IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

In re: Building Materials Corporation of America Asphalt Roofing Shingle Products Liability Litigation	MDL No.: 8:11-mn-02000-JMC
This Document relates to: SUSAN D. ASHLEY, on behalf of herself and all others similarly situated, Plaintiff, v. GAF MATERIALS CORPORATION, Defendant.	Civil Action No. 8:13-03424-JMC
THOMAS BYRD, on behalf of himself and all others similarly situated, Plaintiff, v. GAF MATERIALS CORPORATION, Defendant.	Civil Action No. 8:12-00789-JMC
KATHLEEN ERICKSON, on behalf of herself and all others similarly situated, Plaintiff, v. GAF MATERIALS CORPORATION, Defendant.	Civil Action No. 8:11-03085-JMC

TINA GRIFFIN, on behalf of herself and all others similarly situated, Plaintiff, v. GAF MATERIALS CORPORATION, Defendant.	Civil Action No. 8:12-00082-JMC
DIANE HANER, on behalf of herself and all others similarly situated, Plaintiff, v. GAF MATERIALS CORPORATION, Defendant.	Civil Action No. 8:11-02926-JMC
SYBIL MCDANIEL, on behalf of herself and all others similarly situated, Plaintiff, v. GAF MATERIALS CORPORATION, Defendant.	Civil Action No. 8:11-02879-JMC
JAMES MOROCCO, on behalf of himself and all others similarly situated, Plaintiff, v. GAF MATERIALS CORPORATION, Defendant.	Civil Action No. 8:11-02785-JMC

ANGELA POSEY, on behalf of herself and all others similarly situated, Plaintiff, v. GAF MATERIALS CORPORATION, Defendant.	Civil Action No. 3:11-02784-JMC
MICHAEL RAGAN, on behalf of himself and all others similarly situated, Plaintiff, v. GAF MATERIALS CORPORATION, Defendant.	Civil Action No. 8:12-00095-JMC

Order Granting Motion to Certify Class for Settlement Purposes and for Preliminary Approval of Class Action Settlement and Form and Dissemination of Notice to the Class

This matter is before the Court pursuant to a Motion to Certify Class for Settlement Purposes and for Preliminary Approval of Class Action Settlement and Form and Dissemination of Notice to the Class in the above-captioned matters. (ECF No. 104 (MDL No. 8:11-mn-02000-JMC); ECF No. 53 (C/A No. 3:11-cv-02784-JMC); ECF No. 47 (C/A No. 8:11-cv-02785-JMC); ECF No. 47 (C/A No. 8:11-cv-02879-JMC); ECF No. 56 (C/A No. 8:11-cv-02926-JMC); ECF No. 46 (C/A No. 8:11-cv-03085-JMC); ECF No. 45 (C/A No. 8:12-cv-00082-JMC); ECF No. 48 (C/A No. 8:12-cv-00095-JMC); ECF No. 35 (C/A

No. 8:12-cv-00789-JMC); ECF No. 25 (C/A No. 8:13-cv-03424-JMC).) The Court held a hearing on the motion on October 15, 2014.

After considering the pleadings and briefing, and having heard the arguments of counsel for good cause shown, it is hereby **ORDERED** that: (1) the Motion for Preliminary Approval of Class Action Settlement; (2) preliminary and conditional certification of a settlement class; (3) approval of the form and content of the notice of settlement; (4) an injunction and stay of all claims and actions against Building Materials Corporation of America d/b/a GAF Materials Corporation; and (5) setting of a final fairness hearing and deadlines are **GRANTED** as follows:

1. In a series of orders beginning in 2011, the Judicial Panel on Multidistrict Litigation ("JPML") formed this MDL and centralized and transferred, pursuant to 28 U.S.C. § 1407, all pending actions to the District of South Carolina for pretrial coordination. The undersigned Judge was assigned to handle the litigation. More than ten (10) putative class actions have been coordinated in this litigation. The Court already had a similar case before it, *Brooks v. GAF Materials Corp.*, C/A No. 8:11-cv-00983-JMC, and was familiar with the litigation that had taken place in that action before the JPML formed this MDL.

2. The Settlement presented and considered here relates to Timberline shingles made by Building Materials Corporation of America d/b/a GAF Materials Corporation ("GAF") at plants other than its plant in Mobile, Alabama. The parties have referred to these shingles as "Non-Mobile Timberline® Shingles."

3. The proposed Settlement as set forth in the Settlement Agreement executed by Class Counsel on behalf of Plaintiffs and executed by defense counsel on behalf of GAF

is preliminarily approved, subject to a Final Approval Hearing as provided for in this Order, to determine whether the settlement is fair, adequate, and reasonable.

4. The Court's use of capitalized terms in this Order reflects the use of such terms in the Settlement Agreement and the capitalized terms used in this Order shall have the same meaning as provided in the Settlement Agreement.

5. The Settlement presented and considered here includes as class members, all persons and entities who are Qualifying Owners who own any property located in the United States with Non-Mobile Timberline® Shingles manufactured from January 1, 1998 through December 31, 2009.

6. The parties have presented to the Court a plan to provide notice to the potential members of the Settlement Class of the terms of the Settlement and the various options the potential members have, including, among other things, to opt out of the Settlement Class, be represented by counsel of their choosing, to object to the Settlement, and to participate as a claimant in the Settlement.

