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

IN RE: MI WINDOWS AND DOORS INC. PRODUCTS LIABILITY LITIGATION	))))	**ORDER** MDL No. 2333 No. 2:12-mn-00001-DCN

This matter is before the court on Homeowner Plaintiffs' motion for final approval of class action settlement and Contractor/Construction Plaintiff's motion for final approval of class action settlement. For the reasons set forth below, the court finds that the Stipulation of Class Action Settlement and Release ("Settlement" or "Settlement Agreement") is fair, reasonable, and adequate and grants final class certification. Unless otherwise noted, capitalized terms in this order have the meanings set forth in the Settlement.

I. BACKGROUND

This Action involves 18 individual cases that were initially filed in district courts nationwide and were subsequently consolidated before this court by the Judicial Panel on Multidistrict Litigation. These cases all involve allegations that windows manufactured by defendant MI Windows and Doors, Inc. ("MIWD") contain a defect in the Glazing Tape that causes the windows to prematurely fail, resulting in water intruding into plaintiffs' homes. After extensive negotiations spanning nearly two years, the parties entered into the Settlement with the assistance of three mediators. On February 27, 2015, the court entered an order preliminarily approving the Settlement. Homeowner Plaintiffs and Contractor/Construction Plaintiff subsequently moved for final approval of the Settlement. On June 30, 2015, the court held a Final Approval Hearing. This case is now ripe for the court's Final Order and Judgment.

II. SETTLEMENT TERMS[1]

The Settlement Class includes "all Persons in the United States or its Territories who own, owned, or have a legal obligation to maintain or repair a MIWD Product." The Settlement defines MIWD Product as "any and all MIWD windows that are glazed with Glazing Tape and were manufactured or sold between July 1, 2000 and March 31, 2010." The Settlement contains both a Homeowner Settlement Class and a Contractor/Construction Settlement Class.

The Homeowner Settlement Class consists of "all Persons that purchased or came into ownership of (through assignment, transfer, or otherwise) Affected Property containing MIWD's Product as well as all Persons who have a legal obligation to maintain or repair a MIWD Product." The Homeowner Settlement Class does not include members of the Contractor/Construction Settlement Class nor any person who has "previously settled and released their claims against MIWD involving or related to all their MIWD Product, or had their claims dismissed with prejudice in court, or accepted a final remedy from MIWD involving or related to all their MIWD Product as evidenced by a written document."

The Contractor/Construction Settlement Class consists of "all Persons who, while engaged in the business of residential construction, were involved in any respect in causing MIWD's Product to be acquired for or installed into Affected Property, and also includes all Persons who continue to own such Affected Property at the time of Notice (including developers, builders, contractors, subcontractors, and all other persons or

[1] This section is intended as a brief summary of the Settlement Agreement and to the extent it conflicts with or is not as detailed as the Settlement Agreement, the Settlement Agreement controls.

entities involved in the purchase, installation, or supervision of the installation of MIWD's Product)." The Contractor/Construction Settlement Class does not include members of the Homeowner Settlement Class nor any person who has "previously settled and released their claims against MIWD involving or related to all their MIWD Product, or had their claims dismissed with prejudice in court, or accepted a final remedy from MIWD involving or related to all their MIWD Product as evidenced by a written document."

The Settlement establishes a Claims Program whereby the Settlement Class will receive relief. Homeowner Settlement Class Members will receive relief under three categories. Class A Eligible Members, who are "current Homeowners with Windows who have one or more instances of Eligible Consequential Window Damage," are entitled to repairs or replacements as well as compensation up to $2,500 for Consequential Water Damage. Class B Eligible Members, who are "current Homeowners with a Window that exhibits a Visible Residue Line but who have not experienced Eligible Consequential Window Damages," are entitled to repairs or replacements. Class C Eligible Members, who are "current or former Homeowners that paid for repairs or replacement of Windows as a result of Consequential Water Damage prior to Notice," are entitled to reimbursement for repair of Consequential Water Damage up to $1,250 per Affected Property. Homeowner Settlement Class Members may participate in Class C recovery in addition to Class A or Class B recovery, providing a maximum Total Consequential Damage Compensation, per Affected Property, of $3,750.

Original Homeowners who did not receive a Consequential Damage Payment under Class A recovery may submit a warranty claim to MIWD for any MIWD Product

or MIWD Product Component that was not covered as part of Class A, Class B, or Class C relief and is warranted under the Original Express Written Warranty applicable to their MIWD Products, and shall not be required to provide proof of reliance. Original Homeowners who received a Consequential Damage Payment under Class A recovery may submit a warranty claim to MIWD for any MIWD Product or MIWD Product Component that was not covered as part of Class A, Class B, or Class C relief and is warranted under the Original Express Written Warranty applicable to their MIWD Product. Each such claim must be submitted within two years of the date that Notice of Settlement is First Published. Subsequent Homeowners may submit a warranty claim with MIWD for any MIWD Product or MIWD Product Component that was not covered as part of Class A, Class B, or Class C relief and is warranted under the Original Express Written Warranty applicable to their MIWD Product (as though they were an Original Homeowner). Each such warranty claim must be submitted within 16 months of the date that Notice of the Settlement is First Published.

Eligible Contractor/Construction Class Members, who are "Persons who currently own Affected Property with MIWD Product and have Eligible Consequential Window Damage that is Reasonably Attributable to an Identifiable Condition," are entitled to repairs or replacements and up to $2,000 for Consequential Water Damage. Contractor/Construction Class Members who currently own Affected Property with MIWD Product and did not experience any eligible Consequential Damage prior to the end of the Claims Period may submit a warranty claim to MIWD for any MIWD Product as warranted under the Original Express Written Warranty and are not required to provide proof of reliance.

All the costs of notice and claims administration will be paid by MIWD. The initial claims administration will be undertaken by the Claims Administrator and followed, if necessary, by the Appeal Adjudicator. The Settlement provides that Settlement Class Members who wish to seek a remedy under the Settlement will be able to file a Claim Form at any time on or before: (1) 240 days from the Notice Start Date for Class A or Class B Homeowner Claimants; (2) 180 days from the Notice Start Date for Class C Homeowner Claimants; and (3) 180 days from the Notice Start Date for Contractor/Construction Claimants. Settlement Class Members will be able to request Claim Forms by contacting the Claims Administrator by telephone or in writing or by accessing the Settlement website.

