

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

In re:

**ALLURA FIBER CEMENT SIDING
PRODUCTS LIABILITY LITIGATION**

MDL No. 2886

Case No. 2:19-mn-2886-DCN

CLASS ACTION SETTLEMENT AGREEMENT

This Agreement is made between the Named Plaintiffs, on behalf of themselves and a proposed Settlement Class, and Plycem USA, LLC and Elementia USA, Inc. The purpose of this Agreement is to settle and compromise the Litigation and to release the Released Persons as set forth herein. The Agreement is contingent upon the Court’s certification of the Settlement Class and approval of the Settlement under Federal Rule of Civil Procedure 23. (Capitalized terms in this Agreement have specific definitions, which are provided in Section 1.)

1. DEFINITIONS.

- 1.1. “Agreement” means this Agreement and includes all its Exhibits.
- 1.2. “Adjudicator” means the person responsible for determining whether a Claimant has an Eligible Claim and, if so, the extent of the Claimant’s Qualifying Damage and any Replacement Area. The Adjudicator may be an employee of the Claims Administrator if agreed to by the Parties.
- 1.3. “Claimant” means an individual who submits a claim under this Agreement by submitting a Claim Form and Claims Package to the Claims Administrator.
- 1.4. “Claims Administrator” means the entity responsible for administering the Class notice plan, determining if the Claimant has submitted a complete Claims Package, and administering the Settlement as described in this Agreement.
- 1.5. “Claim Form” means the form required for a claims submission, attached as Exhibit 1.
- 1.6. “Claims Package” means a completed Claim Form with all requisite supporting information and documentation.
- 1.7. “Claims Program” means the claims administration process set forth in Section 7.

- 1.8. “Claims Submission Period” means the period of time from the Effective Date to 24 months after the Effective Date (inclusive).
- 1.9. “Class Counsel” means the law firms appointed by the MDL Court to represent the Settlement Class.
- 1.10. The “MDL Court” or “Court” means the United States District Court for the District of South Carolina.
- 1.11. “Date of Denial” means the date the denial notice is sent if by email or 3 days after mailing if sent via USPS.
- 1.12. “Effective Date” means either:
 - 1.12.1. the date of the Final Approval Order of this Agreement by the Court if no objections are timely filed; **OR**
 - 1.12.2. the expiration date of the time for filing notice of any appeal from the Final Approval Order by the Court if objections are filed but no appeal is filed; **OR**
 - 1.12.3. if an appeal is filed, the latest of: (a) the date of final affirmance of the Final Approval Order; **OR** (b) the expiration of the time for a petition for writ of certiorari to review the Order if affirmed and, if certiorari is granted, the date of final affirmance of the Order following review pursuant to that grant; **OR** (c) the date of final dismissal of any appeal from the Order or the final dismissal of any proceeding on certiorari to review the Order.
- 1.13. “Elevation” means one continuous section of a structure typically separated from another Elevation by an outside corner.
- 1.14. “Eligible Claim” means a claim that the Adjudicator determines qualifies for relief under this Agreement.
- 1.15. “Final Approval Hearing” means the hearing required by Federal Rule of Civil Procedure 23(e)(2).
- 1.16. “Final Approval Order” means the order to be entered by the Court following the Final Approval Hearing.
- 1.17. “Lead Counsel” means the principal counsel appointed by the Court to represent the Parties.

- 1.18. “Litigation” means MDL 2886 and all actions that were transferred to MDL 2886.¹
- 1.19. “Named Plaintiffs” means Plaintiffs Amanda Lowe, Krista Krouse, Christopher Krouse, Donna Johns, Jameson D. Storm, Andrew Harmel, Antonetta Luongo, and Robert Severance.
- 1.20. “Opt-Out Form” means the form or letter substantially in the form agreed to by the Parties, by which Settlement Class Members may opt-out of the Settlement Class, a copy of which is attached as Exhibit 2.
- 1.21. “Parties” means the Named Plaintiffs and Plycem.
- 1.22. “Plycem” means: Plycem USA, LLC and Elementia USA, Inc.
- 1.23. “Preliminary Approval Order” means the Order of Preliminary Approval of Settlement that the Parties will ask the Court to enter, a copy of which is attached as Exhibit 3, and also the final Preliminary Approval Order entered by the court.
- 1.24. “Qualifying Damage” means cracking, bowing, shrinking, warping, breakage, or gapping (greater than 3/16”) in the Siding and, if available, property damage resulting from such failed Siding, including damage under the weather barrier.
- 1.25. “Replacement Area” means the amount in square feet of the home for which the Adjudicator determines a Claimant is entitled to compensation under the terms of this Agreement.
- 1.26. “Released Persons” is defined in Section 15.1.
- 1.27. “Releasing Parties” is defined in Section 15.2.
- 1.28. “Settlement,” as used in this Agreement, refers generally to the Agreement and the process it creates.
- 1.29. “Settlement Class” means all individuals or entities who, as of the Effective Date, own a single-family house in the United States on which the Siding is installed. Excluded from the Settlement Class are:
 - 1.29.1.1. All persons who timely opt-out of this Settlement under Federal Rule of Civil Procedure 23;
 - 1.29.1.2. Owners of multi-family and commercial buildings;

¹ Plaintiffs’ cases, which involve siding that does not meet the Class Definition, will be negotiated separately on a non-classwide basis.

- 1.29.1.3. Plycem employees; and
- 1.29.1.4. The Judge to whom this case is assigned and any member of the Judge's immediate family.

1.30. "Settlement Class Member" means a member of the Settlement Class who has not opted out. Where the home with Siding is owned jointly, the Settlement Class Member shall comprise all persons on the title to the home. A co-owner may make a Claim or opt-out on behalf of the other owners, where he/she has the authority to do so. Otherwise, each owner must join in any submission of a Claim or opt-out.

1.31. "Settlement Fund" means the fund established under this Agreement.

1.32. "Siding" means Allura-brand fiber cement siding manufactured in Plycem's plant located in White City, Oregon, between February 1, 2014 and May 7, 2014 or manufactured in Plycem's Roaring River plant between February 1, 2014 and February 18, 2015, subject to the presumptions established in Section 7.11, below.

2. RECITALS.

- 2.1. Plaintiffs Dominic and Amanda Lowe filed a putative class action against Plycem in August of 2018 in the South Carolina Court of Common Pleas (Berkeley County) asserting claims for damage to their home related to the Siding.
- 2.2. In November 2018, Plycem removed the Lowes' action to the United States District Court for the District of South Carolina. Following removal, eleven additional cases were filed in federal courts in ten other states. Specifically, plaintiffs filed suits in: 1) the Western District of North Carolina; 2) the Southern District of Iowa; 3) the District of Kansas; 4) the Southern District of Ohio; 5) the Northern District of Georgia; 6) the District of Minnesota; 7) the District of Massachusetts; 8) the Northern District of Florida; 9) the District of Kentucky; and 10) the Northern District of New York.
- 2.3. All of these actions were filed against Plycem USA, LLC and Elementia USA, Inc., among others. In each of these actions, Plaintiffs alleged that Allura fiber cement siding is defective and that they have suffered property damage due to the alleged failure of the Siding to adequately perform, causing water and moisture to infiltrate their homes and damaging other portions of their homes, including framing, insulation, drywall, and interior components. Plycem disputes these allegations.
- 2.4. Plaintiffs sought to recover damages for themselves and for a class of homeowners who owned buildings on which the allegedly failing Siding was installed.
- 2.5. Plycem filed motions to dismiss and motions to compel arbitration in a number of these actions, which Plaintiffs opposed.