7. The notice plan proposed by the Plaintiffs and GAF is the best practicable under the circumstances, consistent with Fed. R. Civ. P. 23. In addition, the Court finds that the proposed claims procedure is fair and sufficient, and that the notice to class members provides sufficient detail to the members of the Settlement Class, so that it is appropriate to proceed with preliminary approval and to carry out the notice plan.

8. The Court is satisfied that counsel have submitted enough information to support the conclusion that there are no obvious deficiencies in the proposed Settlement Agreement, that the proposed Settlement Class satisfies the class-action requirements set

forth in Fed. R. Civ. P. 23 (a) and (b) for purposes of a settlement class only, and that potential members of the Settlement Class should be notified of the proposed Settlement and a Final Approval Hearing scheduled.

9. As detailed below, continued or additional litigation involving certain claims against GAF will interfere with the Court's jurisdiction to consider, approve, and effectuate the Settlement, which necessitates temporary injunctive relief in aid of the Court's jurisdiction.

Preliminary Approval of Settlement Class

10. This case is provisionally and conditionally certified, subject to final approval of the Settlement in conjunction with the Final Approval Hearing, as a class action for settlement purposes only pursuant to Fed. R. Civ. P. 23(b)(3). The Settlement Class shall be defined as follows:

> All persons and entities who are Qualifying Owners who own any property located in the United States with Non-Mobile Timberline® Shingles manufactured during the period from January 1, 1998 through December 31, 2009.

11. Parties excluded from the Settlement Class are:

a. all persons and entities who timely exercise their rights under Federal Rule of Civil Procedure 23 to opt out of the Settlement; and

b. all persons or entities who have executed a release, and/or received compensation in any form from GAF, whether in cash and/or through a certificate for shingles, for any claims or complaints concerning, or for the replacement or repair of, any and all Cracked Non-Mobile Timberline® Shingles installed on the property owned by them that was the subject of the release or compensation, including in connection with any warranty claim made to GAF pursuant to the terms of

the GAF Limited Warranty or any other GAF warranty, regardless of whether such complaint or warranty claim identified cracking as the basis of the complaint or warranty claim; and

c. all persons and entities who have asserted a claim in any court of law or arbitral forum concerning Cracked Non-Mobile Timberline® Shingles that has been resolved in a final judgment or disposition, whether or not favorable to the claimant, with respect to the property owned by them that was the subject of the claim; and

d. all persons and entities who have asserted a claim in any court of law or arbitral forum that has resulted in compensation to such person or entity for the replacement or repair of Cracked Non-Mobile Timberline® Shingles installed on properties owned by them that were the subject of the claim, regardless of whether such claims identified or alleged Cracked Non-Mobile Timberline® Shingles as the basis for any relief sought; and

e. all persons and entities who are or were builders, developers, contractors, roofers, manufacturers, wholesalers, or retailers of homes, modular homes, manufactured homes, residences, buildings, or other structures containing Cracked Non-Mobile Timberline® Shingles (except as to personal residences or commercial structures owned by them); and

f. GAF, any entity in which GAF has a controlling interest, any entity which has a controlling interest in GAF, and GAF's assigns and successors; and

g. the Judge to whom the MDL Litigation is assigned and any member of the Judge's immediate family.

12. The Court finds that the above-described Settlement Class definition is appropriate and not overly broad. Membership in the Settlement Class is ascertainable through the ownership of properties with the shingles at issue in this litigation and consumers may use a number of methods, including assistance from the parties, to confirm

their inclusion in this Settlement Class.

13. The Court preliminarily concludes that, for purposes of approving the Settlement only and for no other purpose and with no other effect on this litigation should the proposed Settlement Agreement not ultimately be approved or should the Effective Date not occur, the proposed Rule 23 Class meets the requirements for certification under the Rule because:

a. The Settlement Class contains thousands of members and is so numerous that joinder is impracticable;

b. There exist questions of fact and law common to the members of the Settlement Class. All members of the Settlement Class contend that the Non-Mobile Timberline® Shingles were or may be defective and / or did not or may not meet standards and warranties and GAF's legal and other defenses raise common questions of law and fact;

c. The claims of the Plaintiff class representatives are typical of the claims of the Settlement Class members;

d. Class representatives and Class Counsel have and will fairly and adequately protect the interests of the Settlement Class members; and

e. Resolution of this action in the manner proposed by the Settlement Agreement is superior to other available methods for a fair and efficient adjudication of the action, and common issues resolved through this Settlement predominate over individual issues.

f. The Court also notes that because this action is being settled rather than litigated, it need not inquire whether the case, if tried, would present intractable

management problems. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997). The Court is satisfied that individualized defenses need not be adjudicated in order to approve the Settlement and that any individualized defenses do not predominate rendering class certification inappropriate in the settlement context.

14. Pursuant to Fed. R. Civ. P. 23, the Settlement Agreement between Plaintiffs and all class members who have not properly excluded themselves pursuant to Rule 23 and GAF is preliminarily approved.

