

[HOME](#)

**CIRCUIT COURT OF MOBILE COUNTY, ALABAMA**

**Re: Masonite® OmniWood® Siding Litigation**

**Dear Potential Class Member:**

The enclosed Notice of Class Action Settlement is being sent to you at your request or because you have been identified as a potential owner of property on which exterior Masonite OmniWood Siding manufactured since January 1, 1992 is, or has been, incorporated and installed.

Enclosed for your attention and consideration is a Notice of Class Action Settlement. As more fully described in the Notice, if you are a Class Member, the Settlement may affect your rights.

**If you had or have exterior Masonite OmniWood Siding manufactured since January 1, 1992 installed and incorporated into your property, you may have a right to compensation for damage associated with your siding if you file a timely claim.**

**Your rights and the details of the Settlement are more fully described in the accompanying Notice of Class Action Settlement.**

The enclosed forms are: (1) Notice of Class Action Settlement; and (2) a Claim Form request. If you wish to receive a Claim Form, if the Settlement is approved, you must return the Claim Form request card.

You may obtain further information by calling 1-800-256-6990. Instructions also are included in the Notice for those wishing to exclude themselves from the class and this settlement. The Court will consider the proposed Settlement at a fairness hearing scheduled for January 6, 1999 at 9:00 a.m. You are not required to attend. An updated message summarizing the outcome of the fairness hearing and providing claims information will then be available on the toll-free information number, 1-800-256-6990.

**IMPORTANT DATES AND DEADLINES**

**Opt-Out Deadline: December 20, 1998**

**Comment/Objection Postmark Deadline: December 20, 1998**

**Fairness Hearing: January 6, 1999**

**Time: 9:00 a.m.**

**Place: Courtroom 6600, 205 Government St., Mobile, Alabama**

---

**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA**



[9. Do I need to do anything to participate in the Settlement?](#)

[10. How can I exclude myself from the Settlement?](#)

[11. How do I make a claim?](#)

[12. Who represents the Class?](#)

[a. Class Representatives](#)

[b. Class Counsel](#)

[13. Reasons for the Settlement?](#)

[14. Who pays the attorneys' fees and costs?](#)

[15. What is the Settlement approval procedure?](#)

[16. When will the claims process start?](#)

[17. Where do I get additional information?](#)

---

## **1. Why should I read this Notice?**

The purpose of this Notice is to inform you that your rights may be affected by the proceedings in the lawsuit known as Cosby v. Masonite, CV-98-2446, pending before the Honorable Robert G. Kendall, in the Circuit Court of Mobile County, Alabama. This Notice is given pursuant to Alabama Rule of Civil Procedure 23 and by order of the Circuit Court of Mobile County, Alabama.

## **2. What is the lawsuit about?**

In 1997, Jeff Cosby and other homeowners filed a lawsuit called Cosby, et al. v. Masonite Corp., et al., No. CV-98-2446. The Cosby Plaintiffs, who own structures with exterior Masonite OmniWood Siding, brought the case as a class action against defendants Masonite Corporation and International Paper Company (together, "Masonite" or "Defendants") on behalf of all individuals or entities owning property in the United States on which Masonite OmniWood Siding manufactured since 1992 is incorporated and installed.

Plaintiffs seek relief based on theories of negligence, breach of express warranties, and fraud. Plaintiffs allege that OmniWood siding manufactured by Masonite Corporation on or after January 1, 1992, and installed and incorporated into commercial and/or rental property and residences, will rot, buckle, discolor, deteriorate, and

file:///C:/WSDA/Siding%20CD/Masonite/Omninotice.htm (3 of 12) [11/5/2001 7:50:06 AM]

cause damage to other structural parts of the buildings into which it is incorporated, causing the Class Members to suffer and continue to suffer damages. Defendants vigorously deny these allegations and any and all liability for these claimed allegations. Defendants further deny that Class Members are generally entitled to damages or other relief from the Defendants.

On August 7, 1998, the Circuit Court of Mobile County, Alabama, issued an order preliminarily approving a settlement of this matter, and certifying this action as a class action, defining the Class as: all persons and entities owning property in the United States and its territories on which Masonite OmniWood Siding manufactured since 1992 is incorporated and installed.

