice in failing to install flashing and sealants as required.

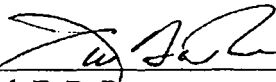
81. That as a direct and proximate result, the Plaintiff Class sustained increased property damage and consequential damages due to the lack of flashing and will incur additional costs in the repairs in that they will be required to place appropriate flashing onto their homes when a replacement of the defective PrimeTrim occurs which will increase the costs and complexity of the repairs.

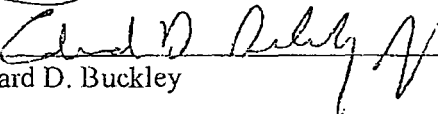
WHEREFORE, Plaintiffs, on behalf of both themselves and all other members of the Class, pray that:

- (1) the Court certify this class of homeowners under Rule 23 of the South Carolina Rules of Civil Procedure;
- (2) the representatives and the class receive a trial by jury;
- (3) the representatives and the class be awarded a judgment for actual, consequential, incidental, and punitive damages against Defendants, jointly and severally;
- (4) they and the class be awarded their attorney's fees, expenses and costs of this action; and

- (5) they and the class be awarded such other and further relief as the Court deems just and proper.

YOUNG CLEMENT RIVERS, LLP

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By: 
Edward D. Buckley

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Attorneys for the Plaintiffs

Charleston, South Carolina

Dated: April 18th 2009

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Jim Lancaster, Nancy Lancaster,
Art Holland, Jeanette Holland, Mr.
and Mrs. Wendell Turner, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

Georgia-Pacific Corporation and/or
Georgia-Pacific LLC and
Grayco Home Center, Inc.,

Defendants and Third-Party
Plaintiffs,

v.

Del Webb Communities, Inc., an
Arizona corporation;
Del Webb Community Management Co.,
an Arizona corporation,
Del Webb Corporation, an Arizona
corporation,
Del Webb Corporation, a Delaware
corporation,
Pulte Homes, Inc., a Michigan
corporation,
Razor Enterprises, Inc., a Texas
corporation, and
Razor Component Systems, Inc., a
South Carolina corporation,

Third-Party Defendants.

Civil Action No. 2007-CP-07-03166

**DEL WEBB
COMMUNITIES' RESPONSE
TO PLAINTIFFS'
REQUESTS TO ADMIT**

Defendant Del Webb Communities Inc. responds to the Plaintiffs' Requests to Admit
as follows:

RESPONSES TO REQUESTS TO ADMIT

1. Admit that Del Webb Communities, Inc. was the entity that developed the Sun City Hilton Head community.

RESPONSE: Admit.

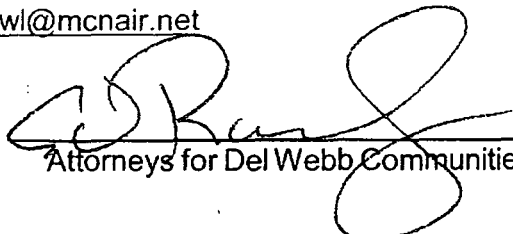
2. Admit that Del Webb Communities, Inc. was the general contractor on the homes subject to this litigation.

RESPONSE: Del Webb Communities, Inc. admits that it was the general contractor that built the plaintiffs' houses in Sun City Hilton Head.

3. Admit that Del Webb Communities, Inc. was the entity which contracted the subcontractors Razor Enterprises, Inc. and D.J. Construction Co., LLC for part of the construction of the homes subject to this litigation.

RESPONSE: Del Webb Communities, Inc. admits that it was the entity which entered into subcontracts related to trim on the plaintiffs houses (including contracts with Razor Enterprises, Inc. and D.J. Construction Co., LLC)

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By: 

Attorneys for Del Webb Communities, Inc.

May 7, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA

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COUNTY OF BEAUFORT

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Jim Lancaster, Nancy Lancaster,
Art Holland, Jeannette Holland,
Mr. and Mrs. Wendell Turner, on behalf
of themselves and others similarly
situated,

Plaintiffs,

vs.

Georgia-Pacific Corporation and Grayco
Home Center, Inc.,

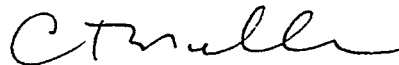
Defendants.

Civil Action No. 2007-CP-07-3166

**ORDER ESTABLISHING
COMPLEX CASE DESIGNATION
AND APPOINTMENT OF
JUDGE ROGER M. YOUNG
AS CASE MANAGER**

IT IS ORDERED that the above-captioned case be designated as complex and that the trial of the case take place at some point after August 1, 2009.

IT IS FUTHER ORDERED that this case be assigned to S.C. Circuit Judge Roger M. Young and that Judge Young hear and handle all pre-trial motions, scheduling matters, and other matters pertaining to this case.



Judge Carmen T. Mullen
Chief Administrative Judge,
Fourteenth Judicial Circuit

5-28, 2008
Beaufort, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2007-CP-07-3166

JIM LANCASTER, NANCY)
LANCASTER, ART HOLLAND,)
JEANNETTE HOLLAND, WENDELL)
TURNER, PHYLLIS TURNER, JACK)
BENNETT, JOAN BENNETT, ON)
BEHALF OF THEMSELVES AND)
OTHERS SIMILARLY SITUATED,)

PLAINTIFFS,)

vs.)

GEORGIA-PACIFIC CORPORATION)
AND/OR GEORGIA-PACIFIC LLC,)
GRAYCO HOME CENTER, INC., DEL)
WEBB COMMUNITIES, INC., AN)
ARIZONA CORPORATION, RAZOR)
COMPONENT SYSTEMS, INC., A)
SOUTH CAROLINA CORPORATION,)
RAZOR ENTERPRISES, INC., A)
TEXAS CORPORATION, AND DJ)
CONSTRUCTION CO., LLC,)

DEFENDANTS.)

**ORDER GRANTING
CLASS CERTIFICATION**

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CLERK OF COURT
BEAUFORT COUNTY, S.C.

THIS MATTER COMES BEFORE THE COURT on the Plaintiffs' Motion for class certification. After careful consideration of all of the argument and submittals of counsel, and as set forth more fully below, the subject motion is hereby GRANTED.

I. STATEMENT OF THE CASE

The Plaintiffs are homeowners in Del Webb Communities, Inc.'s ("Del Webb") Sun City Hilton Head ("Sun City") retirement community in Bluffton, South Carolina, whose homes contain Georgia-Pacific Corporation and/or Georgia-Pacific LLC's (collectively, "Georgia-Pacific") exterior trim board product, PrimeTrim® ("PrimeTrim" or the "Product"). On November 6, 2007, the Plaintiffs filed this case as a putative class action in Beaufort County

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against Georgia-Pacific and Grayco Home Center, Inc., a local distributor of PrimeTrim. On April 30, 2009, claims were added against Del Webb – the developer of Sun City and the general contractor for all of the putative class homes – as well as Del Webb’s subcontractor installers of PrimeTrim, Razor Component Systems, Inc. and Razor Enterprises, Inc. (collectively, “Razor”) and DJ Construction Co., LLC (“DJ”). The Plaintiffs claim that, since the time of construction, their homes have experienced, and continue to experience, premature degradation of the PrimeTrim, water intrusion, and other damages.