- 2.6. In January of 2019, one plaintiff filed a Motion to Transfer Actions to the Southern District of Ohio Pursuant to 28 U.S.C. § 1407, with the Judicial Panel on Multidistrict Litigation (“JPML”). Plycem opposed the Motion to Transfer, citing to variations in the products at issue in each case and state law. Plycem further contested Ohio as the moving Plaintiff’s proposed venue. A contested hearing was held before the JPML on March 28, 2019. On April 2, 2019, the JPML transferred all of the actions to the District of South Carolina, under the MDL name *In re: Allura Fiber Cement Siding Products Liability Litigation*, MDL No. 2886.
- 2.7. The MDL Court set hearings in June and December 2019 during which the Parties presented the merits of their claims and defenses. The Parties also discussed their intent to explore settlement of all claims in an effort to avoid protracted litigation. The Parties agreed to exchange information about the plaintiffs’ claims, and the strength of Plycem’s defenses to those claims, including the potential impossibility of securing class action treatment.
- 2.8. The Court stayed certain deadlines in the actions, with the understanding that it would supervise the Parties’ discussions toward settlement. The Parties subsequently participated in several all-day, in-person mediation sessions in Charleston, South Carolina, and also an in-person meeting in Washington, D.C., without a mediator.
- 2.9. Now, the Named Plaintiffs have evaluated the time and expense that would be necessary to prosecute these cases to final judgment, the likely delays before any judgment could be entered, and the inherent uncertainty of predicting the outcome of any complex litigation such as this. Based on their evaluation, the Named Plaintiffs have concluded that further proceedings are likely to be protracted, complex, expensive, and could have an uncertain outcome.
- 2.10. Without conceding any lack of merit of any of their claims, and assuming that the Court will certify a national settlement class, the Named Plaintiffs have concluded that it is in the best interests of the Settlement Class Members to settle these actions pursuant to the terms of this Agreement. They have concluded that this Agreement is fair, reasonable, and adequate to the Named Plaintiffs and the Settlement Class.
- 2.11. For its part, Plycem denies all allegations of fault, wrongdoing, or liability made by any plaintiff in a lawsuit, including the Named Plaintiffs. Plycem does not admit that its Siding is or was defective in any way, or caused any property damage.
- 2.12. While denying any fault, wrongdoing, or liability, and without conceding any infirmity in its defenses, Plycem considers it desirable to enter into this Agreement in order to avoid further expense, to dispose of burdensome and protracted litigation, and to avoid the uncertain outcome of proceeding with the Litigation.

2.13. Therefore, Plycem and the Named Plaintiffs, acting for themselves and on behalf of the Settlement Class, have reached this Agreement with the intent to conclude this Litigation on fair terms.

3. CLASS CERTIFICATION MATTERS.

3.1. **Class treatment.** The Parties will request the Court to certify the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3).

4. INVESTIGATION BY CLASS COUNSEL.

4.1. Since at least 2018, Class Counsel have conducted an extensive investigation of the facts and circumstances related to the allegations in the complaints filed in the MDL, including consulting experts, interviewing potential witnesses, conducting inspections of the properties of certain Named Plaintiffs and other Settlement Class Members, investigating Plycem's manufacturing operations, reviewing documents produced by Plycem, including warranty claims, and researching the law applicable to liability, damages, jurisdiction, and procedure.

4.2. As part of their evaluation, Class Counsel received from Plycem: 1) formulation logs for the Siding; 2) sales data for the years the Siding was sold; 3) inspection reports related to the Siding; 4) warranty claim files; 5) summary warranty claim information; 6) third-party audit reports and testing data.

4.3. Class Counsel believes the information received was sufficient to enable them to make a reasonable evaluation of the strengths and weaknesses of the claims of the Named Plaintiffs.

4.4. Plycem agrees to identify to Class Counsel all persons to whom it is aware the Siding was distributed (including distributors, wholesalers, retailers, builders, and any others) for the purpose of Notice.

4.5. Plycem further agrees to provide additional information, as necessary, upon request by Class Counsel. Plycem reserves the right to object to any such additional requests for information. The Parties agree that in the event there is a dispute as to the necessity of the requested information, they will conduct a meet and confer. Should the Parties not resolve the dispute, they may seek resolution from the Court.

5. CONSIDERATION TO SETTLEMENT CLASS MEMBERS.

5.1. The Parties will establish a Settlement Fund under this Agreement. The Settlement Fund will be maintained, for the benefit of Settlement Class Members, at a chartered bank or other financial institution capable of serving in this role. Plycem and Class Counsel will jointly agree on the institution. The Claims Administrator will have the right to issue checks out of the Settlement Fund.

- 5.2. Plycem agrees to make payments into the Settlement Fund, as follows:
 - 5.2.1. \$2 million, within 15 days of entry of the Preliminary Approval Order;
 - 5.2.2. \$4 million, by March 1, 2021;
 - 5.2.3. \$4 million by September 15, 2021; and
 - 5.2.3. \$2.5 million, by January 15, 2022.
- 5.3. Plycem has no obligation to make any other payments except as set forth in this Agreement.
- 5.4. The Settlement Fund is intended to be treated as a “qualified settlement fund” for federal income tax purposes, pursuant to Treas. Reg. § 1.468B-1.
- 5.5. The Settlement Fund will be used by the Claims Administrator to pay Eligible Claims. It will also be used to pay the costs of giving notice to Settlement Class Members, the costs of claims administration, including the Claims Administrator’s own operations and the fees of the Adjudicator. It will also be used to pay any award of attorneys’ fees and costs, and service fees to the Named Plaintiffs that are ordered by the Court.
- 5.6. No money may be drawn from the Settlement Fund prior to the Effective Date except to cover the cost of Notice and the Claims Administrator’s preliminary expenses. If this Agreement is not ultimately approved by the Court, neither the Named Plaintiffs, nor any putative Settlement Class Member, nor Class Counsel, or any of them, will have the obligation to reimburse Plycem for any funds already expended on the costs of Notice and the Claims Administrator’s preliminary expenses. Unspent money in the Fund must be returned to Plycem.
- 5.7. The Claims Administrator will produce quarterly reports on the operation of the Settlement Fund and provide them to Plycem and Lead Counsel.
- 5.8. The fees and expenses of the Claims Administrator and Adjudicator will be subject to Court review and approval prior to payment.