In this case and other litigation, counsel for the plaintiffs have conducted an extensive investigation of the claims concerning Masonite OmniWood siding. They have reviewed several hundred thousand documents and conducted depositions.

The parties have proposed to settle this class action. This proposed Settlement is a compromise of disputed claims and is not to be taken as an indication of liability or that damages have been, or would be, found against Defendants if the action had proceeded to trial.

### **3. What is Masonite Omniwood Siding?**

Masonite was a leading manufacturer of an oriented strandboard siding product made from wood fiber, wax, resins, and a hardboard overlay that is widely known as OmniWood siding. Masonite OmniWood siding was distributed both in lap (board) and panel (sheet) applications, each available in various external textures designed to look like conventional lumber siding. Masonite marketed OmniWood siding products for a variety of external construction uses, including exterior siding for residential and other structures.

### **4. Who is covered by the Settlement?**

The settlement agreement provides that it applies to a nationwide plaintiff class under Alabama Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(3), as a voluntary or "opt-out" Class. For settlement purposes, the Class is defined as all individuals and entities owning property in the United States and its territories on which exterior Masonite OmniWood Siding manufactured since 1992 is incorporated and installed. The Class definition excludes from participation: (1) all persons who, in accordance with the terms of this Notice, execute a timely request to opt out of the Class; and (2) persons who, while represented by counsel, previously resolved a claim with Masonite through full release, dismissal with prejudice, or judicial action.

On August 7, 1998, the Court granted preliminary approval of the proposed Settlement. The Settlement provides a program for eligible claimants to recover the costs associated with damage caused by the installation and incorporation of Masonite OmniWood Siding. If you do not execute a timely request for exclusion, you are entitled to make a claim, and your only recovery against Masonite will be in accordance with the terms of the Settlement.

### **5. How do I know if I have Masonite Omniwood Siding?**

If you do not already know whether you have Masonite OmniWood Siding on your property, there are several steps you may take to make that determination. You may wish to contact the builder of your property; you may remove a board or sheet of the siding and inspect the reverse side; or, if you have a garage with the back side of the siding exposed, you may look there. Masonite OmniWood siding is typically identified by the size of the fiber overlays on the back of the siding. Masonite OmniWood Siding has fine, toothpick-size fiber overlays as opposed to the much thicker thumb-size fiber overlays found on the back of other manufacturers' oriented strandboard siding products. You may also take a piece of your siding to your local building supply store, which may be able to assist you. As part of the claims process, you will be

required to establish that you have Masonite OmniWood Siding on your property.

## **6. What are the terms of the Settlement?**

On August 7, 1998, the Court granted preliminary approval to the Settlement subject to final approval following the hearing described below.

The essential terms of the proposed Settlement are:

### **a. Eligible Claimants**

If you qualify as an Eligible Claimant, you may be entitled to recover under the proposed Settlement Agreement. To be an Eligible Claimant, you must:

- (1) own property in the United States or its territories in which Masonite OmniWood Siding manufactured since January 1, 1992 is incorporated and installed, and have not assigned the claim regarding the alleged damage caused by Masonite OmniWood Siding;
- (2) be a subsequent purchaser of such property and have properly documented assignments determined to be valid under the Settlement Agreement; or
- (3) own or have formerly owned such property and have made Prior Un-Reimbursed Expenditures as defined by the Settlement Agreement.

Eligible Claimants do not include persons, associations or entities who made claims or filed lawsuits against Defendants other than in the Cosby class action, were represented by counsel other than Plaintiffs' Class Counsel in the Cosby class action, and whose claims or lawsuits were resolved by full payment, release, dismissal with prejudice, or judicial action.

### **b. Compensation Formula**

#### **(1) Basic Formula.**

The proposed Settlement Agreement contains a Compensation Formula, which will be the measure of payments to which an Eligible Claimant is entitled for the damage to a home or other structure. As agreed by the parties, the Compensation Formula will be based on (1) the average cost per square foot for siding replacement, including all material and labor as calculated by industry standards in your area, adjusted annually for inflation, or (2) the cost of appropriate refinishing as determined by industry standards in your area, also adjusted for inflation.