Following a period of discovery limited to the issue of proposed class certification, the Plaintiffs moved to certify the putative class on March 7, 2011. The subject motion was fully briefed and argued in the course of a two-day hearing in this matter on August 16 and 17, 2011, with counsel for all parties present.

II. FACTUAL BACKGROUND

Sun City is a large development of several thousand retirement homes. Del Webb admits that it was the developer of Sun City as well as the general contractor for all homes in the putative class, which homes were built between the years 1994 and 2002.

The Plaintiffs’ claims relate to PrimeTrim and its installation on their homes. They claim that many hundreds of homes in Sun City, perhaps as many as 800, contain PrimeTrim, which is used extensively on the exterior of the homes for rake boards, trim around windows and doors, and in other exterior locations. The Plaintiffs contend that the Product was defective since the time of its manufacture in that it prematurely rots, absorbs water, and deteriorates when subjected to the South Carolina coastal climate, and that the Product is not fit for use as an exterior trim product and did not perform as warranted.

The Plaintiffs also argue that Del Webb installed the Product on hundreds of homes in Sun City in a manner contrary to installation instructions, good construction practice, and/or the applicable building code, which has contributed to the deterioration of the PrimeTrim. They argue that Del Webb and its subcontractor installers (Razor and DJ) breached the implied warranty of workmanlike service by constructing and placing into the stream of commerce homes that contained defects in workmanship, including deficient installation of the PrimeTrim, and that the Product and its installation constitute latent defects in their homes. The Plaintiffs further contend that documents produced in discovery support their claims that the PrimeTrim installation problems were brought to the attention of Del Webb by its subcontractor installers and Georgia-Pacific as early as 1996 during the initial construction of the putative class homes.

III. DISCUSSION AND FINDINGS

In South Carolina, our Supreme Court has just recently “expressed the viewpoint that class actions are favored in this state” Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 576, 703 S.E.2d 197, 204 (2010). In rejecting the notion that class action lawsuits under South Carolina’s Rule 23 are incompatible with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, the Grazia Court explained (in the particular context of single family construction defect litigation) that “public policy arguments favor the Court finding a way to reconcile the Right to Cure Act and Rule 23 [(SCRCF)],” observing that the class device ““saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion”” Id. Further, the Grazia Court reiterated that our state’s Rule 23 was drafted to “endorse[] a more expansive view of class action availability than its federal counterpart,” by intentionally omitting the additional requirements for class certification found in subsection (b) of Rule 23, FRCP. Id.

In determining the question of class certification, this Court must look to the prerequisites to a class action in South Carolina's Rule 23(a), which prerequisites are as follows:

- (1) The class is so numerous that joinder of all members is impracticable;
- (2) There are common questions of law or fact 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;¹ and
- (5) In cases where the relief sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds \$100 for each member of the class.

The Court is satisfied that these prerequisites are met, and that the class device is the most equitable and efficient method for resolving this large-scale dispute² involving hundreds of neighboring retirees in a single Beaufort County development relating to a single building product and its installation and incorporation into their homes by/at the direction of a single developer/general contractor.³

¹ The Court notes that the first four prerequisites to a class action are commonly known as "numerosity," "commonality," "typicality," and "adequacy of representation."

² The Court is not persuaded by the class opponents' argument that class certification may work undue prejudice upon their rights or present insurmountable manageability problems. This Court has broad powers to manage and control this litigation and believes that, in keeping with the more expansive view of class action availability endorsed by our state, it has the tools at its disposal to see that the rights of all of the litigants are protected and that the efficiencies of the class device are realized. See Rule 23(d); Salmonsens v. CGD, Inc., 377 S.C. 442, 454, 661 S.E.2d 81, 88 (2008) ("Rules 23(d)(1) and (2) of the South Carolina Rules of Civil Procedure specifically permit the trial court to maintain continual control over class action proceedings . . .").

³ The Court notes that the instant lawsuit is one of four exterior engineered wood trim board class action lawsuits that have occurred in South Carolina and North Carolina in recent years, the others being certified by the federal courts (which, again, apply a more stringent criteria for class certification and endorse a less expansive view of class action availability than of South Carolina), two in the Charleston Division of United States District Court for the District of South Carolina (Thomas v. Louisiana-Pacific Corporation, Civil Action No. 2:05-cv-01515, and Brunson v. Louisiana-Pacific Corporation, Civil Action No. 2:07-cv-3186) and one in the Northern Division of the United States District Court for the Eastern District of North Carolina (Hart v. Louisiana-Pacific Corporation, Civil Action

Numerosity

The Court finds that the Plaintiffs have met their burden to prove that joinder of all class members into one suit is impracticable. Although the exact number of class members is not known, at least hundreds of homeowners, perhaps as many as 800, are class members. It is satisfactory that the record in this case establishes that a reasonable inference can be drawn that the numerosity prerequisite is met. See Bates v. Tenco Servs., Inc., 132 F.R.D. 160, 163 (D.S.C. 1990) (wherein the United States District Court for the District of South Carolina found that because "a lawsuit with potentially one hundred eighty plaintiffs presents logistical problems that make the practicality of permissive joinder dubious," class treatment "would streamline the lawsuit and is a much more practical legal vehicle . . ."). In this regard, the Court particularly notes EXHIBIT 13, which was presented to the Court along with materials presented by the Plaintiff in support of class certification, and which shows (via Georgia-Pacific's intracompany correspondence) that, as of 1996, PrimeTrim had been installed on "several hundred homes" in Sun City.

Commonality and Typicality

The Court finds that the Plaintiffs have shown that commonality exists within the class and that this prerequisite is met. Commonality requires common questions of law or fact. Our Court of Appeals has stated that even one common question is sufficient if it is important enough. McGann v. Mungo, 287 S.C. 561, 568 340 S.E.2d 154, 157-158. (Ct. App. 1986) ("It is important enough to note that the subsection does not demand all questions of law and fact to be common, only that there be common issues among the class. In fact, a single common issue will suffice if it is important enough.").

