

A SOUTH CAROLINA COURT AUTHORIZED THIS LEGAL NOTICE. IT IS NOT A SOLICITATION FROM A LAWYER.

The Court of Common Pleas of South Carolina's Fourteenth Judicial Circuit
Civil Action No. 2002-CP-07-1377

If you own or owned a Structure with a non-drainable synthetic stucco exterior manufactured by **Dryvit Systems Inc.**, you should read this notice carefully. Your rights may be affected and you may be entitled to benefits under a proposed class action settlement!

- Class Representatives filed a class action lawsuit called *Treon, et al. v. Dryvit Systems, Inc.* that could affect your rights. The lawsuit alleges that residential barrier synthetic stucco manufactured by Dryvit Systems, Inc. ("**Dryvit**") is defective and causes hidden water damage to homes. Synthetic stucco looks like traditional hardcoat stucco and is also known as an Exterior Insulation Finish System or by the acronym "**EIFS**." This notice refers to non-drainable EIFS products manufactured by Dryvit and installed as a complete system as "**Dryvit EIFS**" as more fully defined in the Settlement Agreement.
- The class action lawsuit includes members of a **Class**, which includes: **all persons who own or owned a one- or two-family residential dwelling or townhouse ("Structure") as of January 4, 2010 located in the State of South Carolina on which Dryvit EIFS was installed on or between January 1, 1989 and September 3, 2002**, excluding condominium owners, owners of commercial or industrial structures, or those who own structures clad with a different EIFS.
- The Class includes property owners who have already replaced the Dryvit EIFS on their Structures and those who participated in the Tennessee class action known as *Posey v. Dryvit Systems, Inc.* (Case No. 17,715-IV).
- To request exclusion from this class action lawsuit, you must file a form described below in which case you will receive no benefits from this class action.
- The Class Representatives also have negotiated a Proposed Settlement Agreement dated November 12, 2009 ("**Proposed Settlement**"), between the Plaintiffs on behalf of the Class and Dryvit, which if approved by the Court will affect your rights.
- If settlement is not approved, Class Representatives will continue to prosecute the class action for the Class Members who do not request exclusion.
- The Proposed Settlement provides monetary benefits to certain Class Members up to a maximum of **\$8.00 per square foot of EIFS** on a Structure. The legal rights and options of Class Members are explained below. **You should read this notice carefully and make sure that you understand the rights and options available to you. You may want to consult with your own lawyer.**

THE PROPOSED SETTLEMENT OF THE CLASS ACTION LAWSUIT

- The Proposed Settlement provides various benefits to Class Members. The Benefits are described in the Proposed Settlement and summarized below. To obtain benefits, you must timely file a Claim Form no later than **August 2, 2010**.
- The Proposed Settlement was reviewed by the Court and preliminarily approved on November ____, 2009. This is not the **final approval** and there is still an opportunity for you to object to the Proposed Settlement if you want to do so. **You may not both object and request exclusion.**
- A hearing by the Court to determine the fairness, reasonableness and adequacy of the Proposed Settlement is scheduled for the Beaufort County Courthouse at 10:00 a.m. on Monday, June 7, 2010.

Your Legal Rights and Options		
STAY IN THIS LAWSUIT	Await the outcome. Give up certain rights. By doing nothing, you keep the possibility of getting money or benefits that may come from a trial or the Proposed Settlement. But, you give up any rights to sue Dryvit separately about the legal claims in this lawsuit.	
EXCLUDE YOURSELF AND GET OUT OF THIS LAWSUIT	Get no benefits from it. Keep rights. If you ask to be excluded and the Court either grants final approval to the Proposed Settlement or money is later awarded by jury verdict or settlement, you won't share in those. But, you keep whatever rights you may have to sue Dryvit separately about the same legal claims in this lawsuit. You must file a timely request to be excluded from the settlement on or before April 5, 2010. See Section 15.	
If the Proposed Settlement is Approved by the Court:		Filing Deadlines:
DO NOTHING.	Get no Benefits. No right to sue separately.	
SUBMIT A CLAIM FORM.	The only way to get a Benefit. You must file a timely claim form. See Section 14.	August 2, 2010
OBJECT.	You may tell the Court what you don't like about the Proposed Settlement by filing a timely objection. See Section 16.	May 3, 2010

WHAT HAPPENS IF THE PROPOSED SETTLEMENT IS NOT FINALLY APPROVED? The Class Representatives will continue to prosecute the lawsuit. Your legal rights will be affected by the prosecution of this lawsuit, and you have a choice to make **now**.

1. Why is this Notice being provided?

You have a right to know about this lawsuit, the Proposed Settlement, and how they affect your legal rights. If the Settlement is not approved, the lawsuit continues.

