

65833-6

65833-6

No. 65833-6-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

LEDCOR INDUSTRIES (USA) INC.,
a Washington corporation,

Petitioner,

vs.

S.Q.I., INC., a Washington corporation; BORDAK BROTHERS, INC.,
an Oregon corporation; *et al.* ,

Respondents.

RESPONDENT STARLINE WINDOWS, INC.'S OPENING BRIEF

William J. O'Brien, WSBA No. 5907
Attorney for Respondent Starline Windows
LAW OFFICE OF WILLIAM J. O'BRIEN
999 Third Avenue, Suite 805, Seattle, WA 98104
(206) 515-4800

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 AUG - 11 PM 1:50

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF ISSUES	2
III.	STATEMENT OF THE CASE	2
IV.	ARGUMENT	5
	1. The Agreement	5
	2. There is no Material Fact Question Concerning The Terms and/or Scope of the Argument	8
	3. Statute of Repose	9
V.	CONCLUSION	11
VI.	APPENDIX	11

TABLE OF AUTHORITIES

Cases

<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 325, 91 L.Ed.2d 265, 106 S.Ct. 2548 (1986)	9
<i>Culpepper v. First American Title Insurance Company</i> , 1011 Wash.App. LEXIS 638 (2011).....	8
<i>Lakeview Blvd. Condominium Ass’n v. Apartment Sales Corp.</i> , 101 Wash.App. 923, 29 P.3d 1249 (2001).....	10
<i>Nast v. Michels</i> , 207 Wn.2d. 300, 308-309, 730 P.2d 54 (1986);	8
<i>Reed v. Streib</i> , 65 Wn.2d 700, 709, 399 P.2d 338 (1965),.....	7
<i>Young v. Key Pharmaceuticals, Inc.</i> , 130 Wn.2d 216, 225, 770, P.2d 182 (1989), (overruled on other grounds after remand and re-trial by <i>Young v. Key Pharmaceuticals, Inc.</i> , 130 Wn.2d 160, 922 P.2d 59 (1996))	9

Statutes

RCW 4.16.310.....	1, 2, 5, 9
-------------------	------------

I. INTRODUCTION

Respondent Starline Windows, Inc., (“Starline”), asks this Court to affirm the trial court’s “Order Granting Starline Windows, Inc.’s Motion for Partial Summary Judgment and Denying Ledcor’s Cross-Motion.” (Appendix 1). The other subcontractor Respondents in this action also ask that this Court affirm the trial court’s orders on summary judgment dismissing the indemnity claims of Ledcor Industries (USA) Inc., (“Ledcor”) against the subcontractors based solely upon RCW 4.16.310, the applicable statute of repose. The factual and legal arguments in support of the trial court’s dismissal of indemnity claims based upon RCW 4.16.310 are thoroughly briefed by the other subcontractor respondents and in the motion briefing submitted by Starline in support of its motion for partial summary judgment. (CP 1332-1351).

However, dismissal of the Ledcor indemnity claims against Starline was based not only upon application of the statute of repose, but upon Starline’s prior settlement with the Admiral Way Condominium Owners Association (“Association”) releasing all claims for alleged defects in design or manufacture of the Starline windows. (Appendix 2, Settlement Agreement and Release of Claims (“the Agreement”), CP 1352-1355, Ex. 9.

II. STATEMENT OF ISSUES

1. Must the dismissal of Leducor's indemnity claims against Starline be affirmed because the Agreement bars Leducor's indemnity claims against Starline for the same alleged defects?
2. Absent any material fact question raised by Leducor concerning the Agreement between the Association and Starline, did the trial court correctly dismiss the indemnity claims of Leducor against Starline on summary judgment based upon the Agreement?
3. Does RCW 4.16.310 bar Leducor's indemnity claims against Starline?