III. NOTICE PLAN

The Notice Plan commenced on March 16, 2015. The Notice Start Date was April 28, 2015. As part of the Notice Plan, Epiq Class Action & Claim Solutions sent a Class Action Fairness Act notice packet to the appropriate state and federal government officials as required by 28 U.S.C. § 1715[2]; mailed notices to 183,786 Class Members; published notice in National Geographic, People, Southern Living, and Sports Illustrated; created internet and mobile banner notices; and set up a case website, toll-free numbers, and a postal mailing address.

The court finds that the Notice Plan, as described in the Settlement and related declarations, has been faithfully carried out and constituted the best practicable notice to Class Members under the circumstances of this Action, and was reasonable and

[2] Furthermore, the Court has given the appropriate state and federal government officials the requisite 90-day period (pursuant to 28 U.S.C. § 1715) to comment or object to the proposed Settlement before entering its Final Order and Judgment and no such objections or comments were received.

constituted due, adequate, and sufficient notice to all Persons entitled to be provided with Notice.

The court also finds that the Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of: (1) the pendency of this class action; (2) their right to exclude themselves from the Settlement Class and the proposed Settlement; (3) their right to object to any aspect of the proposed Settlement (including final certification of the Settlement Class, the fairness, reasonableness, or adequacy of the proposed Settlement, the adequacy of the Settlement Class's representation by Named Plaintiffs or Class Counsel, or the award of attorney's and representative fees); (4) their right to appear at the fairness hearing (either on their own or through counsel hired at their own expense); and (5) the binding and preclusive effect of the orders and Final Order and Judgment in this Action, whether favorable or unfavorable, on all Persons who do not request exclusion from the Settlement Class. As such, the court finds that the Notice fully satisfied the requirements of the Federal Rules of Civil Procedure, including Federal Rule of Civil Procedure 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the rules of this court, and any other applicable law, and provided sufficient notice to bind all Class Members, regardless of whether a particular Class Member received actual notice.

IV. NAMED PLAINTIFFS AND CLASS COUNSEL

The court appoints Named Homeowner Plaintiffs Nadine Johnson, David R. Van Such, Craig Hildebrand, Joseph DeBlaker, Mike and Janeen Meifert, Jackie Vargas Borkouski, Kerry Dewitt, Arthur and Susan Ferguson, Gregory and Kristy Kathman, Alex Krueger, Gail Loder, James Lovingood, Thomas Boettinger, John Oriolt, Jamie

Reed, Patricia Lane, Larry Taylor, Jacquiline Ward, Manzoor and Sosi Wani, David Deem, John W. McCubbrey and Elizabeth D. McCubbrey, Daniel Kennedy, Charles Bradley, Jennifer and Scott McGaffin, Jessica Zepeda, and Stevenson T. Womack to serve as representatives of the Homeowner Settlement Class. The court appoints Daniel K. Bryson of Whitfield Bryson & Mason LLP, and Justin O. Lucey of The Lucey Law Firm to serve as Homeowner Class Counsel.

The court appoints Named Contractor/Construction Plaintiff Lakes of Summerville LLC, to serve as representative of the Contractor/Construction Settlement Class. The court appoints H. Blair Hahn of Richardson, Patrick, Westbrook, & Brickman LLC, and Walter H. Bundy, Jr. of Smith Bundy, Bybee & Barnett P.C., to serve as Contractor/Construction Class Counsel.

The court finds that Class Counsel and Named Plaintiffs have fully and adequately represented the Settlement Class for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rule of Civil Procedure 23(a)(4).

V. CLASS CERTIFICATION

The court must determine whether to grant final certification of the Settlement Class.

The requirements for certification of a settlement class parallel the requirements for certification of a litigation class. Decohen v. Abbasi, LLC, 299 F.R.D. 469, 476 (D. Md. 2014). Except for one exception, discussed below, the Supreme Court has emphasized that the requirements of Rule 23 "designed to protect absentees by blocking unwarranted or overbroad class definitions . . . demand undiluted, even heightened,

attention in the settlement context." Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620 (1997). The Court unequivocally held that a finding that a proposed settlement is fair does not resolve whether a class can be certified under Rule 23. Id. at 593–94 ("Federal courts, in any case, lack authority to substitute for Rule 23's certification criteria a standard never adopted by the rulemakers—that if a settlement is 'fair,' then certification is proper.").

Under Federal Rule of Civil Procedure 23, to certify a class action, the class must meet the four Rule 23(a) prerequisites and fit within one of the three Rule 23(b) categories. Id. The parties seek certification under Rule 23(b)(3). "[D]istrict courts have wide discretion in deciding whether or not to certify a class and their decisions may be reversed only for abuse of discretion," which, of course, "must be exercised within the framework of Rule 23." Gunnells v. Healthplan Servs., Inc., 348 F.3d 417, 424 (4th Cir. 2003) (citations omitted).

The court has already preliminarily approved the Settlement Class. However, the court will again consider whether the Settlement Class meets the Rule 23(a) prerequisites and the requirements of Rule 23(b)(3).

A. Rule 23(a)

Under Federal Rule of Civil Procedure 23(a), class certification is appropriate if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are 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; and (4) the representative parties will fairly and adequately protect the interests of the class.

1. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." "There is no mechanical test for determining whether in a particular case the requirement of numerosity has been satisfied." Kelley v. Norfolk & W. Ry. Co., 584 F.2d 34, 35 (4th Cir. 1978). "The issue is one primarily for the District Court, to be resolved in light of the facts and circumstances of the particular case." Id. The Fourth Circuit has affirmed approval of a class with 480 potential members, saying that this number "easily satisfy[ied] the numerosity requirement." Cent. Wesleyan Coll. v. W.R. Grace & Co., 6 F.3d 177 (4th Cir. 1993). Here, the proposed Settlement Class consists of all persons who own a MIWD product. The Notice was sent to over 180,000 Class Members. Therefore, the Settlement Class easily meets Rule 23(a)'s numerosity requirement.

2. Common Questions of Law or Fact

Rule 23(a)(2) requires "questions of law or fact common to the class." In a class action brought under Rule 23(b)(3), the "commonality" requirement of Rule 23(a)(2) is "subsumed under, or superseded by, the more stringent Rule 23(b)(3) requirement that questions common to the class predominate over" other questions. Lienhart v. Dryvit Sys., Inc., 255 F.3d 138, 147 n.4 (4th Cir. 2001) (citing Amchem, 521 U.S. at 609). Because certification is based on Rule 23(b)(3), the court will omit a discussion of commonality here and will instead consider common questions of law or fact in its predominance analysis below.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties" be "typical of the claims or defenses of the class." "[A] class representative must be part of the class and possess the same interest and suffer the same injury as the class members." Gen. Tel. Co. of the Sw. v. Falcon, 457 U.S. 147, 155 (1982) (internal quotation marks omitted). The essence of this requirement "is captured by the notion that 'as goes the claim of the named plaintiff, so go the claims of the class.'" Deiter v. Microsoft Corp., 436 F.3d 461, 466 (4th Cir. 2006) (quoting Broussard v. Meineke Discount Muffler Shops, Inc., 155 F.3d 331, 340 (4th Cir. 1998)). "The typicality requirement goes to the heart of a representative parties' ability to represent a class" and "tends to merge with the commonality and adequacy-of-representation requirements." Id.