If more than 40% of a wall section is found to have compensable damage, then an Eligible Claimant will receive compensation, determined by the Compensation Formula, for that entire wall section. If 60% of the siding square footage of the structure qualifies as damaged, then an Eligible Claimant will receive compensation, as determined by the Compensation Formula, for the entire structure.

#### **(2) Definition of Damage.**

To be entitled to payment under the Settlement, an Eligible Claimant must be determined to have compensable Damage as defined by the Settlement Agreement. In summary terms, the Settlement Agreement defines Damage as follows: (1) thickness swell exceeding .520"; (2) edge checking wherein a gauge can be inserted one half inch into the board; (3) fungal degradation which results in soft board in which thumb pressure exhibits sponginess in the board deforming or producing significant indentation; (4) buckling exceeding of 1/4" between studs placed not more than 18" on center; (5) wax bleed; (6) delaminated or cracked primer or primer peel or peeling, or blistering; (7) surface welting, or swelling around nailheads; (8) moisture content exceeding 20%; or (9) raised or popped wafers visible on more than 25% of the surface of a board. Damage does not include: (1) intentional, reckless or negligent damage to siding (unrelated to installation or maintenance); or (2) damage to siding to the extent resulting from natural disaster including, but not limited to, fire, hurricane, flood, earthquake, earth movement or other similar events (excluding hail).

### **(3) Causation Exceptions.**

An Eligible Claimant with compensable Damage as defined above will be entitled to recovery unless one or more of the Causation Exceptions contained in the Settlement Agreement is determined to apply. The Causation Exceptions include damage caused by: (1) framing misalignment; (2) studs spaced more than 18 inches on center; (3) missing nails or nails which do not appear to penetrate framing members; (4) permanently installed sprinkler systems having directly sprayed the affected area; (5) siding within two inches of the ground; (6) the absence of or improper roof/wall flashing or cutbacks; (7) the failure of a chimney cricket to extend to the edge of the chimney; or (8) damage around a window assembly. For a Causation Exception to apply, the condition giving rise to the Exception must be clearly observable to the Independent Inspector without intrusive testing and must be determined to be the sole, independent cause of the damage. The benefit of any doubt will go to the homeowner. In addition, an Eligible Claimant will be compensated under the Compensation Formula for all damage to a particular board if any part of such damage is determined to be a result of product failure.

### **(4) Discontinued Masonite OmniWood Siding Products for Which There Are No Reasonable Substitutes.**

As of the date of the Settlement Agreement (July, 1998), Masonite has discontinued the manufacture of all OmniWood siding products. For certain products, specifically OmniWood Pine Textured 8" Lap, there are no substitutes that are reasonably similar in appearance. If an Eligible Claimant owns a structure with this discontinued product, and has sustained compensable damage to more than 25% of an elevation (side) of the structure, then the Eligible Claimant will be paid under the Compensation Formula for the entire structure.

### **(5) Limited Age Deduction.**

The proposed Settlement Agreement also provides for an age deduction based on the number of years the Masonite OmniWood Siding has been installed and incorporated into the structure. For the first five (5) years following installation, there is no deduction or proration under the compensation formula. For each year thereafter, there will be a deduction of three percent (3%) per year for use of the Masonite OmniWood Siding, up to a maximum deduction of twenty-seven percent (27%), based on the compensation formula.

## **c. Settlement Claims Program**

### **(1) Claim Form and Procedures for Damage That Has Not Been Repaired and Product Identification.**

To make a claim for damage that has not been repaired, a Class member must be an Eligible Claimant as defined above, and must submit a properly completed Claim Form to the Claims Administrator, along with proof of product identification. Proof of the existence of the Masonite OmniWood Siding on an Eligible Claimant's property may be achieved by: (1) providing the Claims Administrator with a 6" by 6" sample of Masonite OmniWood siding on the home or property certified by the Claimant to have been from the structure in question that includes the lower drip edge for lap siding or the vertical groove for panel siding; (2) a prior communication from Masonite that confirms that the siding in question is Masonite OmniWood Siding; (3) submitting a Claim Form with a check for \$100.00 (one hundred dollars), which will be refunded if the

Inspector determines the siding is Masonite OmniWood Siding; (4) an invoice or warranty, along with photographs of the exterior walls of the structure, showing that the siding is Masonite OmniWood Siding; or (5) a photograph depicting the back of the Masonite siding and the Masonite OmniWood Siding stamp.

