

## **IKO Organic Shingles Class Action**

*For class member use only – Privileged and Confidential*

### **Warranty Offers**

#### **◆ What recovery can I expect to obtain under my warranty and as part of the class action?**

Warranty: For shingles installed after 1997, the warranty coverage is limited to the prorated costs of materials. No contribution is made towards labour costs, which are typically the higher costs.

Class Action: As part of the class action, we are seeking to recover prorated labour and removal costs, as well as damages for consequential losses (i.e., damage to the interior of the home as a result of any leak). Although we cannot guarantee the results, we can advise that, in these types of cases, the recovery under the class action is typically greater than under the warranty.

#### **◆ IKO wants me to sign a release. What should I do?**

If IKO makes you a warranty offer, IKO will likely ask you to execute a release of claims. If you sign this release, you could be ineligible to participate in the class action, and might not be able to take part in any resulting settlement or judgment.

On September 16, 2015, a motion was heard by the Ontario Superior Court of Justice to amend the certification order to assert common issues specific to class members who signed a release as part of IKO's limited warranty program and for a determination of whether these class members can participate in the class action. The court declined to certify these issues as common issues, meaning that the issues will not be determined as part of the common issues trial. Instead, class members who wish to challenge the scope and validity of the release must do so after the common issues trial as part of the determination of the individual issues.

Class members might be able to challenge the validity of the release on a number of grounds, including that: (i) the scope of the release is limited to the warranty claim and not the claims at issue in the class proceeding, (ii) the transaction was "unconscionable" (i.e., there was an inequality in bargaining power and a grossly unfair or improvident bargain), (iii) IKO misrepresented the effect of signing the release, (iv) IKO did not provide any consideration or adequate consideration (i.e., IKO had a pre-existing obligation to comply with the terms of the warranty and is not providing any new consideration by providing warranty benefits in accordance with the warranty), or (v) mistake.

If you sign the release, there is a real risk that the release will be found to be valid and binding, and you will be precluded from participating in the class action. This is particularly the case if you received any benefit beyond that strictly provided for under the IKO warranty. We note that the IKO warranty only provides for recovery in the event of a leak and that IKO will likely take the position that any payment in the absence of a leak is new consideration and supports a finding that the release is valid and binding.

If the class action is resolved through a settlement, it is possible that class members who signed a release will either be excluded from participating in the settlement agreement or will be paid at a discount. In other similar cases, the claims were paid at a discount, but we can make no guarantee that a similar result would occur in this case.

If you are inclined to accept the warranty offer, we suggest that you at least provide an objection, in writing, to IKO for having to sign the release in order to receive your warranty benefits. You may wish to use the following language in your objection letter:

It is my understanding that, in order to obtain the benefits to which IKO represented would be available under the warranty, IKO is requiring that I sign and return the attached release. I object to having to provide a release in order to obtain the benefits to which IKO represented it would provide. It is my view that IKO is obligated to provide the warranty benefits and should not be permitted to withhold those benefits on the basis that a release is not provided. That said, recognizing that IKO is unwilling to comply with the terms of the warranty in the absence of the submission of a signed release form, I have signed the release.

Ultimately, the decision whether to accept the warranty offer is a personal decision.

If you have additional questions, please email [ikoclassaction@siskinds.com](mailto:ikoclassaction@siskinds.com).