

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENWOOD DIVISION**

<p><b>In re: Building Materials Corporation of America Asphalt Roofing Shingle Products Liability Litigation</b></p>	<p><b>MDL No. 8:11-mn-02000-JMC</b></p>
<p>This Document relates to:</p> <p>SUSAN D. ASHLEY, on behalf of herself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff, v.</p> <p>GAF MATERIALS CORPORATION,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No. 8:13-cv-03424-JMC</p>
<p>THOMAS BYRD, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff, v.</p> <p>GAF MATERIALS CORPORATION,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No. 8:12-cv-00789-JMC</p>
<p>KATHLEEN ERICKSON, on behalf of herself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff, v.</p> <p>GAF MATERIALS CORPORATION,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No. 8:11-cv-03085-JMC</p>

TINA GRIFFIN, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

GAF MATERIALS CORPORATION,

Defendant.

Civil Action No. 8:12-cv-00082-JMC

DIANE HANER, on behalf of herself and  
all others similarly situated,

Plaintiff,

v.

GAF MATERIALS CORPORATION,

Defendant.

Civil Action No. 8:11-cv-02926-JMC

SYBIL MCDANIEL, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

GAF MATERIALS CORPORATION,

Defendant.

Civil Action No. 8:11-cv-02879-JMC

<p>JAMES MOROCCO, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>GAF MATERIALS CORPORATION,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No. 8:11-cv-02785-JMC</p>
<p>ANGELA POSEY, on behalf of herself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>GAF MATERIALS CORPORATION,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No. 3:11-cv-02784-JMC</p>
<p>MICHAEL RAGAN, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>GAF MATERIALS CORPORATION,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No. 8:12-cv-00095-JMC</p>

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**ORDER GRANTING NON-MOBILE PLAINTIFFS' MOTION FOR AN AWARD  
OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES TO  
SETTLEMENT CLASS COUNSEL AND PAYMENT OF SERVICE AWARDS TO  
REPRESENTATIVE PLAINTIFFS**

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AND NOW, this 22nd day of April, 2015, upon consideration of the Non-Mobile Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Expenses to Settlement Class Counsel and Payment of Service Awards to Representative Plaintiffs, the

Settlement Agreement and all exhibits thereto (“Settlement Agreement” or “Settlement”), as well as all other pleadings, submissions and filings in the above-captioned Actions, and the arguments presented to the Court at the Final Approval Hearing that took place on April 22, 2015, and having concluded that the Settlement Agreement is fair, reasonable and adequate, and in the best interest of the Settlement Class, it is hereby **ORDERED** as follows:

1. All terms used in this Order have the same meaning ascribed to them in the Settlement Agreement.

2. The Court has reviewed non-Mobile Class Counsel’s memorandum and supporting documents requesting an award of \$3.89 million in attorneys’ fees. Having presided over this litigation since it became an MDL, the Court is familiar with the extent of work done, the adversarial nature of the litigation, and the benefits gained for Settlement Class Members by way of this Settlement.

3. The Court held a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the Settlement and was advised that only nine objections were received and a number of those were subsequently withdrawn. The Court has considered the objections and determined that they are not well-founded and lack legal and factual support. Importantly, none of the objections related to the attorneys’ fees or expenses being sought by Class Counsel for the non-Mobile cases.

4. Pursuant to Local Civil Rule 54.02(A) DSC and the relevant case law, the Court considers a petition for attorneys’ fees by reviewing the requirements set out in *Barber v. Kimbrell’s, Inc.*, 577 F.2d 216 (4th Cir. 1978), which specifies the following factors for analysis:

- (1) The time and labor expended;
- (2) The novelty and difficulty of the questions raised;
- (3) The skill required to properly perform the legal services rendered;
- (4) The attorney's opportunity costs in pressing the instant litigation;
- (5) The customary fee for like work;
- (6) The attorney's expectations at the outset of the litigation;
- (7) The time limitations imposed by the client or circumstances;
- (8) The amount in controversy and the results obtained;
- (9) The experience, reputation and ability of the attorney;
- (10) The undesirability of the case within the legal community in which the suit arose;
- (11) The nature and length of the professional relationship between attorney and client; and
- (12) Attorneys' fees awards in similar cases.