Here, Named Homeowner Plaintiffs' claims are typical of the Homeowner Settlement Class as a whole. Named Homeowner Plaintiffs have the same interests as all other members of the Homeowner Class as their claims are based on the same legal theory—that their Windows are defective—and they have suffered similar injuries that differ only by degree. Therefore, the court finds that the claims of the Named Homeowner Plaintiffs are typical of the claims of the Homeowner Settlement Class. Similarly, the Named Contractor/Construction Plaintiff's claims are typical of the Contractor/Construction Settlement Class because they have the same interests as the other members of the Contractor/Construction Settlement Class and have suffered similar injuries that differ only by degree.

The court notes that this is a national Settlement Class involving the substantive laws of all 50 states. Several courts, including district courts in this circuit, have denied

certification on this basis. See Stirman v. Exxon Corp., 280 F.3d 554, 562 (5th Cir. 2002) ("But the test is whether her claims are typical, not whether she is. Given the differences among the state laws, it cannot be said that Hunter's claims are 'typical' of the class . . . ." (emphasis in original)); In re Digitek Prods. Liab. Litig., 2010 WL 2102330, at *15 (S.D. W. Va. May 25, 2010) ("At least in the nationwide certification setting, the representatives will pursue their claims using the laws that apply in their states. Some of the class members will live in those same states. Many more will not. So the claims pursued by the representatives will face benefits and obstacles not present in the home states of the class members they represent. A number of courts have found that weighs against finding typicality."); In re Panacryl Sutures Prods. Liab. Cases, 263 F.R.D. 312, 322 (E.D.N.C. 2009) ("But because Plaintiffs have not shown that the prospective class representatives' claims will take into account the substantive laws governing every class member, this Court's conclusion that the laws of the prospective class members' home jurisdictions will govern their claims precludes a finding of typicality."); In re Vioxx Prods. Liab. Litig., 239 F.R.D. 450, 460 (E.D. La. 2006) ("The applicability of multiple substantive laws also precludes a finding of typicality.").

However, other courts have found that "[v]ariations in state law do not necessarily preclude a 23(b)(3) action." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1022 (9th Cir. 1998) (emphasis added). In Hanlon, the Ninth Circuit determined that "although some class members may possess slightly differing remedies based on state statute or common law, the actions asserted by the class representatives are not sufficiently anomalous to deny class certification." Id. Similarly, the Seventh Circuit, while acknowledging that class treatment will "sometimes" be inappropriate when "recovery depends on law that

varies materially from state to state," affirmed certification where the class representatives "avoided this pitfall" by confining their theories to "federal law and aspects of state law that are uniform." In re Mexico Money Transfer Litig., 267 F.3d 743, 47 (7th Cir. 2001). The court held that "to the extent distinct remedies exist, they are local variants of a generally homogenous collection of causes which include products liability, breaches of express and implied warranties, and 'lemon laws'" and that "the idiosyncratic differences between state consumer protection laws are not sufficiently substantive to predominate over the shared claims." Id. at 1022–23.

A district court in the Southern District of Texas recently found that state law claims met the typicality requirement even for a nationwide class. In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig., 851 F. Supp. 2d 1040, 1054–55 (S.D. Tex. 2012). The court "presum[ed]" that "variations exist" among the "applicable laws of the fifty states and the District of Columbia." Id. at 1054. The court noted that Stirman—in which the Fifth Circuit found that significant variations in state law precluded a finding of typicality—involved "claim-dispositive variations" in state laws such that "certain states did not recognize the claim that the class representatives asserted." Id. at 1054–55. In contrast, the variations in state law in Heartland involved "dissimilarities in specific claim elements that must be proven at trial, or differences in burdens of proof." Id. at 1055. The court recognized that the claims at issue there—negligence, breach of contract, and violations of state consumer protection laws—"are recognized in some form in all jurisdictions and therefore available for all [class members]." Id. (citing Overka v. Am. Airlines, Inc., 265 F.R.D. 14, 18 (D. Mass. 2010)).

In its amended complaint, Contractor/Construction Plaintiff brings claims for breach of express and implied warranties and unjust enrichment. In their consolidated amended complaint, Homeowner Plaintiffs bring claims for breach of express warranty, breach of the implied warranty of merchantability, negligence, strict liability/strict products liability, and negligent misrepresentation. These bases for liability "are recognized in some form in all jurisdictions and therefore available for all [Class Members]." Heartland, 851 F. Supp. 2d at 1055; see also Klay v. Humana, Inc., 382 F.3d 1241, 1263 (11th Cir. 2004) ("A breach is a breach is a breach, whether you are on the sunny shores of California or enjoying a sweet autumn breeze in New Jersey."). That is, "[d]espite possible state-by-state variations in the elements of these claims, they arise from a single course of conduct by [MIWD] and a single set of legal theories." Id. (citation omitted). The court finds that the application of the laws of the 50 states does not defeat a finding of typicality here. See, e.g., In re CertainTeed Corp. Roofing Shingle Products Liab. Litig., 269 F.R.D. 468, 477 (E.D. Pa. 2010) (certifying national settlement class for claims—breach of warranty, strict liability, tort, and negligence—arising from allegedly defective shingles).

4. Adequacy of Representative Parties

Rule 23(a)(4) requires that the "representative parties will fairly and adequately protect the interests of the class." "The principal factor in determining the adequacy of class representatives is whether the plaintiffs have the ability and commitment to prosecute the action vigorously." S.C. Nat'l Bank v. Stone, 139 F.R.D. 325, 329–30 (D.S.C. 1991) (citation omitted). "This inquiry involves two issues: (i) whether plaintiffs have any interest antagonistic to the rest of the class; and (ii) whether plaintiffs'

counsel are qualified, experienced and generally able to conduct the proposed litigation." Id. (internal quotation marks and citation omitted); see also Lloyd v. Gen. Motors Corp., 266 F.R.D. 98, 103 (D. Md. 2010) (providing similar inquiry). There is no reason to believe that antagonism or conflicts of interest exist between the Named Plaintiffs and the Settlement Class and the Named Plaintiffs have retained well-qualified counsel experienced in construction litigation. Therefore, the court finds that this requirement has been met.

