No. 90878-8

SUPREME COURT
OF THE STATE OF WASHINGTON

LOUSIANA PACIFIC CORPORATION,

Petitioner,

v.

CANTERBURY APARTMENT HOMES, LLC,

Respondent.

CANTERBURY APARTMENT HOMES LLC'S RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

Louisiana Pacific Corporation ("LP") seeks review of the unpublished decision of the Court of Appeals, Division II, affirming the jury verdict in favor of Canterbury Apartment Homes LLC ("Canterbury"). LP fails to meet the RAP 13.4 criteria for review.

This case does not present issues of substantial public interest that should be determined by the Supreme Court. LP has now presented its argument that the LP federal class settlement restricts Canterbury's breach of warranty remedy to the remedy stated in the written warranty, without success, in three different forums. Before the argument was rejected by the Pierce County Superior Court and Division II, it was rejected by the United States District Court for the District of Oregon – the court with exclusive jurisdiction to interpret and enforce the class settlement agreement. If Canterbury's claim truly "threatens the certainty of not only this class action, but the myriad class action settlements,"[1] the federal court would have intervened upon LP's requests. It did not. LP's argument has now been rejected by three courts. The substantial public interest does not necessitate further review by this Court.

Division II's decision also does not conflict with any decision of this Court. Division II properly applied this Court's well-established rules

[1] Petition at p. 15.

when it construed the plain words employed in LP's written limited warranty and when it reviewed the jury instructions given in this case. The jury's $755,314 verdict is well supported by the law.

STATEMENT OF THE CASE

A. Canterbury's State Court Action To Recover Damages For LP's Breach Of Its Written Limited Warranty.

Canterbury commenced this lawsuit after the defective LP Inner Seal Siding installed on its apartment buildings failed, necessitating replacement of all the siding at a total out-of-pocket cost of $937,917. (CP 1-12.) Canterbury made a claim under LP's 25-year limited warranty. (*Id.*, Trial Exhibits ("Ex.") 9-14.) LP never denied that its product was defective, but claimed that the only remedy available under its limited warranty was payment of $8,383 – less than 1% of the actual cost incurred to address the defective siding. (*See* Ex. 214.)

Canterbury's sole claim presented to the Pierce County Superior Court jury was a claim for breach of the limited warranty. But, Canterbury argued that its remedy for that claim was not limited to the remedy stated on the written warranty. Canterbury argued that, under Washington law, Canterbury had the option to elect and recover the statutory remedy for breach of warranty as provided by Washington's Uniform Commercial Code ("UCC"). While the UCC does authorize contractual limitations on the UCC remedies for breach of warranty, those limitations are only

enforceable if certain conditions are satisfied. The UCC directs that limited remedies will be deemed optional to the buyer (rather than exclusive) unless the written warranty contains an unmistakable expression that the parties agreed the stated remedies are exclusive. RCW 62A.2-719(1(b).

Here, following review of the plain language in the written warranty in the context of Washington law, the Pierce County trial court concluded the warranty lacked the requisite unmistakable expression of exclusivity; and, therefore, the remedy stated on the warranty was not the sole and exclusive remedy. (RP 833.) The trial court thus instructed the jury that the remedy stated in the warranty was not the sole and exclusive remedy available for LP's breach and that Canterbury could recover the UCC remedy as provided in RCW 62A.2-214(2). (CP 198.) Following its own review of the warranty language, Division II reached the same conclusion and ruled the jury instruction was proper. (Opinion at 12-14.)

B. The Nation-Wide LP Class Settlement

The LP Inner-Seal siding and warranty at issue here were also the subject of a 1996 class settlement approved by U.S. District Court Judge Robert Jones. (CP 256-384.) The settlement agreement provided a process through which claimants with defective siding installed prior to January 26, 1996 could submit claims and receive compensation for defective

siding. The remedy was not limited to a refund for the defective siding. Class members received repair costs, including labor for installation, reduced by an aging deduction. (RP 532, CP 264.) As part of the settlement, LP also waived all defenses against class claims, including improper installation or maintenance. This waiver was considered a significant element of the consideration LP provided in the settlement. (CP 366, ¶ 9; CP 391.) In return, class members released in the original agreement all claims against LP, including claims for breach of warranty. (CP 328.)

Under the settlement agreement's own terms, the compensation program would terminate on January 1, 2003. (CP 330.) Thus, as originally drafted, class members who discovered defective siding after January 1, 2003 would have released all claims, but nonetheless go uncompensated. After Judge Jones expressed concerns (CP 249), the class parties agreed to amend the settlement agreement to reinstate the 25-year LP warranty for claims arising after January 1, 2003. (CP 263-307.) The reinstatement was implemented by simply amending the class settlement definition of "Settled Claims" to exclude "claims made against L-P after the expiration of the term of the Settlement Agreement under the express terms of the L-P 25-year limited warranty issued with this product." (*See* CP 264 ¶ 1.3.) The amendment further provided: "At the termination of

the Settlement Agreement, L-P's 25-year Limited Warranty shall be in effect the balance of its term when measured from the date of original installation of the claimant's siding." (CP 268, ¶ 6.)

With the 2003 reinstatement of the limited warranty, LP's previously waived defenses were also reinstated, including the defenses of improper installment and improper maintenance. Indeed, LP asserted such affirmative defenses in this case, confirming that state law was again in play after the settlement term expired. (CP 17-18.)

C. The Federal Court Rejection Of LP's Efforts To Limit Remedies Available To Canterbury Under The Limited Warranty.

Canterbury's suit originally included four state law claims – breach of the written limited warranty, breach of warranties created by advertising and two Consumer Protection Act claims. (CP 1-12.) After Canterbury filed suit, LP requested the federal court to enforce the settlement agreement against Canterbury. (CP 524-39.) LP requested a federal court determination that Canterbury was a class member, as well as an order compelling Canterbury to dismiss all of its state court claims, even its claim under the reinstated warranty. (CP 525.)

Judge Jones ruled on July 26, 2012. (Appendix A at CP 247-55.) He held that Canterbury was a class member and, as such, released three of its four state court claims. (CP 254-55, 248.) Judge Jones thus ordered

Canterbury to dismiss its breach of warranty by misrepresentation claim, as well as its two CPA Claims, which it did. (CP 255, 21-50.)