15. In making this determination, the Court finds that there is "'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *In re Traffic Exec. Ass'n-E. R.R.*, 627 F.2d 631, 634 (2d Cir. 1980); *see also In re Prudential Ins. Co. of Am. Sales Practices Litig.,* 148 F.3d 283, 307 (3d Cir. 1998) (cited by 2003 Amendments to Rule 23(e)) [hereinafter *Prudential*]. Conditionally certifying a class in connection with preliminary approval allows notice to the class. *See McNamara v. Bre-X Minerals Ltd.*, 214 F.R.D. 424, 427 n.2 (E.D. Tex. 2002).

16. The evidence demonstrates that the Settlement, which is recommended by experienced counsel, falls well within a range warranting notice to absent class members. GAF has agreed to pay Settlement Class members for cracking, tearing, or splitting of Non-Mobile Timberline® Shingles and has agreed to provide benefits that, for some Settlement Class members, exceed the benefits available under the GAF warranties applicable to the shingles. Some Settlement Class members will be eligible to receive thousands of dollars under this Settlement. Where there are GAF warranties in place that provide greater benefits than those offered in the Settlement, the Settlement Class member will be

compensated under the warranty applicable to their shingles. The warranties applicable to the shingles remain in place for issues not related to cracking, tearing, or splitting and the release provided by the Settlement is narrow and tailored to these problems.

17. There is no aggregate settlement fund or cap and Settlement Class members are not competing for limited settlement funds. Owners of shingles that have already cracked and the owners of those that crack in the future are treated identically and there are no inter-class conflicts relating to the benefits available to Settlement Class members.

18. GAF will separately pay for the cost of the notice plan, up to $3.89 million for an award of attorney fees, up to $415,000.00 for reimbursement of costs, and incentive awards for the class representatives if approved by the Court. After final approval, Settlement Class members may file claims during a seven-year claim period.

19. The Settlement provides the Settlement Class with an immediate and substantial source of recovery while eliminating risks to the Settlement Class that further litigation would yield little or no recovery.

20. The Settlement followed thorough investigation and discovery. The parties engaged in significant adversarial motion practice and the Court is well-familiar with the zealous advocacy—on both sides—that preceded this Settlement.

21. The Settlement is also the product of arm's-length negotiation between experienced, capable counsel, assisted by an experienced and capable mediator. *See* 4 Alba Conte & Herbert Newberg, Newberg on Class Actions § 11.41 at 90 (4th ed. 2002) ("Newberg") ("There is usually a presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for approval.")

22. Courts have given substantial weight to the experience of the attorneys who prosecuted and negotiated the settlement. *Muhammad v. Nat'l City Mortg., Inc.*, CIV.A. 2:07-0423, 2008 WL 5377783, at *4 (S.D. W. Va. Dec. 19, 2008) (citing NEWBERG § 11.28); *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 255 (E.D. Va. 2009); *see also In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 665 (E.D. Va. 2001) (holding that, when counsel had extensive experience in the subject matter of the class action, it was "appropriate for the court to give significant weight to the judgment of class counsel that the proposed settlement is in the interest of their clients and the class as a whole, and to find that the proposed partial settlement is fair." (Quotation omitted.)); *see also* 4 HERBERT B. NEWBERG & ALBA CONTE, NEWBERG ON CLASS ACTIONS ("NEWBERG") § 11.24 (4th ed. 2002).

23. There are no grounds to doubt the fairness of the Settlement, or any other obvious deficiencies, such as unduly preferential treatment of a class representative or segments of the class, or excessive compensation for attorneys. The Court has also reviewed the Declaration of Francis E. McGovern, the mediator who oversaw the settlement negotiations. (*See* ECF No. 107-1 (MDL No. 8:11-mn-02000-JMC); ECF No. 56-1 (C/A No. 3:11-cv-02784-JMC); ECF No. 50-1 (C/A No. 8:11-cv-02785-JMC); ECF No. 50-1 (C/A No. 8:11-cv-02879-JMC); ECF No. 59-1 (C/A No. 8:11-cv-02926-JMC); ECF No. 49-1 (C/A No. 8:11-cv-03085-JMC); ECF No. 48-1 (C/A No. 8:12-cv-00082-JMC); ECF No. 51-1 (C/A No. 8:12-cv-00095-JMC); ECF No. 38-1 (C/A No. 8:12-cv-00789-JMC); ECF No. 28-1 (C/A No. 8:13-cv-03424-JMC).) Professor McGovern is a well-respected mediator who has handled numerous settlement negotiations in the class action context.

24. Class Counsel's recommendation for preliminary approval reflects their reasonable conclusion that the Settlement Class would benefit more by the creation of a claims process funded now by GAF than the risky prospect of trying to pursue and collect future judgments against GAF. The Settlement provides substantial cash benefits to Eligible Claimants whose shingles crack, tear or split and who submit a valid claim.

25. In addition to considering the recommendations of Class Counsel and Professor McGovern, the Court has carefully reviewed the Settlement and is very familiar with the strengths and weaknesses of the claims and defenses asserted in this litigation. The Court has decided numerous substantive motions, discovery disputes, and class certification-related submissions. The parties in the *Brooks* case were about to begin trial and the Court had received and ruled on numerous pretrial motions.

