

**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 WITH DEFENDANT MAPLE PARK**

Plaintiffs submit this motion and memorandum in support of the proposed settlement with Defendant Maple Park in this matter and request that the settlement agreement with Defendant Maple Park (attached herewith as Exhibit AA), the Long Form Class Notice (Exhibit BB) and the Claim Form (Exhibit CC) be given preliminary approval.

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 several 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, breaching the HUD mandated seal each home has when it is initially installed and that this happens, objectively and verifiably, at the inception of the negligent installation and worsens with time. Specifically, it was alleged that the homes sit on foundation piers that are set on grade and do 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 exists. Class I has six counts certified all of which 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. This followed Plaintiffs' own supplemental memorandum which incorporated many key admissions including that Defendants' own experts concurred in many respects with many of the findings and conclusions of the Plaintiffs' experts.

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 requests were denied by the Court as they offered no new arguments and nothing had changed since the initial extensive briefing and oral argument period.

The parties held informal settlement discussion 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 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 his estate The Long Meadows in Hagerstown, Maryland on September 12, 2007 for a continuation of the Settlement Conference, 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 believed that a global settlement which included Penn National had been reached in principle and counsel for the carrier requested a brief recess of a week or so to obtain approval. The parties, in the meantime, had been prosecuting and defending Motions in *Limine* and continuing to prepare for trial. 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 Class, having been satisfied that Penn National would not enter into the proposed settlement in this matter at that time, 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. Judge Bennett dismissed the action because, among other reasons "...a resolution of the duty to indemnify issue involves factual determinations relevant to the state court case."

The respective carriers took an appeal to the United States Court of Appeals in Richmond, Virginia. As part of that appeal process, the 4th 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 Tom Ball the Court appointed mediator. The mediation began in the morning and Mr. Ball 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 Tom Ball, the parties were finally after exhaustive efforts, able to reach what is deemed a settlement in the best interests of the Class.

**CLASS DEFINITION FOR PURPOSES OF
SETTLEMENT WITH DEFENDANT MAPLE PARK**

All persons who are current tenants in the Maple Park Mobile Home Park and who became a Maple Park Mobile Home Park tenant no earlier than January 1, 1984 whose mobile home does not have footings or load carrying portions of the ground anchors that extend below the frost line.

PROPOSED NOTICE TO CLASS MEMBERS

Defendant Maple Park at its expense shall cause notice of the preliminary approval of this Settlement to be delivered by an independent process server to the potential members of the Settlement Class by regular mail and certified mail (return receipt requested) and hand delivery to the Maple Park addresses of the potential members of the Settlement Class and who shall certify that such delivery occurred. Upon and after delivery of the Class Notice, Class Counsel shall be entitled to meet or otherwise communicate with potential members of the Settlement Class in order to explain the substance of the Class Notice to them and to respond to any questions potential members of the Settlement Class may have about it. Maple Park agrees that it will not impede with Class Counsel's ability to communicate with the potential class members.

Also, plaintiff's firm web page will have the relevant documents and claim forms available at www.pallaw.com.

TERMS OF SETTLEMENT

Maple Park has agreed to provide the members of the class (those who became Maple Park tenants no earlier than January 1, 1984 and whose homes lack footers below the frost-line) with a settlement in the net amount of \$1134.00 per home in rent abatement that will be spread equally over the next twelve rent payments after (and if) the settlement becomes final. Additionally, Maple Park has agreed to pay class counsel \$566.00 per claim above and beyond the \$1,134.00 rent waiver for those tenants who qualify for this relief. The attorneys for the class believe that it is appropriate to compromise the possibility of recovering a larger verdict for the prompt and immediate rent abatement that is offered as well as the assignment of Maple Park's claims which we will inure to the benefit of the class to prosecute.