However, Judge Jones denied LP's motion with regard to Canterbury's breach of warranty claim. The federal court held that Canterbury did not release, but fully retained its breach of warranty claim. Through the parties' briefing, the court was fully informed of the scope of Canterbury's breach of warranty claim, including its claim that the warranty remedies are not exclusive and that Canterbury is thus entitled to recover its full replacement costs of approximately $900,000. (Appendix A at CP 251. *See also* CP 532, 535-36, 574-75.) Fully informed, Judge Jones held that Canterbury could pursue its claim for breach of the reinstated warranty in state court, and the state court could apply Washington law to resolve the issues presented in that claim. (CP 250-51.) LP did not appeal Judge Jones' decision.

Instead, two months later, LP made another attempt to litigate this case in the federal court through a "motion to enforce the court's July 26, 2012 Order." (CP 608-26.) LP asserted Judge Jones previously ruled that the scope of remedies available under the LP warranty was to be determined by the class settlement agreement, rather than the warranty's words and applicable state law. (CP 615-23.) LP requested the federal court "to decide the scope of remedies available to Plaintiff on its 25-year

Limited Warranty claim." (CP 609.) More specifically, LP requested the federal court to rule "that the sole and exclusive remedy for Plaintiff is the remedy stated in LP's 25-year Limited Warranty of twice the retail cost of the original siding less the aging deduction." (*Id.*)

Judge Jones denied LP's motion on November 1, 2012. (Appendix B at CP 426-28.) He agreed that LP's motion "in reality appear[ed] to be a back door attempt to obtain summary judgment . . . without the requisite notice and without complete presentation of relevant facts through sworn testimony." (CP 427.) Ultimately, Judge Jones decided that the issues presented flowed from warranty interpretation rather class settlement interpretation, since he held: "The Washington state trial court is in the best position to interpret the warranty in light of Washington law, and make rulings concerning Canterbury's remedies and damages." (*Id.*) Once again, LP chose not to appeal Judge Jones' decision.

In this context, and with the benefit of two unappealed orders from the federal court with exclusive jurisdiction to interpret and enforce the settlement agreement, Pierce County Superior Court Judge Edmond Murphy made his decisions in this case. Judge Murphy ruled:

> Judge Jones did rule in the November ruling just a few weeks before trial, that it was up to this Court to interpret the warranty in light of Washington law and to make rulings regarding the plaintiff's remedies and damages, which the Court has done.

> I don't find that there was anything in either the settlement agreement or in what Judge Jones has ruled that prohibits this Court from doing that.

(RP 981).

Division II agreed. It held that the class settlement did not specify the remedies available to a class member under the limited warranty. (Opinion at p. 10.) Division II also noted:

> The federal court held that it "did not make any determination concerning Canterbury's damages, only the claims it could pursue," and the "Washington state trial court is in the best position to interpret the warranty in light of Washington law, and to make rulings concerning Canterbury's remedies and damages." CP at 109. Thus, the federal court did not conclude whether the remedy provided in the Limited Warranty is exclusive. Instead, the federal court ordered Canterbury to dismiss all of its claims against LP except it claim for breach of the Limited Warranty. It allowed the trial court discretion to interpret Washington law to determine the specific remedies and damages available under the Limited Warranty.

(Opinion at p. 11.)

ARGUMENT

A. Division II's Unpublished Decision Is Wholly Consistent With The Unappealed U.S. District Court Decisions Issued Specific To This Case And The Class Settlement.

LP has tried from the beginning to hide behind the class settlement even though (1) it expressly reinstated LP's warranty, (2) it excluded warranty claims from the release, and (3) LP's position was rejected by the federal court with exclusive jurisdiction. The class settlement did not

interpret or modify the limited warranty and certainly did not correct its deficiencies under Washington law. The class settlement thus did not serve to restrict the remedies available for breach of the written warranty.

1. The federal court did not limit Canterbury's remedies under the express warranty, but ruled that issue is within the province of the state court.

Omitting the context of the arguments presented to the federal court, LP quotes fragments from the federal court orders. LP claims: "The Federal Court orders in this case are replete with references to limitations provided by the warranty's 'express terms'." (Petition at p. 11.) Judge Jones' orders belie LP's arguments.

Notably, pre-trial, LP understood and acknowledged that Judge Jones' intervention was necessary for LP to prevail on its position that the settlement restricts the available under post-settlement breach of warranty claims. LP thus filed its second federal motion asking the court, supposedly based on its first ruling, "to decide the scope of remedies available to Plaintiff on its 25-year Limited Warranty claim" and rule "that the sole and exclusive remedy for Plaintiff is the remedy stated in LP's 25-year Limited Warranty of twice the retail cost of the original siding less the aging deduction." (CP 609) Meanwhile, in state court, LP requested a trial continuance pending a decision from Judge Jones stating his ruling would greatly influence the state court proceeding. (CP 815-822.)

In its November 1, 2012 ruling, Judge Jones expressly rejected the notion that his order decided Canterbury's remedies:

> Although L-P frames the pending motion as a request to enforce my earlier opinion and order, I did not make any determination concerning Canterbury's damages, only the claims it could pursue. I ruled that:
>
> > [P]laintiff [Canterbury] is a class member and plaintiff's remedy, if any, is the 25-year warranty. L-P claims that plaintiff cannot pursue the warranty claim in state court, but the warranty does not contain any language precluding state court action. Thus, I grant L-P's and Class Council's motion with respect to all of plaintiff's claims except the warranty claim.
>
> Opinion and Order, p. 8. [CP 254.] Thus, there is nothing to "enforce" concerning the amount Canterbury may seek as damages other than the limitation to warranty damages. (Emphasis added.)

(CP 427.) Regarding the required determination, the court ruled:

> The Washington state trial court is in the best position to interpret the warranty in light of Washington law, and make rulings concerning Canterbury's remedies and damages. If LP disagrees with the Washington court's ultimate rulings, LP's remedy is an appeal, not an order of enforcement from this court. (Emphasis added.)

(*Id.*) Judge Jones effectively ruled that the settlement agreement did not limit the remedies available under the written warranty. The federal court did not bind or restrict the state trial court. It confirmed the trial court had full authority and was best positioned to determine available remedies in light of Washington law. (CP 427.)

Judge Jones' second ruling confirmed that the settlement

agreement has no bearing on the issue of available breach of warranty remedies. Both the class settlement agreement and the implementing Final Order expressly give the federal court exclusive jurisdiction with regard to interpretation, implementation, or enforcement of the settlement agreement. (CP 345, ¶ 13.3; CP 261, ¶ 9.) Judge Jones was fully informed of all the arguments presented on this appeal, including LP's "policy" arguments. (CP 612-26, 662-71.) Yet, he refused to intervene and denied LP's second motion.