B. Rule 23(b)

Rule 23(b)(3) allows a class action to be maintained if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."

> The matters pertinent to these findings include: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; [and] (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum.

Fed. R. Civ. P. 23(b)(3). The fourth factor, "the likely difficulties in managing a class action," Fed. R. Civ. P. 23(b)(3)(D), need not be considered on a request for a settlement-only class certification. Amchem, 521 U.S. at 620.

"[T]he predominance and superiority requirements in Rule 23(b)(3) do not foreclose the possibility of mass tort class actions, but merely ensure that class certification in such cases 'achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" Gunnells v. Healthplan Servs., Inc.,

348 F.3d 417, 424 (4th Cir. 2003) (quoting Amchem, 521 U.S. at 615); see also Cent. Wesleyan, 6 F.3d at 185 ("[E]mbrac[ing] the view that the mass tort action for damages may be appropriate for class action, either partially or in whole.").

1. Predominance

The predominance requirement ensures that a class is "sufficiently cohesive to warrant adjudication by representation." Amchem, 521 U.S. at 623–24. The predominance requirement "is 'far more demanding' than Rule 23(a)'s commonality requirement." Gariety v. Grant Thornton, LLP, 368 F.3d 356, 362 (4th Cir. 2004) (citing Amchem, 521 U.S. at 623–24). Whereas commonality requires little more than the presence of common questions of law and fact, Rule 23(b)(3) requires that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members." Melton ex rel. Dutton v. Carolina Power & Light Co., 283 F.R.D. 280, 288 (D.S.C. 2012). The Supreme Court has instructed that the predominance inquiry "trains on the legal or factual questions that qualify each class member's case as a genuine controversy, questions that preexist any settlement." Amchem, 521 U.S. at 623.

In mass tort cases, common issues of law and fact have been held to predominate "where the same evidence would resolve the question of liability for all class members." Beaulieu v. EQ Indus. Servs., Inc., 2009 WL 2208131, at *20 (E.D.N.C. July 22, 2009) (citing cases). "On the other hand, '[w]here after adjudication of the classwide issues, plaintiffs must still introduce a great deal of individualized proof or argue a number of individualized legal points to establish most or all of the elements of their individual claims,' the common issues do not predominate." Id. (quoting Klay v. Humana, Inc., 382 F.3d 1241, 1255 (11th Cir. 2004)). Individual proof of some of the claimed damages by

individual class members does not, by itself, defeat certification. Gunnells, 348 F.3d at 427. "In fact, Rule 23 explicitly envisions class actions with such individualized damage determinations." Id. "Quantitatively, almost by definition there will always be more individual damages issues than common liability issues. . . . Qualitatively, however, . . . liability issues may far exceed in complexity the more mundane individual damages issues." Gunnells v. Healthplan Servs., Inc., 348 F.3d 417, 429 (4th Cir. 2003) (quoting In re Honda Motor Co., 979 F. Supp. 365, 367 (D. Md. 1997)) (internal citation marks omitted).

In a similar case involving allegedly defective shingles, a court in this district determined that individualized affirmative defenses and individualized damages did not preclude certification. Brooks v. GAF Materials Corp., 301 F.R.D. 229 (D.S.C. 2014). The court's ruling was based in part on the fact that the claims "involve[] a single line of products manufactured at a single plant over a limited period of time." Id. at 234. Here, the alleged defect involves only thoseWindows manufactured by MIWD which use Glazing Tape. Additionally, another court in this district found that claims for breach of express warranty and breach of implied warranties satisfied the predominance inquiry because the warranties at issue were similar and the "proof of a defect will further advance the breach of warranty claims of the absent class members, as Plaintiffs' theory is that TrimBoard is defective and completely unsuitable as an exterior trim product contrary to Defendants' warranties." Brunson v. La.-Pac. Corp., 266 F.R.D. 112, 119 (D.S.C. 2010).

Moreover, this Action is distinguishable from a case involving allegedly defective stucco, in which the Fourth Circuit reversed class certification because "classwide proof

may require the district court to probe deeply into the individualized details of [third parties, such as contractors and installers]." Lienhart, 255 F.3d at 149. The court held that "[i]f such an individualized inquiry is needed to determine the membership of a workable class, it is clear that common issues do not predominate over individual issues as required by Rule 23(b)(3)." Id. Lienhart involved faulty installation and the doctrine of contributory negligence to a much greater extent than this Action does. Indeed, that case turned on the application of contributory negligence under North Carolina law, and the court noted that

> if third parties [such as contractors] contributed to the failure of [the product] and [defendant] did not contract to provide instruction to these parties and assist them in installing [the product, the defendant's] claims regarding these parties are not contribution and indemnity claims which may be addressed in a second stage after this litigation, but are instead claims regarding affirmative defenses which, if established, negate [the defendant's] liability ab initio.

Lienhart, 255 F.3d at 148. Additionally, the Fourth Circuit did not deny that certification could possibly be proper in the case, but rather noted that contributory negligence "poses major—and perhaps insuperable—obstacles to the feasibility of certifying this proposed class." Id. at 150.

This Action involves a single dominant factual issue: the sustainability and performance of MIWD's Glazing Tape and sealant. The performance of the Glazing Tape does not involve third-party installers, homeowners' failure to maintain the product, or any other factors outside of MIWD's control. In CertainTeed, a district court in Pennsylvania determined that the predominance requirement was met because

> [t]he main question is whether CertainTeed's shingles failed before the expiration of their warranted life, and whether that failure was caused by a defect. These claims arise from the same theories of breach of warranty, strict liability, tort, and negligence. While there are differences in

> questions of fact—since each plaintiff would have to provide proof specific to that plaintiff's own shingles—this is not an impediment here.

CertainTeed, 269 F.R.D. at 478.

The court finds CertainTeed persuasive and finds that the predominance requirement is met here.

2. Superiority

Finally, Plaintiffs must be able to demonstrate that proceeding as a class "is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Factors relevant to the superiority analysis include whether recoveries for class members are so small as to disincentivize individual lawsuits, judicial economy, and dominance of state law issues.

In this Action, because of the size of the class, it would be manifestly inefficient to try each case individually. Potential plaintiffs with smaller claims might find it difficult, and almost assuredly unprofitable, to pursue their claims individually, especially considering that much of that litigation involves common proof required to establish MIWD's liability. This is one of the essential functions of a class action. Amchem, 521 U.S. at 617 ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights."). In this Action, the class action mechanism both promotes judicial economy and provides a greater number of potential plaintiffs with the opportunity to seek compensation.