26. The Court has also considered the case law concerning Rule 23 class action settlements and is cognizant of the Court's role in evaluating and overseeing proposed class action settlements. In light of that authority, the Court concludes that this Settlement is within the range of being fair, reasonable and adequate. As a result, the potential members of the Settlement Class should be provided notice of the Settlement and should be allowed to evaluate its terms.

27. In the event the Effective Date occurs, Settlement Class members shall be deemed to have and shall have forever released and discharged their claims in accordance with the Settlement Agreement.

28. In the event the Effective Date does not occur for any reason whatsoever: (1) the Settlement Agreement shall be deemed null and void and shall have no effect

whatsoever; (2) the class certification shall automatically be vacated; and (3) the Settlement Agreement and the fact that it was entered shall not be offered, received, or construed as an admission or as evidence for any purpose, including the ability of any other class to be certified.

29. The Settlement Agreement, actions in conformance with or in furtherance of the Settlement Agreement, and the other documents prepared or executed by any party in negotiating or implementing the Settlement, including any terms of any such documents, shall never be offered in evidence in or shared with any party to any civil, criminal, or administrative action or proceeding without GAF's express written consent.

Appointment of Class Representation and Class Counsel

30. The Court appoints the following class representatives to represent the Settlement Class members: Susan D. Ashley, Thomas Byrd, Kathleen Erickson, Tina Griffin, Diane Haner, Sybil McDaniel, James Morocco, Angela Posey and Michael Ragan.

31. To represent the Settlement Class and its members, the Court appoints Shawn M. Raiter of Larson • King, LLP and Charles LaDuca of Cuneo, Gilbert & LaDuca, LLP as Co-Lead Counsel, and the following attorneys as Class Counsel: Robert Shelquist of Lockridge Grindal Nauen, PLLP; Christopher Coffin of Pendley, Baudin & Coffin, LLP; Michael McShane of Audet & Partners, LLP; J. Gordon Rudd of Zimmerman Reed PLLP; Gary Mason of Whitfield Bryson & Mason, LLP; Clayton Halunen of Halunen & Associates; Jordan Chaikin of Parker Waichman, LLP; Shanon Carson of Berger & Montague, P.C.; Charles E. Schaffer of Levin Fishbein Sedran and Berman; Dennis Reich of Reich & Binstock, LLP; and D. Dorian Britt of Tate Law Group, LLC.

Establishment of Claims Program

32. The Settlement Agreement contemplates the establishment of a Claims Program. GAF will fund the Claims Program, including the payment of claims to Eligible Claimants, the cost of the Claims Program, the cost of the notice plan, and up to $4.305 million for an award of attorney's fees and costs, as ordered by the Court.

33. The parties will prepare a claims procedure that sets forth, with specificity, the process for assessing and determining the validity and value of claims and a payment methodology to Eligible Claimants.

34. The Settlement includes the engagement of an Independent Claim Investigator and a Special Master for assistance with the Claims Program. The Independent Claim Investigator and Special Master shall be responsible for the tasks outlined and assigned to them in the Settlement Agreement. GAF shall pay all reasonable fees and expenses of the Independent Claim Investigator and Special Master.

Notice Plan

35. The Court approves the notice plan and the form and content of the settlement notice proposed in the motion before the Court.

36. Notice to members of the Settlement Class, except statutory notice required to be given GAF pursuant to 28 U.S.C. § 1715, shall be the responsibility of GAF.

37. To effect such notice, the Court understands that the parties have engaged Kinsella Media ("Kinsella") to advise them on providing notice. Kinsella has proposed a notice plan that will provide notice to the members of the Class consistent with the parties' agreement and as ordered below.

38. The notice plan detailed by Kinsella in the Affidavit of Shannon R. Wheatman, Ph.D., President of Kinsella, provides the best notice practicable under the circumstances and constitutes due and sufficient notice of the Settlement Agreement and the Final Approval Hearing to the Settlement Class and all persons entitled to receive such notice as potential members of the Settlement Class. (*See* ECF No. 110-1 (MDL No. 8:11-mn-02000-JMC); ECF No. 57-1 (C/A No. 3:11-cv-02784-JMC); ECF No. 51-1 (C/A No. 8:11-cv-02785-JMC); ECF No. 51-1 (C/A No. 8:11-cv-02879-JMC); ECF No. 60-1 (C/A No. 8:11-cv-02926-JMC); ECF No. 50-1 (C/A No. 8:11-cv-03085-JMC); ECF No. 49-1 (C/A No. 8:12-cv-00082-JMC); ECF No. 52-1 (C/A No. 8:12-cv-00095-JMC); ECF No. 39-1 (C/A No. 8:12-cv-00789-JMC); ECF No. 29-1 (C/A No. 8:13-cv-03424-JMC).)

39. The purpose of notice in a class action is to "afford members of the class due-process which, in the context of the Rule 23(b)(3) class action, guarantees them the opportunity to be excluded from the class action and not be bound by any subsequent judgment." *Peters v. Nat'l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-74 (1974)).

40. Where names and addresses of known or potential class members are reasonably available, direct-mail notice is required. *See, e.g., Eisen*, 417 U.S. at 175-76; MANUAL§ 21.311, at 292. The notice plan here includes direct mail notice to known, potential members of the Settlement Class.