LP could have appealed Judge Jones' rulings to the Ninth Circuit and requested a trial continuance while the appeal was pending. It did not and those decisions are now final. LP's attempt to correct the deficiencies of its limited warranty through application of the settlement agreement is an improper collateral attack on the federal court's unappealed rulings. The arguments may be rejected on this ground alone. However, they fail even if considered, because LP misconstrues the settlement agreement.

2. Without interpretation or modification, the class settlement agreement fully reinstated LP's warranty, and with it, all remedies available pursuant to its terms in light of Washington law.

LP relies on ¶ 13.1 of the settlement agreement providing that the settlement remedy "shall be the sole and exclusive remedy for any and all Settled Claims." (CP 345.) But the original Agreement was amended to

expressly exclude the breach of warranty claim from "Settled Claims." (CP 264.) While the settlement agreement establishes the "sole and exclusive remedy" for "Settled Claims," it does not do so for breach of warranty claims, since they are expressly excluded from "Settled Claims."

LP argues that the Amended Agreement expressly limited available remedies when it reinstated the warranty. It did not. Beyond revising the definition of "Settled Claims" to exclude "claims made against L-P after expiration of the terms of the Settlement Agreement under the express terms of the L-P 25-year limited warranty issued with this product." (CP 264, ¶ 1.3), the reinstated warranty is addressed only at ¶ 6 of the Amended Agreement (CP 268):

> **Clarification of Release/L-P 25-Year Limited Warranty.**
>
> The release in the Settlement Agreement is amended to exclude claims filed against L-P after the expiration of the Settlement Agreement by consumers under the terms of the L-P 25-year Limited Warranty. At the termination of the Settlement Agreement, L-P's 25-year Limited Warranty shall be in effect for the balance of its term when measured from the date of original installation of the claimant's siding. (Underlining added.)

This provision simply authorize claims "under the terms of the warranty" after January 1, 2003. It does not revise or delete any of the warranty's express terms, nor does it interpret or even discuss the terms. It merely reinstates warranty, leaving the warranty to operate in the context of applicable Washington law.

Finally, as it did in its second motion to the federal court (CP 620-21), LP attempts to bolster its interpretation of the settlement agreement by reference to the class notice language. LP focuses on the following single sentence at page 3 of the Notice: "You should remember that most warranties issued for L-P Inner Seal Siding had a depreciation schedule so that by the year 2003 your recovery under the warranty will have depreciated." (Petition at p. 11.) This language is not inconsistent with the settlement agreement remedy of replacement costs less an age deduction based on the depreciation schedule. Regardless, the settlement agreement governs the terms of the class settlement. A single sentence in a notice cannot alter the agreement to further limit class members' rights. Even if it could, the referenced sentence certainly does not unambiguously advise class claimants on the issue of exclusivity of remedies for warranty claims.

B. Division II Applied The Well-Establish Contract Construction Rules And Properly Concluded That The Plain Words Of The Limited Warranty Failed To Evidence That The Stated Remedy Was Agreed To Be The Exclusive Remedy.

Both the state trial court and court of appeals reviewed the plain language of LP's limited warranty and concluded that its stated remedy is exclusive because the language does not, as the UCC requires, include an unmistakable expression that parties agreed the remedy was exclusive.

LP cites general contract construction rules, focuses on select language that LP deems favorable and then asserts any interpretation contrary to its own is an absurd result. LP accuses Division II (and the trial court) of failing to construe the warranty as a whole, yet simultaneously chastises Division II for considering "stock language mandated by the Federal Trade Commission" (Petition at p, 16, n. 1), apparently implying that federally mandated language should not be given meaning. Both Division II and the trial court properly construed the language in the written warranty in light of both the contract construction rules and the UCC. Further review is unwarranted.

The LP warranty (Appendix C Ex. 9) provides in relevant part:

> **LIMITED 25-YEAR SIDING WARRANTY**
>
> Louisiana-Pacific Corporation ("L-P") warrants the Inner-Seal® lap and panel sidings, when installed and finished according to the published installation and finishing instructions and when properly maintained, for a period of 25 years from the date of installation against manufacturing defects under normal conditions of use and exposure.
>
> **LIMITATIONS**
>
> L-P MUST BE GIVEN A 60-DAY OPPORTUNITY TO INSPECT THE SIDING BEFORE IT WILL HONOR ANY CLAIMS UNDER THE ABOVE WARRANTY. IF AFTER INSPECTION AND VERIFICATION OF THE PROBLEM, L-P DETERMINES THAT THERE IS A FAILURE COVERED BY THE ABOVE WARRANTY, L-P WILL REFUND TO THE OWNER AN AMOUNT OF MONEY EQUAL TO TWICE THE RETAIL COST OF THE ORIGINAL SIDING MATERIAL. THE COST OF LABOR AND MATERIALS OTHER THAN SIDING ARE NOT

> INCLUDED. WARRANTY PAYMENTS WILL BE BASED UPON THE AMOUNT OF AFFECTED SIDING MATERIAL.
>
> DURING THE FIRST 5 YEARS, L-P'S OBLIGATION UNDER THE ABOVE WARRANTY SHALL BE LIMITED TO TWICE THE RETAIL COST OF THE SIDING MATERIAL WHEN ORIGINALLY INSTALLED ON THE STRUCTURE.
>
> IF THE ORIGINAL SIDING COST CANNOT BE ESTABLISHED BY THE OWNER THE COST SHALL BE DETERMINED BY L-P IN ITS SOLE AND REASONABLE DISCRETION.
>
> DURING THE 6TH THROUGH 25TH YEAR, AS DETERMINED IN THE ABOVE MANNER, WARRANTY PAYMENTS SHALL BE REDUCED EQUALLY EACH YEAR SUCH THAT AFTER 25 YEARS FROM THE DATE OF INSTALLATION NO WARRANTY SHALL BE APPLICABLE. (Underlining added.)

The stated remedy for defects discovered in the first five years is not applicable to this case. Nonetheless, analysis of this separate and different remedy is helpful in interpreting the stated remedy for damages discovered in years 6 through 25. In apparent recognition that product which fails in the first 5 years is virtually new, there is no depreciation deduction. However, the remedy is also directly tied to the amount the claimant actually paid for the product, not the current replacement cost, allowing payment of "TWICE THE RETAIL COST OF THE SIDING MATERIAL WHEN ORIGINALLY INSTALLED ON THE STRUCTURE."