III. STATEMENT OF THE CASE

Leducor entered into a Purchase Order Subcontract with Starline on October 11, 2001 for Starline to supply vinyl windows to the project. CP 1352-1355, Ex. 1. By August of 2002, Starline had delivered all of the windows ordered. CP 1352-1355, Ex. 2. The City of Seattle issued a Temporary Certificate of Occupancy for the project on February 10, 2003, and issued the Certificate of Occupancy on March 14, 2003. CP 1352-1355, Ex. 3&4. In 2007 the Association filed a lawsuit against Admiral Way LLC, the developer of the Admiral Way Condominiums ("the Project"), alleging various construction defects in the Project. Admiral Way, LLC, in turn, sued the general contractor for the Project, Leducor, by way of a third-party complaint. Leducor elected not to file

fourth-party complaint against its subcontractors on the Project. Instead, it adopted a different strategy.

In the Association's lawsuit, Leducor proposed that the parties negotiate an amended case schedule. Leducor represented to the Association that it would join its subcontractors as fourth-party defendants in the Association's lawsuit, if the Association would agree to an amended case schedule. CP 1352-1355, Ex. 6. The Association eventually agreed to an amended case schedule. CP 1352-1355, Ex. 6. However, in 2008 Leducor filed this separate action against its subcontractors, despite the fact that it had represented to the Association that it would join its subcontractors in the Association's lawsuit as soon as the Association agreed to a new Case Management Order. CP 1352-1355, Ex. 6

Leducor also tendered the defense and indemnity of the Admiral Way LLC's claims against it to Starline. CP 1352-1355, Ex. 7. In its tender, Leducor urged Starline to negotiate an issue release with the Association:

"...we encourage Starline to immediately contact their respective attorneys and to negotiate an issue release that absolves Starline and our clients from any liability in any way related to the Starline products."

CP 1352-1355, Ex 7. Leducor did not sue Starline in either lawsuit. Instead, Leducor argued to the Association that the Association should bring Starline

into its action as a defendant, because any applicable warranty claims from Starline ran to the Association rather than to Ledcor. CP 1352-1355, Ex. 6. The Association eventually amended its complaint to add Starline as a defendant. CP 1352-1355, Ex. 11. Starline filed a motion for summary judgment to dismiss all of the Association's claims. CP 1352-1355, Ex. 8. Then, the Association and Starline settled for \$165,000.00 while Starline's motion was pending and before the Association's responsive brief was filed. CP 1352-1355, Ex. 9, Appendix 2. As part of the settlement, the Association granted Starline an issue release stating:

8. Issue Release. ADMIRAL COA hereby agrees that this Settlement Agreement and Release of Claims satisfies and releases all of ADMIRAL COA'S claims against all parties to the litigation arising from the defective design and/or defective manufacture of STARLINE's window products at the Admiral Way Condominiums, including claims for breach of express and implied warranties and claims under the Washington Product Liability Act. Specifically excluded from this Settlement Agreement and Release of Claims are any of ADMIRAL COA's claims against Admiral Way, LLC and/or Ledcor Industries (USA), Inc. for those parties' improper specification, installation, alteration, modification or repair of STARLINE's window products at The Admiral Way Condominiums.

(Appendix 2.)

Shortly after the Association and Starline settled, the Association settled with Ledcor and Admiral Way, LLC. CP 1352-1355, Ex. 10. The settlement agreement between the Association, Ledcor, and Admiral Way, LLC did not allocate any settlement amounts for Starline's allegedly

defective windows, as indeed it could not have, given the Association's issue release in its settlement with Starline.

After Ledcor settled with the Association, it then moved to amend its complaint in this action to add Starline as a defendant. In its amended complaint Ledcor asserted claims against Starline for breach of contract, breach of express and implied warranties, breach of contractual duties to defend and indemnify it, claims under the Washington Product Liability Act, claims for equitable indemnity, and claims for equitable subrogation and/or contribution. CP 1352-1355, Ex. 11.

Starline then moved to dismiss the claims of Ledcor against Starline, including indemnity claims. Relevant to this appeal, Starline first, moved on grounds that the Agreement settled all of the Associations claims against Ledcor associated with the Starline windows, so that there was no exposure to Ledcor for which Ledcor could be indemnified by Starline. Secondly, on the basis that the Ledcor claims were time barred by the statute of repose, RCW 4.16.310. CP 1332-1351.