Although the Court must consider all *Barber* factors, it is not required to apply them rigidly as some factors are deemed to carry more weight given the unique facts of each case.

5. In addition, Rule 23 of the Federal Rules of Civil Procedure states that, “[i]n a certified class action, the court may award reasonable attorney’s fees and non-taxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).

6. In the Settlement Agreement, GAF agreed to pay up to \$3.89 million in attorneys’ fees and up to \$415,000 in reimbursement of expenses that are actually incurred and documented in a satisfactory manner, to the extent approved by the Court, to compensate Class Counsel for fees accrued and costs related to the prosecution of these non-Mobile actions. *See* Settlement Agreement, ¶ 10. GAF further agreed to provide an incentive award of \$5,000 for each of the Class Representatives, to the extent approved by the Court, for their involvement in representing the Settlement Class Members. *Id.* at ¶ 10.2.

7. As to the first *Barber* factor, Class Counsel spent considerable time and labor litigating these cases. The time and labor expended by Class Counsel in this litigation was substantial. Class Counsel for the non-Mobile cases and others at their firms have already

worked a total of 8,658 hours on this litigation. *See Raiter Aff.* The Court is familiar with much of the work done in this litigation since the lawsuits were coordinated for pretrial proceedings in this MDL action in October 2011. Class Counsel responded to numerous motions to dismiss and conducted substantial written discovery. Class Counsel served subpoenas on GAF distributors, reviewed and took depositions (some from the *Brooks* case) and served written discovery requests. The shared written discovery in *Brooks* yielded hundreds of boxes of hard-copy documents and tens of thousands of electronic documents. Class Counsel also retained consulting experts in roofing and shingles design, manufacture, and testing.

8. Class Counsel also spent many hours responding to the GAF's discovery requests and reviewing and indexing shingles submitted to GAF as part of formal warranty claims at one of GAF's manufacturing facilities in Pennsylvania. When GAF requested inspections of Plaintiffs' homes and samples of Plaintiffs' Shingles, Class Counsel worked with their clients to coordinate and carry out these numerous expert inspections. In addition to handling the claims for the non-Mobile property owners, Class Counsel worked with and assisted class counsel in the *Brooks* and Mobile cases. The two sets of counsel coordinated their work and Class Counsel here assisted with motion practice, discovery, and trial preparation in those cases.

9. The Court saw first-hand how much work was done in this litigation. The investigation, coordination, and prosecution of an MDL litigation requires significant effort.

10. The novelty, difficulty, and complexity of the issues in these cases also support the requested fee award. Consumer class actions are complex and involve risk. These cases

presented causation defenses, economic loss doctrine arguments, limitations of remedies and warranties, and potential variations in the products. The outcome of these cases was by no means assured and GAF presented a vigorous defense including arguments and evidence including defect, causation, the choice of law, class certification issues, and the economic loss rule.

11. Because there is no settlement fund being created in the Settlement, the Court will analyze the fee being sought using a lodestar analysis. The result obtained by Class Counsel is a principal factor in considering whether to grant an enhanced lodestar multiplier. *Perdue v. Kenny A.*, 130 S.Ct. 1662, 1668 (2010). “The result achieved should . . . be the most prominent factor considered in the analysis...” *Loudermilk Servs., Inc.*, 623 F. Supp. 2d at 718; *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 247 (4th Cir. 2010) (“We have noted that ‘the most critical factor in determining the reasonableness of a fee award is the degree of success obtained.’”) (quoting *Doe v. Chao*, 435 F.3d 492, 506 (4th Cir.2006)).