The base calculation for compensation for siding discovered to be defective in years 6 through 25 is different. Rather than describe the

payment as "TWICE THE RETAIL COST OF THE SIDING MATERIAL WHEN ORIGINALLY INSTALLED," LP describes the base payment in a different paragraph as "TWICE THE RETAIL COST OF THE ORIGINAL SIDING MATERIAL." No reference is made to the time of installation. The base compensation for defective siding discovered in years 6 to 25 is tied to current retail price of the material installed, rather than the original purchase price as applied in the first 5 years.

There is no language in LP's warranty to even indicate that the above remedy, applicable to years 6 to 25, was agreed to be the exclusive remedy available to claimants who discover siding defects more than five years after it is installed. Certainly there is no unmistakable expression in this regard. To the contrary, the written warranty acknowledges that applicable state law may provide additional remedies under the warranty. It provides: "THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE." Under Washington law, the failure to provide an explicit expression of agreed exclusivity matters. RCW 62A.719(1)(b). It is as if the warranty itself states "the remedy described above is optional."

The UCC "creates a presumption that clauses prescribing remedies are cumulative rather than exclusive." Official Comment 2 to the UCC 2-719. It is LP's burden to overcome that presumption with an unmistakable

expression that the parties agreed the stated remedies to be exclusive. *Id.*, RCW 62A.2-719(1)(b). LP did not meet its burden.[2]

C. Division II Correctly Determined That The Jury Instruction On Failure Of Essential Purpose Did Not Prejudice LP.

LP argues that this Court improperly concluded that the trial court's instruction on failure of essential purpose was harmless. LP relies on a "presumption of prejudice" to advance its argument. However, this Court properly noted that any such presumption is "subject to a comprehensive examination of the record." (Opinion at p. 15, *citing Blaney v. Int'l Ass'n of Machinists & Aerospace Workers. Dist. No. 160,* 151 Wn.2d 203, 211, 87 P.3d 757 (2004). In fact the Court has a duty to "scrutinize the entire record in each particular case and determine whether or not error was harmless or prejudicial." *Blaney*, 151 Wn.2d at 211. Division II engaged in the required analysis to determine that Instruction No. 11, even if erroneously given, was not prejudicial:

> Scrutiny of the record in this case reveals that the erroneous failure of essential purpose instruction was harmless because LP suffered no prejudice. The method to calculate damages for essential purpose was the same calculation the jury used to calculate the damages it found.... Accordingly, because the

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[2] LP cites *Norway v. Root,* 58 Wn.2d 96, 361 P.2d 162 (1961). *Norway,* however, did not address UCC 2-719(1)(b). Moreover, even if it was analyzed, the language used in the *Norway* warranty was more likely to satisfy the UCC requirement. The warranty stated: "Dealer's obligation under this warranty is limited to replacement of, at Dealer's location, or credit for such parts as shall be returned to Dealer with transportation charges prepaid and as shall be acknowledged by Dealer to be defective. *Id.* at 97.

> substantive outcome, the manner in which the jury calculated damages, is the same regardless of the failure of essential purpose instruction, the erroneous instruction is harmless.

(Opinion at pp. 15-16.)

LP claims that is "impossible to determine whether the jury awarded damages on a basis the Court has deemed lawful (breach of warranty) or one that the Court has deemed erroneous (failure of essential purpose)." (Petition at p. 19.) According to LP, this "impossibility" makes the instructions prejudicial to LP as a matter of law.

However, LP fails to address in its petition that the measure of damages under both theories is effectively the same. The remedy stated in the warranty was deemed optional to Canterbury. Canterbury elected the statutory remedy provided by the UCC, which is the same remedy available under the theory of failure of essential purpose. Division II correctly concluded (based on the record) that the substantive outcome would be the same; and, accordingly, Instruction 11 caused no prejudice.

Moreover, LP's reliance on *Hall v. Catholic Archbishop of Seattle,*[3] is misplaced. The *Hall* court was presented with instructions that were irreconcilably contradictory on a material issue of the case. LP cannot demonstrate that to be the case here. The *Hall* case has no

[3] 80 Wn.2d 797, 804, 498 P.2d 844 (1972).

application here and this Court, based on its comprehensive review of the record, properly concluded there was no prejudice.

Independently, LP's argument must be rejected because LP failed to propose a special verdict form that would have resolved the issue presented. LP complains that there is no way to ascertain under which theory the jury made its award. But LP did not articulate this objection at the time it proffered its exceptions to the instructions. (*See* RP 878-79.) Moreover, the so-called "impossibility" is due to the fact that a general verdict form was used. But LP did not propose a special verdict form to elicit from the jury the theory upon which it rendered its verdict. While LP proposed a special verdict form, it did not contain the clarifying language that LP now complains was not presented to the jury. (*See* CP 172.) Because of this failure, LP's objection may not be considered on this appeal as grounds to overturn the verdict' LP has waived its objection. *David v. Microsoft Corp,* 149 Wn2d 521, 539-40, 70 P.3d 126 (2003); *Raum v. City of Bellevue,* 171 Wn. App. 124, 147-48, 286 P.3d 695 (2012). *See also, Marsh-McLennan Building, Inc. v. Clapp,* 96 Wn. App. 636, 649, 980 P.2d 311 (1999).

In *Davis*, as in this case, two theories of recovery were presented but a general verdict form was used. One theory was found on appeal to be invalid. The Court held that remand is proper only if the defendant had

proposed a clarifying special verdict form which eliminated the uncertainty as to which theory the jury had used.

> We conclude that, in cases such as the present one, where a general verdict is rendered in a multitheory case and one of the theories is later invalidated, remand must be granted if the defendant proposed a clarifying special verdict form. (Emphasis added.)

149 Wn2d at 539-40.

LP cites *Collings v. City First Mortgage Services, LLC;* but *Collings* expressly confirmed the *Davis* rule that "remand for a new trial is only required if the defendant objected to the use of a general verdict form and proposed a clarifying special verdict form. 177 Wn. App. 908, 925, 317 P.3d 1047 (2013).

Here, LP proposed a special verdict form, which did nothing to clarify which theory the jury accepted. (*See* CP 172.) LP is now barred from complaining that the instructions did not provide a mechanism to ascertain the theory upon which the jury awarded damages.

CONCLUSION

LP's petition for review does not satisfy the RAP 13.4 criteria and its request for review should be denied.

Dated this 20th day of November, 2014.