IV. ARGUMENT

1. **The Agreement.** The gravamen of all of Ledcor's claims is that the Starline windows were defective:

LXIX

That heretofore, the owners and/or developer of the Project have alleged that problems at the project are due in

part to defective windows, doors and sliders. Some or all of the alleged defects may be the result of latent defects related to or arising from the STARLINE products used at the Project. To the extent they are correct, the vinyl windows, doors and sliders are defective in design, manufacture and/or failure to provide adequate warnings or instructions.

CP 1352-1355, Ex. 11, pg 24. However, when Starline settled the Association's claims against it two weeks before Ledcor's first amended complaint, the Association agreed to release all of its claims against all parties (which included Ledcor and Admiral Way, LLC), arising from the alleged defects in the design and/or manufacture of Starline's windows. (CP 13521-1355, Ex. 9). When the Association settled with Starline, it no longer had any claims it could pursue against Ledcor or Admiral Way, LLC based upon Starline's allegedly defective windows, because the Association had released those claims against all parties.

This fact is further evidenced by the Association's subsequent settlement with Ledcor and Admiral Way, LLC. In the settlement agreement executed by the Association, Ledcor, and Admiral Way, LLC, the parties did not allocate any portion of the settlement to Starline's allegedly defective windows. Obviously, the Association could not agree to allocate any portion of the settlement to claims arising from the Starline Window products, since it had already released all of those claims against all of the parties. The end result, necessarily, is that none

of the settlement money paid by Ledcor to the Association was for damages arising from Starline's allegedly defective windows.

Ledcor is also estopped from pursuing claims against Starline. When Ledcor tendered defense and indemnity of the Association's claims to Starline, it requested that Starline directly negotiate an issue release with the Association. Starline did just that. The issue release released all of the Association's claims against all parties, including Ledcor, for all claims arising from Starline's allegedly defective windows.

The trial court's order in favor of Starline dismissed all claims of Ledcor against Starline, including indemnity claims, reserving only claims of Ledcor for defense and insurance which are not before the Court in this appeal. Whether the dismissal of the indemnity claims against Starline was based upon the statute or repose, or upon the settlement bar of the Agreement, or both, this court must affirm the dismissal on either ground, even if the trial court did not consider the settlement bar of the Agreement.

In *Reed v. Streib*, 65 Wn.2d 700, 709, 399 P.2d 338 (1965), our Supreme Court affirmed the trial court's grant of a motion for summary judgment, stating:

"... though joinder of Hatch and Sutcliffe under Rule 14 was improper, such joinder would have been proper under Rule 13(h). We may sustain the trial court on a correct ground not

considered by it. ... [citing cases] Accordingly, the ruling of the trial court will be sustained.”

See also, *Nast v. Michels*, 207 Wn.2d. 300, 308-309, 730 P.2d 54 (1986); and *Culpepper v. First American Title Insurance Company*, 1011 Wash.App. LEXIS 638 (2011). Of course, the order granting the motion of Starline to dismiss the indemnity claims of Leducor, lists the pleadings and exhibits considered by the court. The settlement bar and/or estoppel grounds for dismissal of the Leducor claims against Starline were considered by the trial court as they are contained in the motion of Starline and the supporting declaration and exhibits of Ken Cusack as provided in the order. (Appendix 1).

2. There is no Material Fact Question Concerning The Terms and/or Scope of the Agreement. Leducor has ignored the additional grounds upon which its indemnity claims against Starline were dismissed. In fact, Starline is not even mentioned by name in Leducor’s appeal brief. There is no mention of the independent and correct ground(s) for affirming the trial court’s dismissal of the Leducor indemnity claims against Starline based upon the terms of the Agreement, which grounds do not apply to any other respondent subcontractor in the action.