6. TREATMENT OF PAST CLAIMS MADE AGAINST PLYCEM; CLAIMS OUTSIDE THE SCOPE OF THIS AGREEMENT.

- 6.1. The following types of claims are not eligible for relief under this Agreement:
 - 1) claims that have been resolved with a final judgment or dismissal, whether or not favorable to the Claimant; 2) claims that have been settled as evidenced by a written release of Plycem; 3) claims for which a Settlement Class Member has received compensation, such as by a check that has been cashed; 4) claims for which a Settlement Class Member has received replacement siding from Plycem or any third party; 5) claims by owners of homes in the Nelliefield neighborhood

located in Berkeley County, South Carolina, and owners of homes constructed by True Homes in North Carolina, who have received or agreed to receive repairs by Plycem or True Homes or received material or a cash payment from Plycem or True Homes.

- 6.2. Notwithstanding Section 6.1, a Settlement Class Member is not precluded from submitting for consideration a new claim that is for Siding that was not the subject of a prior claim that was resolved or settled.
- 6.3. To assist the Claims Administrator and Adjudicator in applying Sections 6.1 and 6.2, Plycem will provide them with a list of all Settlement Class Members who submitted a prior claim, and a statement of the status of their claims. Plycem must produce this list within 14 days of the Effective Date. Plycem will cooperate with the Claims Administrator in providing additional information as needed.
- 6.4. Nothing in this entire Agreement diminishes or extinguishes any rights that any person may hold under a warranty issued by Plycem as to any claims or portion thereof that are not resolved under the terms of this Settlement.

7. CLAIMS PROGRAM PROCEDURES

- 7.1. The Claims Program will commence in accordance with the terms and conditions of this Agreement no later than 14 days after the Effective Date. To the extent not set forth herein, the Claims Administrator will establish all policies and procedures involved in processing claims under the terms of this Agreement, with input from Class Counsel and Plycem, but subject to the Court's oversight.
- 7.2. The Claims Administrator will maintain a full file of each claim including a record for damages to be paid under this Agreement. In this database, the Claims Administrator will provide Plycem and lead counsel with reports and information about each claim upon request.
- 7.3. All claims for damages to be paid under the Agreement must be submitted by filing a Claims Package with the Claims Administrator through the Settlement web site, by email, or via U.S. Mail or other postal service.
- 7.4. To be considered for payment, a claim must be received—either by Internet or U.S. Mail—by 6 p.m. on the final day of the Claims Submission Period. Any Claim Package received by this deadline will be reviewed by the Claims Administrator so long as it contains the basic documentation and information required by the Claim Form. The Claims Administrator will reject any Claim Package that does not meet this standard regardless of claimant circumstances.
- 7.5. **Claims Package requirements.** A Settlement Class Member must submit a complete Claims Package, which shall include the Claim Form and all supporting documentation and information listed on the Claim Form. The Claim Form is attached as Exhibit 1, to this Agreement and provides a detailed explanation of all required information and documentation, but generally requires the following:

- 7.5.1. **Biographical information:** Information regarding the Claimant.
- 7.5.2. **Claimant verification information:** Information to prove that the Claimant is entitled to assert a Claim for the house at issue—including (1) proof of ownership of the house on the date that the Claim is filed or (2) a valid assignment of the Claim to the Claimant (which is only permitted in this Agreement under Section 7.20).
- 7.5.3. **House information:** Information regarding the house on which the Siding was installed, including the identity and size of Elevations for which a Claim is made, and the date the Siding was installed.
- 7.5.4. **Photos of house:** An “overall” photo of any Elevation for which a Claim is made. (See the detailed photo rules below, Section 7.7.)
- 7.5.5. **Photos of damage:** From each Elevation, “detail” photos of any Qualifying Damage sufficient to identify how much Qualifying Damage is present on that Elevation. (See the detailed photo rules below, Section 7.7.)
- 7.5.6. **Proof of product identity:** Sufficient evidence to prove that the Siding is installed in the home. The Parties expect that most Class Members will establish the identity of the Siding by photos or purchase documents, and proof of installation date.
- 7.6. **Optional Claims Package contents.** Claims Packages may also include, as additional evidence to assist with adjudicating the Claim any other document or material the Claimant believes will assist with adjudicating his or her claim, including reports from building professionals.
- 7.7. **Detailed photo rules.** Each Settlement Class Member who submits a Claims Package must make an effort to submit photos of sufficient quality to establish the condition of the Siding, and any and all property damage, so that the claim can be evaluated. The Settlement Class Member must provide one or more photos showing each Elevation from a distance sufficient to show the entire structure, and a minimum of two photos of each claimed Elevation showing the condition of the Siding and any and all property damage. The Settlement Class Member must identify exactly what location is depicted in each photo. It is further advisable that Claimants include in each photo contain a standard sized object that can be used by the Administrator to verify the size of each elevation such as a ruler, yardstick, or other alternative object.
- 7.8. **Attestation.** In submitting a claim, Claimants must also declare under penalty of perjury that the information submitted is true and that the photos submitted are typical of the damage for which the Claimant seeks a remedy. Claimants must agree to cooperate with the Claims Administrator, and permit inspection of the house.

7.9. **Claimant's request for compensation.** On submitting a Claims Package, the Claimant must elect one of the three Options, as set forth in Section 9.

7.10. **Claims Administrator's role and responsibilities.**

7.10.1. After a claim is submitted:

7.10.1.1. The Claims Administrator must make the Claims Package—whether deemed sufficient or insufficient—available to Lead Counsel and Plycem on a private, secure platform within 10 days of a request by Lead Counsel or Plycem.

7.10.1.2. The Claims Administrator must determine whether the Claimant is a Settlement Class Member as defined by this Agreement, *i.e.*, whether the Claimant owns a home with the Siding installed. If a Claimant disagrees with the Claims Administrator's determination of his inclusion in the Settlement Class definition, the Adjudicator will resolve the dispute.

7.11. **Proof of Siding.**

7.11.1. A Claimant is presumed to have Siding on his/her home if:

7.11.1.1. the Claimant's Siding was manufactured at the Roaring River plant and installed on the Claimant's home between February 18, 2014 and September 1, 2015; or

7.11.1.2. the Claimant's Siding was manufactured at the White City plant and installed between February 18, 2014 and September 1, 2014.

7.11.2. Plycem may rebut the presumption by using identifying marks on the back of the boards.

7.11.3. Claimant may also rebut the presumption of finding that the claimed product is not the Siding with any additional information or documentation.

7.12. If the Claims Administrator determines that the Claimant owns a home clad with Siding, the Claims Administrator must then determine if the Claims Package contains the additional documentation necessary for the Adjudicator to make a decision as to the claim's eligibility under this Agreement. The Claims Administrator does not adjudicate the claim at this stage; it merely determines whether the Claims Package is sufficiently complete for the Adjudicator to

determine whether the Claimant has an Eligible Claim and if so the extent of Qualifying Damage and Replacement Area.

