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K. TORRE, CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CALIF.
BY: _____
C. ADRIAN... Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

Coordination Proceeding
Special Title [Rule 1550(b)]
SHAKE ROOF CASES

Judicial Council Coordination
Proceeding No. 4208
Superior Court of Contra Costa County,
C99-00318

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF PARTIAL CLASS
ACTION SETTLEMENT; AND PARTIAL
JUDGMENT, FINAL ORDER AND
DECREE THEREON**

Date: November 14, 2005
Time: 1:30 p.m.
Dept: 6

Judge: Hon. David B. Flinn

1 On July 18, 2005, this Court entered an Order granting Preliminary Approval of a
2 settlement between the New Cal Shake Settlement Class and Defendant Cal-Shake, Inc. ("New
3 Cal-Shake"), Federal Insurance Company, Pacific Indemnity Insurance Company, Continental
4 Insurance Company and Glens Falls Insurance Company, Wausau Insurance Companies, and
5 Transamerica Insurance Group.¹ A hearing on Final Approval of the settlement was duly held on
6 November 14, 2005. Having conducted a hearing regarding the matters set forth herein, and good
7 cause appearing therefor, the Court now finds and orders as follows:

8 FINDINGS

9 By Order dated February 8, 2002, the Court previously certified this action as a class
10 action. By Order dated July 18, 2005, the Court certified a nationwide settlement class
11 encompassing all claims against New Cal-Shake ("Settlement Class").

12 Notice to the New Cal-Shake Settlement Class of the settlement was given in accordance
13 with the Preliminary Approval Order. The notice program provided the best practicable notice to
14 members of the New Cal-Shake Settlement Class, and satisfies due process.

15 Only one objection has been lodged with the Court or Class Counsel, and that objection is
16 directed to the fee application rather than the settlement itself. No New Cal-Shake Settlement
17 Class Members have requested to be excluded.

18 I. THE SETTLEMENT MEETS ALL OF THE CRITERIA FOR FINAL 19 APPROVAL.

20 The decision to grant final approval of a class action settlement involves the Court's
21 consideration of several factors, including: (1) the amount offered in settlement; (2) the risks
22 inherent in continued litigation; (3) the extent of discovery completed and the stage of the
23 proceeding when the settlement was reached; (4) the complexity, expense, and likely duration of
24 the litigation absent settlement; (5) the experience and views of class counsel; and (6) the reaction
25 of class members. See Dunk v. Ford Motor Co., 48 Cal.App.4th 1794, 1801 (1996). "The list of
26

27 ¹ Federal Insurance Company, Pacific Indemnity Insurance Company, Continental Insurance Company
28 and Glens Falls Insurance Company, Wausau Insurance Companies, and Transamerica Insurance Group
are referred to collectively as the "Settling Insurers."

1 factors is not exhaustive and should be tailored to each case.” Id. The Court finds that the
2 relevant criteria support final approval of the settlement.

3 **II. THE VALUE OF THE SETTLEMENT AND THE BENEFIT TO THE NEW CAL-**
4 **SHAKE SETTLEMENT CLASS.**

5 The settlement has a value of \$61.42 million to the New Cal-Shake Settlement Class,
6 which is approximately 75% of the maximum available policy limits of \$84 million which
7 Plaintiffs contended apply here. Prior to settlement, the New Cal-Shake carriers had contended
8 that the maximum available limits were only \$11 million. For these reasons, the settlement
9 represents a very favorable result for the class.

10 **III. THE RISKS OF CONTINUED LITIGATION.**

11 In assessing the merits of the settlement, the Court has weighed the immediacy and
12 certainty of substantial settlement proceeds against the risks inherent in continual litigation. MCL
13 at § 21.62; Dunk, 48 Cal.App.4th at 1801-02.

14 Without question, this factor strongly supports final approval. The settlement affords the
15 New Cal-Shake Settlement Class prompt and substantial relief, and avoids significant legal and
16 factual hurdles that otherwise may have prevented any recovery from New Cal-Shake and its
17 insurers at all. The risk of continued litigation is magnified in this case because of New Cal-
18 Shake’s defunct status. Securing a favorable judgment for the New Cal-Shake Settlement Class
19 would have required a successful trial and judgment against New Cal-Shake, followed by
20 insurance coverage litigation against New Cal-Shake’s insurers, all subject to the risks and delays
21 of both trial and appeal. These risks weigh strongly in favor of the Court’s approval.

22 **IV. THE SETTLEMENT WAS REACHED ON THE EVE OF TRIAL, FOLLOWING**
23 **SUBSTANTIAL DISCOVERY AND LITIGATION.**

24 Plaintiffs filed this action on February 4, 1999. From the time that this action was filed,
25 the Class and New Cal-Shake engaged in extensive litigation for more than six years. It was not
26 until the eve of trial that New Cal-Shake and its insurance carriers entered into a settlement
27 agreement with Plaintiffs.

28 The Court is satisfied that by the time the parties reached the settlement, they had more
than adequate information to assess the strengths and weaknesses of their respective cases, and

1 Class Counsel in particular had a very high level of familiarity with the legal and factual issues
2 sufficient to make a thorough appraisal of the adequacy of the settlement to provide meaningful
3 relief to the class. See Dunk, 48 Cal.App.4th at 1801.

4 **V. THE COMPLEXITY, EXPENSE, AND EXPECTED DURATION OF**
5 **CONTINUED LITIGATION.**

6 Another factor the Court considered in assessing the fairness of the settlement is the
7 complexity, expense, and likely duration of the litigation had a settlement not been reached.
8 Dunk, 48 Cal.App.4th at 1801. The Court weighed the benefits of the settlement against the
9 expense and delay involved in achieving an equivalent or more favorable result at trial. See
10 Young v. Katz, 447 F.2d 431, 434 (5th Cir. 1971). The settlement guarantees a substantial
11 recovery for the New Cal-Shake Settlement Class while obviating the need for a lengthy,
12 uncertain and expensive trial and appeals on numerous complex legal and factual issues.