2. What is the lawsuit about?

On August 12, 2002, John & Sally Cardamone and others ("plaintiffs") sued Dryvit Systems, Inc. in *Cardamone, et al. v. Dryvit Systems Inc., et al.* (Case 2002-CP-07-1377). On September 3, 2002 the Court certified the lawsuit as a class action. Plaintiffs claimed Dryvit's barrier EIFS products are defective because they trap water behind the EIFS and cause hidden water damage, mold, and other damage. Expensive

inspections or removing the EIFS may be necessary to repair damage behind the EIFS. Plaintiffs claimed Dryvit was negligent and breached implied warranties of fitness and merchantability for a particular purpose. They alleged the marketing and sale of Dryvit's EIFS was deceptive and violated the South Carolina Unfair Trade Practices Act.

In December 2005, Timothy & Jane Treon and P. Jennings Scarce replaced the original plaintiffs to prosecute this lawsuit and serve as Class Representatives. They challenged the effect of a class action settlement that Dryvit reached in a Tennessee state court case known as *Posey et al. v. Dryvit Systems, Inc.* (Case No. 17,715-IV). The *Posey* case sought to bind Dryvit homeowners in most states including South Carolina. The Class Representatives also claim that Dryvit wrongfully settled individual lawsuits brought by the original plaintiffs and prosecution of this Class Action stopped for a time. In 2008, Class Representatives sued Dryvit and original plaintiffs in another lawsuit claiming that Dryvit and the original plaintiffs conspired to impair the rights of Class Members. The claims against Dryvit in that lawsuit have been added to this lawsuit and Dryvit has been dismissed from that suit to facilitate the Proposed Settlement. Dryvit asked the Court to dismiss this case because of the settlement in the *Posey* case. The Court denied Dryvit's request. Class Representatives further claim that Dryvit committed various acts of sanctionable misconduct in making this request. The Court was addressing these claims when the Parties reached the Proposed Settlement described in this Notice.

Dryvit denies all of the allegations made against it, asserts affirmative defenses and vigorously disputes plaintiffs' claims. In the settlement, Dryvit seeks merely to buy its peace and avoid further litigation. The Proposed Settlement does not include any admission by Dryvit of liability or of any other disputed issue.

3. What is a class action?

In a class action, one or more people called "Class Representatives" bring a lawsuit for others who have similar claims and are called "Class Members." A court then decides the case for all Class Members who have not excluded themselves from the class.

4. How do I know if I am a Class Member?

You are a Class Member if you own or owned a one- or two-family residential dwelling or townhouse as of January 4, 2010 located in the State of South Carolina on which Dryvit EIFS was installed on or between January 1, 1989 and September 3, 2002. The Class includes property owners who have repaired or replaced their Dryvit EIFS as well as those who have done nothing. If you filed a claim in the *Posey* settlement, you are still a member of this Class.

5. How do I identify Dryvit EIFS?

EIFS looks like traditional hard coat stucco but it is softer because the coating is thinner, is made of synthetic materials and is installed over an EPS board which looks like Styrofoam. Stucco uses a metal lath or mesh to hold the cement material which forms the stucco. EIFS on the other hand is installed over a synthetic mesh that is not metal and comes in a variety of colors. Different manufacturers have used different mesh colors to identify their products but mesh color is not always determinative. In general, Dryvit sold blue mesh. A good way to tell whether you have Dryvit EIFS is to ask your

builder or others who were involved in the construction of your house. If they are no longer available, you can try a few simple tests:

- a. Check your documentation. A warranty, invoice, bill of sale, real estate disclosure form, specification list, inspection report or other documentation about your Structure may indicate whether your siding is EIFS and who manufactured it.
- b. Look at your siding. Feel at the bottom edge of the siding. If it comes out from the foundation more than $\frac{3}{4}$ of an inch, it is likely EIFS. If it does not extend this far out from the foundation, it is likely hard coat stucco.
- c. Look at places where windows, electrical outlets, water spigots, lights and other things are installed on your house through the siding. If covers can be easily removed, remove them. If you see EPS board that looks like Styrofoam, you likely have EIFS. If you see mesh which is not metal, you likely have EIFS siding. Notice the color of the mesh; if it is blue any where, then you may have Dryvit EIFS on your Structure.
- d. If you are still unsure, check www.SCstucco.com for more information and a list of inspectors who can help you determine whether you have Dryvit EIFS.

The Proposed Settlement includes an inspection of your Structure by Dryvit to confirm whether it is clad with Dryvit EIFS.

THE PROPOSED SETTLEMENT.

6. *Why is there a Proposed Settlement?*

Both sides have agreed to the Proposed Settlement to avoid the risks, costs and delay of further litigation. The Proposed Settlement obtains substantial benefits for the Class.