- 7.12.1. **Opportunity to cure Claims Package.** Every Claimant will have no more than two opportunities to cure a deficient but otherwise timely Claims Package.
- 7.12.2. If the Claims Administrator determines that a Claims Package is deficient, the Claims Administrator must send a first deficiency letter (by U.S. Mail and e-mail) to the Claimant notifying the Claimant of that fact. The letter to the Claimant must explain why the Claims Package was deficient, explain what additional material is needed, and inform the Claimant of his or her opportunity to cure the deficiency.
- 7.12.3. If the Claimant does not resolve the identified deficiencies within 15 days of the first deficiency letter, the Claims Administrator must send an additional deficiency letter. The follow-up deficiency letter must advise the Claimant that if the Claimant does not resolve the identified deficiencies within 30 days from the date of the letter, the claim will be denied. Final denial letters must be provided to Lead Counsel within 10 days of any request for copies of same.
- 7.13. **Claims Administrator's other Claims Package duties.** The Claims Administrator may contact the Claimant in connection with his or her processing and evaluation of the Claims Package, including by telephone and e-mail. It must document all communications (whether written, by e-mail, or by telephone) in the central database until the last claim is fully concluded under this Agreement.
- 7.14. **Right to deny for fraud.** After 14 days' written notice to Claimant and anyone acting on the Claimant's behalf, the Adjudicator has the authority to deny any claim where it believes the Claimant or any person acting on the Claimant's behalf has engaged in fraudulent practices, including but not limited to submitting false claims or documentation. The Adjudicator may also take actions to prevent such practices in the future. The Adjudicator must inform the Claimant and anyone acting on Claimant's behalf.
- 7.15. **No other remedy than this Agreement.** The Adjudicator may award only relief provided for by this Agreement and may not award any other relief with respect to any claim governed by this Agreement.
- 7.16. **Claim payments.** The Claims Administrator must make the initial payment of the award by the Adjudicator within 14 days of final adjudication. Any additional payment due under the award will be paid by the Claims Administrator within 14 days of satisfactory proof of completion for repair work has been reviewed and determined to be sufficient.
- 7.17. **Audits of Claims Administrator or Adjudicator; disputes over operations.**

7.17.1. The Claims Administrator's and Adjudicator's activities and records will always be open to audit by the Parties. In the event any Party believes that the Claims Administrator or Adjudicator is not properly applying the terms of this Agreement, or if there is a question concerning the application of this Agreement generally, or if there is a question with respect to an individual claim:

7.17.1.1. The objecting Party's counsel must notify counsel for the other Parties in writing.

7.17.1.2. The Parties must meet within 30 days of the written notification to resolve the concern.

7.17.1.3. If the Parties are not able to resolve the concern, the Court will do so.

7.17.1.4. Any obligation to provide payment for a disputed claim will be suspended until 30 days after the dispute is resolved. If a payment is owed, it is to be paid out within 30 days after resolution.

7.17.2. Quarterly, beginning within 90 days of the Effective Date, the Claims Administrator must file a report with the Court under seal. This report must identify each claim, whether the claim was accepted or denied, and payment provided, if any. The report must also be made available to Lead Counsel and Plycem. The last report should be served when the Claims Submission Period is closed and all pending claims have been resolved.

7.18. **Expedited claims.** In situations in which a Claimant has advertised his or her home for sale, or where the Claimant alleges property damage to the structure requiring immediate repair, the Claims Administrator and the Adjudicator must use best efforts to expedite the claim.

7.19. **Repeat claims.** A Claimant whose claim is denied may submit a new claim within six months if the Claimant alleges additional damage. The other terms of this Agreement—including the requirement that all claims must be submitted within the Claims Submission Period—still apply.

7.20. **Limited assignment of claims; assignment when house is sold.** Settlement Class Members may not assign their claims, except as follows: When a house covered by this Agreement is sold, and if there is no active Claim pending, then any rights the seller has as a Settlement Class Member automatically pass to the purchaser. If there is an active claim pending, that claim belongs to the seller. The seller may also retain the right to bring a future claim for himself or herself by making a written agreement with the purchaser that specifically describes this Agreement. Only one person—the seller or the purchaser—may recover under this Agreement, and any Siding compensated for under the terms of this Agreement shall not be the subject of any future claim.

7.21. **Confidentiality.**

7.21.1. All information relating to the Agreement, including Claimants' claims and the operations of the Claims Administrator and the Adjudicator, is confidential and proprietary. Only Plycem and its counsel, auditors, insurers and reinsurers, Class Counsel, the Claims Administrator, the Adjudicator, and the Court will have access to this information, and only as necessary to carry out this Agreement. A Claimant may have access to his or her own claim file.

7.21.2. The Claims Administrator must assign a manager (and disclose the identity of this person to Class Counsel) to oversee the protection and appropriate management of information, and must review its internal system to manage the protection of information to ensure performance with this Agreement.

7.21.3. The Claims Administrator must take security measures to prevent unauthorized access to information it obtains under this Agreement, as well as to prevent its loss, destruction, falsification, or leakage.

7.21.4. If the Claims Administrator outsources the handling of any information, the Claims Administrator must ensure that outsourced companies take steps to ensure appropriate management of the information to prevent leaks of personal or confidential information and prohibit use of information for any other purpose.

7.21.5. The Claims Administrator must respond immediately with appropriate measures when issues arise related to confidentiality of a Settlement Class Member's information.

7.22. **No liability for contractors' wrongful conduct.** Plycem and Class Counsel will not have any liability for claims of wrongful or negligent conduct by the Claims Administrator, the Adjudicator, or any of their agents, employees or contractors.

