

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DOMESTIC DRYWALL
ANTITRUST LITIGATION

MDL No. 2437
13-MD-2437

THIS DOCUMENT RELATES TO:

ALL DIRECT PURCHASER ACTIONS

~~PROPOSED~~ ORDER APPROVING PLAN OF DISTRIBUTION

Direct Purchaser Plaintiffs (“Plaintiffs”) have now reached four separate settlements in this case, each of which has now received final approval from this Court.¹ These settlements have fully resolved Plaintiffs’ claims in this litigation, and Plaintiffs now seek to distribute funds from the settlements. Upon consideration of Direct Purchaser Plaintiffs’ Motion for Final Approval of (a) the Joint Settlement with American Gypsum Company LLC, Eagle Materials Inc., New NGC, Inc., and PABCO Building Products, LLC, and (b) Final Approval of the Plan of Distribution (the “Final Approval Motion”), and all papers submitted in support thereof or in opposition thereto, and after a June 28, 2018 hearing thereon and considering any argument offered, it is hereby ORDERED this 17th day of July, 2018, that the Motion is GRANTED insofar as it concerns the proposed plan of distribution.² It is ORDERED that:

¹ See ECF No. 276, USG Settlement Final Judgment Order; ECF No. 277, TIN Settlement Final Judgment Order; ECF No. 503, Lafarge Settlement Final Judgment Order; ECF No. . . . , Joint Settlement Final Approval Order. Members of each of the settlement classes defined by these orders are referred to collectively here as the “Combined Settlement Class.” The settlement funds established by these settlements are referred to collectively here as the “Combined Settlement Fund.” The Combined Settlement Fund less any Court-awarded attorneys’ fees, expenses, and service awards is referred to as the “Net Combined Settlement Fund.”

² Plaintiffs’ request for final approval of the Joint Settlement is addressed in a separate order.

1. The Court has jurisdiction over the subject matter of this litigation.

2. In an order dated January 29, 2018 (the “Preliminary Approval Order”), this Court authorized dissemination of notice of the Joint Settlement and plan of distribution (the “Notice,” attached as Exhibit 7A to the Final Approval Motion). Individual notice by first class mail was sent to potential members of the Combined Settlement Class who could be identified through reasonable efforts, a summary notice was published once in *LBM Journal*, and the mailed and summary notices were posted on the Internet on a website dedicated to this litigation. The Notice informed potential members of the Combined Settlement Class of Plaintiffs’ proposed plan of distribution for the Net Combined Settlement Funds; that Plaintiffs would file briefs and material in support of their plan of distribution by April 9, 2018 (including a sample claim form); that any Combined Settlement Class members who objected to the plan of distribution could submit written objections by May 7, 2018; and that the Court would conduct a Fairness Hearing as to the plan of distribution and other matters on June 28, 2018.

3. The details of Plaintiffs’ “Plan of Distribution” are contained in section I.C. of their Memorandum in support of Plaintiffs’ Final Approval Motion. The Plan of Distribution contained in the Final Approval Motion includes the same methodology for allocating the Net Combined Settlement Fund as is contained in the Notice, as well as additional detail regarding the proposed claims process.

4. Proof that mailing, publication, and posting has conformed with the Preliminary Approval Order has been filed with the Court. Due and adequate notice of Plaintiffs’ Plan of Distribution has been provided to potential members of the Combined Settlement Class in compliance with Fed. R. Civ. P. 23 and the requirements of due process.

5. The Court approves Kurtzman Carson Consultants LLC to serve as the Claims Administrator for the purpose of administering the claims process.

6. The Court approves the Plan of Distribution as a fair, reasonable, and adequate method of allocating the monies in the Net Combined Settlement Fund.

7. A Claim Form, substantially in the form attached as Exhibit 4 to the Final Approval Motion, shall be distributed to the members of the Combined Settlement Class in accordance with the Plan of Distribution. The Claims Administrator shall send Claim Forms to members of the Combined Settlement Class by First Class mail by no later than September 16, 2018 [60 days following entry of this order], or, if this order is appealed, within 30 days following final resolution of such appeal. The Claims Administrator shall also post a blank copy of the Claim Form on the settlement website by the same date.

8. For each Class member, the Claim Form shall contain a summary of that class member's purchases of paper-backed gypsum wallboard ("Wallboard") during the period from January 1, 2012 through December 31, 2013 (the "Damages Period"), calculated using the transactional data produced in the litigation, or will reflect that the Class member only purchased after calendar year 2013. Each Class member has the option of accepting this calculation as the basis of its claim or providing its own information regarding its relevant purchases, in which case the Class member must supply the Claims Administrator with supporting documentation.

9. All Claim Forms must be signed and returned to the Claims Administrator, with supporting documentation if applicable, postmarked or emailed no later than 60 days after the Claim Forms are mailed. The Claims Administrator shall review all timely-submitted Claim Forms and resolve any issues concerning the submitted claims. If a disagreement arises with a claimant

that the Claims Administrator cannot resolve, such dispute shall be brought to the Court for resolution

10. Subject to the exceptions described below, the Claims Administrator shall determine the allocation of the Net Combined Settlement Fund *pro rata* in accordance with each Combined Settlement Class Member's purchases during the Damages Period. Purchases during the Damages Period directly from USG Corp., United States Gypsum Co., New NGC, Inc., Lafarge North America Inc., Eagle Materials Inc., American Gypsum Company LLC, PABCO Building Products, LLC, CertainTeed Gypsum, Inc., TTN, Inc., Georgia-Pacific LLC, and L&W Supply Corp. (or its subsidiaries or affiliates) (collectively, the "Wallboard Sellers") are eligible for claim submission. Each member of the Combined Settlement Class with direct purchases from a Wallboard Seller during the Damages Period is guaranteed a minimum distribution of \$250.

11. In determining *pro rata* purchases during the Damages Period, the Claims Administrator shall take the following adjustments into account:

- (a) Purchases from Georgia-Pacific during the Damages Period will be valued at approximately \$0.656 on the dollar (reflecting that approximately 65.6% of the Combined Settlement Fund is attributable to the Joint Settlement, the only settlement that includes purchases from Georgia-Pacific).
- (b) Purchases from CertainTeed Gypsum during the Damages Period will be valued at \$0.10 on the dollar, reflecting the fact that summary judgment was granted in CertainTeed's favor.
- (c) If a Combined Settlement Class Member opted out of one or more settlements, its purchases during the Damages Period will be reduced to reflect the percentage of settlements, by dollar value, in which it participated.

12. Each Combined Settlement Class Member that purchased Wallboard from a Wallboard Seller other than Georgia-Pacific from January 1, 2014 through June 16, 2016, but did not purchase Wallboard from any Wallboard Seller during the Damages Period, will receive \$250 from the Net Combined Settlement Fund

13. After the Claims Administrator has calculated each claimant's share of the Net Combined Settlement Fund, the Claims Administrator shall submit a proposed Schedule of Distributions to the Court with a declaration that it has calculated the amounts on the Schedule in accordance with this order. Upon approval of the Schedule by the Court, the Claims Administrator shall mail checks to the claimants at the earliest practicable date.

BY THE COURT:



MICHAEL M. BAYLSON, U.S.D.J.