In order to receive the benefits of the proposed settlement a potential class member must have: (1) become a Maple Park tenant no earlier than January 1, 1984; and (2) completed and submitted the claim form attached to the Notice within 45 days of receipt of the Notice. Persons in the Settlement Class who, individually or collectively, submit a Claim Form in which they affirm under oath that they were not tenants of Maple Park earlier than January 1, 1984 and further set out and affirm the date they first became tenants of Maple Park to the best of their knowledge, recollection and belief and whose Claim Form is determined to be complete and acceptable shall be entitled to receive an assignable and transferable rent abatement in the total amount of one thousand one hundred thirty-four (\$1,134) dollars, pro-rated over the following twelve monthly lease payments (i.e., monthly abatement in the sum of \$94.50 per month for twelve months), commencing on the first date their lease payments are due after the Effective Date of Settlement. In addition, claimants and Maple Park agree that they (a) commit to disclosing to any prospective purchasers of the mobile home: **"That Park Management has reviewed the home based on exterior appearance only and it has been allowed to remain**

within the park for resale. Please note that Park Management and the unit owner have reviewed the home based on exterior appearance only. Neither the Park Management, the park owner, nor the home owner make any representations, guaranties or warranties whatsoever with respect to the home's structure, foundation (including footings and load carrying portion of the ground anchors), state of repair of home's interior, livability or compliance with federal, state or local codes. In no way, does an inspection from the park warrant the future performance of the home. We suggest that you have the home inspected by a licensed, professional home inspector, prior to the purchase of your home"; and (b) the claimants and Maple Park acknowledge that the COMAR and Howard county regulations concerning the extension of footings and load carrying portions of the ground anchors below the frost line and acknowledge and agree that Maple Park has no further obligation to them with respect to these matters. Tenant likewise has no further obligation to Maple Park as it relates to these matters, and Maple Park acknowledges and agrees that tenant will not be required to reinstall the mobile home for resale provided the inspection disclosure recited above is made to a prospective purchaser. This settlement contemplates a partial settlement to be approved by the Court under Rule 2-231. Any award or verdict rendered against any other person or entity in any other related/similar claim or in the *Royal* Action shall be reduced by the amount of the consideration paid by the Released Persons and Insurer or the pro rata share, whichever is greater, in accordance with the Maryland Uniform Contribution Among Joint Tortfeasors Act, Md. Cts. & Jud. Proc. Code, Ann. Section 3-1401 et seq. The Named Plaintiffs unconditionally promise and agree that any such verdict or award shall be reduced either by the amount of the consideration paid by the Released Persons and Insurer or by the pro rata share, whichever reduction provides any non-settling parties or entities with the greater benefit, whether or not the

Released Persons are determined to be Joint Tortfeasors.

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

RELEASES, INDEMNITIES

Each class member will give up any right to sue Defendant Maple Park or anyone related to Defendant Maple Park, and their employees and agents, for all claims based on this lawsuit which relate to the alleged damages to each class member and their property. Each class member will indemnify and hold Maple Park harmless for any claims others in the lawsuit may bring against Maple Park, although such claims will be barred upon final approval 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. Gautreauz 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 sufficient discovery to conclude that the settlement is beneficial and should be recommended to the class. The attorney's fees will amount to not more than 1/3 the total benefit available to the class and reflects the actual retainer agreement percentage counsel offered and obtained from retained plaintiffs. Counsel is seeking that to which the retainer allows. It is, nonetheless, commonplace in consumer protection litigation for the attorney's fees to enormously exceed the amounts paid to the aggrieved consumers. Poussard v. Commercial Credit Plan, Inc., 479 A.2d 881 (Me. 1984) (\$20,000 fees even though only \$10,000 benefit); Welmaker v. W. T. Grant Co., 365 F.Supp. 531 (N.D. Ga. 1973) (\$380.28 recovery and \$17,500 attorney's fees). The theory on which such fees are allowed is that, in view of the statutory caps on damages, any requirement of proportionality between the recovery of the fees "would be inconsistent with the policy of encouraging private enforcement of the Act." Hayer v. National Bank of Alaska, 663 P.2d 547, 550 n. 7 (1983).