41. The "best notice practicable" does not mean actual notice, nor does it require individual mailed notice where there are no readily available records of class members' individual addresses or where it is otherwise impracticable. *In re Domestic Air Transp. Antitrust*

Litig., 141 F.R.D. 534, 548-53 (N.D. Ga. 1992); *Manual for Complex Litigation* § 21.311, at 288 (4th ed. 2004).

42. In situations such as this action, where all class members cannot be identified for purposes of sending individual notice, notice by publication is sufficient. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317-18 (1950); *see also Mirfasihi v. Fleet Mortg. Corp.*, 356 F.3d 781, 786 (7th Cir. 2004); *Kaufman v. Am. Express Travel Related Servs. Co. Inc.*, 264 F.R.D. 438, 445-46 (N.D. Ill. 2009); *In re Vivendi Universal, S.A. Sec. Litig.*, 242 F.R.D. 76, 107 (S.D.N.Y. 2007).

43. The parties have retained Kinsella, an experienced class notice consultant to design and implement the notice plan. Kinsella has proposed a notice plan that will include direct mail notice to all known owners of Non-Mobile Timberline® shingles covered by the Settlement; published notice in leading consumer magazines designed to target home and property owners; national cable television advertisements; online media efforts through outlets like Facebook; and earned media efforts through a national press release and the settlement web site.

44. The notice plan's multi-faceted approach to providing notice to members of the Settlement Class whose identify is not known to the settling parties constitutes "the best notice that is practicable under the circumstances" consistent with Rule 23(c)(2)(B). *See, e.g., In re Holocaust Victims Assets Litig.*, 105 F. Supp. 2d 139, 144 (E.D.N.Y. 2000) (approving plan involving direct-mail, published notice, press releases and earned media, Internet and other means of notice). The notice plan will "reach" more than eighty percent (80%) of potential class members and this is more than adequate reach for due process requirements.

45. The Court also approves the content of the proposed notices to the Settlement Class.

46. The content of the notice for a class action settlement "must clearly and concisely state in plain, easily understood language" seven (7) types of information: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii).

47. The Court has reviewed the proposed notices and concludes that they provided the information required by Rule 23 and are drafted in a manner to clearly and concisely state in plain, easily understood language the details of the Settlement.

Opt-Out Procedure

48. Notice to Settlement Class members must clearly and concisely state the nature of the lawsuit and its claims and defenses, the class certified, the class member's right to appear through an attorney or opt out of the Settlement Class, the time and manner for opting out, and the binding effect of a class judgment on members of the Settlement Class. Fed. R. Civ. P. 23(c)(2)(B).

49. Compliance with Rule 23's notice requirements also complies with Due Process requirements. "The combination of reasonable notice, the opportunity to be heard, and the opportunity to withdraw from the class satisfy due process requirements of the Fifth Amendment." *In re Prudential Sales Practice Litig. Agent Actions*, 148 F.3d 283, 306 (3rd Cir.

1998).

50. The proposed notice and explanation of the process to opt out meet due-process requirements. The proposed notice explains the action, which is included in the case, and the right to opt out or appear through an attorney. The notice also describes the time and manner for opting out.

51. Prospective members of the Settlement Class can readily determine whether they are likely to be class members, since membership depends on presently or previously owning a building that has or had Non-Mobile Timberline® Shingles manufactured during the period from January 1, 1998 through December 31, 2009. The parties have provided various methods to assist consumers in identifying their shingles and where they were made, making inclusion in the Settlement Class readily ascertainable.

52. The notice plan will advise Settlement Class members of the option to opt out of the Settlement and pursue claims individually, if they wish. A member of the Settlement Class that seeks to be excluded from the Settlement must send a letter or opt-out form requesting to be excluded. The letter or opt-out form must include the Settlement Class member's name, address, work and home telephone numbers, signature, and the address of the structure with the Non-Mobile Timberline® Shingles. The completed letter or opt out form shall bear the signature(s) of the potential Settlement Class member having a legal interest in the property being opted out (even if represented by counsel).

53. A Settlement Class member's letter or opt-out form requesting exclusion must be postmarked by March 16, 2015. Letters must be mailed to the following address:

Non-Mobile Timberline® Shingles Settlement Exclusions
c/o _____
P.O. Box 0000
City, ST 00000-0000

The actual address used for these mailings will be established by the parties and shall be provided in the notice communications and on the settlement web site.

54. The Court approves the notice of the right to opt out of the case because the notice explains the process and right to opt out of the Settlement.

55. Except for those potential members of the Settlement Class who have filed a timely and proper opt-out, all others will be deemed Settlement Class members for all purposes under the Settlement Agreement.

56. All members of the Settlement Class shall be bound by the Settlement Agreement and by all subsequent proceedings, orders, and judgments in this MDL litigation. Any Settlement Class member who elects to opt out of the Settlement Agreement shall not be entitled to relief under or be affected by the Settlement Agreement.

57. Potential Settlement Class members who have elected to opt out may withdraw their opt out prior to the Effective Date, but only if they accept the benefits and terms of the Settlement Agreement and dismiss with prejudice any other pending action against GAF relating to cracked, torn, or split Non-Mobile Timberline® Shingles manufactured from January 1, 1998 through December 31, 2009.

