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## Judge probes payments in stucco lawsuit

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A group of Hilton Head Island residents and their attorneys will appear in court later this year to answer questions about payments they received from the manufacturer of faulty synthetic stucco while involved in a class-action lawsuit against the company, according to court records.

Circuit Court Judge J. Mark Hayes of Spartanburg on June 5 ordered the homeowners and their attorneys to appear Oct. 1 to discuss settlement payments they received from Dryvit Systems and their subsequent withdrawal from the suit against the company.

Evidence suggests that "bonus" payments Dryvit gave to the homeowners and their lawyers were aimed at "stifling" the state lawsuit so the company could first settle a national class-action lawsuit, a resolution that would have left other South Carolina homeowners with Dryvit stucco problems with little legal recourse.

Hayes wrote that the Oct. 1 hearing is necessary to "clarify for the record of this case that the South Carolina class action rules have been complied with, so that the integrity of the class-action process is maintained."

Dryvit's lawyers have insisted in court records that the company acted properly.

Attorneys representing the homeowners and the lawyers who originally represented them have made similar assertions.

"While my clients do not think that this matter should be tried in the press, they do want it to be clearly understood that they adamantly deny any wrongdoing and fully intend to vigorously defend themselves against all claims," said attorney Kent Stair, who is representing a law firm and two attorneys in the case.

Hayes' order and the hearing mark the most recent chapter of a legal saga that is nearly a decade old.

### LAWSUIT INSTIGATED

The complex case started after homeowners around the country began complaining in the mid-1990s that Dryvit's stucco trapped water inside walls, causing moisture damage.

A nationwide class-action lawsuit against Dryvit in Tennessee ended when the company settled in 2002. A judge ruled claimants in other states could get the same settlement as those in Tennessee, but several participants immediately challenged the settlement's fairness and appealed.

Four South Carolina homeowners also believed the national settlement was "grossly inadequate." They pulled out of the national class action suit to pursue a statewide class-action suit on behalf of all South Carolina residents with claims against Dryvit, according to Hayes' order

The four homeowners were John and Sally Cardamone, Benjamin T. and Diane M. Clark, Nathan W. and Jill C. Gordon, all of Hilton Head Island; and Ramona Gianni of Myrtle Beach.

Handling their suit were two firms -- Leath, Bouch & Crawford, and Mullen, Wylie & Seekings, both based in

Charleston -- and two individual lawyers, William Dixon Robertson of Columbia and Frank E. Grimball of Charleston. Seekings has since left the firm, according to court records.

The four homeowners were designated a separate class by Judge Thomas Kemmerlin in September 2003. However, the homeowners' attorneys did not submit a plan to seek other South Carolina homeowners with Dryvit stucco problems so that they too could join the suit, as required by Kemmerlin's order. Such notice plans are customary in class-action lawsuits, and can involve advertisements in newspapers, TV and sometimes mailings to potential plaintiffs.

As a result, many South Carolina homeowners who could have joined the lawsuit didn't because they were never made aware of its existence, according to court records.

Meanwhile, in email exchanges with lawyers for the original plaintiffs, Dryvit's attorneys suggested that the individual cases "needed to be resolved 'in order to eliminate the S.C. class,'" according to an order Hayes filed in January 2009.

The homeowners' lawyers also discussed collecting \$600,000 in fees from the national class-action lawyers and another \$225,000 once the S.C. case was dismissed, Hayes wrote.

The four South Carolina homeowners all settled their individual cases by September 2003, and received between \$25,000 and \$90,000.

The two South Carolina law firms received checks totaling \$600,000 between November 2005 and September 2006, according to court records. Court records do not indicate if the firms ever received the \$225,000 referenced in the emails.

## **SETTLEMENT REACHED**

Once Dryvit settled the South Carolina cases individually, its attorneys then attempted to decertify the South Carolina class and get the original case dismissed.

That never happened because, in September 2005, two Hilton Head plaintiffs -- Timothy and Janie Treon and P. Jennings Scarce -- replaced the original plaintiffs who had cut individual deals with Dryvit.

New attorneys were assigned to represent the new plaintiffs.

Dryvit requested a dismissal of the original class-action lawsuit, arguing the final judgment in the nationwide class action in September 2005 barred any new claims in South Carolina.

In February 2009, Hayes denied Dryvit's motion, saying that "genuine issues exist as to whether the finality of (the national class action) was improperly bought by Dryvit 'buying off' the South Carolina class."

The company agreed in June 2010 to pay \$10,000 to Scarce, \$5,000 to Timothy and Janie Treon and \$2,500 to another plaintiff who later was added to the case, according to a copy of the settlement agreement.

Other homeowners received either \$4 or \$8 per square foot of faulty stucco, depending on the extent of the damage, the agreement said.

The settlement also called for \$995,000 in attorney's fees to attorneys for the Treons and Scarce, according to the filing.

## **LAWSUITS PUT ON HOLD**

The Treons and Scarce and another group of plaintiffs who felt shortchanged by Dryvit and by the original plaintiffs and their attorneys, filed two separate lawsuits against them in Beaufort County.

The cases, filed in 2008, alleged Dryvit, the original plaintiffs and their lawyers originally involved in the South Carolina class action conspired to abandon the case.

Those allegations have been denied by Dryvit and the other parties in various court filings.

In May, Hayes ruled to temporarily stay the lawsuit until after the Oct. 1 hearing in Spartanburg.

Beaufort attorney Thomas Pendarvis, who is representing the plaintiffs in the lawsuit, said he will be paying close attention to the upcoming hearing, and added that he is hopeful "that the stay will be lifted and we will be able to proceed to trial."

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