

SUPERIOR COURT OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

DEBBIE READ, and TERRY O'BRIEN, et al.,  
Plaintiffs,  
v.  
JAMES HARDIE BUILDING PRODUCTS, INC., a  
Nevada Corporation, Defendant.

CLASS ACTION

No. 00-2-17945-6SEA

**NOTICE OF PROPOSED CLASS ACTION  
SETTLEMENT**

**TO: ALL CURRENT AND FORMER OWNERS OF HOMES OR OTHER STRUCTURES ON WHICH ROOF SHAKES MANUFACTURED OR SOLD BY JAMES HARDIE BUILDING PRODUCTS, INC. ("JHBP") HAVE BEEN INSTALLED THROUGH THE DATE OF THIS COURT'S FINAL APPROVAL OF THIS SETTLEMENT.**

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. THIS NOTICE RELATES TO THE SETTLEMENT OF A CLASS ACTION INVOLVING JHBP ROOF SHAKES. IF YOU ARE A MEMBER OF THE CLASS, THIS NOTICE SUMMARIZES IMPORTANT INFORMATION ABOUT YOUR RIGHTS UNDER THE SETTLEMENT.

The purpose of this Notice ("Notice") is to inform you of the proposed settlement of this class action litigation ("Settlement"). This Notice summarizes the basic terms of the Settlement, any rights you may have in connection with the Settlement, and what actions you may take if you are a member of the Class.

The Settlement concerns certain current and former owners of homes or certain other structures with roof shakes manufactured or sold by James Hardie Building Products, Inc. ("JHBP") using such brand names as "HardiShakes" and "HardiSlate" among others (collectively referred to in this Notice as "JHBP Roof Shakes"). It provides a process to compensate class members for damages associated with their JHBP Roof Shakes as defined by the Settlement Agreement. The Class is defined as follows:

All Persons who own or owned structures in the United States on which JHBP Roof Shakes have been installed prior to the date of final approval of the Settlement by the Court. Excluded from the Class are: (1) JHBP, any entity in which JHBP has a controlling interest, and its legal representatives, officers, directors, assigns and successors; (2) the judge to whom this case is assigned and any member of the judge's immediate family; (3) any Person who owns or owned any structure that was the subject of a lawsuit relating to JHBP Roof Shakes in which JHBP was a party to the extent the claims against JHBP were resolved by payment, release or adjudication; (4) any Person who while represented by counsel resolved a claim relating to JHBP Roof Shakes with a full release covering the entire roof; (5) any Person who properly executes and files a timely request for exclusion from the Class; (6) the individual claims of any Person, other than any of the named Plaintiffs (class representatives) in this action, who would otherwise fall within the class definition but who had pending litigation where a claim has been made against JHBP relating to JHBP Roof Shakes as of October 4, 2001; and (7) professional builders,

developers or realtors who previously owned property in the normal course of the construction and development of real estate.

Persons excluded from the Class because they had litigation pending against JHBP relating to JHBP Roof Shakes as of October 4, 2001 may opt-in to and participate in the Settlement, subject to JHBP's agreement.

This Notice is only intended to summarize your rights under the terms of the Settlement. The Notice is based on information provided to the Court by one or both parties and does not constitute findings of the Court on the merits of the claims or defenses asserted by any of the parties. **Class Members who repair or replace their roof shakes before their claims are resolved and inspected under this Claims Program may be ineligible to recover under the Settlement, so please request additional information before you do anything to your roof shakes that may jeopardize your rights under the Settlement.**