7. *How do I Qualify to Participate in the Proposed Settlement?*

You must meet the requirements of the Settlement Agreement. This Notice only summarizes key terms of the Proposed Settlement. You may download a complete copy of the Settlement Agreement at www.SCstucco.com. Initial eligibility criteria include:

a) Product Identification. You must demonstrate your Structure is/was clad with Dryvit EIFS by meeting the requirements set forth on the Claims Form. The Claims Form is available by calling 1-877-977-8397 toll free or by visiting www.SCstucco.com.

b) Actual Damage. For each Structure that meets the initial product identification criteria, Dryvit will provide a qualified inspector to inspect the Structure. Dryvit's inspector will probe through the Dryvit EIFS with a 2 pronged moisture meter pursuant to an inspection protocol that was agreed to by Class Counsel. To qualify for benefits, Dryvit's inspector must locate:

- two (2) elevated moisture readings greater than twenty-two percent (22%) underneath the Dryvit EIFS at different locations on the Structure, or
- one (1) area of damaged sheathing behind the EIFS of at least two square feet (2 ft.²) in size that has lost its structural integrity.

At anytime, a Class Member has the right to retain, at his or her own expense, an EIFS inspector to obtain information about whether a Structure is clad with Dryvit EIFS and meets the Actual Damage criteria. If a Class Member wants to challenge any of Dryvit's determinations, a written challenge to Dryvit's findings must be submitted within thirty (30) days of receipt of Dryvit's inspection report.

Although there is no requirement that a Class Member retain a third-party inspector to participate in the Proposed Settlement, a third-party inspection is necessary to contest the validity of Dryvit's inspection of a Structure. These disputes will be decided by a Special Master appointed by the Court. **For more detailed information on the challenge process or inspections call 1.877.977.8397 or visit www.SCstucco.com.**

8. What benefits does the Proposed Settlement provide?

Class Members Who Purchased a Qualifying Structure BEFORE January 1, 2003:

- a) If such a Class Member **has NOT replaced the EIFS**, then he or she is entitled to \$8.00 per square foot of Dryvit EIFS installed on a Structure, or
- b) If such a Class Member **has replaced the EIFS**, then he or she is entitled to \$4.00 per square foot of Dryvit EIFS installed on a Structure.

Class Members Who Purchased a Qualifying Structure AFTER January 1, 2003:

These Class Members are not eligible for monetary benefits in this Proposed Settlement, but they may pursue individual lawsuits against Dryvit. For these individual lawsuits, Dryvit agrees to (1) toll the period proscribed by the applicable Statute of Limitation and Statute of Repose for a period of time running from the purchase of the Structure to the Notice Date, and (2) waive the affirmative defenses of res judicata, settlement, release and collateral estoppel arising from the *Posey* action.

To obtain this benefit, you must BOTH timely file a Claim Form and have filed an individual lawsuit by August 2, 2010. This class action is NOT an individual lawsuit so Class Members who are not now represented by an attorney should consult a lawyer to advise about the merits of an individual lawsuit.

Class Members Who Made Timely Claims in the *Posey* Settlement:

These Class Members are treated as having previously settled their claims, but may apply to an Equitable Claims Adjustment Fund if their individualized circumstances suggest that some additional compensation is appropriate under concepts of fairness and equity. Distributions from this Fund must be approved by the Court.

Class Members Who Sold their Structures:

Former owners may participate in the Proposed Settlement only if they have a valid assignment of claims from the current owner. Otherwise, the Proposed Settlement provides no benefits to former owners. Only one claim will be paid per Structure.

Other Class Members:

The Proposed Settlement does not provide Benefits to Class Members whose claims previously were settled or dismissed, who sold but did not retain rights, who otherwise purchased a non-qualifying Structure or who do not meet the criteria for receiving Benefits set forth in the Proposed Settlement. If you believe you fall in this group of Class Members, you may want to consult your own counsel for advice and guidance.

9. *Am I giving anything up in the Settlement?*

Yes. When the Proposed Settlement is approved, Class Members, who do not request exclusion, will release all claims against Dryvit and will not be able to pursue a lawsuit against Dryvit for any of the claims raised in this lawsuit except that Class Members who purchased Structures after January 1, 2003 and timely filed as set forth above have the right to bring or continue an individual lawsuit against Dryvit.

10. *What happens if the Court does not approve the Proposed Settlement?*

The Settlement Agreement terminates and this class action lawsuit continues.

11. *Do I have a lawyer in this case?*

Yes, Class Members are represented by the following lawyers and law firms:

Alford & Wilkins, PC Gregory M. Alford, Esq.	The Finkel Law Firm, LLC Robert B. (Sam) Phillips, Esq.	Cotty & Jonas Donald Jonas, Esq.
The Finn Law Firm, PC Thomas Williams, Esq.	Mullen Wylie, LLC Francis E. Grimball, Esq.	