Summary judgment is properly granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together

with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” CR 56(c) In *Young v. Key Pharmaceuticals, Inc.*, 130 Wn.2d 216, 225, 770, P.2d 182 (1989), (overruled on other grounds after remand and re-trial by *Young v. Key Pharmaceuticals, Inc.*, 130 Wn.2d 160, 922 P.2d 59 (1996)), the court adopted the rationale of *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L.Ed.2d 265, 106 S.Ct. 2548 (1986), and established that a defendant may move for summary judgment by either showing that the plaintiff failed to support an essential element of its case or by showing that there is an absence of evidence to support plaintiff’s case. There was no genuine issue of fact raised by Leducor with regard to the bar presented by the Agreement.

3. **Statute of Repose.** The statute of repose, RCW 4.16.310 requires causes of action for construction claims to accrue within six years of substantial completion. The statute provides:

All claims or causes of action shall accrue, and the applicable statute of limitations shall begin to run only during the period within six years after substantial completion of construction, or during the period within six years after the termination of services enumerated in RCW 4.16.300, whichever is later. The phrase “substantial completion of construction” shall mean the state of completion reached when an improvement upon real property may be used or occupied for its intended use. Any cause of action which has not accrued within six years after such substantial completion of

construction, or within six years after such termination of services, whichever is later, shall be barred....

Here, substantial completion occurred, at the latest, when the City of Seattle issued its Certificate of Occupancy on March 14, 2003. Ledcor agrees. In the Association's lawsuit, Ledcor filed its own motion for summary judgment against Admiral Way, LLC, moving to dismiss the LLC's claim for indemnity based upon the statute of repose. In that motion, Ledcor correctly argued that "... the undisputed facts of this case..." establish the latest date for substantial completion was March 14, 2003, relying upon *1519-1525 Lakeview Blvd. Condominium Ass'n v. Apartment Sales Corp.*, 101 Wash.App. 923, 29 P.3d 1249 (2001). CP 1351-1355, Ex. 13, (pg. 7 for the quote). Ledcor now makes the opposite argument in this appeal, arguing that "...the circumstances in *Lakeview* are materially different" from the present case. Respondent's brief, pg. 34.

Based upon a substantial completion date of March 14, 2003, Ledcor's claim for indemnity against Starline needed to accrue by March 14, 2009, or be barred by the statute of repose. Ledcor's claim for indemnity against Starline arose, if at all, when Ledcor paid, or became legally obligated to pay damages to the Association. Ledcor executed a CR2A Agreement on July 28, 2009, and executed a more formal settlement agreement on December 15, 2009. Both dates are beyond the

expiration of the statute of repose. Ledcor's claim for indemnity is therefore time barred.

V. CONCLUSION

The trial court's "Order Granting Starline Windows, Inc.'s Motion for Partial Summary Judgment and Denying Ledcor's Cross-Motion" should be affirmed and the case remanded for trial on the two remaining claims of Ledcor against Starline: defense and insurance.

VI. APENDIX

1. Order Granting Starline Windows, Inc.'s Motion for Partial Summary Judgment and Denying Ledcor's Cross-Motion.
2. Settlement Agreement and Release of Claims CP 1352-1355, Ex. 9.

DATED this 1st day of August, 2011.

LAW OFFICE OF WILLIAM J. O'BRIEN

By: 
William J. O'Brien, WSBA No. 5907
Attorneys for Respondent Starline Windows

APPENDIX

APPENDIX 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE HONORABLE RICHARD EADIE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

BORDAK BROTHERS, INC., a Washington corporation,

Plaintiff,

v.

PACIFIC COAST STUCCO, LLC,

Defendant.

NO. 08-2-29583-4 SEA

~~(PROPOSED)~~ RE
ORDER GRANTING STARLINE
WINDOWS, INC.'S MOTION FOR
PARTIAL SUMMARY
JUDGMENT AND DENYING
LEDCOR'S CROSS-MOTION

LEDCOR INDUSTRIES (USA) INC., a Washington corporation,

Plaintiff,

v.

