

**IN THE CIRCUIT COURT
FOR HOWARD COUNTY, MARYLAND**

JASON W. ROYAL, et. al.)	
)	
and all others similarly situated)	
)	
Plaintiffs,)	
)	
v.)	Civil No: 13-C-04-059581 OC
)	
EASTERN HOMES, INC., et. al.)	
)	
Defendants.)	

**PLAINTIFFS' MOTION AND MEMORANDUM IN
SUPPORT OF PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

Plaintiffs submit this motion and memorandum in support of the proposed settlement with Defendant(s) in this matter and request that the settlement agreement (attached herewith as Class I - Exhibit A) and (Class II – Exhibit B) be given preliminary approval by the Court.

NATURE OF THE ACTION

A Class Action Complaint and Motion and Memorandum in Support of Class Certification were originally filed in this matter on August 24, 2004. There have been multiple amendments to the Complaint since the initial filing. The final amendment sought certification of two classes, Class I and Class II. The Lawsuit alleged that the defendants negligently installed mobile homes causing damages to the homes, including but not limited to, the breaching of the HUD-mandated seal each home has when it is initially installed which worsens with time. Further, it was alleged that the homes sat on foundation piers that were set on grade and did not have footings below the frost-line of each pier and used improper hurricane tie down anchoring systems. It was further alleged that, as a result, a significant risk of significant personal injury and/or death existed. Class I has six counts certified, all of which will require the same facts as proof (sounding in tort,

contract and warranty tort). The Claims included Strict Liability in Tort; Unjust Enrichment/Constructive Trust; Injunctive/Declaratory Relief; Breach of State Law Express/Implied Warranty; Breach of Magnuson-Moss Warranty Act; Breach of Contract.

Defendants denied liability and raised numerous defenses.

On or about May 11, 2005, Defendants filed an Opposition to Plaintiffs' Motion and Memorandum in Support of Class Certification. The initial class certification hearing was continued by consent to allow the parties to engage in substantial discovery and submit supplemental memoranda incorporating and relying upon the discovery. On February 15, 2006, upon consent of all the parties, Defendants filed a Joint Supplemental Memorandum in Opposition to Plaintiffs' Motion and Supplemental Memorandum after extensive discovery was completed on class certification issues.

The Court held oral arguments on March 3, 2006. On that day, in addition to extensive oral argument, several witnesses testified as to the nature of the defects and damages to the class including Plaintiffs' geotechnical engineer Dr. Robert Kondner and Plaintiffs' manufactured housing expert Roy Bonney. In addition, testimony was received vis-à-vis deposition transcripts and in other forms.

On August 15, 2006, this Court certified Class I which generally consisted of:

All persons in Maryland whose manufactured home was installed by Eastern Homes, Inc. after August 25th, 2000 and whose home: 1) does not have footings under each pier that extend below the locally established frost line; or 2) does not have load carrying portions of the ground anchors that extend below the locally established frost line; or 3) does not have ground anchors which utilize either a stabilizer plate or a concrete cylindrical collar; or 4) does not have anchoring equipment that is capable of resisting an allowable working load equal to or exceeding 3,150 pounds and capable of withstanding a 50 percent overload (4,725 pounds total) without failure of either the anchoring equipment or the attachment point on the manufactured home.

The Court appointed the undersigned as Class Counsel and John and Cordelia Walser and Lawrence Corwin as Class Representatives. The Court denied certification of Class II in the same order.

Thereafter, Defendants moved *twice* to have the class decertified and upon the second request, the Court held an oral argument. Each of the de-certification requests were denied by the Court.

The parties held informal settlement discussions throughout this process spanning over one year consisting of numerous meetings and communications and involving at least two (2) Court appointed settlement judges, the Honorable Hilary Caplan (beginning in the fall, 2006) and the Honorable Daniel W. Moylan (beginning in the spring 2007), each of whom are retired Circuit Court Judges for the State of Maryland.

