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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

In re: IKO ROOFING SHINGLE PRODUCTS LIABILITY LITIGATION	MDL Docket No. 2104 ALL CASES

JOINT CASE MANAGEMENT CONFERENCE
STATEMENT AND PROPOSED ORDER

The parties in the above-entitled actions met in accordance with Fed. R. Civ. P. 26(f) on January 26, 2010. The parties submit this Joint Case Management Conference Statement and Proposed Order with respect to this action.

I. DESCRIPTION OF THE CASE AND CLASS CERTIFICATION SCHEDULE

1. The Claim. The claims transferred to this Court by the Judicial Panel on Multi-District Litigation under Docket Number MDL 2104 all relate to roofing shingles manufactured or distributed by various entities including IKO Manufacturing Inc., IKO Midwest Inc., IKO Pacific Inc., IKO Production Inc., IKO Industries Inc., and IKO Industries Ltd. (collectively "Defendants"). The core claims in the Complaints allege that IKO knowingly and intentionally concealed that the roofing shingles at issue routinely deteriorate by crumbling, curling, pitting, cracking and leaking far in advance of the expiration of the warranty periods. In addition, Plaintiffs allege that Defendants failed to provide the services required under the warranties. IKO denies these allegations.

2. The Class. Plaintiffs have defined the following Class:

> All individuals and entities that have owned, own, or acquired homes, residences, buildings or other structures physically located in the United States on which IKO Shingles are or have been installed since 1979. IKO Shingles are defined to include without limitation all asphalt shingles manufactured or distributed by IKO. Excluded from the Class are Defendants, any entity in which Defendant has a controlling interest or which has a controlling interest of Defendant, and Defendant's legal representatives, assigns and successors. Also excluded are the judge to who this case is assigned and any member of the judge's immediate family.

3. Class Certification. Plaintiffs contend that this action is maintainable as a class action based on the facts alleged in the operative complaint and as will be further demonstrated in their Motion for Class Certification. Defendants believe that this action cannot be maintained as a class action because plaintiffs will not be able to carry their burden of demonstrating all of the elements necessary for certification. Plaintiffs propose that a Motion for Class Certification shall be filed within 8 months of Defendants' substantial completion of their document production as discussed further herein. Defendants propose that a Motion for Class Certification shall be filed on September 1, 2010. The hearing on the motion for class certification will be held on [October/November] __, 2010 at ___ a.m. If the Court elects to set a date certain for the filing of Plaintiffs' Motion for Class Certification, Plaintiffs request monthly status conferences with the Court to update the Court on discovery progress and any disputes related thereto.

II. TRANSFER AND CONSOLIDATION

4. Transfer and Consolidation of Pending Cases. All actions pending in or transferred to the United States District Court for the Central District of Illinois that assert claims arising from or relating to purchases of IKO roofing shingles are hereby transferred to this Court's docket.

The following actions and any other actions arising out of the same operative facts now pending or hereafter filed or transferred to this Court are hereby coordinated and consolidated for pre-trial purposes pursuant to Fed. R. Civ. P. 42(a) (collectively, the "Consolidated Actions"):

- *Zanetti v. IKO Manufacturing, Inc.*, No. 09-cv-2017 (D.N.J.)
- *Czuba v. IKO Manufacturing, Inc.*, No. 09-cv-0409 (W.D.N.Y.)
- *McNeil v. IKO Manufacturing, Inc.*, No. 09-cv-4443(N.D. Ill.)
- *Hight v. IKO Manufacturing, Inc.*, No. 09-cv-0887 (W.D. Wash.)
- *William Curler v. IKO Manufacturing, Inc.*, No. 09-cv-0902 (S.D. Ill.)
- *Belinda Curler v. IKO Manufacturing, Inc.*, No. 09-cv-3281 (C.D. Ill.).

5. Procedure for Newly Filed or Transferred Actions. When a case that relates to the subject matter of these Consolidated Actions is hereafter filed in the Court or transferred here from another court, the Clerk of the Court shall:

(a) Make an appropriate entry in the Master Docket;

(b) Place a copy of this Order in the separate file for such action; and

(c) Mail or e-mail a copy of this Order to the attorneys for the plaintiffs in the newly filed or transferred case and to the attorneys for any new defendants named in the newly-filed or transferred case.