SQI, INC., a Washington corporation; SCAPES & CO., INC., a Washington corporation, BORDAK BROTHERS, INC., a Washington corporation; UNITED SYSTEMS, INC., a Washington corporation; THE PAINTERS, INC., a Washington corporation; COATINGS UNLIMITED, INC., a Washington corporation, EXTERIOR METALS, INC., a Washington corporation; SKYLINE SHEET METAL, INC., a Washington corporation; ROESTEL'S

Consolidated with
08-2-15102-6 SEA

(CLERK'S ACTION REQUIRED)

ORDER GRANTING STARLINE WINDOWS, INC.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT - 1

LAW OFFICE OF WILLIAM J. O'BRIEN
999 Third Avenue, Suite 805
Seattle, Washington 98104
Telephone (206) 515-4800
Facsimile (206) 515-4848

1 MECHANICAL, INC., a Washington
2 corporation; and STARLINE WINDOWS,
3 INC., a Washington corporation,

4 Defendants,

5 THIS MATTER, having come before the Court on Defendant Starline Windows,
6 Inc.'s Motion for Partial Summary Judgment; the Court, having reviewed Defendant
7 Starline Windows, Inc.'s Motion for Partial Summary Judgment, Declaration of Kenneth
8 J. Cusack and Exhibits 1-14 and the following responsive documents:

9 Ledcor's Response and Opposition to Defendant Starline Windows, Inc.'s Motion
10 for Partial Summary Judgment and Ledcor's Cross-Motion for Partial Summary
11 Judgment for Starline's Breach of its Contractual Duty to Defend;

12 Declaration of Thomas Lofaro;

13 Declaration of Scott Samuelson in Support of Ledcor's Response and Opposition
14 to Defendant Starline Windows, Inc.'s Motion for Partial Summary Judgment and
15 Ledcor's Cross-Motion for Partial Summary Judgment for Starline's Breach of its
16 Contractual Duty to Defend;

17 Starline Windows, Inc.'s Opposition to Ledcor's Cross-Motion for Partial
18 Summary for Starline's Breach of its Contractual Duty to Defend;

19 Starline Windows, Inc.'s Reply to Ledcor's Opposition to Starline Windows, Inc.'s
20 Motions for Partial Summary Judgment; and Declaration of Cusack; and

1 Ledcor's Reply in Support of its Cross-Motion for Partial Summary Judgment
2 Against Defendant Starline Windows for Breach of Starline's Contractual Duty to
3 Defend, and the records and files herein, now, THEREFORE, IT IS HEREBY:

4 ORDERED that Defendant Starline Windows, Inc.'s Motion for Partial Summary
5 Judgment is hereby GRANTED and the claims of Ledcor Industries (USA), Inc. for
6 breach of contract, *excepting defense and insurance SAC W (RE)*
7 breach of warranty, indemnity, contribution, product liability, and
8 subrogation shall be dismissed with prejudice,

9 IT IS FURTHER ORDERED that Ledcor Industries (USA) Inc. Cross-Motion for
10 Partial Summary Judgment for Starline's Breach of its Contractual Duty to Defend is
11 hereby DENIED.

12 IT IS FURTHER ORDERED that the only claims to be litigated will be Ledcor
13 Industries (USA), Inc.'s claims for defense costs, and for Breach of Starline's obligation
14 to name Ledcor as an Additional Insured under its policy.

15 DONE IN OPEN COURT this 25th day of October, 2010.

16
17
18 Richard D Eadie
19 THE HONORABLE RICHARD EADIE
20

21 PRESENTED BY:
22 LAW OFFICE OF WILLIAM J. O'BRIEN
23 By: Kenneth J. Cusack
24 Kenneth J. Cusack, WSBA No. 17650
25 Attorneys for Defendant, Starline Windows, Inc.