The Plaintiffs argue, and the Court finds persuasive, that answering any, or a combination thereof, of the following common questions would advance the claims of the entire class: (a) whether PrimeTrim was defective from the time that it was manufactured for use as an exterior trim material in coastal South Carolina; (b) whether express and/or implied warranties were given and/or adopted and breached with respect to PrimeTrim; (c) whether Georgia-Pacific's installation instructions for PrimeTrim were adequate; (d) whether Del Webb breached the implied warranty of workmanlike service in uniformly installing a latent defective product in the class homes in conflict with the application instructions, good construction practices, and/or the applicable building code; and (e) what is the reasonable cost to replace the material if it is found that the product is defective.⁴

Further, the commonality and typicality prerequisites often tend to merge. Gen. Tel. Co. of the Southwest v. Falcon, 457 U.S. 147, 158, 102 S. Ct. 2364, 2371, 72 L. Ed. 2d 740, 751 n. 13 (1982); City of Ann Arbor Employees' Ret. Sys. v. Sonoco Prods. Co., 270 F.R.D. 247, 250 (D.S.C. 2010) ("The requirements of Rule 23(a) are, 'numerosity, typicality, commonality, and adequacy of representation, with 'the final three requirements . . . tend[ing] to merge.'") (citing Gariety v. Grant Thornton, 368 F.3d 356, 362 (4th Cir. 2004) (citing Broussard v. Meineke Disc. Muffler Shops, Inc., 155 F.3d 331, 337 (4th Cir. 1998))). And this Court notes that other courts have found that the typicality requirement does not require that the claims of the representatives

⁴ The Court notes that it finds the class opponents' argument regarding the import of Gardner v. S.C. Dep't of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003) with respect to the commonality analysis to be overstated, and that Gardner does not compel the denial of class certification, as the class opponents suggest. The circumstances of Gardner, involving a proposed bi-lateral class of plaintiffs and defendants with respect to claims arising out of the operation of the 1995 Setoff Debt Collection Act and 1999 amendments thereto, appear to the Court to be materially different from the present circumstances involving neighboring retirees in a single, planned retirement community with problems relating to a single allegedly defective trim product installed by/at the direction of a single developer/general contractor. Further, the Court again notes the recent expression by the Grazia Court (in the particular context of cases subject to the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, i.e., single family construction defect litigation) that class actions are favored in South Carolina, that

be identical but rather that they be substantially similar to the other members of the class. See Rosario v. Livaditis, 963 F.2d 1013, 1018 (7th Cir. 1992), *cert. denied*, 506 U.S. 1051, 113 S. Ct. 972, 122 L. Ed. 2d 127 (1993) (“[A] ‘plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory.’”) (citing De La Fuente v. Stokley-Van Camp, Inc., 713 F.2d 225, 232 (7th Cir. 1983)); see H. Lightsey & J. Flanagan, South Carolina Civil Procedure at 180 (2d ed. 1996).

The Court believes that the commonality and typicality prerequisites are met in this case as the class representatives’ homes have alleged similar problems to all other potential class members’ homes, all homes are in the same development, built by the same builder, as part of the same course of conduct, and all are alleged to have the same defective product installed on them.

Adequacy of Representation

Rule 23(a)(4) is designed to insure that the named representatives will adequately represent and protect the interests of the class and consists of two parts. The first part centers on the Plaintiffs’ counsel being competent, dedicated, and qualified to handle complex litigation, and the second part centers on the representatives not having claims or interests antagonistic to the class. This Court finds no serious challenge to the adequacy of the Plaintiffs’ counsel; they have been involved in other class litigation, have numerous years of litigation experience in construction litigation, and are capable of handling the claims through to conclusion. The Court finds them adequate. The Court also has considered the affidavits of the class representatives and finds them to be educated, responsible, and concerned neighboring homeowners, not having

public policy considerations favored reconciliation of the Right to Cure Act and Rule 23, and, of course, that South Carolina has intentionally endorsed a more expansive view of class action availability.

claims materially different from or antagonistic to the other class members. The Court finds that the adequacy prerequisite is met. See Gunnells v. Healthplan Services, 348 F.3d 417, 430 (4th Cir. 2003) (“To defeat the adequacy requirement of Rule 23, a conflict ““must be more than merely speculative or hypothetical.””).

Amount in Controversy

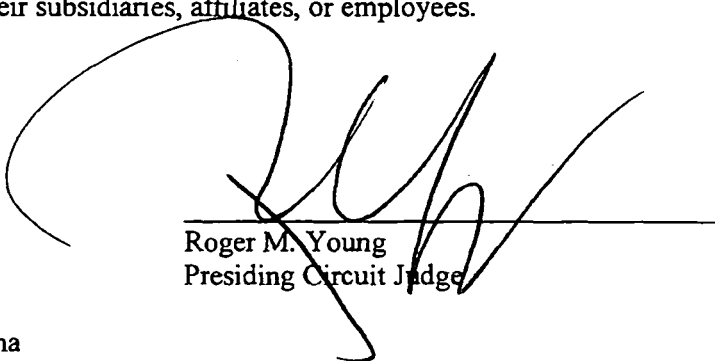
Our state has an additional class action prerequisite not found in Federal Rule 23. “[I]n cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.” The Court finds that this prerequisite (required by Rule 23(a)(5)) is met. The Plaintiffs have claimed and submitted sufficient evidence that the damage each class member has suffered would exceed the requisite dollar amount. In Gardner v. Newsome Chevrolet-Buick, Inc., our Supreme Court examined the phrase “amount in controversy” under Rule 23(a)(5) and found persuasive the definition ascribed to it by the United States Supreme Court when determining “amount in controversy” for purposes of analyzing federal subject matter jurisdiction on the basis of diversity of citizenship. 304 S.C. 328, 330-31, 404 S.E.2d 200, 201 (1991). “The rule governing dismissal for want of jurisdiction, in cases brought in the federal court is that, unless the law gives a different rule, 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.” Id. I find that the sum claimed by the Plaintiffs in this matter, which relates to subject matter of alleged damage to real property, is in apparent good faith and does not appear to a legal certainty to be insufficient. The final prerequisite to a class action in South Carolina, i.e., amount in controversy, has been met.

IV. CONCLUSION

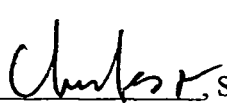
The Plaintiffs' motion for class certification is GRANTED under the following class definition:

All persons and/or entities currently owning, in whole or in part, residences in the Del Webb Communities, Inc. development known as Sun City Hilton Head, located in or about Bluffton, South Carolina, clad with fiber cement lap siding (HardiePlank®) and upon which the exterior trim product PrimeTrim® (a registered trademark of Georgia-Pacific Corporation and/or Georgia-Pacific LLC) is installed thereon as outlined in the Plaintiffs' Third Amended Complaint, excluding any residence owned by any federal, state, or local government, and any residence owned by any of the Defendants herein, their immediate family members, heirs, personal representatives, successors, or assigns, and any of their subsidiaries, affiliates, or employees.

AND IT IS SO ORDERED.