Respectfully submitted,

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APPENDIX A

OPINION AND ORDER OF FEDERAL DISTRICT COURT JUDGE ROBERT JONES, JULY 26, 2012 (CP 247-255)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

IN RE:	)	
	)	
LOUISIANA-PACIFIC INNER-SEAL SIDING LITIGATION	)	No. 3:95-cv-00879-JO (LEAD)
	)	
	)	OPINION AND ORDER
	)	

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JONES, J:

L-P and Class Counsel have filed a joint motion to enforce the settlement agreement in this Inner-Seal Siding class action against Canterbury Apartment Homes LLC ("plaintiff"), asking the court to order plaintiff to take no further steps to prosecute any released claims against L-P and to dismiss with prejudice all claims plaintiff alleges in his Washington state court complaint, filed in November 2011. Plaintiff opposes the motion and moves to strike the declaration of Class Counsel Christopher Brain.

BACKGROUND

In October 1995, Magistrate Judge Jelderks preliminarily approved the class action settlement and an initial form of notice to class members. As defined in the preliminary settlement agreement, "Settlement Class" included "all Persons who have owned, own, or subsequently acquire Property on which Exterior Inner-Seal™ Siding has been installed prior to January 1, 1996 who are given notice in accordance with the Due Process Clause of the United States Constitution." Declaration of Ashley Locke ("Locke Decl."), Exhibit ("Exh.") G, p. 6. The only exclusions from the class were persons who opted out, and persons who were members of a Florida class action. Id. at pp. 6-7.

The initial notice informed recipients that:

> You may be a part of this Class if you: have owned, own, or subsequently acquire a home or structure in the United States on which exterior L-P Inner-Seal Siding was installed prior to January 1, 1996, and that siding is damaged or becomes damaged and you submit a claim prior to January 1, 2003.

Id. at p. 38. The notice explains who is excluded, i.e., those who opt out and those involved in the Florida litigation. The notice explains that a settlement class member shall be an "Eligible Claimant" entitled to the benefits of the settlement agreement "if he or she has incurred damage or incurs such damage to exterior L-P Inner-Seal Siding installed prior to January 1, 1996, and files a claim prior to January 1, 2003." Id. at p. 39.

At the fairness hearing I conducted in April 1996, I raised concerns about certain aspects of the settlement, as did participants at the hearing. As a result, on April 26, 1996, counsel signed an Amendment to Settlement Agreement, Exh. H to the Locke Decl. As relevant here, the amendment revised the definition of "Settled Claim" to exclude "claims made against L-P after the expiration of the term of the Settlement Agreement under the express terms of the L-P 25-year Limited Warranty issued with the product." Locke Decl., Exh. H, p. 2.

On April 22, 1996, I approved the settlement as amended, and on April 26, 1996, signed the Order, Final Judgment and Decree, and a Notice of Approval of Settlement. The Approval Notice described the amendments to the settlement agreement and was sent to persons who had not opted out of the original version; a similar notice was sent to persons who had opted out. See Declaration of Christopher Brain ("Brain Decl."), Exh. 2 (Notice of Approval and cover letter); and Declaration of Warren Daheim ("Daheim Decl."), Exh. G (supplemental notice to opt-outs). For members of the class who had not opted out, the opt out date was extended to May 27, 1996. Brain Decl., Exh. 2, p. 1.

Significant to the present controversy is the wording of the amendment to the settlement agreement concerning the 25-year warranty. The Notice of Approval explains, in a section titled "New Terms From the Last Notice," that

> In the original notice, you were informed that claims under the Settlement must be made by January 1, 2003, after which L-P had no obligations to replace or repair damaged siding.
>
> As a result of continuing negotiations, and after considering the views of Class Members, L-P has now agreed to reinstate the 25 year warranty after January 1, 2003. This means that if you do not make a claim by January 1, 2003, but your siding fails after January 1, 2003, you can still make a claim under the warranty. All claims other than warranty claims (excluding those for consequential damages as described in Paragraphs 5e and 5i) will be released if you stay in the Class. You should remember that most warranties issued for L-P Inner Seal Siding had a depreciation schedule so that by the year 2003 your recovery under the warranty will have depreciated.

Brain Decl., Exh. 2, p. 4 (emphasis added).

PLAINTIFF

Plaintiff owns a multi-structure apartment building that was built during 1994-1995. L-P Inner-Seal siding was installed on the structures in varying amounts and locations. All siding was installed before January 1, 1996.[1] Thus, plaintiff fits the definition of "Class Member" as set forth in the original notice, i.e., "all Persons who have owned, own, or subsequently acquire Property on which Exterior Inner-Seal™ Siding has been installed prior to January 1, 1996 . . . ." Locke Decl., Exh. G, p. 38. Plaintiff was not, however, an "Eligible Claimant," because it had not "incurred damage" and did not "incur[] such damage to exterior L-P Inner-Seal Siding

---

[1] Evidently the original owner was Firgrove Associates, which merged with plaintiff in December 1998. Ray Dally and his wife beneficially owned and still own majority interests in Firgrove and plaintiff.

installed prior to January 1, 1996" during the settlement period that ended January 1, 2003. Id. at 39 (emphasis added).

Plaintiff states that in 1995, its predecessor Firgrove purchased and properly installed L-P Inner-Seal siding. It did so knowing of publicity concerning potential problems with the siding, but "was assured by the distributor that LP had made product changes which cured the problems that brought about the class action." Plaintiff's Opposition, p. 4. According to plaintiff, the siding did not become damaged "at any point prior to January 1, 2003." Id. at 5.

Plaintiff's state court complaint, Exhibit A to the Locke Decl., alleges that plaintiff's siding, which falls within the parameters of the siding addressed in the class action, did not fail until after termination of the settlement period, that is, did not fail before January 1, 2003. It appears from documents of record that plaintiff first noticed early signs of deterioration in December 2008. See Daheim Decl., Exh. D.

Plaintiff made a claim under the L-P 25-year warranty. After inspection of all 24 buildings, calculation of the damaged area, and considering the depreciation schedule under the warranty, etc., L-P offered plaintiff $8,383.32. Locke Decl., Exh. 3. Plaintiff rejected the offer, and in September 2011, plaintiff began replacing all of the siding rather than selectively replacing it, incurring approximately $900,000 in replacement costs, which is the amount plaintiff seeks in damages.

Plaintiff filed his state court complaint on November 15, 2011. The complaint alleges three claims: breach of the written warranty; breach of warranties created by advertising and similar communications to the public; and violation of the Washington Consumer Protection Act.