APPROVED AS TO FORM

Scott A Samuelson
Scott A Samuelson
Attorney for WSBA#
Ledcor 23363

ORDER GRANTING STARLINE WINDOWS, INC.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT - 3

LAW OFFICE OF WILLIAM J. O'BRIEN
999 Third Avenue, Suite 805
Seattle, Washington 98104
Telephone (206) 515-4800
Facsimile (206) 515-4848

APPENDIX 2

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

In consideration of the below promises and other valuable consideration, the sufficiency of which are hereby acknowledged, THE ADMIRAL CONDOMINIUM OWNERS' ASSOCIATION (hereafter "ADMIRAL COA") sets forth herein and agrees to settle its claims against STARLINE WINDOWS, INC. (hereafter "STARLINE") arising out of litigation *The Admiral Condominium Owners' Association v. Starline Windows, Inc., et al., King County District Court, No. 07-2-22890-0 SEA* (hereafter "the litigation") as follows:

I. AGREEMENT

- 1. Consideration and Release:** Upon receipt of and in consideration of payment by STARLINE of a total amount of \$165,000.00 (One Hundred Sixty Five Thousand Dollars) by August 14, 2009, made payable to the Ahlers & Cressman PLLC Trust Account, ADMIRAL COA, its principals, agents, insurers, officers, successors, and assigns, and all affiliated companies, hereby agree to fully release STARLINE, together with all of its respective members, owners, officers and directors, as well as its respective employees, agents, attorneys, insurers, heirs, assigns, affiliated and successor companies of and from any and all claims asserted or which could have been asserted by ADMIRAL COA in connection with the litigation. Any payment or part thereof received by Ahlers & Cressman PLLC after the date it is due shall be subject to interest at a rate of 12% per annum.
- 2. Agreement is Not an Admission.** The parties hereto acknowledge and agree that the payment and acceptance of the settlement sums described herein and other consideration specified herein are compromises of matters involving disputed issues of facts and law. Nothing in this agreement shall be considered an admission by any party of any past or present wrongdoing.
- 3. Costs, Expenses, and Attorney Fees.** The parties shall each be responsible for its own attorney fees and costs in connection with the litigation.
- 4. Applicable Law and Venue.** This agreement is entered into in the state of Washington and shall be construed and interpreted in accordance with Washington law. Venue for any cause of action arising out of or relating to this agreement shall lie in King County.
- 5. General Terms.** The parties to this agreement represent that they have relied upon legal advice of their attorneys and fully understand and voluntarily accept the terms of this agreement. Each person executing this agreement represents and warrants that they have obtained all necessary consents and approvals to execute the agreement. The parties further agree that this agreement contains the entire agreement between the parties and that it may be amended or modified only by an agreement executed in writing in the same manner as this agreement. The parties further agree that this agreement shall be binding upon and is entered into for the benefit of the parties and their respective heirs, successors, and assigns. The preparation of this agreement has been a joint effort of the parties and the resulting document shall not be construed

more severely against any one of the parties than against any other. By making payment hereunder, the parties agree to be bound by the terms of this agreement.

6. **Confidentiality.** The terms of this agreement shall not be revealed, disclosed or discussed in any manner or form whatsoever to any persons, organizations, or other judicial tribunal outside of the parties, their respective attorneys, insurers and their attorneys, team of experts or law firms, unless ordered to do pursuant to a Court order, provided however that nothing contained in this paragraph shall preclude disclosure that the matter was satisfactorily resolved.

7. **Cooperation.** Starline will provide reasonable cooperation such as potential witness testimony at trial and reasonable access to documents to ADMIRAL COA in furtherance of ADMIRAL COA's prosecution of claims against Admiral Way, LLC and/or Ledcor Industries (USA) Inc. in the litigation.

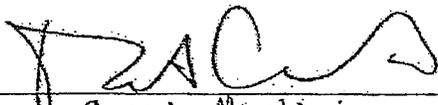
8. **Issue Release.** ADMIRAL COA hereby agrees that this Settlement Agreement and Release of Claims satisfies and releases all of ADMIRAL COA's claims against all parties to the litigation arising from the alleged defective design and/or defective manufacture of STARLINE's window products at The Admiral Way Condominiums, including claims for breach of express and implied warranties and claims under The Washington Product Liability Act. Specifically excluded from this Settlement Agreement and Release of Claims are any of ADMIRAL COA's claims against Admiral Way, LLC and/or Ledcor Industries (USA) Inc. for those parties' improper specification, installation, alteration, modification or repair of STARLINE's window products at The Admiral Way Condominiums.