12. Here, Class Counsel have created an opportunity for Eligible Claimants<sup>1</sup> to obtain a cash only or a materials (plus cash, if they qualify) remedy for their Non-Mobile Timberline® Shingles manufactured from 1998-2009 that crack, tear or split. The Settlement provides a seven year claim period. The Settlement provides a nationwide resolution of all claims applicable to Non-Mobile Timberline® Shingles covered by the Settlement that crack, split or tear prior to the end of their applicable warranty period, and

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<sup>1</sup> Under the Settlement, an “Eligible Claimant” is a Settlement Class Member who submits a Claim that is deemed eligible for compensation pursuant to the terms of the Settlement Agreement.

would resolve all non-Mobile claims pending in this MDL. The Settlement keeps applicable GAF warranties in place for all matters unrelated to cracking, and provides a Settlement Class Member with either the benefits provided by the Settlement or the benefits provided by their warranty, whichever is better for the property owner.

13. The benefits available under the Settlement also supplement or exceed those available under the GAF standard limited warranties. For example, the cash and materials benefits are greater under the Settlement and the period for which a non-materials cash benefit is provided is longer under the Settlement. The Settlement also adds a provision that allows benefits for an entire roof where only five percent of the Shingles have cracked, split, or torn. Applying a five percent rule, where an entire roof will be compensated if more than five percent is affected, Class Members will be entitled to substantial cash benefits that were not available under GAF's standard limited warranties.

14. The Settlement also relieves Settlement Class Members from the burden of proving that their Shingles were defective and that those defects caused the cracking. Although GAF retains certain causation defenses (that were available under its warranties) like improper installation, Settlement Class Members need not prove that a particular defect caused their shingles to crack, split, or tear. The Settlement thus constitutes an excellent result for Settlement Class Members.

15. Class Counsel estimates that there are millions of Settlement Class Members in the non-Mobile Settlement. If only a fraction of those property owners file a claim, the value of the Settlement will be millions of dollars. Since the class notice was sent to the



Settlement Class Members, the call center has received approximately 17,000 calls from interested property owners.

16. The Court also concludes that Co-Lead Counsel and Class Counsel for the non-Mobile plaintiffs handled this litigation with a high degree of ability and skill. The reputation, experience, and ability of Class Counsel were essential to the success of this litigation. As noted in the Court's Order Granting Motion to Certify Class for Settlement Purposes and for Preliminary Approval of Class Action Settlement and Form and Dissemination of Notice to the Class at ¶ 21, "The Settlement is also the product of arm's-length negotiation between experienced, capable counsel."

17. As the Court recognized when it appointed the Plaintiffs' leadership in this MDL, Class Counsel have substantial experience in consumer class-action litigation and, in particular, class actions involving building products. (*See* Docket No. 49); *see also In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 665 (E.D. Va. 2001). Class Counsel's skill in navigating motion practice and negotiating the settlement of this dispute was essential to achieving the Settlement. Class Counsel's history of aggressive and successful prosecution of class actions made credible their commitment to pursue the litigation until a fair result for Settlement Class Members was achieved. The experience, reputation and ability of Co-Lead Counsel and Class Counsel support the reasonableness of the requested fee award. This *Barber* factor supports the fees being requested.

18. Class Counsel has been precluded from accepting other matters as a result of the substantial time and resources devoted to the investigation, litigation, and negotiation required to achieve and implement the settlement. As previously noted, Class Counsel has

already spent 8,658 hours litigating the MDL on behalf of the Settlement Class Members. This time was diverted from other potential engagements. This *Barber* factor supports the fees being requested.

19. Any fees to be awarded in this case were contingent upon achieving a recovery for the plaintiff class. From the outset of these cases to the present, the prosecution of these actions has involved financial risk for Class Counsel. Class Counsel prosecuted these cases on a contingent basis, which placed their own resources at risk. There was no guarantee that plaintiffs would eventually succeed in substantive motion practice, trial, or on appeal. This *Barber* factor supports the fees being requested.

20. Other than class counsel pursuing the *Brooks* case and the Mobile cases, no other attorneys other than Class Counsel pursued class action claims against GAF in connection with cracking Timberline® Shingles. This *Barber* factor therefore supports the reasonableness of the fee request.

21. The requested fee award is fair, reasonable, and appropriate under South Carolina law and when compared to other fee awards granted in similar material defect class actions based on percentage of the fund and lodestar analyses. Class Counsel here has been awarded fees applying a similar lodestar approach, and such awards are consistent with those made in similar product liability litigations. This *Barber* factor therefore supports the reasonableness of the fee request.