Roger M. Young
Presiding Circuit Judge

 South Carolina

Dated: 10/3/17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 2007-CP-07-3166
JIM LANCASTER, NANCY	)	
LANCASTER, ART HOLLAND,	)	
JEANNETTE HOLLAND, WENDELL	)	
TURNER, PHYLLIS TURNER, JACK	)	
BENNETT, JOAN BENNETT, ON	)	
BEHALF OF THEMSELVES AND	)	
OTHERS SIMILARLY SITUATED,	)	
	)	
PLAINTIFFS,	)	ORDER DENYING
	)	GEORGIA-PACIFIC'S MOTION TO
vs.	)	STRIKE AFFIDAVITS
	)	OF ANDY W.C. LEE, DEREK HODGIN,
	)	AND THOMAS J. CARLSON
GEORGIA-PACIFIC CORPORATION	)	
AND/OR GEORGIA-PACIFIC LLC,	)	
GRAYCO HOME CENTER, INC., DEL	)	
WEBB COMMUNITIES, INC., AN	)	
ARIZONA CORPORATION, RAZOR	)	
COMPONENT SYSTEMS, INC., A	)	
SOUTH CAROLINA CORPORATION,	)	
RAZOR ENTERPRISES, INC., A	)	
TEXAS CORPORATION, AND DJ	)	
CONSTRUCTION CO., LLC,	)	
	)	
DEFENDANTS.	)	

THIS MATTER COMES BEFORE THE COURT on motion of Defendant Georgia-Pacific Corporation and/or Georgia-Pacific, LLC's ("Georgia-Pacific") asking that the Court strike the affidavits of the Plaintiffs' experts Andy W.C. Lee, Derek Hodgin, and Thomas J. Carlson filed in support of the Plaintiffs' motion for class certification. The subject motion was fully briefed and argued in the course of a multi-day hearing in this matter on August 16 and 17, 2011, with counsel for all parties present. After careful consideration of all of the argument and submittals of counsel, the subject motion is hereby DENIED.

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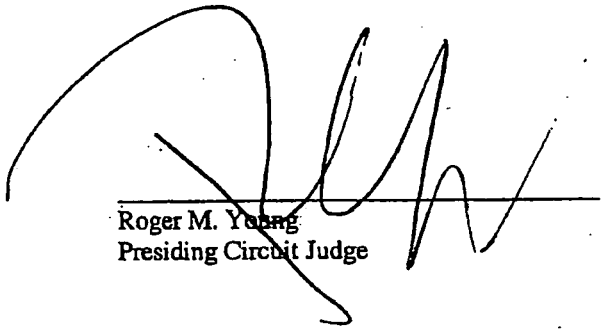
Page 1 of 2

R

Exhibit 5

AND IT IS SO ORDERED.

Charles South Carolina
Dated: 10/15/11



Roger M. Young
Presiding Circuit Judge

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2007-CP-07-3166

JIM LANCASTER, NANCY)
LANCASTER, ART HOLLAND,)
JEANNETTE HOLLAND, WENDELL)
TURNER, PHYLLIS TURNER, JACK)
BENNETT, JOAN BENNETT, ON)
BEHALF OF THEMSELVES AND)
OTHERS SIMILARLY SITUATED,)

PLAINTIFFS,

vs.

GEORGIA-PACIFIC CORPORATION)
AND/OR GEORGIA-PACIFIC LLC,)
GRAYCO HOME CENTER, INC., DEL)
WEBB COMMUNITIES, INC., AN)
ARIZONA CORPORATION, RAZOR)
COMPONENT SYSTEMS, INC., A)
SOUTH CAROLINA CORPORATION,)
RAZOR ENTERPRISES, INC., A)
TEXAS CORPORATION, AND DJ)
CONSTRUCTION CO., LLC,)

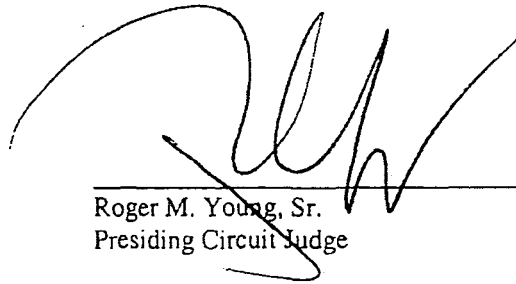
DEFENDANTS.

**ORDER DENYING DEFENDANT
GEORGIA-PACIFIC'S MOTION TO
RECONSIDER, ALTER OR AMEND THE
JUDGMENT**

THIS MATTER COMES BEFORE THE COURT on motion of Defendant Georgia-Pacific LLC for reconsideration, alteration or amendment of (1) the Court's Order Granting Class Certification and (2) the Court's Order Denying Georgia-Pacific's Motion to Strike Affidavits of Andy W.C. Lee, Derek Hodgin, and Thomas J. Carlson. After due consideration of the subject motion, it is hereby DENIED.

<SIGNED ON THE FOLLOWING PAGE>

AND IT IS SO ORDERED.



Roger M. Young, Sr.
Presiding Circuit Judge

Charles, South Carolina

Dated: 3/29/12

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2007-CP-07-3166

JIM LANCASTER, NANCY
LANCASTER, ART HOLLAND,
JEANNETTE HOLLAND, WENDELL
TURNER, PHYLLIS TURNER, JACK
BENNETT, JOAN BENNETT, ON
BEHALF OF THEMSELVES AND
OTHERS SIMILARLY SITUATED,

PLAINTIFFS,

vs.

GEORGIA-PACIFIC CORPORATION
AND/OR GEORGIA-PACIFIC LLC,
GRAYCO HOME CENTER, INC., DEL
WEBB COMMUNITIES, INC., AN
ARIZONA CORPORATION, RAZOR
COMPONENT SYSTEMS, INC., A
SOUTH CAROLINA CORPORATION,
RAZOR ENTERPRISES, INC., A
TEXAS CORPORATION, AND DJ
CONSTRUCTION CO., LLC,

DEFENDANTS.

ORDER DENYING GEORGIA-PACIFIC
LLC'S MOTION TO STAY ACTION
PENDING COMPLIANCE WITH SOUTH
CAROLINA CODE § 40-59-810, *ET SEQ.*

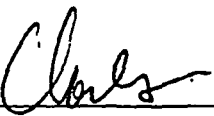
THIS MATTER COMES BEFORE THE COURT on motion of Defendant Georgia-Pacific LLC captioned as Georgia-Pacific LLC's Motion to Stay Action Pending Compliance with South Carolina Code § 40-59-810, *et seq.* After due consideration of the subject motion, it is hereby DENIED. The Court further notes that, in accordance with its authority to maintain continual control over class action proceedings and the Supreme Court's decision in Grazia v. South Carolina State Plastering, LLC, 390 S.C. 562, 703 S.E.2d 197 (2010), it will address issues pertaining to S.C. Code Ann. §§ 40-59-810 to -860 in this case in due course.

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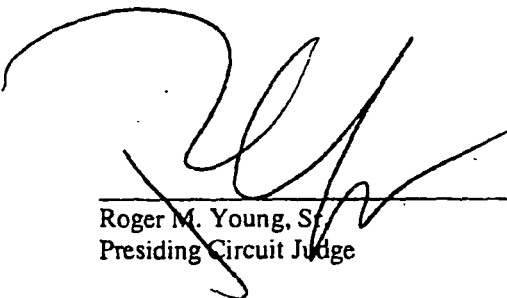
Page 1 of 2

Exhibit 7

AND IT IS SO ORDERED.