6. Assistance of Counsel. The Court requests the assistance of counsel in calling to the attention of the Clerk of the Court the filing or transfer of any case that should properly be consolidated or coordinated with these Consolidated Actions.

7. No Effect on Claims or Defenses. The terms of this Order shall not have the effect of making any person, firm, or corporation a party to any action in which he, she or it has not been properly named, served or joined, in accordance with the Federal Rules of Civil Procedure. The terms of this Order and the consolidation ordered herein, and defendants'

consent thereto, shall not constitute a waiver by any party of any claims in or defenses to any of the actions, including defenses based upon jurisdiction.

8. **Case Caption.** Every paper filed in these consolidated proceedings, or in any separate action included therein, should bear the following caption:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

In re: IKO ROOFING SHINGLE PRODUCTS LIABILITY LITIGATION	MDL Docket No. 2104 ALL CASES

9. **All Cases.** When a paper is intended to be applicable to all of the actions to which this Order is applicable, the words "ALL CASES" should appear below the words "MDL Docket No. 2104" in the caption as set forth above.

10. **Specific Cases.** When a paper is intended to apply only to some, but not all of such actions, this Court's docket number for each individual action to which the paper is intended to be applicable and the last name of the named plaintiff in said action should appear immediately below the words "MDL Docket No. 2104" in the caption described above, *e.g.*, "Civil Action No. 09-cv-2017, Zanetti."

11. **Proposed Orders.** All proposed orders submitted to the Court should be entitled "Pretrial Order No. _____."

12. Proposed Stipulations. All proposed stipulations submitted to this Court should be entitled "Stipulation No. _____."

III. ISSUES OF DISQUALIFICATION OR RECUSAL

13. The parties are not aware of any issues concerning disqualification or recusal. The parties agreed to submit a list of all companies affiliated with the parties and all counsel associated in the litigation to the Court by February 3, 2010 as required by Order No. 2 entered in this MDL proceeding.

IV. JURISDICTIONAL CHALLENGES

14. The parties discussed jurisdictional challenges at length at the January 26 meeting and have also discussed this issue previously. Defendants question whether this Court has personal jurisdiction over IKO Sales Ltd. and IKO Industries Ltd., which are Canadian entities. Defendants asserted that if Plaintiffs leave these specific defendants in this action, then they may challenge the Court's jurisdiction over these specific entities. Plaintiffs have agreed to dismiss claims against IKO Sales Ltd. As to the remaining defendants which are U.S. entities, the parties do not anticipate any jurisdictional challenge.

V. ORGANIZATION OF ATTORNEYS

15. Liaison Counsel. Plaintiffs have designated and filed a Motion with the Court requesting the approval of Jon D. Robinson and the firm of Bolen Robinson & Ellis, LLP as Liaison Counsel. Defendants have designated Christopher M. Murphy and the law firm of McDermott Will & Emery LLP as Liaison Counsel. There is no objection by either party to these designations.

16. Plaintiffs Proposed Management Counsel. Plaintiffs have presented to the Court a Proposed Order Designating Plaintiffs' Management Counsel, Liaison Counsel and

Interim Class Counsel. Plaintiffs ask that the Order be entered and that the following be appointed as Co-Lead counsel:

Clayton D. Halunen and Halunen & Associates;

Charles E. Schaffer and Levin, Fishbein, Sedran & Berman; and

Robert K. Shelquist and Lockridge, Grindal & Nauen, LLLP

In addition, Plaintiffs ask that the following be appointed as co-chairmen of Plaintiffs' Executive Committee:

Charles J. Laduca and Cuneo Gilbert & LaDuca, LLP; and

Michael McShane and Audet & Partners, LLP.

Finally, Plaintiffs ask that the following be appointed as members of the Executive Committee:

Michael J. Flannery and Carey & Danis; and

Nancy A. Pacharzina and Tousley, Brain, Stephens, PLLC.

