

IN THE CIRCUIT COURT OF TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

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JOHN BABB, on behalf of	)
himself and all similarly	) Docket No.: CT-001818-04
situated persons and entities,	) Division 4
	)
PLAINTIFFS,	) Honorable Rita L. Stotts
	)
v.	)
	)
	)
WILSONART INTERNATIONAL, INC.,	)
a Delaware corporation,	)
	)
DEFENDANT.	)

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**ORDER AND FINAL JUDGMENT**

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On the 21<sup>st</sup> day of February, 2005, a hearing having been held before this Court to determine: (1) whether, pursuant to Rule 23 of the Tennessee Rules of Civil Procedure ("Tenn.R.Civ.P.") the terms and conditions of the Stipulation of Settlement<sup>1</sup> dated November 5, 2004, are fair, reasonable and adequate for the settlement of the Complaint filed by Plaintiff in this Court on March 30, 2004 under the above caption, including the release of Defendant, Wilsonart International, Inc. ("Wilsonart" or "Defendant"), and should be approved; (2) whether judgment should be entered dismissing the class action Complaint on the merits and with prejudice in favor of Wilsonart as against all individuals who are members of the Settlement Class; (3) whether to approve the Consideration and Settlement Claims Procedure as a fair and reasonable compensation to the members of the Settlement Class; (4) whether the Settlement Class provisionally certified in this Court's Order of November 8, 2004 meets the prerequisites of Rules 23.01 and 23.02(3), Tenn.

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<sup>1</sup> Capitalized terms not explicitly defined herein are as defined in the Stipulation of Settlement.

R. Civ. P., and should therefore be finally certified; (5) whether the Notice of Proposed Settlement of Class Action and Summary Notice of Proposed Settlement of Class Action disseminated to members of the Settlement Class on or before November 29, 2004, meets the requirements of Tenn. R. Civ. P. 23.03(2) and 23.05 and due process in both content and procedure; and (6) whether and in what amount to award Settlement Class Counsel's fees. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all members of the Settlement Class who could be identified with reasonable effort and was published nationally three (3) separate and distinct times;

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. This Court has jurisdiction over the subject matter of this Action, the Plaintiff, all members of the Settlement Class, and the Defendant.
2. Pursuant to Tenn. R. Civ. P. 23.02(2), this Court hereby finally certifies this Action as a class action for settlement purposes only on behalf of a class including: all residential end users who had purchased and installed Wilsonart® SSV and experience cracking and/or delamination during Wilsonart's ten (10) year warranty period and have not previously executed a release of warranty claims with Wilsonart. Excluded from the class are individuals and entities that have purchased Wilsonart SSV for use in commercial applications or settings (non-residential use) and any agents, employees, owners and assigns of Wilsonart and all residential end users who have submitted a warranty claim which was honored prior to the entry date of this Order and Final Judgment; however, any residential end user with a prior honored warranty claim shall be included in the class to the extent he/she experiences a new or additional crack and/or delamination during the applicable warranty period and after the entry date of this Order.

Also excluded from this class are Wilsonart's agents, employees, owners and assigns and all Settlement Class Members that have submitted a valid Request for Exclusion pursuant to the procedure outlined in the Notice of Proposed Settlement of Class Action, as evidenced in the Affidavit of the Notice of Administration and any supplement thereto. This class is hereinafter referred to as the "Class" or the "Settlement Class" or "Settlement Class Members."

3. With respect to the Settlement Class, this Court finds and concludes pursuant to Tenn. R. Civ. P. 23.01 that (a) the members of the Class are so numerous that joinder of all members in this action would be impracticable; (b) there are questions of law and fact common to the members of the Class which predominate over any individual questions; (c) the claims of the representative Plaintiff are typical of the claims of Settlement Class members; and (d) the representative Plaintiff and their counsel have fairly and adequately represented and protected the interests of the members of the Settlement Class.

4. The Court also finds that the Settlement Class is properly certified under Tenn. R. Civ. P. 23.02(3). The Class Action Complaint alleges, and the Court concludes, that common questions of law and fact predominate over any questions affecting only individual members, and that a class action is superior to other methods available for the fair and efficient adjudication of the controversy.

5. Notice of the proposed settlement of this Action as a class action was given to the Settlement Class Members who could be identified with reasonable effort, having been mailed to the last known address of residential SSV owners who filed warranty registrations or submitted warranty claims with Wilsonart and having been mailed to the last known address of Wilsonart's certified fabricators and distributors. These mailings totaled approximately 54,000. Notice was also duly and properly published on three (3) separate

occasions on a national basis in the *U.S.A. Today* newspaper. Moreover, Defendant has created and will continue to maintain through the year 2013 an internet website, found at <http://www.wilsonartssvsettlement.com>, for the purpose of providing information regarding the terms and conditions of the settlement to Settlement Class Members. The form and methods of notifying the Class of the pendency of the Action as a class action and of the settlement and its terms and conditions met and continue to meet the requirements of Tenn. R. Civ. P. 23.03(2) and 23.05 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all Settlement Class Members, regardless of whether they received actual Notice of the proposed settlement of this Action.