In the meantime, on or about the eve of the scheduled trial date in this matter (March, 2007) the insurance companies for the Named Defendant Eastern Homes, Inc., Penn National Mutual Insurance Co., Inc. and American Modern Insurance Co., filed a declaratory judgment action in federal court in Baltimore alleging that there was no coverage (no duty to defend nor duty to indemnify) for Eastern Homes, Inc. (See PENN NATIONAL INSURANCE COMPANY, et al. v. EASTERN HOMES, INC., et al. United States District Court for the District of Maryland at Baltimore, Case No.: 1:07-cv-00672 (Judge Richard D. Bennett). The insurance carriers chose to sue not only their insured but also the following mobile home owners, some of whom were members of Class I and some of whom were not: Jason W. Royal, Leonard Stewart, Melinda Stewart, Sharon E. Stanhope (A/K/A Sherry E. Stanhope), Donald & Antoinette Scaran, Cordelia and John Walser, Lawrence Corwin, Anna Azni, Samuel Crouch,

Nancy Defina, Sheldon McNeil, Joshua Mendoza, John Morrill, Michael Neville, Beverly Payne, Mary Purdham, Jeffrey Quade, Cecelia Queen, Johnner Reilly, Hamilton Shoop, Christy Stanton, Thomas Tarmon Trust, William Thomas, Christopher Weiffenbach, John Cain, Marlene Carlton, and Helen Taylor (collectively “mobile’ / manufactured home owners”). The Class and other non-class mobile home owners moved to dismiss the declaratory judgment action as did Defendant Eastern Homes, Inc. In the meantime, numerous settlement conferences involving all parties and the insurance carriers occurred over the summer of 2007. Throughout the summer of 2007, the parties remained unable to reach a settlement. By early fall of 2007, Judge Moylan, having read and digested the voluminous record herein and after having held numerous settlement conferences at the Circuit Court for Howard County, had a firm understanding of all issues related to this matter, including insurance issues. These settlement conferences at the Circuit Court failed to result in a settlement although progress was methodically made after each party and the carriers explained their respective arguments as to liability, damage and coverage. Judge Moylan then summonsed all parties, including the insurance carriers through counsel, to a continuation of the Settlement Conference on September 12, 2007, instructing counsel to submit any additional information by September 10th. After nearly a full day, and significant concessions by the Plaintiff Class and the Defendant Eastern Homes, the parties made substantial progress including with Penn National, the insurer for Eastern Homes whose policies insure the period of time for which Class I was certified by this Court. By the end of the day, the parties requested a brief recess of a week or so to continue their efforts.

The parties, in the meantime, had been prosecuting and defending Motions in *Limine* and continuing to prepare for trial which was then set for early November, 2007. On or about the

middle of September, 2007, the parties were informed by counsel for Penn National that there would be no settlement offer from that carrier at that time.

On or about September 25, 2007, the parties were not able to enter into a settlement. On or about that time, the Class entered into a settlement in principle with Defendant Eastern Homes, Inc. which settlement was due in large part to the able assistance and recommendations by Judge Moylan.

As to the declaratory judgment action, PENN NATIONAL INSURANCE COMPANY, et al. v. EASTERN HOMES, INC., et al. United States District Court for the District of Maryland at Baltimore, Case No.: 1:07-cv-00672 (Judge Richard D. Bennett), the case was dismissed by Judge Bennett on November 19, 2007 for discretionary jurisdictional reasons over the objections of the insurance companies and at the urging of the mobile home owners and Eastern Homes.

The respective carriers took an appeal to the United States Court of Appeals for the Fourth Circuit. As part of that appeal process, the Fourth Circuit appointed a mediator experienced in the issues related to not only the appeal but the underlying case. On or about April 1, 2008, all parties participated in a mediation with a Court appointed mediator. The mediation began in the morning and the mediator took substantial time with each side until the matter endured until after lunch, progress again being made. The mediation as adjourned with the carrier requesting additional time for the matter to be considered. Within the next several weeks, with the assistance behind the scenes of the 4th Circuit mediator, the parties were finally after exhaustive efforts, able to reach what is deemed a settlement in the best interests of Class I and a new settlement Class II. The terms follow.

**CLASS I
DEFINITION FOR PURPOSES OF SETTLEMENT**

All persons in Maryland whose manufactured home was installed by Eastern Homes, Inc. in Maryland on or after August 25, 2000 and any person or entity with Similar Claims to those of the Named Plaintiffs in the *Royal* Action Class I and: 1) does not have footings under each pier that extend below the locally established frost line; or 2) does not have load carrying portions of the ground anchors that extend below the locally established frost line; or 3) does not have ground anchors which utilize either a stabilizer plate or a concrete cylindrical collar; or 4) does not have anchoring equipment that is capable of resisting an allowable working load equal to or exceeding 3,150 pounds and capable of withstanding a 50 percent overload (4,725 pounds total) without failure of either the anchoring equipment or the attachment point on the manufactured home; or 5) any person or entity with similar claims to those of the Named Plaintiffs in the *Royal* Action. Excluded from both Class I are the following: (i) Defendant, any person, firm trust, corporation or other entity affiliated with Defendant; (ii) any claims for actual personal injuries (any applicable statute of limitations will apply to these claims and the filing of this class action did not toll such claims), and (iii) class members who timely opt-out of any stipulation.