22. To-date, Class Counsel in the non-Mobile cases expended more than 7,641 hours of attorney time and 1,017 hours of paralegal time on behalf of the Settlement Class Members within the course of this litigation, and the total lodestar amount for attorney and

paralegal time stands at \$4,698,865.67. Class Counsel's requested fee reimbursement of \$3.89 million is considerably less than the current lodestar amount, which means that the fee being sought is already a negative, rather than a positive, multiplier on their lodestar.

23. Class Counsel's responsibilities for this litigation will not end with final approval. There is the potential for appeals and claims can be submitted under the Settlement by Qualified Claimants for up to seven years after the Effective Date. Class Counsel will remain available to answer inquiries from Settlement Class Members that may arise with respect to the Settlement and will continue to work with GAF to process claims and remedy deficient claims. This ongoing work will add many additional hours of work by Class Counsel and their staff and no additional fees will be paid.

24. No Settlement Class Member objected to the fees being sought for the non-Mobile cases. The fees sought are fair and reasonable, given that Class Counsel's lodestar to-date already exceeds the fees being requested. Class Counsel will also spend much more time assisting Settlement Class Members over the seven-year claim period and will not receive additional fees for that ongoing work. The fees being sought are appropriate in light of the risk Class Counsel undertook and the results achieved. Class Counsel achieved a good result in a risky and complex material defect case against a strong opposition (with real defenses) and with no assurance that they would be compensated for the time and expenses they advanced in this litigation.

25. Class Counsel's requested fee reimbursement of \$3.89 million is **GRANTED** and GAF shall pay those fees to an account designated by Co-Lead Counsel within 30

(thirty) days of the Effective Date of this Settlement. The attorneys' fees awarded by the Court shall be allocated to Class Counsel at the sole discretion of Co-Lead Counsel.

26. Class Counsel request reimbursement for the reasonable and necessary expenses that they have advanced and will incur to prosecute this litigation and Settlement to a conclusion. Counsel for the plaintiffs in a class action are entitled to a fee award for such expenses. *See* 1. Alba Conte, *Attorney Fee Awards* § 2:08, at 50-51 (3d ed. 2004).

27. The Fourth Circuit has stated that reimbursable costs may include “those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services.” *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir.1988) (internal quotations omitted). Examples of appropriate costs include necessary travel, depositions and transcripts, computer research, postage, court costs, and photocopying. *Almendarez v. J.T.T. Enters. Corp.*, No. JKS 06–68, 2010 WL 3385362, at \*7 (D.Md. Aug. 25, 2010) (*citing Vaughns v. Bd. of Educ. of Prince George's Cnty.*, 598 F.Supp. 1262, 1289–90 (D.Md.1984)); *Singleton*, 976 F. Supp. at 689; *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 468 (D. Md. 2014).

28. In the Settlement Agreement, GAF agreed to pay up to \$415,000 in reimbursement of expenses that are incurred and documented in a satisfactory manner, to the extent approved by the Court, to compensate Class Counsel for costs related to the prosecution, Settlement, and implantation of the Settlement of these non-Mobile actions. *See* Settlement Agreement, ¶ 10. The Court **GRANTS** Class Counsel's request for an award of \$312,000.00 in costs and expenses related to their efforts to investigate, litigate, secure, and administer the Settlement.

29. The Court **GRANTS** Plaintiffs' request for service awards of \$5,000 each to the named class representatives: Plaintiffs Susan D. Ashley, Thomas Byrd, Kathleen Erickson, Tina Griffin, Diane Haner, Sybil McDaniel, James Morocco, Angela Posey and Michael Ragan. The service awards shall be paid within 30 (thirty) days of the Effective Date of this Settlement. The Court finds that these service awards are fair and reasonable based on the assistance that the Class Representatives provided to Class Counsel and to the other members of the Settlement Class.

**IT IS SO ORDERED:**



United States District Judge

April 22, 2015  
Columbia, South Carolina