9. **Signatures.** This agreement may be executed in duplicated originals, with faxed or electronic signatures acceptable and with each duplicate serving as an original.

THE ADMIRAL CONDOMINIUM OWNERS' ASSOCIATION

By: _____
Name: _____
Title: _____
Date: _____

STARLINE WINDOWS, INC.

By:  _____
Name: Renato Martini
Title: President
Date: 17 July 2009

more severely against any one of the parties than against any other. By making payment hereunder, the parties agree to be bound by the terms of this agreement.

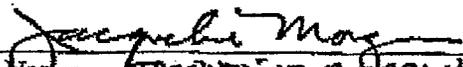
6. **Confidentiality.** The terms of this agreement shall not be revealed, disclosed or discussed in any manner or form whatsoever to any persons, organizations, or other judicial tribunal outside of the parties, their respective attorneys, insurers and their attorneys, team of experts or law firms, unless ordered to do pursuant to a Court order, provided however that nothing contained in this paragraph shall preclude disclosure that the matter was satisfactorily resolved.

7. **Cooperation.** STARLINE will provide reasonable cooperation such as potential witness testimony at trial and reasonable access to documents to ADMIRAL COA in furtherance of ADMIRAL COA's prosecution of claims against Admiral Way, LLC and/or Ledor Industries (USA) Inc. in the litigation.

8. **Issue Release.** ADMIRAL COA hereby agrees that this Settlement Agreement and Release of Claims satisfies and releases all of ADMIRAL COA's claims against all parties to the litigation arising from the alleged defective design and/or defective manufacture of STARLINE's window products at The Admiral Way Condominiums, including claims for breach of express and implied warranties and claims under The Washington Product Liability Act. Specifically excluded from this Settlement Agreement and Release of Claims are any of ADMIRAL COA's claims against Admiral Way, LLC and/or Ledor Industries (USA) Inc. for those parties' improper specification, installation, alteration, modification or repair of STARLINE's window products at The Admiral Way Condominiums.

9. **Signatures.** This agreement may be executed in duplicated originals, with faxed or electronic signatures acceptable and with each duplicate serving as an original.

THE ADMIRAL CONDOMINIUM OWNERS' ASSOCIATION

By: 
Name: JACQUELINE MORGAN
Title: BOARD PRESIDENT
Date: JULY 17, 2009

STARLINE WINDOWS, INC.

By: _____
Name: _____
Title: _____
Date: _____

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON

2011 AUG -1 PM 1:20

No. 65833-6-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

LEDCOR INDUSTRIES (USA) INC.,
a Washington corporation,

Petitioner,

vs.

S.Q.I., INC., a Washington corporation; BORDAK BROTHERS, INC.,
an Oregon corporation; *et at.* ,

Respondents.

CERTIFICATE OF SERVICE

William J. O'Brien, WSBA No. 5907
Attorney for Respondent Starline Windows, Inc.
LAW OFFICE OF WILLIAM J. O'BRIEN
999 Third Avenue, Suite 805, Seattle, WA 98104
(206) 515-4800

TO: Clerk of the Court

And TO: All Parties and Counsel of Record.

The undersigned declares as follows:

I am over the age of 18, not a party to this action, and competent to be a witness herein.

On the 1st day of August, 2011, I caused to be filed a true and correct copy of Respondent Starline Windows, Inc.'s Opening Brief and delivered a copy to the following counsel of record as indicated:

Counsel for Ledcor Industries (USA)

Inc.:

Richard L. Martens, WSBA 4737
Scott A. Samuelson
Steven A. Stolle
Rose K. McGillis
Kathleen A. Shea
705 Fifth Avenue South, Suite 150
Seattle, WA 98104-4436

- U.S. Mail
- Legal Messenger
- Facsimile
- Overnight Mail
- Email W/Approval

Counsel for SQI, Inc.

