

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In re:  
HARDIEPLANK FIBER CEMENT  
SIDING LITIGATION

Case No. 12-md-2359  
MDL No. 2359

THIS DOCUMENT  
RELATES TO ALL ACTIONS

**STIPULATION AND AGREED ORDER**

On February 8, 2016, James Hardie Building Products Inc. (“Hardie”) filed Defendant’s Motion to Compel Plaintiffs’ Disclosure of Rule 26(a)(2)(B) Materials, or Alternatively, to Strike All Opinions of Plaintiffs’ Expert Joel Wolf that are Based on Those Materials (the “Motion”). (Docket No. 216.) Plaintiffs filed their opposition to the Motion on February 29, 2016. (Docket No. 238.)

Plaintiffs and Defendant, through undersigned counsel, hereby STIPULATE AND AGREE as follows to resolve Defendant’s Motion:

1. On July 7, 2015, Plaintiffs produced their expert’s report, Evaluation of James Hardie Fiber-Cement Siding (the “Exponent Report”), which was authored by Joel M. Wolf (“Wolf”), Eric P. Guyer, Ph.D. and Duane L. Steffey, Ph.D. of Exponent Failure Analysis Associates (“Exponent”), to Hardie. Any references to CertainTeed in the Exponent Report were based upon internal Hardie documents, provided by Defendant in this litigation, containing references and competition information regarding CertainTeed. Such references in the Exponent Report specifically cite to those internal Hardie documents.

2. During his deposition testimony on December 16, 2015, Plaintiffs' expert, Wolf of Exponent, in response to specific questioning by Hardie's counsel, Christopher M. Murphy, referred to work that Wolf and Exponent performed regarding CertainTeed fiber cement siding in two other lawsuits: *In re CertainTeed Fiber Cement Siding Litig.*, No. 2:11-md-02270 (E.D. Pa.) ("*CertainTeed*"), and *Burlingame Ranch I Condo. Assoc., Inc. v. CertainTeed Corp.*, No. 201-cv-104 (Dist. Ct., Pitkin County, CO) ("*Burlingame Ranch*").

3. Wolf's work in the *CertainTeed* and *Burlingame Ranch* actions has contributed to Wolf's general knowledge base concerning fiber-cement siding products. If, during the course of the pending litigation, Wolf is asked about his work experience with other fiber-cement siding products in general, or CertainTeed fiber-cement siding products specifically, Wolf may testify that he did indeed work on the *CertainTeed* and *Burlingame Ranch* actions and that such work included testing CertainTeed fiber-cement siding products.

4. In their opposition to the Motion, Plaintiffs state that Wolf's opinions in this MDL proceeding are not based upon his or Exponent's prior work in *CertainTeed* or *Burlingame Ranch*. Rather, Plaintiffs state that Wolf's reliance upon CertainTeed for purposes of his opinion in the instant action, if any, is solely based upon internal Hardie documents that referenced CertainTeed.

5. The parties dispute whether or not Wolf testified during his deposition that any of his opinions in this litigation are based on Wolf's or Exponent's work in the *CertainTeed* or *Burlingame Ranch* actions. Plaintiffs contend that, during his deposition,

Wolf testified that, in forming his opinions regarding Hardie's siding in this case, he did not rely on the findings he made in his previous CertainTeed investigations. Hardie contends that, during his deposition, Wolf testified that, in forming his opinions regarding Hardie's siding in this case, he did rely (at least in part) on testing and inspections of CertainTeed siding that he and Exponent performed in *CertainTeed* and *Burlingame Ranch*.

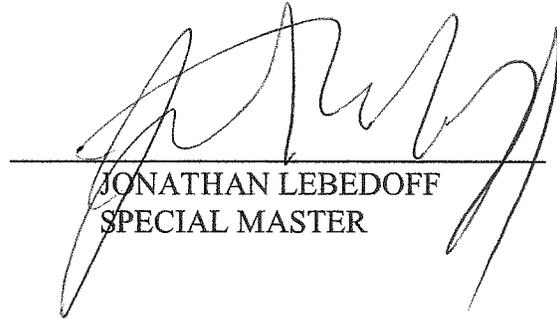
6. Accordingly, the parties agree that Plaintiffs will not, at any point in this proceeding, elicit, use, or refer to any opinions, testimony, or other evidence from Wolf that are based in any way on Wolf's or Exponent's work in *CertainTeed* or *Burlingame Ranch*, including without limitation Exponent's testing or inspections of CertainTeed siding. Any opinions of Exponent or Wolf in this case that are based at least in part on the work of Exponent or Wolf in *CertainTeed* or *Burlingame Ranch* shall be stricken in their entirety and inadmissible for any purpose in the pending litigation.

7. Any reference or comparison of Hardie siding to CertainTeed siding by Wolf or Exponent will be based only upon internal Hardie documents, provided by Hardie in this litigation, containing references and competition information on CertainTeed.

THEREFORE, the parties stipulate to, and request that Special Master Lebedoff enter, this Agreed Order.

**ENTERED:**

Dated: MARCH 10, 2016



JONATHAN LEBEDOFF  
SPECIAL MASTER

**STIPULATED AND AGREED:**

Dated: March 9, 2016

Dated: March 9, 2016

/s/ Aron J. Frakes

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