## I. THE LITIGATION

This class action lawsuit (the "Litigation") was filed in June of 2000 in the Superior Court of Washington in King County (the "Court"). Plaintiffs brought the Litigation against JHBP for themselves and on behalf of a Class of similarly situated persons. Plaintiffs are represented by the attorneys appointed by the Court, who are listed in Paragraph IV below ("Class Counsel"). The suit arises out of the manufacture and sale by JHBP of various styles of roofing products. The Litigation does not concern any JHBP products other than roof shakes. Plaintiffs allege that JHBP Roof Shakes absorb excessive moisture, rot, break, deteriorate or otherwise fail when installed and incorporated on buildings and structures. **JHBP denies all such allegations.** Plaintiffs seek compensation for themselves and other owners of property on which JHBP Roof Shakes have been installed for alleged damages as a result of roof shakes failure. Plaintiffs assert individual and class action claims for money damages and injunctive relief based upon theories of negligence, fraudulent concealment/nondisclosure, consumer protection, and warranty. **JHBP denies all charges of wrongdoing or liability of any kind whatsoever asserted or which could have been asserted in this Litigation and has asserted and continues to assert various defenses to the individual and class action claims.**

Class Counsel have thoroughly investigated JHBP's design, manufacture, advertising, and sale of JHBP Roof Shakes. In the course of discovery, Class Counsel reviewed thousands of pages of documents produced by JHBP and third party experts. In addition, Class Counsel worked with building product and construction experts who inspected JHBP Roof Shakes installed on homes and other structures, and consulted with roofing products experts regarding the Litigation and Settlement.

The parties commenced settlement negotiations in the Fall of 2000. Designated representatives of the parties, in consultation with their experts, conducted extensive arms-length negotiations. The final negotiating sessions were mediated by Judge Edward Infante (Retired), formerly Chief Magistrate Judge of the United States District Court for the Northern District of California, resulting in an agreement in principle. The Settlement Agreement was executed on October 3, 2001. On October 4, 2001, the Court certified the Settlement Class.

Plaintiffs have agreed to compromise and settle the Litigation because they believe that the Settlement provides reasonable and fair compensation to the Class Members on a timely basis and obtains for the Class Members essentially all that they would have hoped to recover at trial, and would have been able to keep on

appeal, including attorneys' fees and costs. Most importantly, through this Settlement, the Class Members have obtained this result without the additional expense, risk, and delay of protracted litigation.

## II. SUMMARY OF SETTLEMENT TERMS

The Settlement reached in the Litigation between the Plaintiffs and JHBP, as set forth in the Settlement Agreement, dated October 3, 2001, is on file with the Court. Plaintiffs and Class Counsel believe that this Settlement is fair, adequate, reasonable, and in the best interest of the Class. The Court preliminarily approved the Settlement on October 4, 2001. **This Notice provides only a summary of the terms of the Settlement Agreement.** A copy of the Settlement Agreement may be obtained as set forth in Section V of this Notice.

The Settlement is structured as a "claims-made" settlement, which means that JHBP is obligated to pay all timely claims for Damaged JHBP Roof Shakes that qualify for compensation under the Settlement without any limit on its financial obligations.

i. **Claimants.** If you qualify as a Claimant, you may be entitled to recover monetary damages under the Settlement. Claimants must either:

1. Own property on which JHBP Roof Shakes have been installed prior to the date of final approval of the Settlement (current owner); or
2. Purchase such property during the Term of this Agreement without executing a valid assignment in favor of a prior owner (future owner); or
3. Have previously owned such property and have a valid assignment of any claim against JHBP (prior owner with assignment); or
4. Own or have previously owned such property and have paid to replace damaged JHBP Roof Shakes (prior replacement).

ii. **Definition of Damage.** To be entitled to payment under the Settlement, your roof must not be serviceable and must be Damaged by meeting at least one of the following requirements:

(1) In the case of a Structure where **there is visible interior leaking** in the area of Damage, 10% or more of the Shakes on the roof (counting each Shake only once) are damaged. An individual Shake is damaged if it is delaminating (separating into layers) or deconsolidating (crumbling or disintegrating): (a) along with visible cracking through the Shake, where the crack has a length of 25% or more of the exposed vertical length of the Shake, and the beginning point for measuring the crack starts at 1" away from a corner of the drip edge of the Shake; or (b) on the drip edge over 2" or more of the width of the Shake and where a feeler gauge can be inserted 2" into the piece; or (c) on 25% or more of the surface of the exposed area of the Shake; or (d) so as to expose fasteners as a result of crumbling or separating into layers and cracking and breaking.

