

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

)	
ROBIN MINOR, on behalf of)	
herself and all others similarly situated,)	
)	
Plaintiff,)	CIVIL ACTION NO: 3:13-cv-07727
)	
vs.)	
)	
CONGOLEUM CORPORATION,)	
)	
Defendant.)	
)	

**ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL,
ENTERING JUDGMENT REGARDING SETTLEMENT, AND
DISMISSING ACTION WITH PREJUDICE**

WHEREAS, this matter has come before the Court pursuant to Plaintiffs' Motion for Final Approval of Class Action Settlement Class (the "Motion");

WHEREAS, the Court finds that it has jurisdiction over the Litigation;

WHEREAS, on May 19, 2015, this Court granted Plaintiffs' Motion for Preliminary Approval of the Settlement Agreement and Provisional Class Certification (the "Preliminary Approval Order");

WHEREAS, the Settlement Class conditionally certified in the Preliminary Approval Order has been appropriately certified for settlement purposes only;

WHEREAS, the Court held a hearing on September 17, 2015 to consider the fairness, reasonableness, and adequacy of the Settlement Agreement, has been advised that no objections or requests for exclusion to the Settlement were lodged;

WHEREAS, the Court has considered the Motion, the Settlement Agreement; and

WHEREAS, the Court is otherwise fully advised in the premises and has considered the record of these proceedings, the representations, arguments, and recommendations of counsel for the parties, and the requirements of law.

IT IS HEREBY ORDERED THAT:

I. FINAL APPROVAL OF THE SETTLEMENT AGREEMENT

The terms of the Settlement Agreement are approved. The settlement is in all respects fair, reasonable, adequate, and proper, and in the best interest of the Settlement Class. In reaching this conclusion, the Court has considered a number of factors, including an assessment of the likelihood that the Representative Plaintiff would prevail at trial; the range of possible recovery; the consideration provided to Settlement Class Members as compared to the range of possible recovery discounted for the inherent risks of litigation; the complexity, expense, and possible duration of litigation in the absence of a settlement; that fact that the Settlement was met with zero objections; and the stage of proceedings at which the settlement was reached. The proposed settlement was entered into by experienced counsel and only after extensive arm's-length negotiations, including through mediation supervised by Magistrate Goodman. The proposed settlement is not the result of collusion. It was entered into in good faith, is reasonable, fair, and adequate, and is in the best interest of the Settlement Class. Class Counsel and the Representative Plaintiff have fairly and adequately represented the Settlement Class.

2. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

Consistent with its Preliminary Approval Order, the Court hereby grants class certification of the following Settlement Class for purposes of final approval:

all persons, organizations, corporations and entities that submitted warranty claims in connection with DuraCeramic Floor Tile to Congoleum and were denied warranty coverage during the period January 1, 2010 through the notice date. Excluded from the Settlement Class is all end-

users who submitted a warranty claim that was honored prior to the Effective Date, Congoleum, Congoleum's employees, Congoleum's subsidiaries, the Judge to which this case is assigned and the immediate family of the Judge to which this case is assigned, those who previously accepted a repair remedy from Congoleum, and those who previously sued Congoleum claiming that their DuraCeramic Floor Tiles experienced failures and that lawsuit was resolved through a settlement or decision by a court or arbitrator.

Rule 23(a)

With respect to the proposed Settlement Class, this Court has determined that, for purposes of settlement of the litigation only, Plaintiffs have satisfied each of the Rule 23(a) prerequisites:

- The Class Members are so numerous that joinder of all members is impracticable. FED. R. CIV. P. 23(a)(1).
- There are questions of law or fact common to the Settlement Class. FED. R. CIV. P. 23(a)(2). Common questions of law or fact include: (1) whether the DuraCeramic was subject to a common design defect; (2) whether Congoleum failed to adequately disclose material facts related to DuraCeramic prior to sale; (3) whether Congoleum's conduct was unlawful; and (4) how any resulting monetary damages to consumers should be calculated.
- The claims of the Representative Plaintiff is typical of the claims of the Settlement Class. FED. R. CIV. P. 23(a)(3). Plaintiffs have alleged that Congoleum sold defective products and failed to disclose (or to adequately disclose) material facts to members of the Settlement Class.
- The Representative Plaintiff will fairly and adequately protect the interests of the Settlement Class. FED. R. CIV. P. 23(a)(4). The Representative Plaintiff does not have interests that are antagonistic to the Settlement Class and is fully aligned with the interests of

other Settlement Class Members. Accordingly, the Court finds that the Representative Plaintiff has satisfied Rule 23(a) for purposes of evaluating the settlement.

Rule 23(b)(3)

The Court also "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." FED. R. CIV. P. 23(b)(3).

Here, Settlement Class Members share a common legal grievance arising from Congoleum's alleged failure to disclose or adequately disclose material facts about DuraCeramic. Common legal and factual questions predominate over any individual questions that may exist for purposes of this settlement, and the fact that the parties are able to resolve the case on terms applicable to all Settlement Class Members underscores the predominance of common legal and factual questions for purposes of this settlement. In concluding that the Settlement Class should be certified pursuant to Rule 23(b)(3) for settlement purposes, the Court further finds that a class action is superior for purposes of resolving these claims because individual class members have not shown any interest in individually controlling the prosecution of separate actions. Moreover, the cost of litigation likely outpaces the individual recovery available to any Settlement Class Members. See FED. R. CIV. P. 23(b)(3)(A). Accordingly, the Court finds that, for purposes of this settlement, Rule 23(b)(3) has also been satisfied.

3. NOTICE

The Court finds that the notice program (i) satisfied the requirements of Rule 23(c)(3) and due process; (ii) was the best practicable notice under the circumstances; (iii) reasonably apprised Class Members of the pendency of the action and their right to object to the proposed

settlement or opt out of the Settlement Class; and (iv) was reasonable and constituted due, adequate, and sufficient notice to all those entitled to receive notice. Additionally, the Class Notice adequately informed Settlement Class Members of their rights in the litigation. See FED. R. CIV. P. 23(c)(2).

4. DISMISSAL WITH PREJUDICE

The Court hereby enters a judgment of dismissal of the claims by the Settlement Class Members, with prejudice, except as specified in this order, and except as provided in the Court's order related to Plaintiffs' motion for Class Counsel fees and expenses and an incentive award. The Clerk of Court is directed to close this docket.

5. RELEASES AND FURTHER RELIEF

Pursuant to the Settlement Agreement, the Representative Plaintiff and Settlement Class Members forever release, discharge, and covenant not to sue the Released Persons regarding any of the Released Claims. With respect to all Released Claims, the Representative Plaintiff and the Settlement Class Members expressly waive and relinquish the Released Claims to the fullest extent permitted by law. These releases apply even if the Representative Plaintiff or Settlement Class Members subsequently discover facts in addition to or different from those which they now know or believe to be true.

6. CONTINUING JURISDICTION

Without any way affecting the finality of this Order, the Court retains jurisdiction over the Parties, including all Settlement Class Members, to construe and enforce the settlement for the mutual benefit of the Parties. The Court retains jurisdiction to enter any orders necessary or appropriate in implementing the Settlement Agreement, including but not limited to orders enjoining Settlement Class Members from prosecuting Released Claims.

Consistent with the Settlement Agreement, it is further ordered that Settlement Class Members are permanently barred from initiating, asserting, or prosecuting any Released Claims against any of the Released Persons in any federal or state court in the United States or any other tribunal.

IT IS SO ORDERED.

Dated: 9/18/15



Honorable Peter Sheridan
District Court Judge