C. Conclusion

The court finds that the Settlement Class meets the prerequisites of Rule 23(a) and the requirements of Rule 23(b)(3). Therefore, the court certifies the Settlement Class.

VI. FAIRNESS, REASONABLENESS, & ADEQUACY

Federal Rule of Civil Procedure 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." The court may approve such a settlement "only after a hearing and on finding that it is fair, reasonable, and adequate." Id. Additionally, any class member may object to the settlement. Id.

Once the court has preliminarily approved a settlement, it must schedule a fairness hearing, at which "the proponents of the settlement must show that the proposed settlement is 'fair, reasonable, and adequate.'" Manual for Complex Litigation § 21.634 (quoting Fed. R. Civ. P. 23(e)). The parties may present witnesses, experts, and affidavits or declarations, and objectors or class members may also appear and testify. Id. Fairness is determined by examining "(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of . . . class action litigation." In re Jiffy Lube Sec. Litig., 927 F.2d 155, 159 (4th Cir. 1991). Adequacy is determined by examining "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." Id. The court will analyze these factors to determine whether the Settlement is fair, reasonable, and adequate.

A. Fairness

1. Posture of Case at Time Settlement was Proposed

At the time the Settlement was proposed, the Parties had engaged in extensive substantive motion practice as well as extensive discovery. In many cases, there were at least two rounds of motions to dismiss. With the claims narrowed, the Parties were well apprised of the strengths and weaknesses of their case moving forward. The court finds that the posture of the case at the time Settlement was proposed weighs in favor of finding the Settlement fair.

2. Extent of Discovery

The Parties engaged in substantial discovery prior to and during settlement discussions. The Parties produced thousands of documents, hired experts, deposed many individuals, and inspected and tested many windows throughout the country. This factor weighs in favor of finding the Settlement fair.

3. Circumstances Surrounding Negotiations

Settlement negotiations began two years into the proceedings and were lengthy, encompassing multiple meetings over the course of two years. The parties employed the assistance of three mediators—Erik Green, The Honorable Bruce Howe Hendricks, and Tom Wills—who facilitated mediation. In short, "the settlements were reached only after arduous settlement discussions conducted in a good faith, non-collusive manner, over a lengthy period of time, and with the assistance of . . . highly experienced neutral mediator[s]." In re Toys R Us Antitrust Litig., 191 F.R.D. 347, 352 (E.D.N.Y. 2000); see also Kirven v. Cent. States Health & Life Co. of Omaha, No. 3:11-cv-2149, 2015 WL 1314086, at *5 (D.S.C. Mar. 23, 2015) ("Absent evidence to the contrary, the court may

presume that settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion."). This factor weighs in favor of finding the Settlement fair.

4. Expertise of Counsel

Class Counsel are well-qualified and experienced in the field of class action litigation and construction defect litigation. This factor weighs in favor of finding the Settlement fair.

B. Adequacy

1. Relative Strength of Plaintiffs' Case on the Merits & Existence of Difficulties of Proof or Strong Defenses

For these factors, "the court should weigh the benefits of the settlement to the class against the strength of the defense, and the expense and uncertainty of the litigation while accounting for class objections." Kirven, 2015 WL 1314086, at *6. These cases involved many motions to dismiss, some of which were successful at least in part. MIWD presented defenses which are obviated by the settlement, such as issues related to causation of damages. Every motion to date has been hard-fought and there is every indication that trial would be just as hard-fought. Considering the uncertainty of moving forward with litigation, the court finds that this factor weighs in favor of finding the Settlement adequate.

2. Anticipated Duration and Expense of Additional Litigation

Certainly continued litigation would require substantial time and expense, including motions for class certification and potentially multiple trials. Moreover, many more claims may be brought against MI Windows related to the defective nature of the Windows. The court recognizes the advantage that Class Members will receive by

obtaining settlement benefits now as opposed to some indeterminate time in the future, if at all.

3. Degree of Opposition

Homeowner Plaintiffs represent that out of an estimated 1 million potential class members and 183,786 direct notice recipients, only eight filed objections[3] and only 123 timely opted out. The small number of objectors and opt-outs here is evidence that the settlement is fair, reasonable, and adequate. In re Cardizem CD Antitrust Litig., 218 F.R.D. 508, 527 (E.D. Mich. 2003) ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement."). Additionally, as discussed further below, the court does not find any of the objections persuasive.

C. Conclusion

After considering the substantial benefits provided to the Settlement Class by the Settlement, as well as the factors laid out above, the court finds that the Settlement is fair, reasonable, and adequate.

VII. OBJECTIONS

Prior to the final approval hearing, the court received only eight objections—six to the Homeowner Settlement Class (one of which was withdrawn, as discussed further below) and two to the Contractor/Construction Settlement Class (both of which were withdrawn, as discussed further below). The court will consider each of the objections in turn.

[3] Three of the objections received were later withdrawn.

A. Non-Class Member Objections

The objections filed by J. Barry Gheesling, Michael C. Stein, Sandra Winberg, and an anonymous individual all fail. None of these individuals are Class Members because their windows were not manufactured during the Class Period (July 1, 2000 to March 31, 2010). Under Rule 23(e), only class members have standing to object to a proposed settlement. See Gould v. Alleco, Inc., 883 F.2d 281, 284 (4th Cir. 1989) ("Rule 23(e) clearly contemplates allowing only class members to object to settlement proposals."). Moreover, many of these objectors argue that the Class Period should be expanded to include their windows. However, the Class Period was crafted to the time the Glazing Tape at issue was in use. Therefore, the court overrules these objections.

B. Michelle Vullings

Michelle Vullings ("Vullings") filed an objection to the Homeowner Class Settlement advancing a variety of arguments. First, Vullings contends that the release in the Settlement is overbroad and provides "a blanket liability waiver for any claim relating in any way to MIWD's product list." Vullings fails to recognize that the release is limited to the specific MIWD Windows that are glazed with Glazing Tape and were manufactured and sold during a specific time period. The tape-glazed windows form the basis of the various suits that are a part of the MDL and, as such, the release and Settlement are limited to this type of MIWD Window and the release is not overbroad.

Vullings also contends that the Settlement Agreement provides no recourse for future harm suffered by Class Members arising out of MIWD's Product. However, under the Settlement, Class Members whose Windows have not exhibited any of the conditions

that would entitle them to relief during the defined Claim Periods can nevertheless file a warranty claim with MIWD if the Windows exhibit warrantable conditions in the future.