(2) In the case of a Structure where **there is no visible interior leaking** in the area of Damage, 25% or more of the Shakes on the roof (counting each Shake only once) are damaged. An individual Shake is damaged if it is delaminating (separating into layers) or deconsolidating (crumbling or disintegrating): (a) along with visible cracking through the Shake, where the crack has a length of 25% or more of the exposed

vertical length of the Shake, and the beginning point for measuring the crack starts at 1” away from a corner of the drip edge of the Shake; or (b) on the drip edge over 2” or more of the width of the Shake and where a feeler gauge can be inserted 2” into the piece; or (c) on 25% or more of the surface of the exposed area of the Shake; or (d) so as to expose fasteners as a result of crumbling or separating into layers and cracking and breaking.

(3) The roof is not walkable. In the case of a Structure where **there is visible interior leaking** in the area of Damage, the roof is not walkable if a trained Independent Inspector using reasonable care cannot walk on 10% or more of the roof without causing visible cracking or breaking. In the case of a Structure where **there is no visible interior leaking** in the area of Damage, the roof is not walkable if a trained Independent Inspector using reasonable care cannot walk on 25% or more of the roof without causing visible cracking or breaking.

Satisfaction of any one of these criteria qualifies your entire roof for compensation subject to the terms of the Settlement. However, Damage does not include: (a) Damage resulting from a roof pitch less than 4/12 unless it can be established that an appropriate approved waterproof system has been applied in accordance with the product installation instructions; (b) intentional, reckless or negligent physical damage (not including failure to maintain the roof) to any Shake by a person other than JHBP after installation; (c) Damage to any Shake by fire or natural disaster including, but not limited to, hurricane, flood, tornado, earthquake, earth movement, severe hail, or similar force majeure causes.

iii. **Claims Procedures for JHBP Roof Shakes with Current Damage.** To make a claim for Damage that has not been repaired, you must be a Claimant as defined above, and must submit a properly completed Claim Form to the Independent Claims Administrator, along with proof that your roof shakes are JHBP Roof Shakes. **Claimants who repair or replace their JHBP Roof Shakes before their claim is resolved through the Claims Program may adversely affect their rights under the Settlement.** If your roof has visible leaking in the general area of damage, you must so indicate on the Claim Form and provide information regarding the leak, along with photograph(s) depicting the location and nature of the leak or a statement specifying the reasons why you are unable to provide photographs. You may prove that you have JHBP Roof Shakes on your Structure by providing the Claims Administrator with any one of the following: (1) a shake sample from the Structure and of sufficient size and good condition to allow identification of the sample as a JHBP Roof Shake, such as a minimum 6" x 6" sample with photographs indicating the location from which the sample was removed before and after removal; or (2) a prior communication from JHBP (e.g., where a prior warranty claim has been made) which confirms that the shakes on the Structure are JHBP Roof Shakes; or (3) a check or money order in an amount to be specified equal to the cost of a product identification inspection for each Structure on the Property, payable to the Claims Administrator, which amount will be refunded if the Independent Inspector determines that your property has JHBP Roof Shakes; or (4) an invoice or JHBP Roof Shakes warranty, along with photographs of the roof of the Structure sufficient to establish that the Shakes on the Property are JHBP Roof Shakes.