 South Carolina

Dated: 3/29/12



Roger M. Young, Sr.
Presiding Circuit Judge

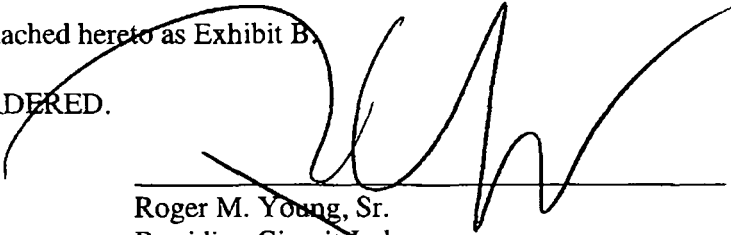
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
JIM LANCASTER, NANCY	)	CASE NO. 2007-CP-07-3166
LANCASTER, ART HOLLAND,	)	
JEANNETTE HOLLAND, WENDELL	)	
TURNER, PHYLLIS TURNER, JACK	)	
BENNETT, JOAN BENNETT, ON	)	
BEHALF OF THEMSELVES AND	)	
OTHERS SIMILARLY SITUATED,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
GEORGIA-PACIFIC CORPORATION	)	
AND/OR GEORGIA-PACIFIC LLC,	)	
GRAYCO HOME CENTER, INC., DEL	)	
WEBB COMMUNITIES, INC., AN	)	
ARIZONA CORPORATION, RAZOR	)	
COMPONENT SYSTEMS, INC., A	)	
SOUTH CAROLINA CORPORATION,	)	
RAZOR ENTERPRISES, INC., A	)	
TEXAS CORPORATION AND DJ	)	
CONSTRUCTION CO, LLC ,	)	
	)	
DEFENDANTS.	)	

**ORDER APPROVING
NOTICE OF CLASS ACTION**

THE COURT HEREBY approves the Notice of Class Action attached hereto as Exhibit

A. The notice shall be mailed by Plaintiffs' counsel on or before April 5, 2012 to the list of putative class members attached hereto as Exhibit B.

AND IT IS SO ORDERED.



Roger M. Young, Sr.
Presiding Circuit Judge

Charleston, South Carolina

Dated: 4/12/12

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
)
) CASE NO. 2007-CP-07-3166

JIM LANCASTER, NANCY)
LANCASTER, ART HOLLAND,)
JEANNETTE HOLLAND, WENDELL)
TURNER, PHYLLIS TURNER, JACK)
BENNETT, JOAN BENNETT, ON)
BEHALF OF THEMSELVES AND)
OTHERS SIMILARLY SITUATED,)

PLAINTIFFS,)

vs.)

GEORGIA-PACIFIC CORPORATION)
AND/OR GEORGIA-PACIFIC LLC,)
GRAYCO HOME CENTER, INC., DEL)
WEBB COMMUNITIES, INC., AN)
ARIZONA CORPORATION, RAZOR)
COMPONENT SYSTEMS, INC., A)
SOUTH CAROLINA CORPORATION,)
RAZOR ENTERPRISES, INC., A)
TEXAS CORPORATION, AND DJ)
CONSTRUCTION CO., LLC,)

DEFENDANTS.)

NOTICE OF CLASS ACTION

**TO: ALL CURRENT OWNERS OF RESIDENCES IN DEL
WEBB'S SUN CITY HILTON HEAD CLAD WITH FIBER
CEMENT LAP SIDING (HARDIEPLANK®) AND UPON
WHICH THE EXTERIOR TRIM PRODUCT PRIMETRIM®
(A REGISTERED TRADEMARK OF GEORGIA-PACIFIC
CORPORATION AND/OR GEORGIA-PACIFIC LLC) IS
INSTALLED**

PLEASE READ THIS NOTICE CAREFULLY

YOUR RIGHTS MAY BE AFFECTED BY THIS PENDING LITIGATION


Exhibit 8

*****YOU ARE NOT BEING SUED*****
*****THIS IS NOT A SOLICITATION FROM A LAWYER*****
*****A SOUTH CAROLINA COURT AUTHORIZED THIS NOTICE*****

IMPORTANT INFORMATION ABOUT YOUR RIGHTS

You have been identified as a potential member of the class on whose behalf certain claims are being asserted in the above-captioned civil action pending in the Beaufort County Court of Common Pleas (the "Court"). The Court certified this civil action to proceed as a class action on behalf of the class defined below.

The purpose of this notice is to advise you of the pendency of this class action against Georgia-Pacific LLC ("Georgia-Pacific"); Grayco Home Center, Inc. ("Grayco"); Del Webb Communities, Inc., an Arizona corporation ("Del Webb"); Razor Component Systems, Inc., a South Carolina corporation, and Razor Enterprises, Inc., a Texas corporation (collectively, "Razor"); and DJ Construction Co., LLC ("DJ"), all of whom will hereinafter be collectively referred to as the "Defendants," so that you may make whatever decision you deem appropriate for the protection of your interests. Records indicate that you may be a class member whose rights may be affected by this pending litigation. If you are a member of the class, and do not exclude yourself from the class (i.e., opt out of the class), the result of this pending litigation will permanently affect your rights against the Defendants.

DESCRIPTION OF THE LITIGATION

This lawsuit was originally brought against the Defendants by Jim Lancaster, Nancy Lancaster, Art Holland, Jeannette Holland, Wendell Turner, Phyllis Turner, Jack Bennett, and Joan Bennett, (collectively, the "Plaintiffs") on behalf of themselves and others similarly situated. Mr. and Mrs. Lancaster are no longer Plaintiffs. The Plaintiffs are homeowners in Del Webb's Sun City Hilton Head community in Bluffton, South Carolina, whose homes contain Georgia-Pacific's exterior trim board product, PrimeTrim[®], which product they allege was distributed by Grayco. The Plaintiffs filed a Complaint and ultimately a Third Amended Complaint alleging that the PrimeTrim[®] installed on their homes is and has been defective since the time of its manufacture in that it allegedly prematurely rots, absorbs water, and deteriorates when subjected to the South Carolina coastal climate, and that the PrimeTrim[®] is allegedly not fit for use as an exterior trim product and did/does not perform as warranted. The Plaintiffs also allege that Del Webb (the developer and general contractor and original seller for all homes involved in the pending litigation) and its subcontractor installers of the PrimeTrim[®], Razor and DJ, installed the PrimeTrim[®] on hundreds of homes in Sun City in a manner contrary to installation instructions, good construction practice, and/or the applicable building code, which has contributed to the deterioration of the PrimeTrim[®]. The Plaintiffs seek to recover the losses allegedly resulting from the defective PrimeTrim[®] and its deficient installation and breach of warranty as set forth in the Plaintiffs' Third Amended Complaint. The Defendants deny that PrimeTrim[®] is defective and deny that the Plaintiffs and the class members are entitled to recover any damages.