Next, Vullings argues that the claims process is unreasonably burdensome and unfair because (1) homeowners are required to prove that they own the home (and, accordingly, the Windows) by providing a copy of a deed, mortgage statement, tax bill, or other documentation establishing ownership; (2) homeowners are required to provide photographs of the Windows; (3) homeowners must notarize the Claim Form; (4) homeowners are required to retain a "Qualified Contractor" in certain instances to provide a repair estimate; and (5) the Claims Administrator has the ability to deny claims based on the existence of certain "Challenge Factors." Vullings's objections to the claims process amount to Vullings's desire that the mere assertion that a Claimant is entitled to relief under the Settlement is sufficient without any evidence whatsoever to support the claim.

Vullings's objection "ignore[s] the rule that a plaintiff in a civil lawsuit bears the burden of proving liability and damages in his or her case" and "[c]lass action status does not alter this basic principle." Mangone v. First USA Bank, 206 F.R.D. 222, 234 (S.D. Ill. 2001). While courts recognize that there are limits to what may be demanded of class members, "it is likewise true that class members are not entitled to an effortless claim process." In re WorldCom, Inc., 347 B.R. 123, 153 (Bankr. S.D.N.Y. 2006). Courts routinely uphold claims procedures that require class members to provide proof of ownership, submit photographs evidencing the alleged defect, and notarize claim forms. See In re WorldCom, Inc., 347 B.R. at 153 (upholding requirement that class members provide proof of ownership of property as they would not be entitled to relief if they did

not own the property); Pelletz v. Weyerhaeuser Co., 255 F.R.D. 537, 544 (W.D. Wash. 2009) (finding claims process that required class members to submit photographs to show existence of alleged defect was reasonable); Mangone, 206 F.R.D. at 235 ("Notarization of claim forms is routinely required in class action settlements to assure that the fund [is] share[d] among proper and deserving claimants . . . .").

Vullings also overstates the nature and scope of the Qualified Contractor requirement. Although Vullings seems to suggest that every Claimant will need to "seek out, hire, and likely pay for the services of a 'Qualified Contractor,'" this is not the case. A statement from a "Qualified Contractor is only required in those very limited circumstances in which (1) a Homeowner has made and paid for repairs prior to Notice of the Settlement and seeks reimbursement; or (2) a Homeowner seeks monetary compensation for Extensive Consequential Water Damage in the range of $2,500. Based on the nature of these claims (past repairs and the highest monetary payment available under the Settlement Agreement), it is not unfair to require further proof of a Homeowner's damages.

With respect to the Challenge Factors, Vullings again overstates the impact of these factors and ignores the lesser standard of proof necessary to recover under the Settlement Agreement. As an initial matter, it is worth noting that courts have upheld class action settlements that require a class member to provide the same proof that he or she would be required to provide to succeed at trial. See, e.g., In re WorldCom, Inc., 347 B.R. at 153 ("As class members would be forced to offer this proof at trial, it is not unreasonable to require it of them in a settlement . . . ."). Nevertheless, Class Members

in this case bear a significantly lighter burden than if they were required to prove their claims at trial.

Under the Settlement, members of the Homeowner Settlement Class qualify for monetary relief if they have certain defined damages that are "Reasonably Attributable" to an "Identifiable Condition." Rather than requiring Class Members to prove proximate cause, as they would be required to do at trial, the Settlement Agreement presumes—based solely on photographs—that the existence of an Identifiable Condition within a certain, defined proximity of visible consequential water damage means that the water damage is Reasonably Attributable to the Identifiable Condition; in other words, that the Identifiable Condition is more likely than not a substantial contributing cause of the water damage. As such, Class Members generally qualify for monetary relief based solely on the proximity of the Identifiable Condition to the water damage as shown by photographs taken by the Class Members. Thus, the claims process itself provides a significant benefit to the Class Members as it greatly lowers a Class Member's burden of proof.

Moreover, rather than placing the burden on Class Members to establish that their consequential water damages were caused by an Identifiable Condition, the Settlement essentially places the burden on MIWD to show that the damages were not caused by an Identifiable Condition through the use of a limited number of narrowly defined Challenge Factors. Vullings contends that the Challenge Factors are unreasonable, but she fails to recognize that they were negotiated at length with Class Counsel, who are experienced in litigating window defect claims, and were vetted by Plaintiffs' own experts. The Challenge Factors provide valid reasons why MIWD would not automatically be

responsible for certain, defined damages and Vullings provides no evidence to explain why the Challenge Factors are not reasonable or reliable.

Vullings also makes several arguments as to why the relief offered by the Settlement Agreement is allegedly insufficient. Specifically, she contends that: (1) Homeowners that qualify for a replacement sash should not be required to install the sash on their own; (2) the Class Period should be expanded to provide relief with respect to windows purchased prior to July 1, 2000 to include additional individuals in the Class; (3) a Cap Seal is an insufficient remedy; (4) homeowners that qualify for repairs should be able to select their own contractors to make the repairs at MIWD's cost; and (5) the consequential damage compensation is insufficient. Vullings's criticisms regarding the adequacy of the Settlement have no meaningful bearing on whether the Settlement should be approved: "The test is whether the settlement is adequate and reasonable and not whether a better settlement is conceivable." In re Vitamins Antitrust Litig., 2000 WL 1737867, at *2 (D.D.C. Mar. 31, 2000).

Moreover, a "settlement must be evaluated taking into account the uncertainty and risks involved in litigation and in light of the strength of the claims and possible defenses." Jenkins, 300 F.R.D. at 304 (internal quotation omitted). The court should consider "the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." Id. at 303; see also Brunson v. Louisiana-Pac. Corp., 818 F. Supp. 2d 922, 926 (D.S.C. 2011) (holding that a court should weigh "the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation"). Vullings fails to take into account that a settlement is a compromise, and she

instead takes the position that members of the Homeowner Settlement Class should be given greater benefits simply because she subjectively believes that the relief provided in the Settlement is insufficient. This is not a valid reason to strike down a class action settlement. The Settlement was negotiated by competent counsel through arms-length negotiations that were overseen by several mediators, including a judge of this court. The court is entitled to rely on the judgment of such counsel and should hesitate to "substitute its own judgment for that of counsel." See Nelson v. Mead Johnson & Johnson Co., 484 F. App'x 429, 434 (11th Cir. 2012).

