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## Pella Puts Up \$90M To Settle Window Defect Class Action

By **Juan Carlos Rodriguez**

Law360, New York (March 12, 2013, 2:40 PM ET) -- Pella Corp. and class members in a lawsuit alleging that defects in the company's windows caused extensive property damage asked a federal judge on Monday to approve a settlement that Pella said is worth more than \$90 million.

The move follows the court's December denial of a request by a group of objectors to prevent notice of Pella's settlement from being sent out to class members. Both the company and the plaintiffs said Monday the settlement is fair and should be approved.

"Class counsel believe that they have a strong case on the merits, but they also recognize the restrictions that the limited class certification imposes on the strong evidence related to the common issues," the plaintiffs said in their memorandum in support of the settlement.

While they believe in the strength of their liability case, they must realistically recognize that a finding of no liability is possible, the plaintiffs said.

"Plaintiffs also must acknowledge the many other risks and uncertainties facing them absent settlement. If plaintiffs were to be successful at trial establishing Pella's liability, that would just be the beginning of the road as each class member would then need to individually litigate issues of causation, damages, limitations and other defenses," the class members said.

The plaintiffs said they retained professional accountants, Veris Consulting Inc., to value the settlement, and based on that independent analysis, their class counsel believe that the aggregate value of this benefit to settlement class members exceeds \$90 million.

Pella, in its memorandum in support of the deal, said the court has limited certification to an "issue class" addressing whether Pella ProLine Casement Windows had a uniform defect, and denied certification on the critical issues of causation, comparative fault, and amount of damages for individual trials.

"The court's certification of such a limited class issue dictates that even if the class were to prevail in a trial of the 'common issue,' there could be no monetary award to the class, or individual class members, and such a 'win' would be the beginning of the litigation process — not the end. This fact underscores the significant risks, difficulty and amount of time faced by class members if the class were to pursue the litigation instead of settle the matter," Pella said.

Under the deal, class members may be able to receive up to \$750 in cash per structure with the windows through a claims process, or up to \$6,000 per structure through an arbitration process in which they will not have to prove a window defect but Pella will be able to make all other defenses.

Some class members may instead receive certain discounts or coupons.

The settlement also provides that class counsel can ask for an attorneys' fee award of up to \$11 million, that Dr. Leonard Saltzman, the original plaintiff and the one named class representative in favor of the deal, may receive an incentive award of \$10,000, and that the four other plaintiffs who agreed to the settlement may receive awards of \$5,000 each.

Class counsel is Richard J. Burke, Paul Weiss and Julie D. Miller of Complex Litigation Group LLC, Jonathan Shub and Christopher Seeger of Seeger Weiss LLP, Steven Jaffe and Mark Fistos of Farmer Jaffe Weissing Edwards Fistos & Lehrman PL, and Ben Schwartzman of Banducci Woodward Schwartzman PLLC.

Pella is represented by James A. O'Neal, John P. Mandler and Amy R. Fiterman of Faegre Baker Daniels LLP and by John A. Roberts of Edwards Wildman Palmer LLP.

The case is Saltzman v. Pella Corp. et al., case number 1:06-cv-04481, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Megan Stride. Editing by Rebecca Flanagan.

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