Class Members may make a claim once every two years; however a Class Member whose roof was installed prior to December 31, 1992 may submit only one claim. A Class Member who submits more than two claims must pay a fee for any subsequent inspections in advance.

iv. **Claim for Unreimbursed Replacement.** If you paid to replace Damaged JHBP Roof Shakes before the Date of Final Approval without knowledge of this Settlement, you are entitled to make a claim for Unreimbursed Replacement if: (1) the replaced roof shakes were JHBP Roof Shakes; (2) you personally own or owned the property on which the JHBP Roof Shakes were installed; (3) the JHBP Roof Shakes were Damaged

such that they required replacement; and (4) the JHBP Roof Shakes were replaced on the entire roof, where the condition of the roof and the replacement are documented by bills, contracts, photographs or other reliable evidence. You must complete and submit a Claim for Unreimbursed Replacement no later than May 5, 2003. You will be entitled to the lesser of the amount of (1) the cost of the unreimbursed replacement or (2) the amount to which you would have been entitled under the Settlement's Compensation Formula for current Damage.

v. **Reduction In Class Member Recoveries For Compensation Previously Received.** Any amount paid (or the equivalent retail value of materials or labor provided) by JHBP through its warranty claims process or as a result of any other claim, lawsuit or dispute, including claims to insurers (except with respect to a subrogee protected against a waiver of subrogation) or builders shall be deducted from any payment made to Class Members, unless it can be established that such amounts were used to replace original JHBP Roof Shakes with new JHBP Roof Shakes that are the subject of the Class Member's Claim.

vi. **Compensation Formula for Damaged Roof Shakes.** The Settlement contains a Compensation Formula, which will be used to determine how much, if any, money you are entitled to receive for your Damaged JHBP Roof Shakes. The Compensation Formula will be based on an agreed national average for roof replacement (\$310 per ten by ten foot square), adjusted geographically to take into account differences in local construction costs using data from National Construction Estimator, and adjusted annually to reflect changes in the construction materials component of the Producer Price Index.

vii. **Use Deduction.** The Settlement provides for a use deduction based on the number of years the JHBP Roof Shakes have been installed on the Structure. For the first two years following the date of installation, there is no deduction. For each year thereafter, there will be a deduction of three percent (3%) per year, up to a maximum total deduction of thirty-three percent (33%).

viii. **Inspection and Payment of Claims.** After receipt of a properly completed Claim Form for current damage, JHBP may authorize an offer of payment without inspection. If you do not receive or accept this offer, a Court-appointed Independent Inspector who is trained and supervised jointly by the parties will inspect your property to verify whether your JHBP Roof Shakes have Compensable Damage. A roof with Damaged JHBP Roof Shakes as defined above shall be compensable in accordance with the terms of the Settlement. Inspectors are required to do an independent, objective inspection. After completion of the inspection, the Independent Inspector will forward his/her report to the Independent Claims Administrator, who will determine the amount of payment based on the information contained in the report of the Independent Inspector, by multiplying the Compensation Formula defined above by the square footage of JHBP Roof Shakes on your roof. This amount will be adjusted by the Use Deduction and any prior payments, and you will then receive a check for the approved adjusted amount. You may request a reinspection by returning the check to the Claims Administrator along with payment equal to the cost of a new inspection. If the Claims Administrator determines that a material error occurred in the first inspection, you will receive a refund of the inspection fee plus the revised amount due under the Settlement. The results of the reinspection will be binding.

ix. **Claims Periods and Deadlines.** The Settlement provides a staggered claims program. You are required to file a claim within the following time limits:

1. For Roof Shakes installed prior to December 31, 1992, you must file your claim within three (3) years from the date of Final Approval.

2. For Roof Shakes installed between January 1, 1993, and December 31, 1995, you must file your claim within four (4) years from the date of Final Approval.
3. For Roof Shakes installed between January 1, 1996, and December 31, 1999, you must file your claim from within eight (8) years from the date of Final Approval.
4. For Roof Shakes installed between January 1, 2000 and the date of Final Approval, you must file your claim within ten (10) years from the date of Final Approval.