**(2) Inspection and Payment of Claim.**

After receipt of a properly completed Claim Form, an Independent Inspector will inspect the property to verify the amount, if any, of compensable Damage. All damage associated with siding that meets the agreed definitions of Damage shall be compensable unless it is subject to one of the Causation Exceptions identified above. After completion of the inspection, the Independent Inspector will forward his/her report to the Claims Administrator, who will determine the amount of payment based on the information contained in the report of the Independent Inspector, according to the Compensation Formula defined above as applied to the damage compensable under the Settlement Agreement.

**(3) Claim for Un-Reimbursed Expenditures.**

Eligible Claimants also are entitled to make claims for Un-Reimbursed Expenditures associated with Masonite OmniWood Siding if they made the repairs (i) before the commencement of the notice program or, (ii) made the repairs by April 1, 2000, in good faith and with no knowledge of the proposed Settlement Agreement or Claims Program established by this Agreement. To make such a claim, the Eligible Claimant must properly complete a Claim for Un-Reimbursed Expenditures and must provide satisfactory proof (1) that the siding that is the subject of the claim was Masonite OmniWood Siding, (2) that the siding was damaged, (3) that the damage that is the subject of the claim was repaired or replaced, and (4) of the costs of any such repair or replacement work. In seeking to satisfy the first and second proof requirements, an Eligible Claimant may submit (i) photographs showing damaged Masonite OmniWood Siding, (ii) contracts, invoices, bills or other documents reflecting the repairs to the siding, or (iii) sworn statements from third persons in the business of inspecting or making repairs attesting to the inspection, damage and repairs. Claims may not be made for painting alone, but where the siding has been replaced, the cost of painting the siding may be included.

**(4) Subsequent/Multiple Claims.**

You are not limited to making a single claim during the life of the Settlement. If you experience additional compensable Damage subsequent to an initial claim that was not the subject of a previous claim, you may make additional claims in subsequent years during the life of the Settlement.

**(5) Claims Periods and Deadlines.**

The Settlement provides a ten (10) year claims program, subject to two provisions. The first would allow defendants to void the settlement after seven years; the second would permit defendants to extend the agreement for an additional ten (10) years. If the settlement extends for the first ten years, you must file your claim(s) by January 6, 2009. If the defendants exercise the early termination option, claims must be filed by January 6, 2006. If defendants exercise the option to extend the agreement an additional ten years, the settlement will terminate January 6, 2019. Once the Settlement expires, the remainder of Masonite's warranty, if any, will remain in effect, and you may be entitled to receive compensation for siding that fails under the terms of Masonite's warranty program separate and apart from this Settlement.

**[7. What if I have sold my house?](#)**

If you have sold your house, you are eligible to participate in the lawsuit if you previously repaired or replaced damage related to your siding without submitting a claim to Masonite, if you submitted a claim which was not fully paid in accordance with the terms of this Settlement, or if you have a valid assignment of claim from your buyer. Call 1-800-256-6990 to obtain a form. You may also assign your right to take a future claim to the buyer of your home, by advising the buyer of this settlement and making a written assignment of your potential claim.

### 8. What if I already made a warranty claim and signed a release?

You are eligible to participate in the settlement even if you previously made a warranty claim and signed a release except if you were previously represented by an attorney and your claim was resolved by full release, dismissal with prejudice, or judicial action. If you qualify to make a claim, the amount due you under the settlement will be reduced by the amount of any prior payments to you for the damaged siding.

### 9. Do I need to do anything to participate in the Settlement?

You do not need to do anything at this time if you want to remain a Member of the Class and participate in the Settlement. However, if you have Masonite OmniWood Siding, you are encouraged to obtain a Claim Form now, whether you have damage on the siding or not. To recover for damage to the siding, you may submit your Claim Form or Claim for Un-Reimbursed Expenditures before the end of the applicable claims deadline, ten years after approval of the Settlement. You may call 1-800-256-6990 to receive claim forms if and when the Settlement is approved.