The Settlement also provides homeowners with consequential damages, which are excluded by the express warranty, and provides relief to Subsequent Homeowners who previously had no rights under the express warranty. Thus, Vullings's argument that the consequential damages relief is inadequate has no merit because the Homeowners are not otherwise entitled to consequential damages under the warranty. Weighing "the immediacy and certainty of substantial settlement proceedings against the risks inherent in continued litigation" shows that the relief provided under the Settlement Agreement is fair, adequate, and reasonable and Vullings failed to show otherwise. See Brunson, 818 F. Supp. 2d at 926.

Vullings also misunderstands several portions of the Settlement Agreement. Vullings contends that the Settlement Agreement is objectionable because former homeowners that incurred costs to repair and/or replace windows are allegedly excluded from Class C of the Homeowner Settlement Class. However, Class C of the Homeowner Settlement Class does include former homeowners: "Class C Eligible Members are current or former Homeowners that paid for repairs or replacement of Windows as a

result of Consequential Water Damage prior to Notice." Former homeowners qualify for reimbursement of repair and replacement costs in the same manner as current homeowners. Vullings also objects to the Settlement on the grounds that "glass replacement is the only sufficient remedy for an insulated glass failure" but again misreads the Settlement Agreement. The Settlement Agreement specifically states that with respect to eligible Claimants, the glass in the referenced failed insulated glass units will be replaced. Lastly, Vullings contends that homeowners that reside in multiple unit properties should be able to recover damages under the Settlement Agreement. However, under the Settlement, governing bodies of multiple unit properties that own or are responsible for MIWD Product (i.e., where the windows are common elements of a multi-unit property), are members of the Homeowners Settlement Class and can seek monetary relief for consequential damages. This monetary relief can be used to make repairs.

After carefully considering Vullings's objections, the court overrules them.

C. D.R. Horton-Jacksonville & Ashton Burden, LLC

Ashton Burden, LLC, Ashton Orlando Residential, LLC, and Ashton Tampa Residential, LLC (collectively, "Ashton") and D.R. Horton, Inc.-Jacksonville ("D.R. Horton") filed objections with regard to the Contractor/Construction Settlement Class. Ashton and D.R. Horton's primary objection was based on their belief that in those instances where a Homeowner Class Member was permitted to bring a suit against a Contractor/Construction Class Member for installation errors, the Contractor/Construction Class Member was prohibited from bringing a related action for claims arising from those same installation errors. During the course of the Final

Approval Hearing, Class Counsel for the Contractor/Construction Plaintiff and Counsel for MIWD made clear that this was not the intent of the Settlement Agreement. Specifically, the Parties clarified—and the court finds—that in the event that Contractor/Construction Class Members, such as Ashton or D.R. Horton, receive claims from or are sued by Homeowner Settlement Class Members or any other party for claims relating to the installation of the Windows, the Contractor/Construction Class Members do not release or waive and expressly reserve their rights to file a related action to pursue any claim, including but not limited to breach of contract, breach of warranty, negligence, misrepresentation, express indemnity and/or implied indemnity, against any party, other than MIWD, involved in the installation of the Windows for such installation-related claims. Moreover, Contractor/Construction Class Members do not release or waive and expressly reserve any insurance coverage rights against any insurer of any party, other than MIWD, involved in the installation of the Windows, including but not limited to any defense or indemnity obligations the insurer may owe to Contractor/Construction Class Members as an alleged primary or additional named insured on any applicable policy of insurance. Notwithstanding any other term, MIWD shall bear no responsibility and is, and shall remain, released from any potential liability in this regard.

Based on this finding, Ashton and D.R. Horton have withdrawn their objections.

D. Mark Kidnie and Joanne Boudreau

The final objectors, Mark Kidnie ("Kidnie") and Joanne Boudreau ("Boudreau"), submitted a letter to the Court on June 29, 2015, seeking permission to treat their previously filed objection as an opt-out. Homeowner Class Counsel supported the application, and Counsel for MIWD took no position on the issue. The court finds that

Kidnie and Boudreau filed their objection on the final day of the opt-out period (May 28, 2015) and further finds that the objection consists primarily of objections that are personal to Kidnie and Boudreau. Moreover, many of the objections advanced are of the "the Settlement could be better" variety. As discussed above, the arms-length negotiations that lead to a settlement almost ensure that any settlement could be better.

The court may in its discretion permit a class member to opt-out from a class action settlement after the deadline for doing so has passed. There is no indication that the Parties have been prejudiced by Kidnie and Boudreau's late opt out nor is there any indication that Kidnie and Boudreau acted in bad faith. See In re Paine Webber Short Term U.S. Gov't Income Fund Sec. Litig., 1995 WL 498805, at *2 (S.D.N.Y. Aug. 22, 1995) (allowing late opt-out where it was not prejudicial to the defendant or the court and it was not made in bad faith). Therefore, the court allows Kidnie and Boudreau to opt-out of the Settlement and considers their objection withdrawn.

VIII. LATE REQUEST TO OPT-OUT OF THE SETTLEMENT

On June 30, 2015, Joseph B. Lambert sent an email to Homeowner's Class Counsel seeking to opt out of the Settlement. Lambert indicated that he did not find out about the lawsuit until June 25, 2015 and never received a notice. Lambert acted quickly to indicate his intention to opt out. Under the circumstances, the court finds that Lambert has shown good cause for his late opt-out, there is no indication that he has acted in bad faith, and the Parties will not be prejudiced by his late opt-out. Therefore, the court grants Lambert's request to be excluded from the Settlement Class.

IX. BINDING EFFECT

The terms of the Settlement, and of this Final Order and Judgment, shall be forever binding on Named Plaintiffs and all other Class Members, as well as their heirs, executors, administrators, representatives, agents, transferees, successors and assigns, and those terms shall have res judicata and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in this Action or are otherwise encompassed by the Release described in the Settlement.

X. RELEASE

The release language contained in the Settlement (including, but not limited to, Section A, Paragraph 64, Section K, and Section L of the Settlement) is expressly incorporated herein in all respects, is effective as of the date of this Final Order and Judgment, and forever discharges the Released Parties as set forth therein. As set forth in the Settlement Agreement, MIWD Product or MIWD's Product means any and all MIWD windows that are glazed with Glazing Tape and were manufactured or sold between July 1, 2000 and March 31, 2010. This includes those MIWD Products identified in the Long Form Notice at pages 4 through 8.