6. Without altering any of this Court's findings and rulings in the above paragraph 5, the Court has identified specific Settlement Class Members (hereinafter referred to as the "Specific Class Members") who may have not received the Notice by mail due to a clerical error, although many have received actual Notice and, due to the multiple methods of Notice set forth in paragraph 5, could otherwise be deemed to have been given sufficient Notice so as to be bound by this Order and Final Judgment. The identities and last known addresses of the Specific Class Members are known to, and shall be retained by, the Notice Administrator. The Specific Class Members amount to less than 3% of the Notices that were in fact mailed to the Settlement Class and amount to even a lesser percentage of the entire Class Members. This Court orders that the Notice Administrator shall mail a Notice (in the form substantially similar to the Notice authorized by the Order of Preliminary Approval dated November 8, 2004) to the last known address of the Specific Class Members. Said Notice shall state that each Specific Class Member may exclude himself from this settlement and Order and Final Judgment by mailing their name, address and a statement requesting exclusion to the Notice Administrator,

which must be postmarked no later than 30 days from the date of the mailing of said Notice. No Specific Class Member may object to this settlement nor seek to alter, modify, amend or otherwise challenge in any way this settlement and Order and Final Judgment. The Notice Administrator shall timely file an Affidavit with this Court verifying that said Notice was mailed as required in this paragraph and identifying all Specific Class Members who have properly requested exclusion, who so shall be deemed excluded from the Settlement Class and this Order and Final Judgment.

7. The Court finds that Settlement Class Counsel are appropriate, competent and well-versed in the prosecution of class action claims. The Court further finds that Settlement Class Counsel have adequately and zealously represented the class members interests and have provided significant value to the class.

8. The Stipulation of Settlement is approved as fair, reasonable, and adequate, and the members of the Settlement Class and the Parties are directed to consummate the Stipulation of Settlement in accordance with its terms and provisions.

9. In accordance with the terms of the Stipulation of Settlement, upon the Effective Date, Wilsonart shall take all steps to effectuate the warranty claims process described therein.

10. The Complaint is hereby dismissed with prejudice with costs taxed by the Court clerk assessed against Wilsonart.

11. The Settlement Class on behalf of themselves, their heirs, executors, administrators, successors and assigns, subsequent purchasers of their SSV installations, and any persons they represent, hereby, with respect to each and every Settled Claim (as defined below in paragraph 12), releases and forever discharges, and forever covenants not to sue with respect to

any Settled Claims against the Released Parties (as defined below in paragraph 14).

12. "Settled Claims" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims (as defined below in paragraph 1~~2~~<sup>3</sup>), that have been or could have been asserted in any forum by Plaintiffs and/or the Settlement Class, or any of them, against any of the Released Parties, which arise out of or relate in any way to the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, referred to or that could have been asserted in the Class Action Complaint filed March 30, 2004.

13. "Unknown Claims" means any and all claims which any Plaintiff or member of the Settlement Class does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims, the parties stipulate and agree that Plaintiffs shall, by operation of the Order and Final Judgment, have waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Plaintiff and members of the Settlement Class by operation of law shall be deemed to have acknowledged that the inclusion of Unknown Claims in the definition of Settled Claims was separately bargained for and was a key element of the Settlement.

14. "Released Parties" means Defendant and any person, firm, company, trust,

corporation, or entity in which any Defendant has a controlling interest, and each of their past, present and future corporate parents (including intermediate and ultimate parents), subsidiaries, affiliates, predecessors, successors and assigns, and each of their respective past, present and future officers, directors, employees, representatives, agents, solicitors, attorneys, heirs, investment advisors, administrators, executors, insurers, predecessors, successors and assigns, or any of them, including any person or entity acting on behalf or at the direction of any of them.

15. Nothing contained in the Stipulation of Settlement or in other agreement executed in connection with the Settlement or this Order and Final Judgment shall be construed as an admission (a) by the Defendant of any alleged liability, fault or wrongdoing whatsoever, or (b) by any Settlement Class Member that their claims are without merit or lack validity.

16. The Consideration and Settlement Claims Procedure is approved as fair and reasonable, and Plaintiffs' counsel and Wilsonart are directed to administer the Stipulation of Settlement in accordance with its terms and provisions.

17. Settlement Class Counsel are hereby awarded fees in the amount of \$3,500,000.00 and are directed to pay their own discretionary expenses (except the costs of the Court), which the Court finds to be fair and reasonable. Costs of the Court are to be paid separately by the Defendant and will not directly affect the benefit provided to Class Members in the manner set forth in Plaintiffs' Application for an Award of Attorneys' Fees or as otherwise agreed to by the Parties. The Defendant is hereby ordered to pay said fee upon the Effective Date of this settlement pursuant to the Stipulation of Settlement as shall be directed by Class Counsel Frank L. Watson, III.

18. Exclusive jurisdiction is hereby retained over the parties and the members of the settlement Class for all matters relating to this Action, including the administration,

interpretation, effectuation or enforcement of the Stipulation of Settlement and this Order and Final Judgment.

19. The Court finds that Plaintiff John Babb is an appropriate and proper class representative and that he has adequately and zealously represented the interest of the Class in the prosecution of this action. The Court further approves and orders the Defendant to pay the \$12,000.00 payment to Plaintiff John Babb upon the Effective Date of this settlement pursuant to the Stipulation of Settlement.

**SO ORDERED.**

Dated: Memphis, Tennessee  
This 21 day of February, 2005.

*Rita L. Stotts*

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The Honorable Rita Stotts  
Shelby County Circuit Court Judge

**APPROVED AS TO FORM:**

**GLASSMAN, EDWARDS, WADE  
& WYATT, PC**

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A TRUE COPY ATTEST

JIMMY MOORE, Clerk  
*B. Bailey* D.C.

**BATEMAN GIBSON, LLC**

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*Class Counsel for Plaintiff*

**BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, P.C.**

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*Counsel for Defendant Wilsonart International, Inc.*