THE PARTIES' ARGUMENTS

Plaintiff's argument is fairly straightforward. Plaintiff proposes that it reasonably believed it was not a class member due to the class description:

> The Settlement Class is currently composed of those who meet the following criteria:
>
> > You may be part of this Class if you: have owned, own, or subsequently acquire a home or structure in the United States on which exterior L-P Inner-Seal Siding was installed prior to January 1, 1996, **and** that siding is damaged or becomes damaged **and** you submit a claim prior to January 1, 2003.

"And" is emphasized in that paragraph because that is the focus of plaintiff's argument, that when it received the notice, the siding was intact and remained intact through January 1, 2003. See Plaintiff's Opposition, pp. 4-5.

Essentially, plaintiff asserts that the class action notice was unconstitutionally misleading in that it did not apprise potential class members "with sufficient clarity to enable them to make reasoned decisions about how to proceed." Id. at p. 8. Plaintiff also argues that even if it was bound by the class notice, any release of claims was not binding as plaintiff received no consideration. Finally, plaintiff contends, relying on Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997), that any class settlement purporting to resolve the claims of potential, future plaintiffs who have suffered no injury at the time of class certification is invalid.

With respect to the Amchem case, which involved the class certification of asbestos-related claims for the purpose of settlement, it does not hold, as plaintiff suggests, that inclusion of plaintiffs who had not yet suffered injury is invalid. As L-P correctly observes:

> *Amchem* involved the class certification of asbestos-related claims for the purpose of settlement. 521 U.S. at 591. Plaintiff cites *Amchem* in arguing that the Claimant Notice here was inadequate, but *Amchem* actually centered on the scope

> of the class certification itself, not the notice provided. *Id.* at 606, 628. The *Amchem* court evaluated the scope of the class members because the *Amchem* class embraced "hundreds of thousands, perhaps millions, of individuals," *id.* at 597, including those exposed to asbestos or products containing asbestos that were traced back to any one or more of a number of different defendants, and those exposed to asbestos or products containing asbestos by virtue of a spouse's or household member's exposure, *id.* at 602.
>
> The *Amchem* class included members who already suffered physical injuries as well as members who had not manifested any personal injuries from asbestos. *Id.* at 603. The settlement outlined four types of categories of disease that those who had not yet manifested personal injuries could suffer: mesothelioma, lung cancer, other cancers, and non-malignant conditions. *Id.* The Supreme Court described the significant factual differences in the class members and their injuries: "In contrast to mass torts involving a single accident, class members in this case were exposed to different asbestos-containing products, in different ways, over different periods, and for different amounts of time . . . . Each has a different history of cigarette smoking, a factor that complicates the causation inquiry." *Id.* at 609, 624 (quotation marks and citation omitted). It was against this backdrop that the Court evaluated the proposed class certification for settlement purposes, finding that the "disparate questions" in each *Amchem* class member's case rendered the class certification unable to sufficiently benefit each class member. *Id.* at 624 (finding commonality and adequacy of representation not met).
>
> Unlike *Amchem*, here the potential damage triggering event here was defined — installation of one specific manufacturer's specific type of siding — and purely economic.

Reply in Support of Joint Motion, pp. 9-10.

With respect to plaintiff's argument that it did not receive consideration, if plaintiff is a class member, then it got the same consideration all class members got: the right to file claims for damage every year for seven years, plus the right to pursue future damages under the 25-year warranty.

Finally, with respect to plaintiff's arguments about notice, L-P puts its emphasis on a different aspect of the class description; specifically, on the language "is damaged **or becomes damaged,**" and contends that the highlighted language put recipients "on notice that they were Class Members even if their LP Siding had not yet suffered damage." Reply in Support, p. 8 (emphasis added). In this court's view, an even more compelling reason for finding that plaintiff did indeed receive reasonable notice that it was a class member is the language concerning the 25-year warranty added by amendment to the settlement agreement and included in the Notice of Approval. That language plainly informs recipients, including plaintiff,[2] that:

> As a result of continuing negotiations, and after considering the views of Class Members, L-P has now agreed to reinstate the 25 year warranty after January 1, 2003. This means that if you do not make a claim by January 1, 2003, but your siding fails after January 1, 2003, you can still make a claim under the warranty.

Brain Decl., Exh. 2, p. 4. At that point, plaintiff still could have opted out of the class action, as the opt out date was extended, but chose not to.

In summary, I conclude that plaintiff is a class member and plaintiff's remedy, if any, is the 25-year warranty. L-P claims that plaintiff cannot pursue the warranty claim in state court, but the warranty does not contain any language precluding state court action. Thus, I grant L-P's and Class Counsel's motion (# 694) with respect to all of plaintiff's claims except the warranty claim.[3]

---

[2] Plaintiff does not contend that it did not receive the initial class action notice or the Notice of Approval, which explained the amendments to the original settlement terms. Instead, plaintiff disregarded the notices because it concluded that it was not a member of the settlement class.

[3] Plaintiff moves (# 710) to strike the Declaration of Christopher Brain for a variety (continued...)

CONCLUSION

L-P's and Class Counsel's motion (# 694) to enforce settlement agreement is granted and denied as set forth above. Plaintiff is hereby ordered to dismiss all claims asserted in his state court complaint except the written 25-year warranty claim. Plaintiff's motion (# 710) to strike declaration of Christopher Brain is denied as moot.

IT IS SO ORDERED.

DATED this 26th day of July, 2012.

ROBERT E. JONES
U.S. District Judge

[3](...continued)
of reasons, but because I relied only on the exhibits to the declaration, not Brain's statements, the motion is denied as moot.

APPENDIX B

ORDER OF FEDERAL DISTRICT COURT JUDGE ROBERT JONES, NOVEMBER 1, 2012 (CP 426-28)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

IN RE:	)	
	)	
LOUISIANA-PACIFIC INNER-SEAL SIDING LITIGATION	)	No. 3:95-cv-00879-JO (LEAD)
	)	
	)	ORDER
	)	
	)	

JONES, Judge:

Louisiana-Pacific ("L-P") moves (# 719) to enforce the court's July 26, 2012, order that required Canterbury Apartment Homes LLC ("Canterbury"), a class member in the Inner-Seal Siding Litigation, to dismiss with prejudice all claims Canterbury alleges in his Washington state court complaint, filed in November 2011, except its claim under the L-P 25-year limited warranty.[1] Evidently, trial in the Washington state case is set to commence on November 13, 2012.

---

[1] L-P represents that Class Counsel joins in this motion to the extent it seeks a ruling that the Canterbury's sole and exclusive remedy is the remedy stated in the 25-year limited warranty. See L-P's Motion to Enforce, p. 2.