13 **VI. THE EXPERIENCE AND VIEWS OF COUNSEL.**

14 The Court finds that this action has been prosecuted by counsel with substantial
15 experience and competence in products liability class actions and insurance coverage litigation.
16 Settlement discussions took place in numerous separate sessions with two accomplished
17 mediators. Class Counsel's support for the settlement as being fair, reasonable and adequate, and
18 in the best interests of the New Cal-Shake Settlement Class as a whole is entitled to significant
19 weight. See Dunk, 48 Cal.App.4th at 1802.

20 **VII. CLASS MEMBER'S REACTION.**

21 The Court has considered the fact that to date, Class Counsel has been contacted by over
22 1,200 class members but received only one objection (to the fee application, not the settlement
23 itself). A Court may infer that a class action settlement is fair, adequate and reasonable when few
24 class members object to it. Here, the Court finds that the nearly universal non-opposition to the
25 settlement is tacit New Cal-Shake Settlement Class member support for the settlement as fair,
26 adequate and reasonable.

1 **FINAL SETTLEMENT APPROVAL AND FINAL PARTIAL JUDGMENT.**

2 Accordingly, the Settlement having been duly noticed, and having been fully considered
3 by the Court,

4 IT IS HEREBY ADJUDGED, ORDERED AND DECREED THAT:

5 1. This Court has jurisdiction over the claims of the New Cal-Shake Settlement Class
6 members asserted in this proceeding, personal jurisdiction over the settling parties (including the
7 New Cal-Shake Settlement Class members), and subject matter jurisdiction to approve the
8 Settlement.

9 2. This Court confirms that the applicable requirements of Code of Civil Procedure
10 Section 382 have been satisfied with respect to the New Cal-Shake Settlement Class.
11 Accordingly, the Court confirms and makes final its certification of the New Cal-Shake
12 Settlement Class in the July 18, 2005 Preliminary Approval Order.

13 3. Notice given to members of the New Cal-Shake Settlement Class was reasonably
14 calculated under the circumstances to apprise the New Cal-Shake Settlement Class members of
15 the pendency of this action, all material elements of the settlement, and their opportunity to object
16 to, or to comment on, the settlement and to appear at the final fairness hearing. The notice was
17 reasonable and the best notice practicable under the circumstances, was adequate and sufficient
18 notice to all New Cal-Shake Settlement Class members, and complied fully with the laws of the
19 State of California, the Code of Civil Procedure, due process, the U.S. Constitution and California
20 Constitution, and any other applicable rules of the Court. A full opportunity has been afforded to
21 the New Cal-Shake Settlement Class members to participate in the final fairness hearing, and all
22 New Cal-Shake Settlement Class members and other persons wishing to be heard have been
23 heard. Accordingly, the Court determines that all members of the previously certified New Cal-
24 Shake Settlement Class are bound by this Judgment, Final Order and Decree.

25 4. The Court hereby grants final approval to the settlement and finds that it is fair,
26 adequate and reasonable, and in the best interests of the New Cal-Shake Settlement Class as a
27 whole, and Final Judgment is hereby entered in accordance with the terms of this Order and the
28 settlement agreement.

1 5. All New Cal-Shake Settlement Class members have released and forever
2 discharged their claims to the extent set forth in the settlement agreement.

3 6. All New Cal-Shake Settlement Class members are permanently barred and
4 enjoined from asserting claims released by the settlement agreement, to the extent set forth
5 therein.

6 7. The Court approves the payment of \$10,000 stipends each to Melvin Weiner and
7 to Jean Portello for their services as Class Representatives.

8 8. Without affecting the finality of this Order and Judgment, the Court reserves
9 continuing and exclusive jurisdiction over parties to the settlement agreement, including New
10 Cal-Shake, the Settling Insurers, and the New Cal-Shake Settlement Class, to administer,
11 supervise, construe and enforce the settlement agreement in accordance with its terms for the
12 mutual benefit of the parties. The Court further reserves continuing jurisdiction over Class
13 Counsel's application for attorney's fees and costs, and to modify the Plan of Allocation and
14 Claims Protocol without further notice to the New Cal-Shake Settlement Class. All subsequent
15 notices to the New Cal-Shake Settlement Class will be disseminated exclusively through the Web
16 site (<http://www.calshakeclassaction.com>).

17 9. The settlement agreement is expressly incorporated herein by this reference, and
18 has the full force and effect of an order of this Court. The parties shall consummate the
19 settlement agreement according to its terms.

20 10. Under Code of Civil Procedure sections 578, 579, and 664.6, the Court, in the
21 interests of justice, there being no reason for delay, expressly directs the Clerk of the Court to
22 enter this Judgment, Final Order, and Decree, and hereby decrees, that upon entry, it be deemed
23 as a final judgment and appealable in accordance with the terms of the Settlement. This
24 Judgment, Final Order, and Decree is entered as between the New Cal-Shake Settlement Class
25 and New Cal-Shake only, and has no effect on the claims of the Class against Old Cal-Shake and
26 its insurers.

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1 IT IS SO ORDERED AND PARTIAL FINAL JUDGMENT WITH RESPECT TO ALL
2 CLAIMS OF THE SETTLEMENT CLASS AGAINST NEW CAL-SHAKE IS HEREBY
3 ENTERED IN ACCORDANCE HEREWITH

4 **DAVID B. FLINN**

5 DATED: 11-15-, 2005

6 HONORABLE DAVID B. FLINN
7 Judge of the Superior Court

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