VI. DISCOVERY

17. Dispute Resolution. To avoid unnecessary litigation concerning discovery disputes, counsel are directed to meet and confer before contacting the Court on discovery matters or filing a motion concerning discovery. In the event the parties are unable to resolve their differences after meeting and conferring, then a party may bring the dispute to the Court's attention by motion. Discovery motions must be accompanied by a notice of presentment specifying the date and time on which the motion will be presented to the Court.

18. Document Production. Documents produced by defendants shall be produced in an electronic format on a CD or DVD to Plaintiffs' Liaison Counsel who shall copy or reproduce each CD or DVD for the benefit of all of the plaintiffs. Documents produced by each plaintiff

shall similarly be produced in an electronic format on a CD or DVD to Defendants' Liaison Counsel who shall copy or reproduce each CD or DVD for the benefit of all of the defendants.

19. Suspension of Fed. R. Civ. P. 26(a)(1). The parties discussed and agreed that suspending the requirements of Federal Rule of Civil Procedure 26(a)(1) would be most efficient in this case. Accordingly, the Court hereby suspends the requirements of Federal Rule of Civil Procedure 26(a)(1) until further order of this Court.

20. Depositions—Generally. Plaintiffs propose that the procedures governing and limiting depositions, including resolution of any disputes arising during depositions, shall be in accordance with the Federal Rules of Civil Procedure. Defendants propose that the procedures governing and limiting depositions, including resolution of any disputes arising during depositions, shall be in accordance with the Federal Rules of Civil Procedure, with the following additional limits: (1) plaintiffs collectively are permitted only one deposition conducted pursuant to Federal Rule of Civil Procedure 30(b)(6), which shall be limited in scope to three subject matters, without leave of Court; and (2) unnecessary attendance by counsel is discouraged and may not be compensated in any fee application to the Court. Counsel are expected to cooperate with, and be courteous to, each other and each deponent.

21. Scheduling of Depositions. Absent extraordinary circumstances, counsel shall consult in advance in an effort to schedule depositions at mutually convenient times and places. Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel shall attempt to establish by mutual agreement a schedule for depositions in this proceeding that reflects sequencing consistent with (a) the availability of documents from among those produced by the parties and third parties; and (b) the objective of avoiding the need to subject any person to repeated depositions. The parties shall work cooperatively to ensure a fair and orderly process for the scheduling of depositions,

and shall comply with all of the other directives set forth in this Order. Plaintiffs propose that depositions shall not be allowed, without leave of Court or by agreement of the parties, on less than seven days' notice. Defendants propose that depositions shall not be allowed, without leave of Court or by agreement of the parties, on less than fourteen days' notice.

22. Rule 26 Discovery Plan. The parties agree to the following discovery plan:

(a) Plaintiffs shall file a consolidated complaint by March 15, 2010 (the "Consolidated Complaint").

(b) All defendants must answer, move or otherwise respond to the Consolidated Complaint within 30 days following service of the Consolidated Complaint, or by April 14, 2010, whichever is later. If defendants file a motion to dismiss the Consolidated Complaint, plaintiffs shall file their joint response 30 days after the filing of the motion, and defendants shall file their joint reply brief 15 days after the filing of plaintiffs' response brief. Defendants' opening brief will be limited to 30 pages, plaintiffs' response brief will be limited to 30 pages, and defendants' reply brief will be limited to 15 pages.

(c) Plaintiffs shall serve initial document requests on Defendants on or before March 15, 2010.

(d) The deadline for joinder of parties and amendment of pleadings is August 1, 2010.

(e) Plaintiffs propose that all discovery shall close eight (8) months following the substantial completion of Defendants' document production. Defendants propose that, pending further order of this Court, all merits discovery is stayed; however, class certification discovery shall be allowed, commencing on March 15, 2010 and closing on September 1, 2010.

(f) Plaintiffs propose that Plaintiffs' Motion for Class Certification shall be filed within 8 months of Defendants' substantial completion of their document production as discussed above. Defendants propose that a Motion for Class Certification shall be filed on September 1, 2010 as discussed above.