According to L-P, although Canterbury is now pursuing only the warranty claim, it nonetheless intends to seek damages in the sum of $900,000 for full replacement cost, rather than the remedy stated in the warranty; that is, twice the retail cost of the damaged siding less the appropriate aging deduction.

Although L-P frames the pending motion as a request to enforce my earlier opinion and order, I did not make any determination concerning Canterbury's damages, only the claims it could pursue. I ruled that:

> [P]laintiff [Canterbury] is a class member and plaintiff's remedy, if any, is the 25-year warranty. L-P claims that plaintiff cannot pursue the warranty claim in state court, but the warranty does not contain any language precluding state court action. Thus, I grant L-P's and Class Counsel's motion (# 694) with respect to all of plaintiff's claims except the warranty claim.

Opinion and Order, p. 8. Thus, there is nothing for this court to "enforce" concerning the amount Canterbury may seek as damages other than the limitation to warranty damages.

L-P goes further and requests a ruling that Canterbury's damages under the warranty are limited to the sum of $74,361. See Reply in Support of Motion to Enforce, pp. 7-8. I agree with Canterbury that L-P's motion "in reality appears to be a back door attempt to obtain summary judgment . . . without the requisite notice and without a complete presentation of the relevant facts through sworn testimony." Canterbury's Opposition to LP's Motion, p. 23. Although L-P and Class Counsel both press this court to interpret the warranty and determine Canterbury's damages as a matter of law, I decline to do so. The Washington state trial court is in the best position to interpret the warranty in light of Washington law, and to make rulings concerning Canterbury's remedies and damages. If L-P disagrees with the Washington court's ultimate rulings, L-P's remedy is an appeal, not an order of enforcement issued from this court.

In summary, L-P's motion (# 719) is DENIED. L-P's request for attorney fees is also denied.

IT IS SO ORDERED.

DATED this 1st day of November, 2012.

/s/ Robert E. Jones
ROBERT E. JONES
U.S. District Judge

APPENDIX C

LP'S LIMITED WARRANTY
(TRIAL EXHIBIT 9)

LIMITED WARRANTY FOR INNER-SEAL® SIDINGS

Louisiana-Pacific

LIMITED 25-YEAR SIDING WARRANTY

Louisiana-Pacific Corporation ("L-P") warrants the Inner-Seal® lap and panel sidings, when installed and finished according to the published installation and finishing instructions and when properly maintained, for a period of 25 years from the date of installation against manufacturing defects under normal conditions of use and exposure.

LIMITATIONS

L-P MUST BE GIVEN A 60-DAY OPPORTUNITY TO INSPECT THE SIDING BEFORE IT WILL HONOR ANY CLAIMS UNDER THE ABOVE WARRANTY. IF AFTER INSPECTION AND VERIFICATION OF THE PROBLEM, L-P DETERMINES THAT THERE IS A FAILURE COVERED BY THE ABOVE WARRANTY, L-P WILL REFUND TO THE OWNER AN AMOUNT OF MONEY EQUAL TO TWICE THE RETAIL COST OF THE ORIGINAL SIDING MATERIAL. THE COST OF LABOR AND MATERIALS OTHER THAN SIDING ARE NOT INCLUDED. WARRANTY PAYMENTS WILL BE BASED UPON THE AMOUNT OF AFFECTED SIDING MATERIAL.

DURING THE FIRST 5 YEARS, L-P'S OBLIGATION UNDER THE ABOVE WARRANTY SHALL BE LIMITED TO TWICE THE RETAIL COST OF THE SIDING MATERIAL WHEN ORIGINALLY INSTALLED ON THE STRUCTURE.

IF THE ORIGINAL SIDING COST CANNOT BE ESTABLISHED BY THE OWNER THE COST SHALL BE DETERMINED BY L-P IN ITS SOLE AND REASONABLE DISCRETION.

DURING THE 6TH THROUGH 25TH YEAR, AS DETERMINED IN THE ABOVE MANNER, WARRANTY PAYMENTS SHALL BE REDUCED EQUALLY EACH YEAR SUCH THAT AFTER 25 YEARS FROM THE DATE OF INSTALLATION NO WARRANTY SHALL BE APPLICABLE.

THE ABOVE WARRANTY SHALL APPLY ONLY IF THE INNER-SEAL SIDING IS SUBJECTED TO NORMAL SIDING USE AND EXPOSURE. THE SIDING MUST BE STORED, HANDLED, INSTALLED, FINISHED AND MAINTAINED IN ACCORDANCE WITH L-P'S PUBLISHED INSTRUCTIONS. FAILURE TO FOLLOW SUCH INSTRUCTIONS WILL VOID THIS WARRANTY.

IMPORTANT NOTICE:
FAILURE TO INSTALL, FINISH AND MAINTAIN IN ACCORDANCE WITH L-P'S PUBLISHED INSTRUCTIONS MAY CAUSE DAMAGE TO THE SIDING AND WILL VOID THIS WARRANTY.

CONDITIONS COVERED BY THIS WARRANTY

- DELAMINATION OF THE OVERLAY FROM THE SUBSTRATE.
- RESIN SPOTS.
- SPOTS ON OVERLAY RESULTING FROM A MANUFACTURING PROCESS WHICH CANNOT BE COVERED WITH PAINT.
- FOLDED OR "POPPED" WAFERS/STRANDS THAT BREAK THE OVERLAY SURFACE.
- CRACKING, PEELING, CHIPPING OR FLAKING OF THE OVERLAY SURFACE.
- EXCESSIVE OR MISSING SEALANT ON EDGES AND/OR GROOVES.
- DIMENSIONAL VARIANCE FROM SPECIFICATIONS, AT THE TIME OF SALE.
- PATTERN VARIANCES FROM SPECIFICATIONS.

CONDITIONS NOT COVERED BY THIS WARRANTY

- FAILURES DUE TO MOISTURE IN THE WALL CAVITY.
- FAILURES DUE TO INSUFFICIENT PAINT COVERAGE ON FACE AND EXPOSED EDGES.
- FAILURES DUE TO FAILURE OF THE PAINT SYSTEM.
- FAILURES RELATED TO MOLD, MILDEW AND/OR ALGAE ON PAINTED SIDING SURFACE.
- FAILURES DUE TO FACE NAILING ON LAP SIDING.
- FAILURES DUE TO INADEQUATE SPACING AND/OR SEALANT.
- FAILURES DUE TO UNCONTROLLED WATER RUNOFF OR INADEQUATE FLASHING.
- FAILURES DUE TO SIDING BEING IN DIRECT CONTACT WITH MASONRY AND/OR LESS THAN 6" FROM THE GROUND.
- FAILURES DUE TO SPRINKLERS SPRAYING ON THE SIDING.

