

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

CINDY THOMAS, F. RENEE GATERS, and
LOREN CHAMBERLAIN, on behalf of,
themselves and all others similarly situated,

Plaintiffs,

vs.

LOUISIANA-PACIFIC CORPORATION and
ABT BUILDING PRODUCTS
CORPORATION, a/k/a ABTCO,

Defendants.

Case No. 2:05-1515-PMD

**FINAL JUDGMENT AND ORDER
APPROVING CLASS ACTION
SETTLEMENT**

On November 3, 2008, this Court entered an Order Preliminarily Approving Class Action Settlement, Approving Settlement Notice Plan and Setting Fairness Hearing (“Preliminary Approval Order”). The Preliminary Approval Order granted preliminary approval of a proposed Class Action Settlement Agreement (the “Settlement”)¹ between Plaintiffs, the Class Members, and Defendants Louisiana-Pacific Corporation and ABT Building Products Corporation a/k/a ABTco (collectively “Defendants”).

A hearing on Final Approval of the Settlement was duly held on October 28, 2008. Having read and considered the documents, papers, and evidence submitted in this matter, and having conducted a hearing regarding the matters set forth herein, and good cause appearing, the Court now finds and orders as follows:

¹ All capitalized terms in this Order shall have the meanings defined for them in the Settlement.

1 **FINDINGS**

2 **I. THE NOTICE PROGRAM AS IMPLEMENTED COMPLIES WITH**
3 **DUE PROCESS AND BINDS ALL CLASS MEMBERS**

4 The Court finds that the Notice Program conducted by the Parties provided
5 individual notice to all known Class Members and all Class Members who could be identified
6 through reasonable efforts and constitutes the best notice practicable under the circumstances of
7 this Action, meeting or exceeding all applicable requirements of Federal Rule of Civil Procedure
8 23, the United States Constitution (including the Due Process Clause), the South Carolina
9 Constitution, South Carolina Rule of Civil Procedure 23, and any other applicable law. This
10 finding is based on the evidence of the adequacy of the notice program. Notice of the Settlement
11 was given to the Class in accordance with the Preliminary Approval Order, including direct mail
12 notice and publication. The Court also finds that the Long Form Settlement Notice and the
13 Settlement Notice provided class members with accurate, fair and reasonable information
14 regarding the Action and the Settlement. The form and manner of notice were the best
15 practicable notice to members of the Class and the form and manner of notice satisfy due
16 process.

17 **II. THE SETTLEMENT MEETS ALL OF THE CRITERIA FOR**
18 **FINAL APPROVAL**

19 The decision to grant final approval of a class action settlement involves the
20 Court's consideration of several factors, including: (1) the amount offered in settlement; the risks
21 inherent in continued litigation; (3) the extent of discovery completed and the stage of the
22 proceeding when the settlement was reached; (4) the risk, complexity, expense, and likely
23 duration of the litigation absent settlement; (5) the experience and views of class counsel; and (6)
24 the response of Class Members to the Settlement. The Court finds that the relevant criteria
25 support final approval of the settlement.
26

1 A. The Benefits of the Settlement to the Class Members

2 Under the Settlement, a Class Member will have an opportunity to make a Claim
3 for any TrimBoard that has experienced Damage on his or her home. Class Members making
4 Claims will receive a free inspection of TrimBoard by a Claims Adjuster. For any TrimBoard
5 with Damage, the Settlement Agreement provides a remedy including cash payments. The
6 Settlement Agreement provides a mechanism to resolve disputes between the parties and well-
7 defined rights and obligations to help avoid conflict. The Settlement thus provides substantial
8 benefits for Class Members.

9 B. The Risks of Continued Litigation and the Strength of Plaintiffs’
10 Case

11 In assessing this factor, the Court weighs the immediacy and certainty of
12 substantial settlement proceedings against the risks inherent in continual litigation. *See Manual*
13 *for Complex Litigation*, Fourth § 21.62 (2004). This factor strongly supports final approval.
14 The Settlement affords the Class Members prompt and substantial relief in light of the significant
15 legal and factual hurdles that otherwise may have prevented any recovery from Defendants. In
16 contrast, continued litigation risks the possibility of little or no recovery for Plaintiffs.
17 Defendants have challenged certification of a litigation class, and they contest liability and deny
18 all allegations that their TrimBoard is defective in any respect. At the time the Parties reached
19 the Settlement, Defendants had a motion for summary judgment pending and trial had been set
20 for February 25, 2008.

21 C. The Settlement Was Reached Just Months Before Trial, Following
22 Substantial Discovery and Litigation

23 Plaintiffs filed this action on May 25, 2005. From that time, Class Members and
24 Defendants engaged in extensive litigation for more than two years, including extensive written
25 discovery, depositions of fact and expert witnesses, destructive testing, and motion practice. By
26 the time the parties reached a settlement, they had sufficient information to assess the strengths

1 and weaknesses of their respective cases, and Class Counsel in particular had a very high level of
2 familiarity with the legal and factual issues which enabled them to make a thorough appraisal of
3 the adequacy of the Settlement to provide meaningful relief to the class.

4 D. The Risk, Complexity, Expense, and Expected Duration of
5 Continued Litigation

6 In assessing the fairness of the Settlement, the Court considers the risk,
7 complexity, expense, and likely duration of the litigation had a settlement not been reached. The
8 Court weighs the settlement against the expense and delay involved in achieving the equivalent
9 or more favorable result at trial. *See Young v. Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971). The
10 Settlement affords a substantial and immediate remedy for the Class Members while obviating
11 the need for further expensive and time-consuming discovery and motion practice; a lengthy,
12 uncertain and expensive trial; and appeals on numerous complex legal and factual issues.