8. CALCULATING QUALIFYING DAMAGE AND REPLACEMENT AREA.

8.1. The Adjudicator will be responsible for determining:

8.1.1. The Elevations of a house, and the size of each;

8.1.2. Whether Qualifying Damage exists on each Elevation and the amount of any such Qualifying Damage in square feet;

8.1.3. The extent, if any, of the Replacement Area; and

8.1.4. Whether any installation error predominantly caused the Qualifying Damage.

- 8.2. **“Elevation.”** The identity and size of each Elevation will be determined under this procedure:
- 8.2.1. Each house has at least four Elevations.
 - 8.2.2. An Elevation is defined in Section 1.12.
 - 8.2.3. Typically, one Elevation is separated from another by an outside corner. An outside corner is a corner where the angle (measured through the air, not through the house or other structure) is greater than 180 degrees.
 - 8.2.4. All walls inside two outside corners typically constitute a single Elevation.
 - 8.2.5. The Parties recognize that it is impossible to provide a definition of “Elevation” to cover all varieties of irregular shapes of homes, and there may be instances where the preceding definition of “Elevation” does not fit and cannot apply.
 - 8.2.5.1. With respect to such instances of irregular construction, in the event the Settlement Class Member does not agree with the Adjudicator’s definition, the Settlement Class Member may discuss the matter with the Adjudicator, who must then make a good faith decision, balancing industry norms and the need to preserve adequate money in the Settlement Fund for other Settlement Class Members.
 - 8.2.6. The Elevation facing the street should be considered Elevation #1, with further Elevations being identified clockwise around the house.
 - 8.2.7. The Adjudicator may make his/her determination of an Elevation’s size based on estimates. Photographic evidence, board counts, and architectural plans all may be used as evidence of the size.
 - 8.2.8. The size of each Elevation should be reported in square feet.
- 8.3. **“Replacement Area.”** Replacement Area will be determined as follows:
- 8.3.1. For each Elevation where Qualifying Damage exists on 30% or more of the entire Elevation, then that Elevation’s Replacement Area will be the entire Elevation.
 - 8.3.2. For each Elevation where Qualifying Damage exists on less than 30% of the entire Elevation, then that Elevation’s Replacement Area will be limited to the square footage containing Qualifying Damage.
 - 8.3.3. The Adjudicator should report the Replacement Area on each Elevation, in square feet.

- 8.4. **“Installation.”** If the Adjudicator determines that installation errors predominantly caused any claimed damage, the Adjudicator shall deny that portion of the claim as to Siding not properly installed. The Claimant shall have an adequate opportunity to rebut any evidence of improper installation.
- 8.5. In determining whether Qualifying Damage was predominantly caused by installation errors, the Adjudicator may evaluate the following:
 - 8.5.1. Gapping;
 - 8.5.2. Clearance at base of house;
 - 8.5.3. If face nailed, the use of improper placement of fasteners;
 - 8.5.4. Overdriven nails occurring near Qualifying Damage;
 - 8.5.5. Improper or missing roof to wall transition flashing;
 - 8.5.6. Failure to install the Siding over a planar, rigid substrate; and
 - 8.5.7. Inadequate thickness of paint on exposed surfaces.

The Parties have reached an agreement, a copy of which is attached as Exhibit 4, on what specifically may be considered as a disqualifying installation error, and will provide such guidance to the Adjudicator.

9. COMPENSATION.

- 9.1. The Claimant must select one of three compensation options when submitting his/her Claims Package. Claims will be paid in order of submission.

9.1.1. Option 1: “Replacement and Repair.” The Class Member electing this

Option will receive:

- 9.1.1.1. \$1 per square foot towards the cost of primed fiber cement boards equal to the size of the Replacement Area;
- 9.1.1.2. \$4.75 per square foot of Replacement Area to contribute to additional repair costs, including installation labor, paint, home wrap, trim, and all other repairs and/or incidental work (“Additional Costs”);
- 9.1.1.3. an additional \$200 if the total Replacement Area is 20 boards or fewer; and

- 9.1.1.4. a paint allowance of \$1.00 per square foot for the entire Elevation where the Replacement Area is less than 30% of the Elevation.
- 9.2. This is the procedure for this Option 1:
 - 9.2.1. Within 30 days after the adjudicator has made the determinations set forth in Section 8.1, the Claims Administrator will pay 30% of the amount of Additional Costs described above.
 - 9.2.2. The Settlement Class Member must then perform and submit proof of repairs within nine (9) months of the issuance of the initial payment, including replacing the Siding that was determined to be in the Replacement Area.
 - 9.2.2.1. In the event a Claimant demonstrates good cause, as determined by the Adjudicator, for being unable to complete repairs within nine (9) months, the Adjudicator may, in his/her discretion consider proof of repair within a twelve (12) month period following the initial payment.
 - 9.2.2.2. In the event a Claimant does not submit proof of repairs within the nine (9) month period, or if extended at the discretion of the Adjudicator for good cause shown, within the twelve (12) month period, the Claimant will waive and forfeit any claim for payment of repairs. The forfeited payment will be available to the fund to compensate other Claimants.
 - 9.2.3. The Settlement Class Member must provide proof of repair to the Claims Administrator, who must promptly review the proof and accept or deny it.
 - 9.2.4. Within 30 days after proof of repair is accepted by the Claims Administrator, the Claims Administrator will pay the remaining 70% of Additional Costs
- 9.3. **Option 2: “Quick Cash Option.”** The Claims Administrator will pay the Settlement Class Member \$4.25 per square foot of Qualifying Damage. The Claims Administrator will pay 100% of the amount within 30 days of final approval of the Claim. This option provides compensation solely for Siding exhibiting Qualifying Damage.
- 9.4. **Option 3: “Cash Option with Proof of Repair.”** This option is only available for claims with Qualifying Damage that does not exceed 30% of an Elevation. Under this option, the Claims Administrator will pay \$4.25 per square foot of Qualifying Damage within 30 days after final approval. If the Settlement Class Member then provides sufficient proof of repair for the entire Elevation, the

Claims Administrator will pay the Settlement Class Member \$4.25 per square foot of the remaining portions of the Elevation.

- 9.5. As to Options 1 and 3, which require proof of repair, the Claimant must submit that proof to the Claims Administrator within the time limitation as set forth in section 3.2.2 and its accompanying subsections. Proof can be made by invoices, photos, or other reasonable evidence.
- 9.6. The Claims Administrator's review is intended to be limited and expeditious. In the event of a denial, the Claimant may appeal to the Adjudicator from a denial of a claim within 15 days from the Date of Denial, or submit further proof to the Claims Administrator from a denial of a claim related to proof of repair within 15 days from the Date of Denial. Denial notices may be sent via email to the email address provided in the claim process.

10. ATTORNEYS' FEES AND INCENTIVE PAYMENTS TO NAMED PLAINTIFFS.

- 10.1. Class Counsel will make an application for an award of attorneys' fees and litigation costs in this Action to be paid exclusively out of the Settlement Fund. The Court will determine the amount to be paid to Class Counsel for their work and their expenses. Class Counsel must file the application for fees and costs within twenty days of entry of the Preliminary Approval Order of the Settlement.
- 10.2. Plycem has agreed not to oppose an award of attorneys' fees and litigation costs of more than 33% of the total value of the Settlement, which includes the value of the Settlement Fund.
- 10.3. **Service award.** The Parties recognize that the Named Plaintiffs have served the Settlement Class, including by: participating at the pleading stage, providing evidence and samples of Siding for analysis, permitting inspections, participating in individual discovery, and participating in the settlement process. Thus, Named Plaintiffs who are Settlement Class Members may apply for a \$5,000 service award. This service award, if approved, will be paid over and above the value of their Claim and will be paid out of the Settlement Fund. A maximum of one service award per qualifying house will be paid.

11. THE PRELIMINARY APPROVAL ORDER.

- 11.1. The Parties will submit this Agreement to the Court within ten days of signing it; and
- 11.2. The Parties will request that the Court enter the Preliminary Approval Order.