58. Class Counsel may contact persons who file an opt-out form or letter and to challenge the timeliness and validity of any opt-out request, as well as the right to effect the withdrawal of any opt-out filed in error and any exclusion which that Settlement Class member wishes to withdraw for purposes of participating in the Settlement as set forth in

the Settlement Agreement. The Court shall determine whether any of the contested opt-outs are valid.

59. The notice plan will advise class members of the option to exclude themselves from the Settlement and pursue their claims individually. Notice periods for opting out are "almost wholly an exercise in the Court's discretion." *In re Potash Antitrust Litig.*, 161 F.R.D. 411, 413, n.4 (D. Minn. 1995). The opt-out period provided for in connection with the Settlement- is reasonable. *See, e.g., id.* ("In selecting a 60-day period, we are satisfied that the period allowed will neither compel an unnecessarily rushed response, nor will it lull the potential class members into complacency"). Periods of approximately two (2) months for opting out have been approved in other cases. *See, e.g., Supermarkets Gen. Corp v. Grinnell Corp.*., 490 F.2d 1183, 1184-85 (2d Cir. 1974); *Pierce v. Novastar Mortg., Inc.*, No. C05-5835, 2007 WL 1046914, at *2 (W.D. Wash. Apr. 7, 2007). Some federal courts have approved opt-out periods in which the deadline to opt out was sixty (60) days or fewer. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374-75 (9th Cir. 1993) (affirming 31-day opt-out period pursuant to dual notice plan, even though one-third of the class members received untimely notice); *DeJulius v. New England Health Care Emp. Pension Fund*, 429 F.3d 935, 944 (10th Cir. 2005) (affirming 32-day opt-out period and noting that "[f]or due process purposes, rather than looking at actual notice rates, our precedent focuses upon whether the district court gave 'the best notice practicable under the circumstance'"); *Fidel v. Farley*, 534 F.3d 508, 513-15 (6th Cir. 2008) (affirming 46-day opt-out period and recognizing that publication notice and notice provided to brokerage houses on behalf of stockholders satisfies due process); *In re OCA, Inc. Sec. & Deriv. Litig.*, Civ. A. No. 06-2165, 2008 WL 4681369, at *16 (E.D. La.

Oct. 17, 2008) (approving 39-day opt-out period and noting that courts have typically found notice sent to brokerage houses adequate, even where the notice was not then sent to class members in a timely manner).

Objections to Settlement

60. A member of the Settlement Class may object to the Settlement Agreement by filing a written objection. To exercise this right to object, a Settlement Class member must provide a written notice of objection via a letter. The letter must state that the Settlement Class member objects to the settlement in the *Non-Mobile Timberline® Shingles Settlement*. The letter must also state the objecting Settlement Class member's name, address, home and work telephone numbers, signature of the Settlement Class member, and the Settlement Class member's reasons for objecting to the settlement. The objection must bear the signature of the Settlement Class member having a legal interest in the property that contains Non-Mobile Timberline® Shingles manufactured during the class period (even if represented by counsel).

61. To be considered, each objection letter must state the exact nature of the objection, the facts underlying the objection, and whether or not the objector intends to appear at the Final Approval Hearing. The objector must also provide a copy of any documents which the objector wants to use, reference, or rely upon at the Final Approval Hearing. If the objector is represented by counsel, the objection shall also be signed by the attorney who represents the objector. Co-Lead Counsel, counsel for GAF, and the Clerk of Court must be served with copies of the objections, postmarked no later than March 16, 2015.

62. Any attorneys hired by individual Settlement Class members for the purpose of objecting to the proposed Settlement shall file with the Clerk of Court and serve on Co-Lead Counsel and counsel for GAF a notice of appearance, not later than March 16, 2015.

63. All objection letters must be postmarked by March 16, 2015. A copy of the objection letter must be mailed to each of these three addresses:

Clerk of the Court
U.S. District Court for the District of South Carolina
Greenwood Division
300 East Washington Street
Greenville, SC 29601

David B. Tulchin
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498

Shawn M. Raiter
Larson · King, LLP
30 East Seventh Street
Suite 2800
Saint Paul, MN 55101

64. Any person or entity who objects to the Settlement shall respond to requests for information from the parties. The Plaintiffs and GAF may conduct an inspection of the subject property, may issue written discovery requests, and may conduct the deposition of the objecting party to determine, among other things, whether the objecting party is a member of the Settlement Class and to ascertain the nature of the objection.

65. No person or entity shall be entitled to contest the approval of the terms and conditions of the Settlement Agreement or the Final Order and Judgment requested thereon except by filing and serving written objections in accordance with the provisions of this Order and the Settlement Agreement.

66. Any member of the Settlement Class who does not submit a timely, written objection in compliance with all of the procedures set forth in this Order and the Settlement Agreement shall be deemed to and shall have waived all such objections and will, therefore, be bound by all proceedings, order, and judgments in this case, which will be preclusive in all pending or future lawsuits or other proceedings.

Stay of Proceedings and Preliminary Injunction

67. GAF appropriately seeks entry of a temporary injunction prohibiting Settlement Class members from participating in any other proceeding in any jurisdiction based on or relating to the alleged cracking, splitting, or tearing of Non-Mobile Timberline® Shingles during the notice and opt-out period between preliminary approval and the Final Approval Hearing. This type of injunctive relief is commonly granted in preliminary approvals of class-action settlements pursuant to the All Writs Act and the Anti-Injunction Act.