At this time, the Court has made no findings as to the validity of the Plaintiffs' allegations and this notice is not intended as an expression by the Court on the merits of the


Exhibit 8

claims or defenses of any party. The Court has ruled, however, that this lawsuit may be maintained as a class action, with the Plaintiffs being the class representatives, under the following class definition:

All persons and/or entities currently owning, in whole or in part, residences in the Del Webb Communities, Inc. development known as Sun City Hilton Head, located in or about Bluffton, South Carolina, clad with fiber cement lap siding (HardiePlank®) and upon which the exterior trim product PrimeTrim® (a registered trademark of Georgia-Pacific Corporation and/or Georgia-Pacific LLC) is installed thereon as outlined in the Plaintiffs' Third Amended Complaint, excluding any residence owned by any federal, state, or local government, and any residence owned by any of the Defendants herein, their immediate family members, heirs, personal representatives, successors, or assigns, and any of their subsidiaries, affiliates, or employee

Therefore, if you currently own, in whole or in part, a residence in Sun City Hilton Head that meets the above criteria for class membership, you are a class member – you do not have to have purchased your home directly from Del Webb to be a class member. You are being notified of this pending litigation so that you may choose to remain in the class or exclude yourself from it. You will be deemed a member of the class, to have elected to participate in this class action, and be bound by whatever judgment is entered in this case, favorable or unfavorable, unless you affirmatively request to exclude yourself from the class as explained below.

DESCRIPTION OF YOUR RIGHTS AND OBLIGATIONS

I. YOU MAY REMAIN IN THE CLASS

If you would like to remain in the class, you need not take any action. Unless you properly request to exclude yourself from the class (see below), you will remain in the class. If you remain in the class, you will be eligible to participate in whatever settlement or award, if any, the Court ultimately approves. You will, however, also undertake the risk that the Plaintiffs will not prevail in the litigation, and that you will receive nothing for your claims. In addition, you will be barred from asserting any claims against the Defendants based on the matters and claims that were asserted in this lawsuit. If you remain in the class, you will be notified of pertinent developments in the proceedings.

As a class member, you will automatically continue to be represented by the Plaintiffs named above (i.e., the class representatives) and the Plaintiffs' counsel (i.e., class counsel), attorneys Joseph E. DaPore and Edward D. Buckley, Jr. of Young Clement Rivers, LLP, located at 25 Calhoun Street, Suite 400, Charleston, South Carolina. With respect to attorneys fees', class counsel will be paid from any settlement or monetary award that is recovered, with any payment of attorneys' fees to class counsel being subject to review and approval by the Court. A proportionate share of the attorneys' fee award will be deducted from whatever award, if any, is

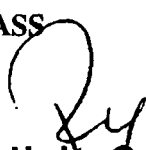
ultimately made to you. If you choose to do so, you may remain in the class and seek legal representation (at your own expense) separate from that provided by class counsel to enter an appearance in this action on your behalf and represent you.

The Court has determined that certain claims common to the class will be tried in one proceeding. If a judgment is entered against the Plaintiffs, you will be bound by that judgment and will have no further claims against the Defendants. If judgment is entered for the Plaintiffs, you will then have to participate in a subsequent proceeding to determine whether you are entitled to a monetary award, and, if so, the amount of any such award. Class counsel will also represent you in that proceeding and their fees will be paid out of the amount, if any, that you may be awarded.

NOTE: THE CLASS CLAIMS AGAINST DEL WEBB, RAZOR, AND DJ ARE SUBJECT TO THE SOUTH CAROLINA NOTICE AND OPPORTUNITY TO CURE CONSTRUCTION DWELLING DEFECTS ACT.

The class claims against Del Webb, Razor, and DJ are subject to South Carolina legislation called the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act (the "Notice and Opportunity to Cure Act"), which provides a statutory procedure for possible out-of-court resolution of certain residential construction claims. It is found and fully set forth in S.C. Code Ann. §§ 40-59-810 to -860, and it must be complied with on behalf of all class members. In this case, the Court has authorized representative notice to comply with the Notice and Opportunity to Cure Act. Under the Notice and Opportunity to Cure Act, a claimant is required to file a notice of claim stating that the claimant asserts a construction defect, providing a description of the claim(s) in reasonable detail sufficient to determine the general nature of the construction defect, and also providing a description of any result of the defect, if known. If you remain in the class, a notice of claim will be filed on your behalf (at no cost to you) by the Plaintiffs above named (i.e., the class representatives) and the Plaintiffs' counsel (i.e., class counsel) who shall follow up with Del Webb, Razor, and/or DJ as may be needed regarding any clarification with respect to the notice of claim. Del Webb, Razor, and/or DJ will have a time period determined by the Court from service of the notice of claim to inspect, offer to remedy, offer to settle, or deny the claim, and Del Webb, Razor, and/or DJ must provide written notice to the class representatives and class counsel of its choice among these options. If you remain in the class, and Del Webb, Razor, and/or DJ may be able to inspect your home. You must allow the inspection, which will take place at a time agreeable to all parties. The inspection will be non-invasive and non-destructive (i.e., visual only), at no cost to you, and conducted in conjunction with the class representatives and class counsel, and under the supervision of the Court. If Del Webb, Razor, and/or DJ makes an offer to remedy the defect(s) stated in the notice of claim or a monetary settlement of the claim, the class representatives and class counsel will respond. If an agreement is reached between Del Webb, Razor, and/or DJ and the class representatives, you will be notified, and, if that agreement is approved by the Court, a settlement may occur. If no agreement or settlement is reached between Del Webb, Razor, and/or DJ and the class representatives, the case will proceed in court. Class counsel's fees will be paid out of the settlement.

II. YOU MAY OPT OUT OF (i.e., EXCLUDE YOURSELF FROM) THE CLASS


Exhibit 8

Any class member may opt out of (i.e., be excluded from) the class if they would like to **BUT ONLY IF** that member properly requests to be excluded from the class. If a timely and effective request for exclusion is made by any class member, they will be excluded from the class. Class members who are excluded from the class will not be entitled to participate in any award the Plaintiffs may ultimately receive and they will not be bound by any judgment that may ultimately be entered against the Plaintiffs and the class in this action.