12. NOTICE OF PROPOSED SETTLEMENT.

- 12.1. The Parties agree that reasonable notice of this Agreement, consistent with law, including the Due Process requirements of the United States Constitution, must be given to the members of the Settlement Class.
- 12.2. The Parties have developed a notice plan with the prospective Claims Administrator as described in Exhibit 5.
- 12.3. Notice will be targeted to homeowners, and specifically, to homeowners where the greatest concentration of Siding was sold; to homeowners where Plycem has received its greatest concentration of warranty claims; and to owners of houses known or suspected to have been built with the Siding. Notice will also be targeted to participants in the supply chain (distributors, retailers, builders).
- 12.4. The Parties have agreed to engage the Claims Administrator to give notice to the Settlement Class. The cost of the Claims Administrator's notice activities will be paid out of the Settlement Fund.
- 12.5. Additionally, any Party may also engage in any effort of its own, at any time, to give additional notice, at its own expense.
- 12.6. Notice will be given over an appropriate time, with two overlapping goals: (1) the intent to maximize Settlement Class Members' right to be heard prior to the Agreement's Effective Date, including through objecting or seeking exclusion, and (2) the intent to ensure continued notice throughout the Claims Submission Period so that Claimants whose claims arise in the future are reminded of and remain aware of the availability of benefits under this Agreement.
- 12.7. Lead Counsel and Plycem may confer on the notice plan and make adjustments as necessary, so as to learn from the response rates to various forms of notice.
- 12.8. **Summary notices by publication.** A summary notice (print, media, and internet), a copy of which is attached as Exhibit 6, will be published as approved by the Court.
- 12.9. **Long-form notice by mail to Settlement Class Members.** A long-form notice, a copy of which is attached as Exhibit 7, will be mailed, first class postage prepaid, to each ascertainable member of the Settlement Class identified by the Parties through reasonable efforts, including all Settlement Class Members who have submitted a warranty claim for the Siding in the past. The long-form notice will also be mailed to all known distributors of the Siding, retailers and dealers selling the Siding, and homebuilders who are believed to have used the Siding. Plycem will provide Lead Counsel with this information (see Section 4.4).
 - 12.9.1. **Undeliverable mail.** The Claims Administrator will promptly log each long-form notice that is returned as undeliverable and make the log available to Lead Counsel and Plycem. The Claims Administrator will

take reasonable steps to update undeliverable addresses, including the National Change of Address Database or other reasonable means, and send a second copy of the long-form notice. If any long-form notice is returned as undeliverable a second time, no further mailing is required.

- 12.10. **Notice by e-mail to homeowners and homebuilders.** Using all information available to Plycem and Lead Counsel, the Claims Administrator will take reasonable steps to send an e-mail directly to known Settlement Class Members, homebuilders, installers, and suppliers who may have used the Siding. The e-mail will inform them of this Agreement and direct them to the Settlement's web site for more information. The e-mail will appear in a form similar to Exhibit 8.
- 12.11. **Notice by mail to entities in the distribution chain.** The Claims Administrator, using the information made available by Plycem and Lead Counsel, will send written notices to all known entities in the distribution chain for Siding (distributors, retailers, builders).
- 12.12. **Web site.** As soon as practicable, the Claims Administrator will publish a web site regarding this Settlement, the contents of which will be approved by Lead Counsel and Plycem. The address for the web site is to be simple and easy for homeowners to remember and enter and must be included in published notices. The web site will provide: (1) generalized information about the Agreement, its scope, and its remedies; (2) deadlines for opting out of or objecting to the Agreement, and the dates of relevant Court proceedings, including the Final Approval Hearing; (3) information on making a Claim, including access to the Claims Package database; (4) the phone number established under Section 12.15; and (5) relevant legal documents like this Agreement and settlement notices. The web site is to remain active for one year after the Claims Submission Period.
- 12.13. **Internet advertising.** As part of the notice plan, the Claims Administrator will run advertising on web sites and Internet ad platforms similar to Google and Facebook. The advertising will be targeted to reach members of the Settlement Class and entities in the distribution chain (distributors, retailers, builders). The advertising will direct viewers to the Settlement's web site. Search keyword advertising may also be used.
- 12.14. **Press releases,** will be released through PR Newswire.
- 12.15. **Call center.** As soon as practicable, the Claims Administrator will set up a call center. The number for the call center will be included in the published notices. The call center will: (1) receive requests for any materials described in this Section or available on the Settlement web site; (2) provide information on deadlines to opt-out, object, file a claim, and relevant Court proceedings; and (3) mail requested materials to Settlement Class Members. The toll free number will be maintained until six months after the expiration of the Claims Submission Period.

- 12.16. At least 7 days before the Final Approval Hearing, the Claims Administrator will file proof, by declaration, that it has implemented the notice plan described in this Section 12 as approved by the Court.
- 12.17. **Reports on the Claims Administrator's activities.** The Claims Administrator will make periodic reports available to Lead Counsel and Plycem that show: calls and inquiries made to the call center; logs of mail received, requested, and sent out; detailed activities on the Settlement web site; and the response rates to all notice activities.
- 12.18. **Plycem's own web site.** Plycem will also include, in the pages of its web site that deal with warranty claims for Siding, information about the benefits available under this Agreement, and a link to the Settlement's web site. This information will be included on Plycem's web site as soon as practicable and until the expiration of the Claims Submission Period.
- 12.19. The Claims Administrator will also act on behalf of Plycem, to fulfill its obligation under the Class Action Fairness Act, 28 U.S.C. § 1715(b), to send required materials to the appropriate federal and state officials designated in that Act.

13. SETTLEMENT CLASS MEMBERS' RIGHT TO BE EXCLUDED AND TO OBJECT.

- 13.1. A Settlement Class Member may seek exclusion from the Settlement Class ("opt-out") or may object to the Agreement. In the event that there is more than one owner of a home, all owners listed on the title must sign the request for exclusion unless one owner has authority to sign such request on behalf of the other owner(s).
- 13.2. In seeking a Preliminary Approval Order of this Agreement, the Parties will request that the deadline for seeking exclusion and for objecting be set for 60 days after the notice plan established in Section 12 begins. The Court will set the exact deadline ("Exclusion or Objection Deadline").
- 13.3. **Seeking exclusion ("opting out").** To be excluded, a Settlement Class Member must fully complete the Opt-Out Form, Exhibit 2 to this Agreement, and send it using the directions on the form. Opt-Out Forms must be actually received to be effective.
- 13.4. Any Settlement Class Member who has not sent a completed Opt-Out Form will be bound by this Agreement and by all subsequent proceedings and orders. Any Settlement Class Member who elects to opt-out of this Agreement is not entitled to a remedy under this Agreement and is not affected by this Agreement.
- 13.5. Any Settlement Class Member who submits a valid Opt-Out Form will not be permitted to object to the Agreement.