“Similar Claims” shall mean and include all claims by any person or entity, whether filed or un-filed, which are the same as or substantially similar to the underlying claims of the Named Plaintiffs in the *Royal* Action or which seek relief for damages that are the same as or substantially similar to those alleged by the Named Plaintiffs in the *Royal* Action. Similar Claims shall include and encompass any claim for damages, injunctive or declaratory relief arising out of Eastern Homes, Inc.’s alleged improper installation of a mobile home on or after August 25, 2000 and in which claimant(s) seek(s) repair or correction, or money damages for

the repair or correction, of damage to the mobile home or the defective conditions allegedly caused by the installation. "Similar Claims" does not include claims for bodily injury.

The proposed Class I settlement representatives are the same as the Court appointed Class I representatives, John and Cordelia Walser and Lawrence Corwin.

CLASS II DEFINITION FOR PURPOSES OF SETTLEMENT

All persons who live in Maryland who are not members of Class I (including any person or entity with Similar Claims to those of the Named Plaintiffs in the *Royal Action Class II*) and whose manufactured home was installed by Eastern Homes, Inc. in Maryland before August 25, 2000 and: 1) does not have footings under each pier that extend below the locally established frost line; or 2) does not have load carrying portions of the ground anchors that extend below the locally established frost line; or 3) does not have ground anchors which utilize either a stabilizer plate or a concrete cylindrical collar; or 4) does not have anchoring equipment that is capable of resisting an allowable working load equal to or exceeding 3,150 pounds and capable of withstanding a 50 percent overload (4,725 pounds total) without failure of either the anchoring equipment or the attachment point on the manufactured home; or 5) any person or entity with similar claims to those of the Named Plaintiffs in the *Royal Action* as defined in Section 1.19 of the Class Settlement Agreement. Excluded from Class II are the following: (i) Any Defendant, any person, firm trust, corporation or other entity affiliated with any Defendant; (ii) any claims for actual personal injuries (any applicable statute of limitations will apply to these claims and the filing of this class action did not toll such claims); and (iii) any class members who timely opt-out of any stipulation.

“Similar Claims” shall mean and include all claims by any person or entity, whether filed or un-filed, which are the same as or substantially similar to the underlying claims of the Named Plaintiffs in the *Royal* Action or which seek relief for damages that are the same or substantially similar to those alleged by the Named Plaintiffs in the *Royal* Action. Similar Claims shall include and encompass any claim for damages, injunctive or declaratory relief arising out of Eastern Homes, Inc.’s alleged improper installation of a mobile home before August 25, 2000 and in which claimant(s) seek(s) repair or correction, or money damages for the repair or correction, of damage to the mobile home or the defective conditions allegedly caused by the allegedly improper installation. “Similar Claims” does not include claims for bodily injury.

The proposed Class II settlement representatives are Jason Royal, Leonard and Melinda Stewart and Hamilton “Buddy” Shoop. Each has been actively engaged in this matter from near the onset of the case and has agreed to continue to allow the use of their homes as the prototypes for the anchor retro-fit in this matter.

PROPOSED NOTICE TO CLASS MEMBERS

Copies of the proposed long and short-forms of notice of the settlement to be given to class members are attached hereto and incorporated herein by reference as, respectively, **Exhibits 1 and 2**. The Named Plaintiffs shall cause notice of the preliminary approval of this Settlement to be delivered to the Settlement Class in the following manner:

(a) By mailing copies of the short-form notice (Exhibit 2) via first class mail to the address of each respective class member and to the last known address of members of the Settlement Class for whom such addresses are available if such address differs;

(b) By publishing the short and long forms of the notice of the settlement to the Settlement Class by publication on Class Counsel's web site www.pallaw.com.

(c) By publishing the short form notice (Exhibit 2), in a newspaper of general circulation in Howard, Anne Arundel, Baltimore, Charles, Frederick, Harford, Prince George's and Wicomico counties once a week for three consecutive weeks

(d) By whatever other method as may be ordered by the Court instead of, or in addition to, those methods set forth herein.