You may opt out of the class by clear, written request for such exclusion, **POSTMARKED BY May 15, 2012**, referring specifically to the case captioned *Lancaster, et al. v. Georgia-Pacific Corporation, et al.*, pending in the Beaufort County, Court of Common Pleas, Civil Action No. 2007-CP-07-3166. **TO BE EFFECTIVE**, exclusion requests **MUST** be mailed to **BOTH** the Beaufort County Clerk of Court and the Plaintiffs'/Class Counsel at the addresses below **POSTMARKED NO LATER THAN MAY 15, 2012**:

THE CLERK OF COURT:

The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
P.O. Box 1128
Beaufort, SC 29901-1128

PLAINTIFFS'/CLASS COUNSEL:

Joseph E. DaPore, Esquire
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402

FURTHER INFORMATION

This notice does not provide a complete description of the action. For additional information about the action and the parties, please refer to the pleadings and other documents on file at the Beaufort County Clerk of Court's office at 102 Ribaut Rd., Beaufort, SC 29902, which you may examine in person during normal business hours.

DO NOT TELEPHONE THE COURT OR THE CLERK ABOUT THIS NOTICE, THE MATTERS SET FORTH HEREIN, OR THE LAWSUIT.


Exhibit 8

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
JIM LANCASTER, NANCY	)	CASE NO. 2007-CP-07-3166
LANCASTER, ART HOLLAND,	)	
JEANNETTE HOLLAND, WENDELL	)	
TURNER, PHYLLIS TURNER, JACK	)	
BENNETT, JOAN BENNETT, ON	)	
BEHALF OF THEMSELVES AND	)	
OTHERS SIMILARLY SITUATED,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	
	)	
GEORGIA-PACIFIC CORPORATION	)	
AND/OR GEORGIA-PACIFIC LLC,	)	
GRAYCO HOME CENTER, INC., DEL	)	PRELIMINARY CASE MANAGEMENT
WEBB COMMUNITIES, INC., AN	)	AND SCHEDULING ORDER
ARIZONA CORPORATION, RAZOR	)	
COMPONENT SYSTEMS, INC., A	)	
SOUTH CAROLINA CORPORATION,	)	
RAZOR ENTERPRISES, INC., A	)	
TEXAS CORPORATION AND DJ	)	
CONSTRUCTION CO, LLC ,	)	
	)	
DEFENDANTS.	)	

THE COURT HEREBY enters the following case management and scheduling order:

1. April 5, 2012: Plaintiffs shall mail class notice in form approved by the Court to all putative class members on or before today;
2. May 15, 2012: Opt-out period ends;
3. May 28, 2012: Compliance with the Right-to-Cure Act will be accomplished on a representative basis through the class representatives. By the foregoing date, Plaintiffs must identify ten percent (10%) of the homes remaining in the class after the expiration of the opt-out

period that will be subjected to a right-to-cure process inspection. As to all homes remaining in the class, Plaintiffs must also deliver notice as required by South Carolina Code § 40-59-840.

Notice shall be copied to all parties and the Court. Any requests for clarification under South Carolina Code § 40-59-840 shall be made by **June 1, 2012**, with copies delivered to all parties and the Court;

4. May 28, 2012 – August 28, 2012: Plaintiffs will make available for the inspection all of the homes identified for a right-to-cure process inspection (as set forth above) under South Carolina Code § 40-59-850. All parties noticed or to this litigation will be given the opportunity to participate in the inspections. Based upon the notice required by South Carolina Code § 40-59-840 (as set forth above) and the information obtained from the aforementioned inspections, a class-wide offer to cure may be made by the defendants, which offer will be presented to the class representatives for response;

5. August 28, 2012: Deadline for any offer to cure under South Carolina Code § 40-59-840;

6. September 17, 2012 (or as soon thereafter is practicable): The Court will conduct a hearing to establish a trial plan and a merits discovery plan. The parties will make any submissions and proposals regarding class certification, identity and number of representative homes, a trial and a discovery plan ten (10) days prior to the hearing;

7. Discovery commences upon entry of Court's trial and discovery plan¹;

8. 30 days after entry of trial plan: Plaintiffs identify experts and provide supplemental reports as to previously-identified experts or reports for newly-identified experts;

¹ Discovery schedule and trial date are subject to modification depending on the Court's final ruling on a trial plan and the number of representative homes to be tried.

9. 45 days after entry of trial plan: Plaintiffs' experts will be made available for deposition;

10. 70 days after entry of trial plan: Defendants' identify experts and provide supplemental reports as to previously-identified experts or reports for newly-identified experts;

11. December 31, 2012: Mediation is ordered by the Court to be conducted on or before today. All parties are ordered to bring representatives to the mediation with full settlement authority and mediator is to report back to the Court by **January 24, 2013** with progress made at mediation;

12. 110 days after entry of trial plan: Defendants' experts will be made available for deposition;

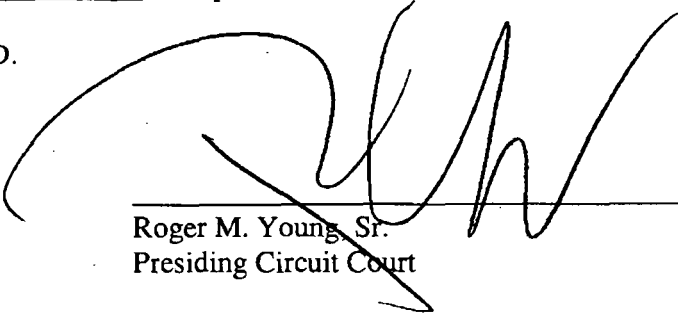
13. 150 days after entry of trial plan: Discovery closes.

14. 175 days after entry of trial plan: Parties shall file all dispositive motions, motions in limine, trial briefs, and objections.

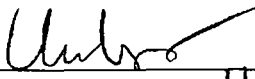
15. As soon as is practicable thereafter, a hearing on dispositive motions and a pretrial conference will be convened; and

16. Trial not before April 29, 2013: The parties estimate three weeks.

AND IT IS SO ORDERED.



Roger M. Young, Sr.
Presiding Circuit Court

 _____, South Carolina
Dated 4/14/12

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2007-CP-07-3166

Jim Lancaster, Nancy Lancaster, Art Holland, Jeannette
Holland, Wendell Turner, Phyllis Turner, Jack Bennett,
Joan Bennett, on behalf of themselves and others
similarly situated, ... Respondents,

v.

Georgia-Pacific Corporation and/or Georgia Pacific
LLC, Grayco Home Center, Inc., Del Webb
Communities, Inc., an Arizona Corporation, Razor
Component Systems, Inc., a South Carolina
Corporation, Razor Enterprises, Inc., a Texas
Corporation, and DJ Construction Co., LLC, ... Defendants.

OF WHOM Georgia-Pacific Corporation and/or
Georgia Pacific, LLC is Appellant

NOTICE OF APPEAL

Georgia-Pacific Corporation and/or Georgia Pacific LLC, appeals the following orders of the Honorable Roger M. Young, Sr.: 1) Order Denying Georgia Pacific Corporation's Motion to Stay Action Pending Compliance with SC Code § 40-59-810, *et. seq.*, entered April 5, 2012; 2) Preliminary Case Management and Scheduling Order, entered April 5, 2012; 3) Order Approving Notice of Class Action, entered April 5, 2012; 4) Order Granting Class Certification, dated October 5, 2011; 5)

Order Denying Georgia-Pacific's Motion to Strike Affidavits of Andy W.C. Lee, Derek Hodgin, and Thomas J. Carlson entered October 31, 2011; and 6) Order Denying Georgia Pacific Corporation's Motion to Reconsider, Alter, or Amend the Judgment, entered April 5, 2012.