As more particularly described in the Settlement Agreement, after completion of the Claims Program, for a period of ten years thereafter, class members will have the benefit of any remaining applicable JHBP Roof Shakes warranty period (not the warranty itself), within which to file a warranty claim with JHBP for Roof Shakes that were not compensated pursuant to a Claim under the Settlement Agreement or other prior claim or payment (e.g., a prior warranty claim).

x. **Release.** Under the Settlement, each Class Member who has not timely opted out of the Class shall be deemed to have released and discharged fully, finally, and forever JHBP and other related entities with regard to any claims regarding JHBP Roof Shakes, as set forth in detail in the Settlement Agreement. Class Members also release non-parties for claims relating to JHBP Roof Shakes and/or any alleged defects in JHBP Roof Shakes. JHBP also releases the Class Members from all claims relating to JHBP Roof Shakes.

xi. **Proposed Compensation to Class Representatives and Class Counsel.** At the Fairness Hearing to be held on February 14, 2002, the Court will consider proposed awards of \$3,000 to each class representative to be paid by JHBP and plaintiffs' application for an award of Class Counsel attorneys' fees, plus reimbursement of expenses that were advanced in connection with the Litigation and future costs to administer the Settlement. The attorneys' fees and cost award has been separately negotiated by the parties, and is to be paid to Class Counsel separately by JHBP. The award of fees and expenses is in addition to the amounts recovered by the Class, and thus will not reduce, in any manner, Class Members' recovery under the Settlement. JHBP has agreed to pay a fee of 20% of all claims up to \$41.25 million, and 15% of all claims between \$41.25 million and \$65 million. The first portion of the fee is guaranteed. In addition, JHBP has agreed to reimburse Class Counsel for costs incurred during the course of the Litigation and for future costs associated with administration of the Settlement, not to exceed \$250,000. Class Members are not personally liable for any fees and costs. The fee awarded to Class Counsel compensates them for their efforts in achieving monetary damages for the benefit of the Class, for their risk in undertaking this representation on a contingency basis, and for continued work on behalf of the Class during the more than ten-year life of the Settlement.

xii. **Conditions for Settlement.** The Settlement is conditioned upon the occurrence of certain events. If one of the conditions described in the Settlement Agreement is not met, the Settlement Agreement may be terminated, and, if terminated, will become null and void, and the parties will be restored to their respective positions.

xiii. **Termination Provisions.** In the event JHBP determines that the number of Class Members requesting exclusion reaches a level that threatens to frustrate its essential purpose in entering the Settlement, it may terminate the Settlement by so notifying Plaintiffs' Class Counsel and the Court, not less than ten (10) days prior to the date set for the Fairness Hearing. JHBP also has the right to terminate the Settlement Agreement any time after three (3) years from the Settlement Date. In the event JHBP elects to terminate the Agreement, the Litigation will be reinstated to its status as of the date of entry of Final Order and Judgment.

### III. RIGHTS AND OPTIONS OF CLASS MEMBERS

If you wish to participate in the Settlement. If you are a member of the Class and you wish to participate in the Settlement, you need not do anything now. However, in order to obtain any recovery, you will be required to submit a Claim Form. **No Claim Forms will be available until after the Final Order and Judgment is entered by the Court, which currently is anticipated to occur on or about February 14, 2002. To request a claim form, or if you have any questions about the Settlement, you may call 1-888-780-8579 or visit the Settlement website at [www.hardieroofingclaims.com](http://www.hardieroofingclaims.com).**

If you do not wish to participate in the Settlement. If you do not wish to be included in the Class and you do not wish to participate in the proposed Settlement or be bound by the Settlement terms, you must request to be excluded by January 22, 2002. To request exclusion you must write a letter that states (1) the name of this Litigation (*Read et al v. James Hardie Building Products*, No. 00-2-17945-6SEA), (2) your name, (3) your address, (4) the address of the property which has the JHBP Roof Shakes and the number of structures on the property with the Shakes, and (5) a statement signed under penalty of perjury that you own the property that has the JHBP Roof Shakes and (6) your telephone number. Your request for exclusion must be personally signed by you under penalty of perjury or notarized and mailed to:

Bennet A. McConaughy  
SANDLER, AHERN & McCONAUGHY PLLC  
1200 Fifth Avenue, Suite 1900  
Seattle, WA 98101

**NO REQUEST FOR EXCLUSION WILL BE CONSIDERED VALID UNLESS ALL THE INFORMATION DESCRIBED ABOVE IS INCLUDED AND THE REQUEST IS POSTMARKED ON OR BEFORE JANUARY 22, 2002.**

### IV. CLASS COUNSEL

The Court has appointed the following attorneys to serve as Class Counsel:

Bennet A. McConaughy  
Paul L. Ahern, Jr.  
SANDLER, AHERN &  
McCONAUGHY PLLC  
1200 Fifth Avenue, Suite 1900  
Seattle, WA 98101

Michael F. Ram  
LEVY, RAM, OLSON & ROSSI  
639 Front Street, 4<sup>th</sup> Floor  
San Francisco, CA 94111

William M. Audet  
ALEXANDER, HAWES &  
AUDET, LLP  
152 North Third Street, Suite 600  
San Jose, CA 95112

### V. FAIRNESS HEARING AND RIGHT TO APPEAR

A fairness hearing will be held on February 14, 2002 at 8:30 a.m. before the Honorable Steven Scott in the Superior Court for the State of Washington at 516 Third Avenue, Seattle, Washington 98104. At that time, the Court will determine whether (1) the proposed Settlement is in good faith, fair, adequate, reasonable, and in the best interests of the Class; (2) Class Counsel's request for attorneys' fees and costs should be approved; and (3) the Litigation should be dismissed with prejudice. The Court may adjourn or continue the Hearing without further notice to the Class.

Any member of the Class who has not timely requested exclusion from the Class may, but is not required to, appear at the Hearing to comment on or object to the Settlement or Class Counsel's request for attorney's fees and costs. However, no such person shall be heard unless his or her objection or opposition is made in writing and is filed, together with copies of all other papers and briefs to be presented by him or her to the Court at the Hearing, with the Court no later than January 22, 2002 **and** served by such date on **both** Class Counsel and JHBP at the following addresses:

Class Counsel:  
SANDLER, AHERN &  
McCONAUGHY PLLC  
1200 Fifth Avenue, Suite 1900  
Seattle, WA 98101

JHBP Counsel:  
Elizabeth A. Alaniz  
PERKINS COIE LLP  
1201 Third Ave 40th Fl  
Seattle, WA 98101-3099

Such objections must include (1) the name of the Litigation (*Read et al v. James Hardie Building Products*, No. 00-2-17945-6SEA), (2) your name, (3) your address, (4) the address of the property which has the JHBP Roof Shakes, (5) a statement signed under penalty of perjury that you own the property that has the JHBP Roof Shakes, (6) your telephone number. Unless ordered by the Court, any Class Member who does not object to or oppose the Settlement in the manner prescribed shall be deemed to have waived all such objections.

#### **VI. EXAMINATION OF PAPERS AND INQUIRIES**

This Notice contains only a summary of the terms of the Settlement. For a more detailed statement of the matters involved in this Litigation, you may review the pleadings, the Settlement Agreement, and other papers filed in this action, which may be inspected at the Office of the Clerk of King County Superior Court, 516 Third Avenue, Seattle, Washington 98104.

**To request a claim form, or if you have any questions about the Settlement, you may call 1-888-780-8579 or visit the Settlement website at [www.hardieroofingclaims.com](http://www.hardieroofingclaims.com).**

**Please do not call or write to the Court or the Clerk of the Court as neither can answer any questions or provide legal advice regarding the Settlement or your rights thereunder.**

DATED: October 4, 2001

BY ORDER OF THE COURT