DISCLAIMER: LOUISIANA-PACIFIC DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING UTILITY GRADE INNER-SEAL SIDING, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING EXPRESS WARRANTIES ARE APPLICABLE ONLY TO OUR A-GRADE PRODUCT AND NOT OUR UTILITY GRADE WHICH IS SOLD "AS IS AND WITH ALL FAULTS". EXCEPT FOR THE EXPRESS WARRANTY AND REMEDY SET FORTH ABOVE, L-P DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO OTHER WARRANTY WILL BE MADE BY OR ON BEHALF OF THE MANUFACTURER OR THE SELLER OR BY OPERATION OF LAW WITH RESPECT TO THE PRODUCT OR ITS INSTALLATION, STORAGE, HANDLING, MAINTENANCE, USE, REPLACEMENT OR REPAIR. NEITHER L-P NOR THE SELLER SHALL BE LIABLE BY VIRTUE OF ANY WARRANTY, OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE RESULTING FROM THE USE OF THE PRODUCT. L-P MAKES NO WARRANTY WITH RESPECT TO INSTALLATION OF THE PRODUCT BY THE BUILDER OR THE BUILDER'S CONTRACTOR, OR ANY OTHER INSTALLER. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND IN SUCH STATES THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

SEE REVERSE SIDE FOR WARRANTY CHECKLIST TO ENSURE SIDING PERFORMANCE AND VALIDITY OR WARRANTY.

Louisiana-Pacific
111 SW Fifth Avenue
Portland, Oregon 97204

NOTE: Louisiana-Pacific Corporation periodically updates and revises its product information. To verify that this version is current, contact one of the sales offices.

August 1995
23-OS-6 1504
Printed in USA

"EOF" Printed using totally chlorine-free paper.

LP000339

8/95

WARRANTY CHECKLIST FOR INNER-SEAL® SIDING

Louisiana-Pacific

THIS CHECKLIST PROVIDES GUIDELINES FOR PROPER INSTALLATION, FINISHING AND MAINTENANCE OF INNER-SEAL LAP AND PANEL SIDINGS. FOLLOWING THESE RECOMMENDATIONS WILL ENSURE YEARS OF SIDING PERFORMANCE AND THAT YOUR WARRANTY IS VALID.

CONSTRUCTION/INSTALLATION

- ☐ Siding was stored off the ground and kept dry.
- ☐ Siding was kept dry during the installation process.
- ☐ Installation meets local building and energy codes.
- ☐ Dry exterior wall cavity design and construction have been utilized. A vapor retarder on the warm side of all exterior walls is required to prevent interior moisture from gaining access to the wall cavity. (Weather barrier over the sheathing is recommended.)
- ☐ An exterior weather barrier is required when lap siding is applied direct to studs.
- ☐ Stud spacing and blocking meets local code requirements and provides a flat, smooth plane for the siding.
- ☐ A minimum of 6" clearance ground-to-siding exists around the perimeter of the home.
- ☐ Siding joints are directly over studs with 3/16" spacing for lap siding joints.
- ☐ Spacing of 3/16" at all corner, window, door, and utility trim joints has been allowed.
- ☐ Siding has a minimum 2" clearance on roof rakes and chimneys.
- ☐ Siding is protected from direct contact with any form of masonry: foundations, chimneys, patios, steps, and sidewalks.
- ☐ Proper length corrosion resistant nails have been used. (No stapling allowed.)
- ☐ Blind nailing is used for all lap siding (1991 forward).
- ☐ 1-1/2" overlap on 6" and wider siding nailed 1" from the top. 1" minimum overlap on 6" siding nailed 1/2" from the top.
- ☐ For panel siding, exposed nails are driven only to the siding surface.
- ☐ Nail panel siding 6" o.c. around perimeter and 12" o.c. on intermediate supports.
- ☐ Siding material is not suitable for trim and/or fascia and should not be used for these applications.

SEALING/FINISHING

- ☐ Siding was finished within 90 days of installation.
- ☐ Siding was clean of construction dirt, dust, and stains before painting.
- ☐ Siding has been finished with a minimum of 2.5 dry mils in addition to the factory primer.
- ☐ Paint is a high quality 100% acrylic latex or other comparable finish specifically recommended and warranted for factory primed siding.
- ☐ Paint was applied according to the manufacturer's recommendations for temperature and moisture conditions. (Some paint manufacturers recommend an alkyd primer over factory-primed wood sidings.)
- ☐ Semigloss paints provide better performance against moisture, mold, and mildew and should be used in high moisture, high humidity climates.
- ☐ All bottom edges are fully painted with a minimum of 2.5 dry mils in addition to the factory primer.
- ☐ All joints, cuts, and exposed nails (lap siding) are sealed with a high quality nonhardening 25-year paintable sealant.

OWNER MAINTENANCE

- ☐ Sprinklers do not splash water on the siding.
- ☐ Water from roofs and gutters is diverted away from the siding.
- ☐ Shrubs, trees, and plants do not have direct contact with the siding.
- ☐ The painted surface is kept free of mold, mildew, and algae.
- ☐ The siding is repainted before the paint fails.

For a copy of the warranty or installation and technical questions call L-P customer services:

800-648-6893

8am - 5pm Central Standard Time

LP000340

OFFICE RECEPTIONIST, CLERK

To: Hoober, Leslee
Cc: Archer, Margaret; Ostruske, Frances; JMarkley@perkinscoie.com; KOSullivan@perkinscoie.com; AKhanna@perkinscoie.com
Subject: RE: Louisiana Pacific Corporation v. Canterbury Apartment Homes LLC - No. 90878-8

Received 11-20-2014

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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To: OFFICE RECEPTIONIST, CLERK
Cc: Archer, Margaret; Ostruske, Frances; JMarkley@perkinscoie.com; KOSullivan@perkinscoie.com; AKhanna@perkinscoie.com
Subject: Louisiana Pacific Corporation v. Canterbury Apartment Homes LLC - No. 90878-8

Attached for filing in PDF is a Praecipe – Canterbury Apartment Homes LLC's Response to Petition for Review. A copy has also been mailed to counsel.

The attorney for Respondent filing this Praecipe is Margaret Archer, WSBA No. 21224, marcher@gth-law.com.

Thank you.

Leslee Hoober
Legal Assistant to
Andrea McNeely
Shelly Andrew
Ken Kieffer (of counsel)

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