TERMS OF SETTLEMENT

Defendant(s) will retro-fit the Class I and II settlement members' homes with a new anchoring system designed to make the homes safe and bring them into compliance with any applicable HUD and COMAR Building Codes, if needed. The value of the components and services include ensuring the homes are brought into compliance with relevant HUD, COMAR and respective County regulations, are Code compliant and help to protect the future safety of the inhabitants and their neighbors. Additionally, the respective homes values are increased on re-sale due to the fact that the homes are Code compliant and can thus be sold as such. The retail value of the components and services to be used in any retrofitting are estimated by Plaintiff's Expert to be \$1500 per multi-section home and \$1200 per single section home and amount to a massive undertaking to be completed over three years on an estimated 800 plus homes as there are estimated to be approximately 400-450 homes in each respective class. An inspection of Class members' manufactured homes by a qualified inspector agreed to by Class Counsel and Coordinating Defendants Counsel will occur, which inspection shall determine whether the Class members' manufactured homes are fitted or not with proper anchoring systems as required by the applicable HUD or COMAR Building Codes and need an anchor retrofit. .

Additionally for Class I only: Persons in the Settlement Class who, individually or

collectively, submit a complete Claim Form to Class Counsel after inspection or anchor retro-fit if needed, and within three years of Final Approval of this Settlement or on or before October 3, 2011, shall be entitled to receive one-hundred and eighty five dollars (\$185.00).

Class I funding: Defendant(s) have agreed to establish and fund a Settlement Trust in the amount of \$710,000.00 which is considered part of the common fund created as a result of the *Royal Action* (the other part being the in kind contribution of goods and services to bring homes into compliance with any HUD and COMAR tie-down standards as contemplated in the anchor retro-fit to be consummated over a three year period). Of this amount, \$115,000 shall be set aside for putative payments to class members and incentive payments to class representatives as contemplated below. As an incentive payment for representing the Class, participating in the litigation and allowing their homes to be used as test prototypes for the new stabilizing systems Class Counsel is proposing incentive payments of \$15,000 each to Lawrence Corwin and Cordelia Walser for acting as Class I Representatives. The remainder shall be used as approved by the Court for class counsel fees and costs. Finally, \$30,000 will be paid immediately by Eastern Homes, Inc. to help cover the costs of administration and class notice, including newspaper advertising.

Class II funding: Defendant(s) have agreed to establish and fund a Settlement Trust in the amount of \$140,000.00. As an incentive payment for representing the Class, participating in the litigation and allowing their homes to be used as test prototypes for the new stabilizing systems Class Counsel is proposing incentive payments of \$3,000 each to Jason Royal, Leonard and Melinda Stewart and Hamilton "Buddy" Shoop for acting as Class II Representatives. The remainder shall be used as approved by the Court for class counsel fees and costs.

The attorneys for the class believe that this settlement is fair, reasonable, and in the best interests of the mobile home owners. For purposes of the settlement, a home with more than one individual as owner is treated as a single class member.

RELEASES, INDEMNITIES AND RECEIPT OF ASSIGNMENT OF CLAIMS

Each class member will give up any right to sue Eastern Homes and any other released party under the two Class Action Settlement Agreements for any and all claims of any kind excepting personal injury claims for damages arising out of the installation of their mobile home due to the improper installation. Class members will not give up any right to pursue any other defendants or parties, not expressly released herein.

REASONS FOR APPROVAL

Maryland uniformly follows Federal Rule 23 with regard to the requirements of maintaining and settling a class action. See Source to Rule 2-231 Md. Rules (2001); Ian Gallacher, *Representative Litigation in Maryland: The Past, Present, and Future of the Class Action Rule in State Court* 58 Md. L.R.4 (1999). In fact there is “limited State case law construing [Rule 2-231].” 58 Md. L.R. at 7. It has been stated by the Maryland Court that “[a] large body of decisional law has been developed in the federal courts interpreting the federal standard, which, while not binding, is a logical reference.” Pollokoff v. Maryland Nat’l Bank, 288 Md. 485, 491, 418 A.2d 1201, 1205 (1980).