68. The All Writs Act authorizes the Court to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a) (2006). The Act empowers a federal court to "enjoin almost any conduct 'which, left unchecked, would have . . . the practical effect of diminishing the court's power to bring the litigation to a natural conclusion.'" *See Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1102 (11th Cir. 2004) (quoting *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978)).

69. Although the Anti-Injunction Act limits a federal court's powers under the All Writs Act, it expressly authorizes a federal court to enjoin parallel state court proceedings

"where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283 (2006). "[T]he parallel 'necessary in aid of jurisdiction' language is construed similarly" in both the All Writs Act and the Anti-Injunction Act. *Newby*, 302 F.3d 295, 301 (5th Cir. 2002); *see also In re Baldwin-United Corp.*, 770 F.2d 328, 335 (2d Cir. 1985).

70. It is undisputed that if the Settlement is finally approved, all of the cases that would be subject to the injunction would become moot.

71. Federal courts' broad authority under the All Writs Act encompasses the power to enjoin both subsequent and parallel arbitration proceedings. *In re Y & A Grp. Sec. Litig.*, 38 F.3d 380, 382 (8th Cir. 1994) ("No matter what, courts have the power to defend their judgments as res judicata, including the power to enjoin or stay subsequent arbitrations."); *Bank of Am. v. UMB. Fin. Servs., Inc.*, 618 F.3d 906, 914-15 (8th Cir. 2010) (noting that "the district court has the inherent ability to protect its own jurisdiction over the dispute pending before it," and affirming the district court's *sua sponte* injunction of parallel arbitration proceedings); *In re PaineWebber Ltd. P'ships Litig.*, No. 94 CIV. 8547 SHS, 1996 WL 374162, at *4 (S.D.N.Y. July 1, 1996) ("[I]t would be incongrous if the Court had the authority to stay pending litigation, but not enjoin arbitration, 'in aid of its jurisdiction' even before judgment is entered.").

72. In cases such as this, where parties to complex, multidistrict litigation have reached a settlement agreement after lengthy, protracted, and difficult negotiations - parallel proceedings can "seriously impair the federal court's flexibility and authority' to approve settlements in the multi-district litigation" and threaten to "destroy the utility of the multidistrict forum otherwise ideally suited to resolving such broad claims." *See, e.g.,*

In re Baldwin-United, 770 F.2d at 337; *In re Diet Drugs Prods. Liab. Litig.,* 282 F.3d 220, 236 (3d Cir. 2002) (finding threats to court's jurisdiction "particularly significant where there are conditional class certifications and impending settlements in federal actions").

73. An extensive body of federal case law recognizes that complex, multidistrict litigation like this one implicates special considerations under the All Writs Act.[1] "In complex cases . . . the challenges facing the overseeing court are such that it is likely that

[1] *See In re Baldwin-United Corp.,* 770 F.2d at 337 (stating that complex class action pending before the federal district court "was the virtual equivalent of a res over which the district judge required full control"); *In re Asbestos Sch. Litig.,* No. *83-0268,* 1991 WL 61156, at *3 (E.D. Pa. Apr. 16, 1991) (staying state court proceedings is proper under federal law" "where a federal court is on the verge of settlement of a complex matter, and state court proceedings undermine its ability to achieve that objective' (internal citations omitted)), *aff"d mem., 950* F.2d 723 (3d Cir. 1991); *In re The Prudential Ins. Co. of Am. Sales Practices Litig.,* 314 F.3d 99, 104 (3d Cir. 2002) (" [D]istrict courts overseeing complex federal litigation are especially susceptible to disruption by related actions in state courts."); *Carlough v. Amchem Prods., Inc.,* 10 F.3d 189, 202-03 (3d Cir. 1993) (approving of *In re Baldwin-United* and *In re Asbestos Sch. Litig.,* and noting that complex class actions may be appropriate instances in which to enjoin parallel proceedings); *Newby,* 302 F.3d at 301 ("[T]he district court had authority to compel lawyers properly before it from engaging in vexatious and needlessly harassing maneuvers that challenged judicial efforts to . . . preserv[e] fair processes in the complex suit in federal courts.") *Three J Farms, Inc, v. Plaints' Steering Comm. (In re Corrugated Container Antit. Litig.),* 659 F.2d 1332, 1334-35 (5th Cir. Unit A Oct. 1981) (affirming injunction in a "complicated antitrust action [that] has required a great deal of the district court's time and has necessitated that it maintain a flexible approach in resolving the various claims of the many parties"); *Winkler v. Eli Lilly & Co.,* 101 F.3d 1196, 1202 (7th Cir. 1997) (approving of appellate decisions in which "courts have extended the exception to consolidated multidistrict litigation, where a parallel state court action threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation"); *Liles v. Del Campo,* 350 F.3d 742, 746-47 (8th Cir. 2003) (affirming district court's injunction in class action so as to ensure enforceability of the preliminary settlement approval and to prevent further depletion of settlement fund); *Negrete v. Allianz Life Ins. Co. of NA.,* 523 F.3d 1091, 1102 (9th Cir. 2008) (commenting that "the existence of advanced federal in personam litigation [that] may, in some instances, permit an injunction in aid of jurisdiction . . . is a fairly common theme"); *Battle v. Liberty Nat'l Life Ins. Co.,* 877 F.2d 877, 882 (11th Cir. 1989) ("[I]t makes sense to consider this ease, involving years of litigation and mountains of paperwork, as similar to a *res* to be administered.").

almost any parallel litigation in other fora presents a genuine threat to *the* jurisdiction of the federal court." *In re Diet Drugs,* 282 F.3d at 236.