Mailing Address:	Dryvit Settlement P.O. Box 1799 Columbia, SC 29202	Email: DryvitSettlement@FinkelLaw.com	Telephone: 1-877-977-8397	Facsimile: 1-803-252-0786
-------------------------	--	--	----------------------------------	----------------------------------

12. *How will Class Expenses including Fees for the Lawyers be paid?*

Dryvit will provide \$995,000 for use in paying the cost of Notice, Class litigation expenses and attorneys' fees for Class Counsel. Dryvit will also provide \$20,000 for the Court to use to compensate three (3) Class Representatives for their service and expenses in this action in addition to any Benefits they may receive. All other expenses incurred will be deducted from Class Counsel's fee. Class Members will not be responsible for individually compensating Class Counsel for their services. The Court will review and approve all payments to Class Counsel and Class Representatives.

13. *When and where will the Court decide whether to approve the Proposed Settlement and attorneys' fees?*

A final approval hearing called a **Fairness Hearing** will be held at **10:00 a.m. on Monday, June 7, 2010** at the Beaufort County Court House, 102 Ribault Road,

Beaufort, South Carolina. The Honorable J. Mark Hayes, II, Circuit Court Judge sitting in South Carolina's Fourteenth Judicial Circuit will conduct the Hearing and determine whether the Proposed Settlement is fair, reasonable and adequate for the Class as a whole. Class Counsel will also ask the Court to award and approve attorneys' fees and litigation costs. The Court may continue or postpone the Hearing without further notice to the Class.

MAKING A CLAIM.

14. How do I make a Claim?

File a Claim Form before Monday **August 2, 2010 (determined by the date of the Postmark)**. Claims Forms are available from Class Counsel by calling 877-977-8397 toll free, or visiting www.SCStucco.com, or emailing DryvitSettlement@FinkelLaw.com.

15. Can I exclude myself from the Proposed Settlement?

Yes. Class Members who want to exclude themselves from this class action lawsuit and retain their right to sue, or continue to sue, Dryvit must complete a Request for Exclusion Form ("Opt Out") and mail it to Dryvit c/o Kenneth J. Nota, Dryvit Systems Inc., One Energy Way, West Warwick, RI 02893 before Monday **April 5, 2010 (determined by the date of the Postmark)**. The Exclusion Form is available at www.SCstucco.com.

Members of the Class (including people who have initiated lawsuits against Dryvit) who do not individually exclude themselves by timely completing and mailing a Request for Exclusion shall be bound by the Proposed Settlement or other results of this class action lawsuit. If one joint, former or current owner of a qualifying Structure Opt's Out of this Class Action, then all other current or former owners of that Structure shall be deemed to have opted out.

OBJECTING TO THE PROPOSED SETTLEMENT.

16. How do I tell the Court if I do not like the Proposed Settlement?

If you are a member of the Class and have not filed a Request for Exclusion, you can tell the Court you do not like the Proposed Settlement or any part of it. This is called **objecting**. The Court will consider your objection and make a decision based on the fairness to the Class as a whole. To object, you must timely submit: (1) a completed Claim Form, and (2) a letter to the Court that contains:

- (a) your name and the title of this lawsuit (Treon v. Dryvit Systems, Inc.)
- (b) a statement of each of your objections and supporting facts,
- (c) a description of each law or case supporting the objection,
- (d) if you want to speak, how much time you or your lawyer will need, and
- (e) copies of any documents you or your lawyer will present at the Hearing.

These items must be filed with the Court by Monday **May 3, 2010** at:

Beaufort County Clerk of Court's Office
Re: Treon, et al. v. Dryvit Systems, Inc., et. al. (Case 2002-CP-07-1377)
102 Ribault Road, Beaufort, South Carolina, 29902

You must also mail a copy of all of these items to each of the following:

Robert B. (Sam) Phillips, Esq.
P.O. Box 1799
Columbia, SC 29202

Thomas E. Williams
P.O. Box 6003
Hilton Head, SC 29938

Samuel W. Outten, Esq.
Post Office Box 10208
Greenville, SC 29603

Any Class Member who does not properly and timely file their objection shall be deemed to have waived all objections to the Proposed Settlement.

17. Do I have to come to the Fairness Hearing?

No, however you may attend at your own expense. If you send a timely written objection, you do not have to come to the Court for the Hearing.

18. May I speak at the Fairness Hearing?

Yes, but only if you have timely objected as provided in Section 16.

19. How do I get more information about the Proposed Settlement?

This Notice contains only a summary of this class action and the Proposed Settlement. The complete court file is available at the Beaufort County Court House. You may review the entire Settlement Agreement and select material at www.SCstucco.com.

Please do not call or write the Court or the Clerk of Court with questions. Neither can provide legal advice regarding the Proposed Settlement or your rights.

s/ J. Mark Hayes, II
The Honorable J. Mark Hayes, II
Circuit Court Judge

January 4, 2010.