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and/or Georgia Pacific, LLC

Columbia, South Carolina

April 26, 2012

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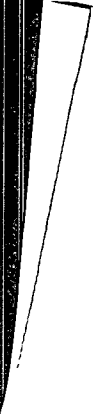
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Attorneys for Defendant DJ Construction Co., LLC



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2007-CP-07-03166

Jim Lancaster, Nancy Lancaster, Art Holland, Jeannette
Holland, Wendell Turner, Phyllis Turner, Jack Bennett,
Joan Bennett, on behalf of themselves and others
similarly situated, ... Respondents,

v.

Georgia-Pacific Corporation and/or Georgia Pacific
LLC, Grayco Home Center, Inc., Del Webb
Communities, Inc., an Arizona Corporation, Razor
Component Systems, Inc., a South Carolina
Corporation, Razor Enterprises, Inc., a Texas
Corporation and DJ Construction Co., LLC, ... Defendants.

OF WHOM Georgia-Pacific Corporation and/or
Georgia Pacific, LLC is Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson
Mullins Riley & Scarborough LLP, attorneys for Georgia-Pacific Corporation and/or
Georgia Pacific LLC, do hereby certify that I have served all counsel in this action with
a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by
United States Mail, postage prepaid, to the following address(es):

Pleadings:

Notice of Appeal

Exhibit 10

Counsel Served:

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Lisa P. Whitehurst
Administrative Assistant

April 26, 2012

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Beaufort County
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2007-CP-07-3166

RECEIVED

MAY 04 2012

SC Court of Appeals

Jim Lancaster, Nancy Lancaster, Art
Holland, Jeannette Holland, Wendell
Turner, Phyllis Turner, Jack Bennett, Joan
Bennett, on behalf of themselves and others
similarly situated,

Respondents,

v.

Georgia-Pacific Corporation and/or
Georgia-Pacific LLC, Grayco Home Center,
Inc., Del Webb Communities, Inc., an
Arizona Corporation, Razor Component
Systems, Inc., a South Carolina Corporation,
Razor Enterprises, Inc., a Texas Corporation
and DJ Construction Co., LLC,

Defendants,

Of whom Del Webb Communities, Inc., an
Arizona Corporation, and Georgia-Pacific
Corporation and/or Georgia-Pacific LLC are

Appellants.

PROOF OF SERVICE

Case No. 2007-CP-07-3166

YOUNG CLEMENT RIVERS, LLP

Stephen L. Brown

Joseph E. DaPore

Edward D. Buckley, Jr.

Russell G. Hines

P.O. Box 993 (29402)

25 Calhoun Street, Suite 400

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(843) 720-5488

Attorneys for the Respondents

I, Russell G. Hines, of Young Clement Rivers, LLP, do hereby certify that a copy of the **Respondents' Motion to Dismiss Georgia-Pacific's Appeal and Supporting Memorandum** in the above-captioned matter was served on all other parties to this litigation by depositing a copy of the same in the United States Mail, postage prepaid, on May 3, 2012, addressed as follows to their attorneys of record:

Robert L. Widener, Esquire
A. Victor Rawl, Jr., Esquire
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and

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and

Robert B. Remar, Esquire
S. Gardner Culpepper, III, Esquire
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and

Courtney C. Enloe, Esquire
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Law Department
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L. Darby Plexico, Esquire
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Attorneys for Defendant Grayco Home Center, Inc.

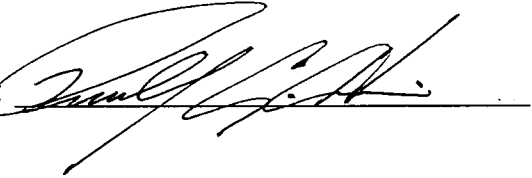
James H. Elliott, Esquire
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*Attorneys for Defendants Razor Component Systems, Inc.,
a South Carolina Corporation, and Razor Enterprises, Inc.,
a Texas Corporation*

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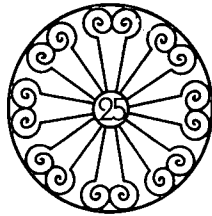
Attorneys for Defendant DJ Construction Co., LLC

YOUNG CLEMENT RIVERS, LLP

By: 

Charleston, South Carolina

Dated: 5/3/12



YCR LAW

Young Clement Rivers, LLP

Russell G. Hines
Associate

Direct Dial: (843) 720-5488
Direct Fax: (843) 579-1327
E-mail: RHines@ycrlaw.com

May 3, 2012

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
MAY 04 2012
SC Court of Appeals

Re: Lancaster, et al. vs. Georgia-Pacific Corporation, et al.
Circuit Court Case No.: 2007-CP-07-3166
Court of Appeals Tracking No.: 2012210927
YCR File: 13376-20070735

Dear Ms. Kitchings:

Enclosed for filing with respect to the above-referenced matter, please find the original and seven (7) copies of the **Respondents' Motion to Dismiss Georgia-Pacific's Appeal and Supporting Memorandum** along with the original and two (2) copies of a **Proof of Service** for the same. Also enclosed is our firm's check in the amount of \$25.00 to cover the motion filing fee. Please return a file-stamped copy of both the motion and its accompanying proof of service in the envelope provided.

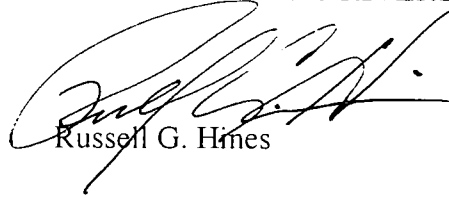
As stated in the enclosed motion, and as was the case with the Respondent's recently-filed motion to dismiss Appellant Del Webb's appeal, I would alert the Court that, contemporaneously with the filing of the instant motion to dismiss in this Court, the Respondents are filing a supplemental motion in the Supreme Court making clear to that Court that the Respondents' request for it to accept this matter for immediate and expedited review pursuant to Rule 204(b), SCACR, encompasses Georgia-Pacific's appeal as well. A copy of the Respondents' supplemental motion to the Supreme Court is being provided to this Court under separate cover.

Should you have any questions or concerns, or the Court need anything further from me at this time, please let me know.

With kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP



Russell G. Hines

RGH/rg

Enclosure(s)

ce: (All below via U.S. Mail)
Robert L. Widener, Esquire
A. Victor Rawl, Jr. Esquire
G. Mark Phillips, Esquire
Ryan A. Earhart, Esquire
C. Mitchell Brown, Esquire
A. Mattison Bogan, Esquire
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