Plaintiffs are merely seeking approval of 1/3 of the available recovery for each claimant that submits and acceptable claim form. In fact, the requested contingency percentage fee is the same percentage amount of fee which was approved recently for undersigned counsel in Ellerbe v. Chesapeake Mobile Homes, Inc. See Order of Final Approval of Class Action Settlement. Such a claim is within the parameters of similar cases. Bebchick v. Washington Metropolitan Area Transit Commission, 805 F.2d at 407 (25% of the recovery "is a reasonable percentage fee

for otherwise uncompensated attorneys"); Paul, Johnson, Alston & Hunt v. Gaulty, 886 F.2d 268, 272 (9th Cir. 1989) ("[w]e note with approval that one court has concluded that the 'benchmark' percentage for the fee award should be 25 percent"); Mashburn v. National Healthcare, Inc., 684 F.Supp. 679, 692 (M.D.Ala. 1988) ("The majority of common fund fee awards fall between 20% to 30% of the fund"); In re Warner Communications Securities Litigation, 618 F.Supp. 735, 749-50 (S.D.N.Y. 1985) ("Traditionally, courts in this Circuit and elsewhere have awarded fees in the 20%-50% range in class actions"); In re Workers' Compensation Ins. Antitrust Litigation, 771 F.Supp. 284 (D.Minn. 1991) (22.5%); Sanders v. Robinson Humphrey/American Express, Inc., [1990 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶95,315 (N.D.Ga. May 23, 1990) (awarding 30% of \$16.84 million settlement fund).

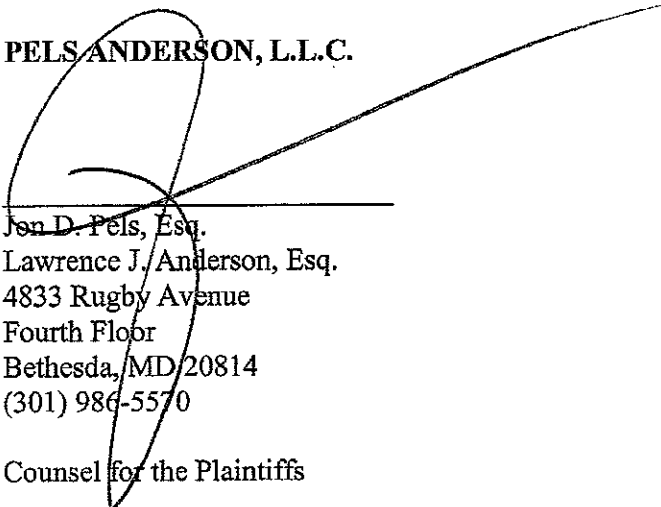
CONCLUSION

Plaintiffs respectfully request that the Court enter a preliminary order (a) determining that this action is a class action for purposes of settlement with Defendant Maple Park, (b) finding that the named plaintiffs fairly and adequately represent the interests of the class, (c) finding the proposed settlement with Defendant Maple Park is fair and reasonable, and (d) approving payment of attorney's fees by Defendant Maple Park.

Respectfully submitted,

PELS ANDERSON, L.L.C.

Dated: 6/24/08


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 24, 2008, I sent, via first-class mail and email pdf a copy of the foregoing to:

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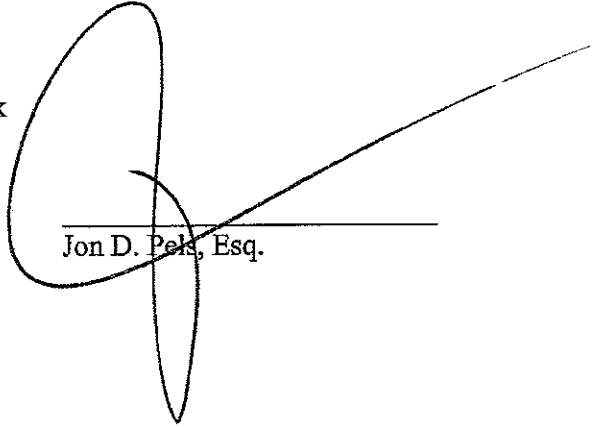
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