R. Scott Fallon
Fallon & McKinley
1111 Third Avenue, Suite 2400
Seattle, WA 98101

- U.S. Mail
- Legal Messenger
- Facsimile 206-682-3437
- Overnight Mail
- Email W/Approval

Counsel for Skyline Sheet Metal

Steven G. Wraith
Lee Smart
701 Pike Street, Suite 1800
Seattle, WA 98101

- U.S. Mail
- Legal Messenger
- Facsimile 206-624-5944
- Overnight Mail
- Email W/Approval

Counsel for Painters, Inc.
Kristen Dorrity
Johnson Andrews & Skinner, P.S.
200 West Thomas, Ste. 500
Seattle, Washington 98119

- U.S. Mail
- Legal Messenger
- Facsimile 206-623-9050
- Overnight Mail
- Email W/Approval

Counsel for Scapes & Co.
Brett M. Wieburg
Law Offices of Kelly J. Sweeney
1191 Second Avenue, Ste. 500
Seattle, Washington 98101

- U.S. Mail
- Legal Messenger
- Facsimile 206-473-4031
- Overnight Mail
- Email W/Approval

Counsel for Pacific Coast Stucco
Patrick N. Rothwell
Davis Rothwell Earle & Xochihua
5500 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104

- U.S. Mail
- Legal Messenger
- Facsimile 206-340-0724
- Overnight Mail
- Email W/Approval

Counsel for Exterior Metals
Gregory G. Jones
Fallon & McKinley, PLLC
1111 Third Avenue, Suite 2400
Seattle, Washington 98101

- U.S. Mail
- Legal Messenger
- Facsimile 206-628-3437
- Overnight Mail
- Email W/Approval

Counsel for Bordak Brothers, Inc.
Joanne T. Blackburn
Gordon Thomas Honeywell Malanca
Peterson & Daheim, LLP
600 University, Ste. 2100
Seattle, Washington 98101

- U.S. Mail
- Legal Messenger
- Facsimile 206-676-7575
- Overnight Mail
- Email W/Approval

Counsel for Roestel's Mechanical
Christopher Anderson
Office of Sharon J. Bitcon
West Mercer Street, Ste. 111
Seattle, Washington 98119

- U.S. Mail
- Legal Messenger
- Facsimile 206-286-1941
- Overnight Mail
- Email W/Approval

Co-Counsel for Roestel's Mechanical

John P. Hayes
Martin J. Pujolar
Forsberg & Umlauf PS
901 Fifth Avenue Suite 1400
Seattle, WA 98164-2047

- U.S. Mail
- Legal Messenger
- Facsimile 206-689-8501
- Overnight Mail
- Email W/Approval

Counsel for United Systems, Inc.

Stephen M. Todd
Joshua M. Joerres
Todd & Wakefield
1501 Fourth Avenue, Suite 1700
Seattle, WA 98101-3660

- U.S. Mail
- Legal Messenger
- Facsimile 206-583-8980
- Overnight Mail
- Email W/Approval

Counsel for Starline Windows, Inc.

Betsy A. Gillaspay
Salimi & Gillaspay
821 Kirkland Avenue, Suite 200
Kirkland, WA 98033

- U.S. Mail
- Legal Messenger
- Facsimile 425-462-4995
- Overnight Mail
- Email W/Approval

Counsel for Coatings Unlimited, Inc.

Kara Masters
Skellenger Bender, P. S.
1301 Fifth Avenue, Suite 3401
Seattle, WA 98101

- U.S. Mail
- Legal Messenger
- Facsimile 206-447-1973
- Overnight Mail
- Email W/Approval

Counsel for Admiral Way, LLC

Stephen D. Wakefield
Hecker Wakefield & Feilberg, P.S.
321 First Avenue West
Seattle, WA 98119

- U.S. Mail
- Legal Messenger
- Facsimile 206-447-9075
- Overnight Mail
- Email W/Approval

Signed and dated at Seattle, Washington this 1st day of August, 2011

LAW OFFICE OF WILLIAM J. O'BRIEN



Sheela Schlorer