- 13.6. Class Counsel have the right to contact persons who submit Opt-Out Forms.
- 13.7. Within 7 days after the Exclusion or Objection Deadline, Lead Counsel will e-mail Plycem a copy of all Opt-Out Forms so that Plycem may consider whether to exercise its right to terminate under Section 18.4.
- 13.8. **Objecting to the Settlement.** A Settlement Class Member may object to this Agreement. To exercise this objection right, the Settlement Class Member must provide written notice of the objection via first class mail to the Court, Lead Counsel, and Plycem's counsel. Information on the objection procedure will be provided in the long-form notice and on the Settlement's web site. To be valid, an objection must: (1) bear the signature of the Settlement Class Member (even if represented by counsel); (2) contain the Settlement Class Member's current address, phone number, e-mail address, and the address of each house that may contain Siding; (3) state the exact nature of the objection and whether or not the Settlement Class Member intends to appear at the Final Approval Hearing; **AND** (4) meet the Exclusion or Objection Deadline set by the Court. If the Settlement Class Member is represented by counsel, the objection must also be signed by the attorney who represents the Settlement Class Member.
- 13.9. Objections sent by any Settlement Class Member to incorrect locations will not be valid.

14. FINAL JUDGMENT OF DISMISSAL.

- 14.1. At least 14 days before the Final Approval Hearing, the Parties will file a joint motion, requesting that the Court grant final approval of this Agreement and enter a Final Approval Order and Final Judgment.
- 14.2. If the Court grants final approval, the Final Approval Order must:
 - 14.2.1. State that the Agreement is fair, reasonable, and provides an adequate remedy for the members of the Settlement Class, and state that the Agreement comports with Fed. R. Civ. P. 23.
 - 14.2.2. Find that the notice plan in this Agreement fairly and adequately informed Settlement Class Members of all material elements of this Litigation, and constituted sufficient notice to them under the law.
 - 14.2.3. Order that the Agreement be implemented.
 - 14.2.4. Dismiss all the actions of the Named Plaintiffs in MDL No. 2286 with prejudice.
 - 14.2.5. State that each Settlement Class Member is deemed to have given the Release described in Section 15.

- 14.2.6. Approve whatever award of attorneys' fees and expenses for Class Counsel, and service awards to Named Plaintiffs, the Court finds appropriate.
- 14.2.7. Retain jurisdiction over performance and administration of the Agreement.
- 14.2.8. Permanently bar and enjoin Settlement Class Members with Eligible Claims from asserting such claims directly or indirectly against the Released Persons (as defined in this Agreement).

15. RELEASE.

- 15.1. "Released Persons" means Plycem, as it is defined in Section 1.215, and Plycem's past, present and future affiliates, related entities, parent companies, subsidiary companies, divisions, and each of their respective predecessors, successors, officers, directors, managers, employees, trustees, fiduciaries, administrators, agents, representatives, principals, accountants, counsel, auditors, insurers, and reinsurers.
- 15.2. "Releasing Parties" means all Settlement Class Members who do not properly seek exclusion from this Agreement under Section 13.
- 15.3. The Settlement Class intends to compromise all claims and causes of action that were asserted, or that could have been asserted, in the Litigation against Plycem, relating to the Siding, and the Released Persons, while reserving all the claims and causes of action that its members have against the persons and entities that built the homes with the Siding and against the persons who installed the Siding.
- 15.4. **Operative release clause.** Upon the Court's entry of the Final Approval Order, all Releasing Persons will be conclusively deemed to have released and forever discharged (as if by an instrument under seal, without further act by any person, and upon good and sufficient consideration), on behalf of themselves and their agents (including homeowner associations or similar entities), heirs, executors and administrators, successors, attorneys, representatives, and assigns, the Released Persons, from each and every claim of liability, including damages or relief under federal law or the law of any state or local government, which arises out of the purchase, installation, and/or use of the Siding, including without limitation all claims or liability on account of or related to damage caused by the Siding as alleged or as could have been alleged in the complaints in the Litigation.
- 15.5. **Types of damages released.** The Releasing Parties expressly release all claims for penalties, consequential damages, punitive damages, exemplary damages, statutory damages, special damages, damages based upon a multiplication of compensatory damages, court costs, or attorneys' fees or expenses.

- 15.6. **Waiver of future claims.** This release includes all claims that the Settlement Class Members have or may hereafter discover related to the Siding including, without limitation, claims, injuries, damages, or facts in addition to or different from those now known or believed to be true with respect to any matter disposed of by this Agreement. By this Agreement, the Settlement Class Members have fully, finally and forever settled and released any and all such claims, injuries, damages, or facts whether known or unknown, suspected or unsuspected, contingent or non-contingent, past or future, whether or not concealed or hidden, which exist, could exist in the future, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of different or additional facts. The Settlement Class Members will be deemed by the operation of the Final Approval Order to have acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement of which the releases herein are a part. The Settlement Class Members expressly and intentionally waive any and all rights and benefits which they now have or in the future may have related to matters arising from or in any way related to, connected with, or resulting from the claims asserted, or which could have been asserted, in the Litigation.

Notwithstanding the foregoing it is expressly not the intent of this Settlement Agreement to modify or waive any rights that a Party may have under any applicable warranty issued by Plycem as to any claims or portion thereof that are not resolved under the terms of this Settlement.

- 15.7. **Treatment of non-parties.** It is the intent of the Parties that no Releasing Party can recover, directly or indirectly, any sums for claims released by operation of this Agreement from the Released Persons, other than the compensation received under this Agreement. Therefore, none of the Released Persons will have any obligation to make any payments to any non-parties by way of contribution or indemnification or otherwise relating to the same Qualifying Damage for which a Releasing Party was eligible to receive a remedy under this Agreement.
- 15.8. Pursuant to the South Carolina Contribution Among Tortfeasors Act, Releasing Parties agree that in any action brought by a Releasing Party against any non-party arising out of or related to the same damage that gave rise to the Releasing Party receiving a remedy under this Agreement, the Releasing Party agrees that he will reduce or remit any judgment against the non-party by the percentage, amount, or share necessary under applicable law to fully discharge and relieve the Released Person of liability to the non-party for claims for contribution and indemnification, or otherwise.
- 15.9. The Parties agree that the provisions of this Agreement and any claim thereunder constitute a good faith settlement under California Civil Code §§ 877 and 877.6 and comparable laws in other states, that the Parties will cooperate fully in any effort of the Released Persons to establish such good

faith settlement before any court (including, without limitation, by joining in any motion or other procedure and providing declarations and other evidence to establish such good faith settlement where requested by any Released Person) and that all payments made under this Agreement relate to claims arising out of or related to the Siding.

15.9.1. If notwithstanding the intention of the Parties expressed therein, any release given by the Releasing Parties is not given its full effect by operation of law, then the Releasing Parties will be deemed to have and do hereby transfer and assign to Released Persons all claims, if any, that were deemed not released, to the extent necessary to effectuate the intent of this Section.