XI. PERMANENT INJUNCTION

All Class Members, and anyone acting on their behalf or for their benefit, who have not been timely excluded from the Settlement Class (by serving a properly executed request for exclusion postmarked by May 28, 2015 and as identified in the opt-out list

attached hereto as Appendix A or by order of this Court), are hereby permanently barred and enjoined from:

1. filing, commencing, asserting, prosecuting, maintaining, pursuing, continuing, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration, or administrative, regulatory or other proceeding in any jurisdiction, based on or relating to, directly or indirectly, in whole or in part, the claims and causes of action, or the facts and circumstances relating thereto, that have been or could have been set forth or raised in this Action or in any of the consolidated or non-consolidated actions related to these proceedings and/or the matters released as Released Claims in the Release sections of the Settlement Agreement (Section A, Paragraph 64, Section K, and Section L); and

2. organizing or soliciting the participation of any Class Members in a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit or other proceeding based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, that have been or could have been set forth or raised in this Action or in any of the consolidated or non-consolidated actions related to these proceedings and/or the matters released as Released Claims in the Release sections of the Settlement Agreement (Section A, Paragraph 64, Section K, and Section L).

Having considered all points relevant to the Settlement Agreement and this Final Order and Judgment, the Court finds that issuance of this permanent injunction is

necessary and appropriate in aid of the Court's jurisdiction over this Action and to protect and enforce its Final Order and Judgment in this complex Action.

XII. ENFORCEMENT OF SETTLEMENT

Nothing in this Final Order and Judgment shall preclude any action to enforce the terms of the Settlement. Nothing in this Final Order and Judgment precludes Named Plaintiffs or Class Members from participating in the Claims Program described in Section F of the Settlement Agreement if they are entitled to do so under the terms of the Settlement Agreement. The Parties may seek from this Court, pursuant to 28 U.S.C. § 1651(a), such further orders or processes as may be necessary to prevent or forestall the assertion of any of the Released Claims set forth in the Settlement, in any other forum, or as may be necessary to protect and enforce its Final Order and Judgment.

XIII. ATTORNEY'S FEES AND INCENTIVE PAYMENTS

The Settlement Agreement contemplates an award by the court for reimbursement of Attorneys' Fees and Costs in an amount up to $9,045,000 and service awards to the Named Plaintiffs of $5,000 each (but limited to one award per house/couple, where applicable). The court will issue a separate order addressing these fees, costs, and award requests.

XIV. NO OTHER PAYMENTS

The preceding paragraph of this Final Order and Judgment covers, without limitation, any and all claims for Attorneys' Fees and Costs, as well as expenses, representative fees, costs or disbursements incurred by Class Counsel or any other counsel representing the Named Plaintiffs or Class Members, or incurred by the Named Plaintiffs or the Class Members, or any of them, in connection with or related in any

manner to this Action, the settlement of this Action, the administration of such Settlement, and/or the matters released in the Release sections of the Settlement Agreement (Section A, Paragraph 64, Section K, and Section L). MIWD shall not be liable to Named Plaintiffs and the Class Members for any additional attorneys' fees, representative fees, or expenses in connection with this Action and this Settlement Agreement. All costs of court are taxed against the Parties incurring same.

XV. RETENTION OF JURISDICTION

The court has jurisdiction to enter this Final Order and Judgment. Without in any way affecting the finality of this Final Order and Judgment, this court expressly retains exclusive and continuing jurisdiction over the Parties, including the Settlement Class, and all matters relating to the administration, consummation, validity, enforcement and interpretation of the Settlement Agreement and of this Final Order and Judgment, including, without limitation, for the purpose of:

1. enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, and/or this Final Order and Judgment (including, without limitation, whether a person or entity is or is not a Class Member; whether claims or causes of action related to this Action are or are not barred or released by this Final Order and Judgment, whether persons or entities are enjoined from pursuing any claims against MIWD, etc.);

2. entering such additional orders, if any, as may be necessary or appropriate to protect or effectuate this Final Order and Judgment and the Settlement Agreement (including, without limitation, orders enjoining persons or entities from pursuing any

claims against MIWD), or to ensure the fair and orderly administration of the Settlement; and

3. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction over the Settlement Agreement, the Parties, and the Class Members.

XVI. NO ADMISSIONS

Neither this Final Order and Judgment nor the Settlement Agreement (nor any other document referred to herein, nor any action taken to negotiate, effectuate and implement the Settlement) is, may be construed as, or may be used as an admission or concession by or against MIWD as to the validity of any claim or any actual or potential fault, wrongdoing, or liability whatsoever. Additionally, neither the Settlement Agreement, nor any negotiations, actions, or proceedings related to them, shall be offered or received in evidence in any action or proceeding against MIWD in any court, administrative agency or other tribunal for any purpose whatsoever, except to enforce the provisions of this Final Order and Judgment and the Settlement Agreement. This Final Order and Judgment and the Settlement Agreement may be filed and used by MIWD or the Released Parties to seek an injunction and to support a defense of res judicata, collateral estoppel, estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

Certification shall be vacated and this Final Order and Judgment shall become null and void if the Final Order and Judgment is reversed in its entirety or the Settlement Agreement is disapproved or materially altered by any federal appellate court and

MIWD properly invokes its right to terminate this Settlement Agreement (pursuant to Sections T or X of the Settlement Agreement), in which event this Final Order and Judgment, the Settlement Agreement, and the fact that they were entered into shall not be offered, received or construed as an admission or as evidence for any purpose, including the "certifiability" of any class as further discussed in Section B of the Settlement Agreement. The Settlement Agreement itself, actions in conformance with the Settlement, and the other documents prepared or executed by any party in negotiating or implementing the Settlement called for by the Settlement Agreement, including any of the terms of any such documents, shall not be construed as an admission, waiver or estoppel by MIWD and shall not be offered in evidence in or shared with any party to any civil, criminal, administrative, or other action or proceeding without MIWD's express written consent.

XVII. DISMISSAL

This Action is dismissed. Furthermore, each and every individual case that was transferred to this court or consolidated before this court as part of this MDL is dismissed. (A list of all such cases is attached hereto as Appendix B and incorporated herein and made a part hereof for all purposes). Dismissal of the Released Claims is on the merits and with prejudice against Named Plaintiffs and all other Class Members, without fees or costs to any party except as otherwise provided in this Final Order and Judgment and the Court's separate order regarding attorney's fees and costs and class representative service awards.

XVIII. CONCLUSION

For the foregoing reasons, the court **CERTIFIES** the Settlement Class as laid out in the Settlement Agreement, **OVERRULES** the objections to the Settlement, **APPROVES** the Settlement as fair, reasonable, and adequate, and **DISMISSES** this Action with prejudice.

AND IT IS SO ORDERED.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

July 22, 2015
Charleston, South Carolina