In deciding whether to approve a proposed settlement, the Court must determine whether it is fair, reasonable, and in the best interests of the class which will be affected by it. Gautreaux v. Pierce, 690 F.2d 616, 631 (7th Cir. 1982). Relevant factors to this determination are (1) the strength of the case for plaintiffs on the merits, balanced against the extent of the settlement offer, (2) the complexity, length and expense of further litigation, (3) the extent of opposition to the settlement, (4) the reaction of members of the class to the settlement, (5) the opinion of

competent counsel, (6) the progress of the proceedings. Id. See also Bennett v. Behring Corp., 737 F.2d at 986; In re Domestic Air Transportation Antitrust Litigation, 148 F.R.D. at 312; Gautreaux v. Pierce, 690 F.2d at 631; Armstrong v. Board of School Directors, 616 F.2d 305, 314 (7th Cir. 1980). Plaintiffs' counsel's opinion as to the settlement is an important consideration and "[j]udges should not substitute their own judgments as to optimal settlement terms for the judgment of the litigants and their counsel." Id. There is thus a "strong initial presumption" that an arms-length settlement arrived at by counsel concerning the claims at issue is fair. Feder v. Harrington, 58 F.R.D. 171 (S.D.N.Y. 1972).

A settlement does not require that the Plaintiffs obtain 100% of actual damages. Bennett v. Behring Corp., 737 F.2d at 987 (settlement providing for \$675,000 of maximum possible \$12 million recovery adequate). By definition a settlement is a compromise. To be sure, even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is not a sustainable objection to a class settlement, since "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." Air Line Stewards & Stewardesses Ass'n v. American Airlines, Inc., 455 F.2d 101, 109 (7th Cir. 1972). "[S]ettlements of class actions are highly favored in the law and will be upheld whenever possible because they are means of amicably resolving doubts and preventing lawsuits." In re Domestic Air Transportation Antitrust Litigation, 148 F.R.D. 297, 312 (N.D.Ga. 1993).

A Court's decision is reviewable only for abuse of discretion if it considers the settlement within the range of reason and fairness. In re U. S. Oil & Gas Litigation, 967 F.2d 489, 493-4 (11th Cir. 1992). The public interest is served through a settlement compromising conflicting positions in class action litigation. Armstrong v. Board of School Directors, 616 F.2d 305, 313

(7th Cir. 1980). The trial court should not decide the merits of the case or make the assumption that victory is absolutely assured or even that all claimed damages are properly recoverable. In re Domestic Air Transportation Antitrust Litigation, 148 F.R.D. at 312-13; Armstrong, 616 F.2d at 314-15.

Plaintiffs' counsel have obtained significant discovery and conclude that the settlement is beneficial and should be recommended to the class. First, of paramount importance and a major consideration in this matter is the fact that Defendants will be utilizing their resources to make the homes in this case "safe" as they are now deemed "unsafe" by all experts on both sides of this case due to the anchor issue including some of the best mobile home experts in the Country who have worked on behalf of the Plaintiff Class at considerable expense from, among other states, Louisiana, California and Florida. To date Class Counsel has expended and advanced \$201,290.41 not inclusive of additional outstanding invoices which have been requested from the respective expert / consultants on behalf of the Class and said costs will increase due to the costs of administration expenses expected herein for class notice and the like. Additionally, Class Counsel believes that an anchor retro-fit, if required, for putative members thus rendering the homes "safe" is better than speculative recovery against a corporation of limited assets and/or CGL Insurance Carriers who aggressively dispute coverage. Finally, any putative member finding the proposed settlement not acceptable may and should opt-out.

CONCLUSION

Plaintiffs respectfully request that the Court enter a preliminary order (a) determining that this action is a class action for purposes of settlement with Defendants and other parties to be released per the two Class Action Settlement Agreements, (b) finding that the named plaintiffs fairly and adequately represent the interests of the two classes, (c) finding the proposed

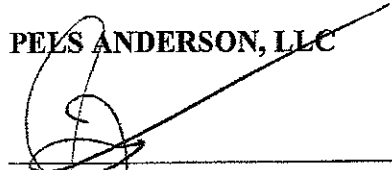
settlement with Defendants and other released parties is fair and reasonable, and (d) approving payment of \$30,000 immediately to Class Counsel to help cover the costs of administration and class notice, including newspaper advertising.

Respectfully submitted,

PELS ANDERSON, LLC

Dated: _____

6/24/08



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 24, 2008, I sent, via ~~first-class~~ ^{PO+email} mail a copy of the foregoing to: _{ON}

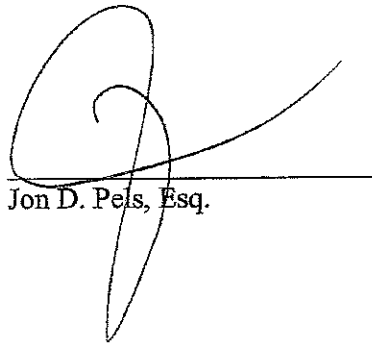
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