If you remain a Member of the Class, then: (i) you may make a claim and you may participate in the benefits of the Settlement; and (ii) the Class Counsel listed in this Notice will act as your representatives and counsel, without fee or costs to you. If you choose this option you will be bound by the Settlement, and if the Settlement is not approved, you will also be bound by that result. If you desire, you may also appear by your own attorney, at your own expense, you may seek to intervene individually, and you may advise the Court regarding adequacy of representation by Class Representatives and Class Counsel.

### 10. How can I exclude myself from the Settlement?

If you do not want to remain a Class Member and participate in the proposed Settlement, that is, you want to "opt out," then you must personally sign and have notarized a letter requesting exclusion and mailed to **Masonite OmniWood Exclusion, P.O. Box 925, Minneapolis, MN 55440-0925**, postmarked by no later than December 20, 1998. Unsigned, incomplete, or late letters requesting exclusion will not be accepted. No one else can sign your exclusion letter for you.

By electing to be excluded from the Class ("opting out"), (i) you will not share in any recovery that may be paid to Class Members as the result of the Settlement; (ii) you will not be bound by any further orders or judgments entered for or against the Class; and (iii) you may present any claims you have against Defendants by filing your own lawsuit at your own expense.

### 11. How do I make a claim?

If you believe you are an Eligible Claimant, in order to participate in the Settlement, you must make your claims by the applicable deadlines described above, and follow any procedures set by the Court and provide the information requested to support and verify your claim. The claims process will not begin until the Court approves the Settlement. Therefore, the claim forms (*i.e.*, Claim Form and Claim for Un-Reimbursed Expenditures) will not be available until Court approval. The Court is scheduled to consider the fairness of the Settlement on January 6, 1999. If you have received this notice in the mail, or if you call 1-800-256-6990, contact Class Counsel, or return the attached "Claim Request Form" with your name and complete address to **Independent Claims Administrator, Masonite OmniWood Claim Form, P.O. Box 925, Minneapolis, MN 55440-0925**, you will receive claim forms if the Settlement is approved, or you will be notified if the Settlement is not approved.

### 12. Who represents the Class?

**a. Class Representatives**

Plaintiffs Jeff and Donna Cosby, Delores Ruscigno, Charles David Isaak, and David and Virginia Steinmetz have been designated as Class Representatives by the Court. They have presented this action on behalf of the Class since 1996. They have provided documents and information in support of Class Claims. The Settlement provides no special benefits to the Class Representatives, other than payment of \$5,000 per class representative family in recognition of their efforts on behalf of the Class.

**b. Class Counsel**

In its August 7, 1998 order granting preliminary approval of the Settlement, the Court appointed the following attorneys as Class Counsel:

CUNNINGHAM, BOUNDS, YANCE,  
CROWDER & BROWN  
Richard T. Dorman  
John T. Crowder  
Post Office Box 66705  
Mobile, Alabama 36660  
Telephone: (334) 471-6191

HAGENS & BERMAN  
Clyde A. Platt, Jr.  
1301 Fifth Avenue, Suite 2929  
Seattle, Washington 98101  
Telephone (206) 623-7292

LEVY, RAM & OLSON, LLP  
Michael F. Ram  
351 California St., Suite 1100  
San Francisco, CA 94104  
Telephone: (415) 433-4949

McRIGHT, JACKSON,  
MYRICK & MOORE  
1100 First Alabama Bank Building  
106 St. Francis Street  
Post Office Box 2846  
Mobile, Alabama 36652  
Telephone: (334) 432-3444

SANDLER AHERN & McCONAUGHY PLLC  
Bennet A. McConaughy  
Paul L. Ahern, Jr.  
1200 Fifth Avenue, Suite 1900  
Seattle, Washington 98101  
Telephone (206) 346-1750

DOFFERMYRE, SHIELDS, CANFIELD,  
KNOWLES & DEVINE  
Ralph I. Knowles, Jr.  
Everette L. Doffermyre  
1600 The Peachtree  
1355 Peachtree Street  
Atlanta, Georgia 30309  
Telephone: (404) 881-8900