(g) Plaintiffs' opening brief in support of their Motion for Class Certification shall be limited to 50 pages. Defendants' Opposition to Plaintiffs' Motion for Class Certification shall be filed within 45 days of the filing of Plaintiffs' Motion. Defendants' brief in response to plaintiffs' Motion for Class Certification shall be limited to 60 pages. Plaintiffs' reply to Defendants' response to Plaintiffs' Motion for Class Certification shall be filed within 30 days of the filing of Defendants' Opposition to Class Certification. Plaintiffs' reply brief in support of their Motion for Class Certification shall be limited to 30 pages.

(h) Plaintiffs shall produce any expert reports and other information required by Fed. R. Civ. P. 26(a)(2)(B) at the time they file their Motion for Class Certification. Defendants may depose Plaintiffs' experts, if any, before they file their Opposition to Class Certification.

(i) Defendants shall produce any expert reports and other information required by Fed. R. Civ. P. 26(a)(2)(B) at the time they file their Opposition to Class Certification. Plaintiffs may depose Defendants' experts, if any, before they file their Reply to Defendants' Opposition to Class Certification.

23. Service and Filing of Discovery Documents. Pursuant to Rule 5(d) of the Federal Rules of Civil Procedure, discovery requests and responses will not be filed with the Court, except when specifically ordered by the Court or to the extent they are presented in

connection with a motion. Discovery requests and responses shall be served by electronic mail on Plaintiffs' Liaison Counsel (who shall circulate the requests and responses to all of the other counsel representing the plaintiffs) and Defendants' Liaison Counsel (who shall circulate the requests and responses to all other counsel for the defendants).

24. Application of Rules of the Court. Except as otherwise provided herein or by further order of the Court, the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Central District of Illinois shall govern all further procedural matters in these consolidated actions. Defendants propose that written discovery requests be further limited as follows: Plaintiffs shall serve joint discovery requests upon each of the defendants, and their requests shall not exceed for each defendant 25 interrogatories; 40 requests for production of documents, electronically stored information and things; and 20 requests for admission. Defendants shall serve joint discovery requests upon each of the plaintiffs, and their requests shall not exceed for each plaintiff 25 interrogatories; 40 requests for production of documents, electronically stored information and things; and 20 requests for admission. In addition, defendants shall be permitted to serve requests upon each plaintiff pursuant to Fed. R. Civ. P 34(a)(2) for the purpose of entering onto the plaintiffs' land for inspection and other purposes. Subject to Fed. R. Civ. P. 26(b)(2)(C), there is no limitation on the amount of discovery or the number of depositions that can be taken of third parties. Plaintiffs disagree with the above proposed limitations advanced by Defendants and again propose that the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Central District of Illinois shall govern all further procedural matters in these consolidated actions.

25. Management of Discovery Issues. The parties discussed and agreed that they would work together to develop a uniform numbering system to allow for the ease of

identification of discovery documents. The parties also discussed the use of establishing a document depository or computer storage system to facilitate document management issues. The parties agreed that they would both create separate document storage systems but work together to eliminate discovery issues as outlined herein.

VII. COOPERATION AMONG THE PARTIES

26. Coordination. Plaintiffs shall, to the extent practicable, seek to coordinate their efforts, including discovery efforts and motion practice, among themselves for efficient and prompt management of the Consolidated Actions. Likewise, defendants shall, to the extent practicable, seek to coordinate their efforts, including discovery efforts and motion practice, among themselves for efficient and prompt management of the Consolidated Actions.

27. Privilege of Coordination Efforts. Cooperation among either plaintiffs or defendants to coordinate motion practice, discovery, or to otherwise minimize burdens and expenses in this litigation is encouraged by this Court and shall not constitute evidence of bad faith, conspiracy, concerted action, or any other wrongful or unlawful conduct. The fact of such cooperation and/or communication(s) as a result of such cooperation: (1) shall not be communicated to the trier of fact in this litigation under any circumstances; and (2) shall not be otherwise used in any other litigation. All information and documents exchanged among either plaintiffs or defendants for purposes of prosecuting or defending this litigation are communicated for the limited purpose of assisting in a common cause and shall not constitute a waiver of the attorney-client privilege, work product doctrine, or any other applicable privilege or protection.