13 E. The Experience and Views of Counsel

14 In assessing a proposed class action settlement “a presumption of fairness exists
15 where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and
16 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
17 experienced in similar litigation; and (4) the percentage of objectors is small.” Newberg &
18 Conte, *Newberg on Class Actions* (3d ed. 1992) § 11.41.

19 This action has been prosecuted by counsel with substantial experience and
20 competence in products liability actions and class actions. Settlement discussions took place in
21 numerous separate sessions before an accomplished mediator and this Court. Class Counsel’s
22 support for the Settlement as being fair, reasonable and adequate, and in the best interests of the
23 Class Members as a whole is entitled to significant weight. Moreover, given that settlement was
24 reached two months before trial and after substantial litigation of the matter, the results of
25 investigation and discovery in the case were certainly sufficient to allow Class Counsel to act
26 intelligently and to demonstrate that the settlement was reached through significant arm’s-length

1 negotiations.

2 F. Class Members' Reaction

3 According to the Preliminary Approval Order, Class Members who oppose the
4 approval of this Settlement had until December 30, 2008 to file a written notice of objection with
5 the Court, Class Counsel and Defendants' Counsel. The Court and Counsel received no written
6 notices of objection, and no objectors appeared at the Fairness Hearing on January 26, 2009.
7 The Court finds that the lack of opposition to the Settlement indicates that the Settlement is fair,
8 adequate and reasonable.

9 G. Absence of Collusion

10 Given the extended discovery and arm's-length negotiations in reaching this
11 Settlement, the Court finds the presence of good faith and the absence of collusion. There are no
12 grounds to doubt the fairness nor are there other obvious deficiencies in the Settlement, such as
13 unduly preferential treatment of Plaintiffs or of segments of the class, or excessive compensation
14 for attorneys, and the Settlement is well within the range of final approval.

15 **FINAL SETTLEMENT APPROVAL AND FINAL JUDGMENT**

16 Based on the foregoing,

17 IT IS HEREBY ADJUDGED, ORDERED AND DECREED that:

18 1. This Court has jurisdiction over the Settled Claims and the claims asserted
19 in this proceeding, personal jurisdiction over the Class Members, and subject matter jurisdiction
20 to approve the Settlement. This Court having found that the applicable requirements of Federal
21 Rule of Civil Procedure 23 have been satisfied with respect to the Settlement and the Class
22 Members as defined in the Settlement, the Court grants certification of the Class for settlement
23 purposes and vacates its Order of June 5, 2007, which certified a litigation class.

24 2. Notice given to the Class was reasonably calculated under the
25 circumstances to apprise Class Members of all material elements of the Settlement and their
26 opportunity to object to, or to comment on, the Settlement and to appear at the Fairness Hearing.

1 Notice to the Class Members was the best notice practicable under the circumstances and
2 complied fully with the laws of the State of South Carolina, the Federal Rules of Civil Procedure,
3 the U.S. Constitution and South Carolina Constitution, and all applicable Rules of Court.
4 Accordingly, the Court determines that all Class Members are bound by this Judgment.

5 3. The Court hereby grants final approval to the Settlement and finds that it
6 is fair, adequate, reasonable and in the best interests of the Class Members. Judgment is hereby
7 entered in accordance with the terms of this Judgment and the Settlement.

8 4. All Class Members have released and forever discharged the Settled
9 Claims.

10 5. All Class Members are permanently barred and permanently enjoined
11 from asserting or prosecuting the Settled Claims.

12 6. The Court approves a payment of a \$5,000 stipend each to Cindy Thomas,
13 Renee Gaters and Loren Chamberlain, respectively.

14 7. The Court approves a payment of \$100,000 by Defendants to Class
15 Counsel under the Settlement to compensate Class Counsel for the future fees, costs and
16 expenses of submitting Claims and administrative tasks pursuant to the Settlement.

17 8. The Court hereby authorizes Class Counsel to take 1/3rd of each Class
18 Member's recovery as a fee in this case, such fee to be collected out of the Settlement Payment
19 Amounts as each Claim is paid under the Settlement. The Court hereby finds this award of fees
20 is fair and reasonable and does not in any way undermine the fairness of the Settlement.

21 9. Without affecting the finality of this Judgment, the Court shall retain
22 exclusive and continuing jurisdiction over this Action and the Parties to it, including all Class
23 Members, to the full extent necessary to enforce the Settlement.

24 10. The Settlement is expressly incorporated herein by this reference, and will
25 have the full force and effect of an order of this Court. The parties shall consummate the
26 Settlement according to its terms.

1 IT IS SO ORDERED.

2
3 
4 PATRICK MICHAEL DUFFY
United States District Judge

5 January 28, 2009
6 Charleston, South Carolina

7 APPROVED AS TO FORM:

8 DATED: January 27, 2009

9 BUIST MOORE SMYTHE McGEE PA

10
11 By: s/ James E. Weatherholtz
12 C. Allen Gibson, Jr.
James E. Weatherholtz
Attorneys for Defendants

13 DATED: January 27, 2009

14 BINGHAM MCCUTCHEN LLP

15
16 By: s/ Michael I. Begert
17 Michael I. Begert
Attorneys for Defendants

18 DATED: January 27, 2009

19 NEXSEN PRUET, LLC

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21 By: s/ Paul A. Dominick
22 Paul A. Dominick
Attorneys for Plaintiffs and Class Members

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DATED: January 27, 2009

JUSTIN O'TOOLE LUCY, PA

By: s/ Justin O. Lucey

Justin O. Lucey
Attorneys for Plaintiffs and Class Members