LIEFF, CABRASER, HEIMANN  
& BERNSTEIN, LLP  
Elizabeth J. Cabraser  
Jonathan D. Selbin  
Fabrice N. Vincent  
Embarcadero Center West  
275 Battery Street, 30th Floor  
San Francisco, California 94111-3339  
Telephone: (415) 956-1000

### **13. Reasons for the Settlement**

Class Representatives and Class Counsel have reached this Settlement after lengthy negotiations conducted over the course of more than one year. Settlement negotiations have been conducted with the assistance and supervision of a retired judge, who previously served as Court-appointed mediator in other siding litigation. In ultimately deciding to recommend this Settlement, Class Counsel considered the relative risks and benefits to the Class of Settlement or continuing litigation. Among the factors considered in reaching this Settlement were the following:

1. The settlement provides certain, timely, and substantial relief to Class members, and waives substantial defenses of defendants.
2. Plaintiffs believe that one of their strongest claims was for breach of express warranty. However, the express warranty only provides that Masonite will pay up to twice the original costs of the siding (approximately \$1 per square foot). That amount was subject to defenses of improper installation and maintenance. Plaintiffs believe that Class Members should get a significantly higher recovery, estimated by Plaintiffs to be three to four times the warranty remedy, under the terms of the Settlement than they did under the warranty. There also were potential legal problems with the warranty claim. Defendants may have argued that the warranty only applied to the original purchasers of the siding and/or the homes, and that subsequent purchasers, and homeowners who did not actually see and rely upon the warranty, could not recover.
3. Plaintiffs also believe they had a strong fraud cause of action. However, that claim would have required Plaintiffs to prove a fairly complex series of legal issues, including proof that Defendants were aware that the siding was defective, that this fact was "material," that Defendants had a duty to disclose that fact to Class Members, and that, as a result of Defendants' failure to disclose that fact, Class Members acted to their detriment.
4. Plaintiffs' negligence claim also presented potential legal problems, including, among others, those related to defenses of improper installation and maintenance, which could, if successful, have affected a finding that alleged defects in Masonite OmniWood Siding caused damage or injury to Class Members' homes or structures.
5. Any recovery would be subject to review and possible reversal on appeal; by contrast this Settlement does not require an admission or final determination of liability, and this Settlement ensures recovery for the Class, eliminating the substantial costs, delays, and risks of continued litigation on trial and appeal by Defendants.

Class Counsel balanced all of these risks in determining that this Settlement is in the best interests of the Class. The Settlement also ensures timely, certain relief, without all of the uncertainties and risks of further litigation.

### **14. Who pays the attorneys' fees and costs?**

No Class Member's recovery will be reduced to pay attorneys' fees. In addition to payment to Class Members, Defendants have agreed to pay Class Counsels' attorneys' fees in an amount equivalent to 13% of the claims paid during the life of the Settlement. Of this amount, Defendants have agreed to pay Class Counsel an initial, advance payment of attorneys' fees of \$1.7 million. Defendants also have agreed to pay Class Counsels' costs incurred in this litigation, in an amount not to exceed \$75,000. These agreements on fees and costs are subject to Court approval. Unlike many settlements, this Settlement does not deduct attorneys' fees or costs from the class benefit, and Class Members have no responsibility to pay any hourly or contingent fees to Class Counsel.

### **15. What is the Settlement approval procedure?**

The Court will hold a formal Fairness Hearing on January 6, 1999 at 9:00 a.m., in the Courtroom of Honorable Robert G. Kendall, in Mobile, Alabama. The address of the Court is Courtroom 6600, Circuit Court, 205 Government Street, Mobile, Alabama 36602. At the Fairness Hearing, the Court will consider whether the above-described

Settlement should be granted final approval as fair, adequate, and reasonable and in the best interests of the Class as a whole. You may attend this hearing if you wish, but you are not required to do so in order to participate in the Settlement. The Court reserves the right, without further notice to the Class, to adjourn or continue the Fairness Hearing from time to time after the first day.