VIII. ADDITIONAL RULES CONCERNING PRIVILEGE ISSUES

28. Privilege Log – Timing. A privilege log which complies with the requirements of the Federal Rules of Civil Procedure and the Local Rules of the Central District of Illinois

shall be served by any party withholding documents on the basis of privilege or work product protection within 60 days after production of the responsive documents from which the allegedly privileged or protected documents are being withheld.

29. Privilege Log—Categories of documents that do not need to be logged. The parties do not need to log any of the following categories of withheld documents:

(a) Attorney-client privileged communications or work product protected documents regarding this or similar litigation written by, to, between, or on behalf of any of the parties or their representatives or counsel after April 29, 2009;

(b) Communications among counsel for the defendants or among counsel for the plaintiffs relating to joint litigation efforts following the commencement of any of the actions that are a part of MDL 2104; and

(c) Communications, which are by, to, or between any party to this litigation or its counsel, and/or a consultant retained for the party in respect to this litigation or related litigation or in anticipation thereof, which have been withheld from production, in whole or part, based upon a claim of work product protection and which pertain exclusively to the issues in this action or to a similar action, except to the extent production or logging is required by the terms of other Court orders or by agreement of the parties.

30. Draft Expert Reports. The parties further agree that an expert's draft reports are work product and shall not be discoverable and that communications between an expert and the attorney who retained the expert, including notes reflecting their communications, are not discoverable. However, counsel may obtain through discovery any facts or data the expert is relying upon in forming his or her opinion, including those facts that were provided by counsel. Counsel may also fully inquire of an expert what facts or data the expert considered in reaching

his or her opinion, whether the expert considered alternative approaches, or into the validity of the expert's opinions.

31. Inadvertent Production of Privileged or Other Protected Information. The parties have stipulated to a protective order that provides the procedure for handling inadvertent production of privileged or other protected information.

IX. PRESERVATION OF EVIDENCE/INSPECTION

32. Duty to Preserve. The parties agree that they shall meet and work together to submit an agreed Preservation Order that will detail both the obligations of each to preserve certain evidence and the plan for the production and sharing of same. The parties intend to submit this agreed order to the Court at the February 17 scheduled hearing or soon thereafter.

33. Inspection/Removal of Shingles. Plaintiffs shall afford Defendants the right to inspect and/or test shingles from their properties during any period of fact discovery in this consolidated action (the "Inspection Time Period"), provided Defendants provide prior notice to Plaintiffs' Counsel. Defendants shall similarly allow Plaintiffs the right to inspect certain of their labs and plants where shingles are produced and to test the shingles during the Inspection Time Period, provided Plaintiffs provide prior notice to Defendants' Counsel. If Plaintiffs intend to remove any shingles on their properties during the Inspection Time Period, Plaintiffs will provide Defendants with 30 days prior written notice and will give Defendants access to their property and shingles within that 30 day period. Defendants shall similarly preserve any shingle samples that are submitted to them as part of their warranty program and provide Plaintiffs the opportunity to inspect same, subject to any Preservation Order entered pursuant to Paragraph 32.

X. SETTLEMENT

34. The parties agreed that it was premature to discuss the prospects for settlement.

XI. NARROWING OF ISSUES

35. The parties discussed the issues at length and have submitted a Joint Preliminary Report to the Court.

XII. TRIAL SCHEDULE

35. Should this case not be disposed of prior to trial, Plaintiffs propose that trial should commence in early 2012. Defendants propose that, following the Courts' ruling on plaintiffs' motion for class certification, the parties, if necessary, will endeavor to submit a proposed scheduling order setting forth the time for the close of any further fact and expert discovery with respect to the merits, the time for filing of dispositive motions and related briefing, and pre-trial and trial deadlines. Based on the preliminary nature of this case, the parties agree that an estimate of trial length at this time would be premature.

Dated: February 3, 2010

Jointly submitted,

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[PROPOSED]
CASE MANAGEMENT ORDER

The Joint Case Management Conference Statement and Proposed Order (as modified above by the Court) is hereby adopted by the Court as Case Management Order No. 1 for the case, and the parties are ordered to comply with this Order.

Dated: _____

_____
The Honorable Michael P. McCuskey
Chief United States District Judge

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