15.9.2. Class Counsel must cooperate with the Released Persons to ensure that the releases set forth in this Section are given their full force and effect and that Releasing Parties comply with their obligations set forth in this Agreement.

15.10. In the event that any Releasing Party seeks to invoke California Civil Code § 1542, which provides that “a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor” (or any other like provision of law) in connection with the Siding, the Releasing Parties now expressly waive the provision of California Civil Code § 1542 (and all other like provisions of law) to the full extent that these provisions may be applicable to this release. Each of the Releasing Parties assumes the risk that facts additional, different, or contrary to the facts, which each believes or understands to exist, may now exist or may be discovered after this Agreement becomes effective. Each of the Releasing Parties agrees that any such additional, different, or contrary facts will not limit, waive, or reduce the foregoing release.

15.11. **Preservation of governmental claims.** Notwithstanding the general terms of the release, nothing in the release should be construed to limit a state or governmental entity’s ability to bring, continue, obtain judgment in, or enforce judgment in a law enforcement action against Plycem when such action is based on or arises out of the events and circumstances that form the basis of this case.

15.12. **Matters not released.** Notwithstanding any other clause, the Releasing Persons do not release the Released Persons from any claim not expressly released as stated in this Agreement. Also, the Releasing Parties specifically reserve any and all other claims and causes of action against any installers of the Siding, but only in their role as installers, not sellers.

16. EXCLUSIVE REMEDY; DISMISSAL OF LITIGATION; CONTINUING JURISDICTION OF COURT.

- 16.1. The exclusive remedies for all Settlement Class Members' claims that are released pursuant to this Agreement are the compensation options specified in this Agreement, and any remedies available under active Plycem warranties that remain available to the Settlement Class Members.
- 16.2. When the MDL Court has entered its Final Approval Order for this Agreement, each Settlement Class Member who has not properly sought exclusion from the Agreement will be barred from initiating, asserting, or prosecuting any legal claim against Plycem where the subject matter of the claim is within the scope of this Agreement.
- 16.3. Upon the entry of the Final Approval Order, each of the actions brought by Named Plaintiffs will be dismissed with prejudice.
- 16.4. The MDL Court is the exclusive forum for any person to seek to enforce this Agreement.
- 16.5. The MDL Court will also hear disputes regarding the costs or expenses incurred by the Claims Administrator or the Adjudicator. Only Named Parties have standing to raise such challenges.

17. WIND-DOWN OF SETTLEMENT FUND.

- 17.1. After the end of the Claims Submission Period, and after the resolution of all costs and expenses incurred, the Claims Administrator shall seek permission from the MDL Court to return any funds remaining in the Settlement Fund to Plycem after each Named Party has had the right to be heard.

18. OTHER TERMS AND CONDITIONS.

- 18.1. **Not effective until Effective Date.** This Agreement and the obligations of the Parties under this Agreement are expressly conditioned upon the occurrence of the Effective Date.
- 18.2. **Unenforceability or failure of Agreement; outcome.** In the event that this Agreement does not become effective for any reason, this Agreement will become null and void and of no further force and effect. The Parties and Settlement Class Members will be restored without prejudice to their respective positions as if the Agreement and any application for its approval by the MDL Court had not been made or submitted. Notwithstanding the foregoing, in the event that the MDL Court should refuse to approve any material part of this Agreement or if, on appeal, an appellate court fails to affirm the Judgment entered pursuant to this Agreement, then the Parties may (but are not obligated to) agree in writing to amend this Agreement and proceed with the Agreement as so amended. All amounts paid by Plycem under Section 5 will be returned to Plycem, except for

amounts approved by the Court for the cost of giving notice and the preliminary work of the Claims Administrator. This Agreement does not become null and void under this Section just because one of the following occurs: (1) the Court awards a lower service award to a Named Plaintiff than sought; (2) the Court awards less in attorneys' fees, costs, and disbursements to Class Counsel than sought; (3) an appellate court reverses or lowers any such award.

- 18.3. **No admission of liability.** The Parties have agreed that the fact that this Agreement has been reached does not constitute any admission of Plycem's liability.
- 18.4. **"Blow provision."** If the number of opt-outs from the Settlement that are received from Settlement Class Members during the Opt-Out Period exceeds the number agreed to in writing by the Parties ("the Opt-out Number"), then Plycem will have the right, at its option, to terminate the Settlement. Plycem shall advise Class Counsel and the Court, in writing, of this election within ten (10) business days of receiving the list of opt-outs. In such event, this Agreement may not be offered or received into evidence or utilized for any other purpose in the Litigation or in any other action, suit or proceeding.
- 18.5. **Companies' warranty of authority to execute.** Plycem represents and warrants that: (1) it has all requisite corporate power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated within; (2) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (3) its signatories to the Agreement have full authority to sign on behalf of and to bind Plycem to its terms; and (4) this Agreement has been duly and validly executed and delivered by Plycem and constitutes its legal, valid, and binding obligation.
- 18.6. **Named Plaintiffs' warranty.** Counsel for the Named Plaintiffs represent that they have been fully authorized to execute this Agreement on behalf of their clients.
- 18.7. **Full cooperation.** Plaintiffs, Plycem, and their attorneys agree to cooperate fully in seeking Court approval of this Agreement and to use their best efforts to effect its consummation as provided for herein. They further agree to execute any further documents that are reasonably necessary to carry out this Agreement.
- 18.8. **Succession.** This Agreement will be binding upon and inure to the benefit of the Parties to this Agreement and to all members of the Settlement Class and their respective agents, heirs, executors, administrators, successors, or assigns. Section 7.20 (regarding Settlement Class Members' limited right to assign their claims) controls over any conflict in this Section.
- 18.9. **Entire agreement; integration clause; modification in writing only.** This Agreement is the entire agreement of the Parties with respect to the subject matter thereof. This Agreement is not subject to any condition not expressly provided for

herein, and there are no collateral or oral agreements relating to the subject matter of the Agreement. In entering this Agreement, no Party is relying on any promise, inducement, or representation other than those set forth in the Agreement. Any modification to this Agreement must be in writing, signed by counsel for each of the Parties.

- 18.10. **Exhibits incorporated.** The exhibits attached to this Agreement are integral parts of the Agreement and incorporated within.
- 18.11. **Applicability of waivers of rights.** The waiver by any party to this Agreement of any breach of its terms should not be deemed or construed to be a waiver of any other breach of this Agreement, whether prior, subsequent, or contemporaneous.
- 18.12. **Form of execution.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original. All counterparts will constitute one Agreement, regardless of whether all Parties signed the same counterpart. The Agreement does not take effect until all Parties have executed at least one counterpart.
- 18.13. **Choice of law.** This Agreement will be governed by the laws of the State of South Carolina, without regard to any of its conflict of laws principles.
- 18.14. **Headings.** Any headings, subheadings, or titles in this Agreement are for convenience only and do not have any legal effect.

WHEREFORE, the undersigned have executed this Agreement on behalf of their clients:

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