If you decide to opt out of the Class (as described above), then you are not entitled to comment on the proposed Settlement or be heard at the Fairness Hearing. If you decide to remain in the Class, and you wish to comment in support of, or in opposition to, any aspect of the Settlement or proceedings described in this Notice, you may do so, provided that you submit your comments, in writing, to the addresses listed in the following paragraph, postmarked not later than December 20, 1998.

If you wish to appear at the Fairness Hearing and be heard orally, in support of or in opposition to the Settlement, you may do so if you file with the Clerk of the Court, at the Circuit Court of Mobile County, Alabama, a written notification of your desire to appear personally, indicating (if in opposition to the Settlement) briefly the nature of your comment or objection. Such notice must be postmarked not later than December 20, 1998. The address of the Court is: Clerk's Office, Circuit Court, 205 Government Street, Mobile, Alabama 36602. A copy of the notification must also be sent, by the same postmark date, to: (1) Robert Shulman, Esq. - Howrey & Simon, 1299 Pennsylvania Ave., N.W., Washington, D.C. 20004 - **OR** - Stephen M. Bickford, Esq., Tobin & Tobin, 500 Sansome Street, 8th Floor, San Francisco, CA 94111 (Counsel for Defendants) **AND** Plaintiffs' Class Counsel c/o Clyde A. Platt, 1301 Fifth Avenue, Suite 2929, Seattle, WA 98101.

If you do not comply with the procedure and the deadlines stated herein, you will not be entitled to be heard at the Fairness Hearing or to otherwise contest the approval of the Settlement, or to appeal from any orders or judgments of the Court entered thereon.

The Court's determination on the final approval of the proposed Settlement will be binding on all Class Members (except for those who have timely opted out of the Class). If the Court grants approval of the Settlement, the judgment will release and dismiss all Class Members' settled claims. This release and dismissal will bar any further suit by or on behalf of the Class Members on settled claims. Instead, Class Members will obtain the rights and benefits accorded them under the Settlement.

If the Settlement is not approved by the Court, the case will remain in Court, and will proceed as active litigation. If there are further actions that are taken in this lawsuit that affect your rights, you will receive notice.

#### **16. When will the claims process start?**

The claims process will not begin until the Court approves the Settlement. Therefore, the forms (*i.e.*, Claim Form and Claim for Un-Reimbursed Expenditures) will not be available until Court approval. The Court is scheduled to consider the fairness of the Settlement on January 6, 1999. If you call 1-800-256-6990, contact Class Counsel, or return the attached "Claim Request Form" with your name and complete address, you will receive claim forms if the Settlement is approved, or you will be notified if the Settlement is not approved.

#### **17. Where do I get additional information?**

The foregoing is only a summary of the circumstances surrounding the litigation, the claims asserted, the proposed Settlement, and related matters. You may seek the advice and guidance of your own private attorney, at your own expense, if you desire. For more detailed information, you may review the pleadings, records, and other papers on file in this litigation, which may be inspected during regular business hours at Clerk's Office, Circuit Court of Mobile County, Alabama. The address of the Court is: Circuit Court, 205 Government Street, Mobile, Alabama 36602. Copies of the complaint, the Settlement and the papers filed in support of approval of the proposed Settlement are available upon written request to Class Counsel.

Current information is available by calling 1-800-256-6990. This information, the Settlement Agreement, and the Court's Settlement-related orders are also available on the

Internet at: <http://www.kinsella.com/Masonite>. If you decide to remain a Member of the Class and you wish to communicate with Class Counsel identified above, you may do so by writing to (1) Class Counsel, c/o 1301 Fifth Avenue, Suite 2929, Seattle, WA 98101, Fax: (206) 623-0594, or (2) any of the Class Counsel listed in Section 11.

**REMINDER**  
**Important Dates and Deadlines:**

"Opt-Out" Postmark Deadline: December 20, 1998  
Comment/Objection Postmark Deadline: December 20, 1998  
Fairness Hearing Date: January 6, 1999  
Time: 9:00 a.m.  
Place: Courtroom 6600, 205 Government St., Mobile, Alabama  
Claims Deadlines: 10/10 years

PLEASE DO NOT CONTACT THE COURT.

Dated: August 7, 1998

/s/The Honorable Robert G. Kendall  
Judge, Mobile County Circuit Court

[BACK TO TOP](#) [HOME](#)