74. The All Writs Act empowers district courts to "issue all writs necessary or appropriate *in* aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651; *see also Wolf Designs, Inc. v, Donald McEvoy Ltd., Inc.,* 341 F. Supp. 2d 639, 642 (N.D. Tex. 2004) ("The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.").

75. "Whether viewed as an affirmative grant of power to the courts or an exception to the Anti-Injunction Act, the All-Writs Act permits courts to certify a national class action and to stay pending federal and state cases brought on behalf of class members." *In re Joint E. & S, Dist. Asbestos Litig.,* 134 F.R.D. 32, 37 (E.D.N.Y. 1990). "The power conferred by the Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice." *United States v. N.Y. Tel. Co.,* 434 U.S. 159, 174 (1977) (upholding order for telephone company to assist with pen register).

76. "[D]istrict courts overseeing complex federal litigation are especially susceptible to disruption by related actions in state fora." *In re Prudential Ins. Co. of Am. Sales Practices Litig.,* 314 F.3d 99, 104 (3d Cir. 2002). Concerns of Defendants in large class actions about remaining exposed to "countless suits in state court despite settlement of the federal claims" is a consequence "that would seriously undermine the possibility for settling

any large, multi-district class action." *Id.* at 104-05 (quotations omitted). Permitting collateral attacks to disrupt such a settlement would undermine "Congress's purposes underlying diversity jurisdiction and the Multi-district Litigation Act, 28 U.S.C. § 1407, an application of Congress's constitutional power to regulate interstate commerce." *Id.* Accordingly, the All-Writs Act authorizes this Court to certify the class and enjoin other litigation.

77. This is a decidedly complex, multidistrict class action involving lengthy negotiations and a proposed settlement reached after years of motion practice and discovery and days of formal and informal arm's-length negotiations. The Court has the power and authority to enjoin current or future federal proceedings regarding and future state court proceedings. *See Newby,* 302 F.3d at 301 (noting that the Anti-injunction Act "does not preclude injunctions against a lawyer's filing of *prospective* state court actions").

78. The requested injunctive relief is unlikely to impact but a few existing lawsuits. None of the plaintiffs in these cases would be unduly prejudiced by a temporary injunction pending the Final Approval Hearing. It is undisputed that if the Settlement is finally approved, all of the cases that would be subject to the injunction would become moot.

79. Accordingly, the Court hereby orders that any actions or proceedings pending in any court in the United States involving, based on, or relating to the alleged cracking, splitting, or tearing of Non-Mobile Timberline® Shingles, except any matters necessary to implement, advance, or further approval of the Settlement Agreement or settlement process, are stayed pending the Final Approval Hearing and the issuance of a

Final Order and Judgment.

80. In addition, all members of the Settlement Class are hereby enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding or order in any jurisdiction involving, based on, or relating to the alleged cracking, splitting, or tearing of Non-Mobile Timberline® Shingles, the claims and causes of action, or the facts and circumstances relating thereto, in this proceeding, or the Settlement Agreement.

81. In addition, all members of the Settlement Class are hereby preliminarily enjoined from filing, commencing, prosecuting or maintaining any other lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action in any jurisdiction) on behalf of members of the Class, if such other class action is based on or relates to the alleged cracking, splitting, or tearing of Non-Mobile Timberline® Shingles, the claims and causes of action, or the facts and circumstances relating thereto, in this proceeding, and/or the Settlement Agreement. The Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's jurisdiction over this action. The Court finds no bond is necessary for issuance of this injunction.

Final Approval Hearing

82. Pursuant to Fed. R. Civ. P. 23, the Court has scheduled a Final Fairness Hearing to take place on Wednesday, April 22, 2015 at 10 a.m., at the Clement F. Haynsworth Federal Building and U.S. Courthouse, 300 East Washington Street, Greenville,

South Carolina 29601, to determine whether the proposed Settlement is fair, reasonable, and adequate, to consider any objections by members of the Settlement Class, and to consider an award of reasonable attorneys' fees and expenses and an award to the class representatives.

83. At least seven (7) days before the Final Approval Hearing, the parties shall file a motion requesting that the Court grant final approval of the Settlement embodied in the Settlement Agreement and that the Court enter a Final Order and Judgment consistent with the terms of the Settlement Agreement, in the form required by the Settlement Agreement and as submitted by the settling parties. At that time, Class Counsel may also file a petition for an award of attorney's fees and reimbursement of expenses.

84. Before the Final Approval Hearing, Plaintiffs and GAF may file memoranda of law responding to any objections of the members of the Settlement Class filed with the Court.

IT IS SO ORDERED.

J. Michelle Childs

United States District Judge

October 15, 2014
Columbia, South Carolina