

Don't Miss the Boat!

Tagging Along In Class Action Litigation With Your Small Property Claims

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Typical Scenario

Claims professional receives new file

- Small claim amount (\$25,000 or less)
- Product liability case
- Note in activity log that service technician mentioned the product was part of class action
- **NOW WHAT?**

**Confirm product is
part of class action!**

Confirm product is part of class action

- Research class action online
 - Class action informational websites
 - Take note of affected model, year of product
- Gather information from insured
 - Product and installation manuals
 - Purchase information
 - Installer information (if applicable)

Identifying Product

Is product easily identifiable as part of class action?

- If not, consider obtaining written statement from installer, retailer, or relevant expert identifying product
- Get good, clear digital photos of product – from all sides!

Zurn or Uponor?

- **Zurn and Uponor – manufacturers of plumbing systems and fittings – “pex” and brass**
- **Consolidated multi-state class action lawsuits – now settled**
- **Essential to correctly identify – to present claims to correct company!**

Zurn or Uponor?

Zurn – Q-Pex

Uponor – P-Pex



DON'T ASSUME!

Don't assume your product is part of class action!

- You may blow statute of limitations
- You may be barking up the wrong tree
- You may miss out on settlement deadlines
- You **WILL** waste a lot of time!

RETAIN EXPERT?

- Difficult decision
- Would you retain expert normally?
- All claims – need to confirm loss occurred due to issue identified in class action
- May not be cost-effective in smaller claims
- Gather as much information as possible

**You know you have
claim under class
action...NOW WHAT?**



NOTICE OF CLAIM

- Gather information
- Send notice of claim to Defendant's counsel
 - At a minimum, include:
 - Date of loss
 - Location of loss
 - Information identifying product
 - Description of type and amount of damages

SHOULD YOU COMMENCE SUIT?

- Decide – individual suit, consolidated action, or wait out class action?

BE AWARE OF SOL!

Individual Lawsuit

Pros:

- Can protect SOL

Cons:

- Burden of proving product liability against manufacturer who may have spent hundreds of thousands of dollars on experts

Consolidated Action

Pros:

- Protect SOL
- Be one of first to know of settlement

Cons:

- May face motion to dismiss
- May have to participate in extensive, costly discovery

Waiting Out the Class Action

Pros:

- You can obtain updates from class counsel
- You won't spend any money on litigation

Cons:

- SOL could run before class action settles

DON'T MISS THE BOAT!

Issues to Discuss With Insured

Ask insured:

- Has insured received notice of class action?
- Submitted claim?
 - OOP
 - Deductible?
- Received any response?
- Does insured plan to commence own suit?

Collect Documents From Insured!

- Correspondence from class defendant(s)
- Claim documents submitted by insured
- Documents received by insured in response to claim forms

MAKE SURE INSURED KEEPS YOU IN THE LOOP IN CASE OF SUIT!

Secure The Product!

- Know EXACTLY where the product is located
- May need to send to claim administrator to prove eligibility for settlement
- Obtain good photos

The Class Action Settled...NOW WHAT?



Should you opt in, or opt out?

Opting in:

- Pros
 - Known settlement amount
 - Claims filing process instead of litigation
 - Defined end date for submitting claims and payouts
 - Limited expense

Opt in, or opt out?

Opting in:

- Cons
 - Limited to class action settlement amount
 - Claim forms are tedious to complete
 - Little margin for error on forms
 - Hard to get answers to questions about timelines, forms

Opting out of class action settlement

- Chance to recover more than settlement amount
- Normal burden of proof
- Litigation expenses
- Need to evaluate whether cost-effective to pursue litigation – like any other case

Opt-in – NOW WHAT?

- Obtain Settlement Agreement
 - Settlement Approval Hearing
 - Keep track of all deadlines!
 - Try to identify other known claims
 - Be patient!

Case Study: Zurn Pex Plumbing Fittings

Product

- PEX plumbing fittings – brass fittings and copper crimp ring connection design with polyethylene tubing
- Sold throughout the U.S.
- Easier to install, cheaper, longer lasting than copper
- 25 year warranty

Description of Product

- Zurn sold 292,000,000 fittings
- Ceased manufacture in 2010



Failure Mechanism

- Brass in fittings had high zinc content
- Dezincification, SCC
- i.e. highly susceptible to cracking under stress and when exposed to water
- Failures resulted in water damage

Class Action History

- 2,000 known fitting failures
- Potential class members = 50,000
- First lawsuit filed 2007, Minnesota state court
 - Denise & Terry Cox, et al. v. Zurn

Complaint against Zurn

- Zurn's design and choice of materials
- Violations of MN Consumer Protection Statutes
- Negligence
- Negligent Failure to Warn
- Breach of implied warranty of merchantability
- Breach of express warranty

Zurn's Defenses

- Warranty excluded coverage for corrosion failures
- Corrosive water conditions caused failures
- Ex. MN hard, alkaline water
- Product adhered to ANSI standards
- Improper installation (over or under-crimping)


Zurn's Defenses

- Claims Rate statistically insignificant
- 292,000,000 fittings sold, 2,000 failures = .0006849% failure rate
 - Spent over \$1 million in expert fees – water chemistry, metallurgists, plumbing experts, statisticians

Other Class Action Cases

- 2nd lawsuit – North Dakota
- Other states – AL, CO, LA, MI, MT, NM, NC, VA
- Lawsuits sought to represent all owners with Zurn PEX systems with brass fittings
- Plaintiffs sought replacement of fittings – failures or not

Multidistrict Litigation

- Judicial Panel on Multidistrict Litigation (MDL)
- Zurn PEX cases involved common questions of law and fact
- Centralization of cases  MN (1st)

Class Certification

2010

- Plaintiffs moved to certify class – allow case to proceed as class action
- Vigorously opposed by Zurn
- Class certification granted
- Zurn appealed
- July 2011 - affirmed

What about small property subro cases?

- Few dozen claims - \$1,500 - \$71,000
- Identified all as Zurn products, organized
- Roundtabled – consolidated case in Federal Court?
- Small State court suits - SOL

To consolidate or not to consolidate?

Why consolidate in Federal Court?

- Already class actions in Federal Court
- Hoping to benefit from class action and have case assigned to same judge

Federal jurisdiction requirement

Federal Court Jurisdiction 28 U.S.C. § 1332

- Amount in controversy must exceed \$75,000
and
- Between citizens of different states

Consolidated subro action

All claims exceeded \$400,000

- Insurer A - \$242,000
- Insurer B - \$180,000
- Insurer C - \$11,000

Zurn moved to dismiss – court lacked subject matter jurisdiction

Can claims be aggregated?

Several federal courts have held that subrogated insurer can aggregate claims to reach amount in controversy requirement

- Separate losses/separate dates/separate locations
- Focus on carrier and total claim
- Zurn's motion denied

5 years after original suit...

THE CLASS ACTION SETTLED!

- All further litigation was stayed by the court
 - Including consolidated subro case
- Settlement agreement filed for approval
- Approval hearing set for 02/13

Terms of settlement (in a nutshell)

- Class members to receive up to 60% of documented damage resulting from leaks
- Cap of \$100,000
- Re-plumb claims reimbursable up to 60% of total cost
- Subrogated insurers eligible
- Settlement subject to court approval/hearing

Fine points of settlement

- Deadline to opt out, or be included
- Past claims – deadline to file claims forms 04/01/14
- All other claims – must submit claims form within 12 months of leak
- Future claims filing deadline – 04/01/20
- Initial payment = 60% of 60% of eligible claims

The Class Action Settled...NOW WHAT?



Notify Insured

If insured has OOP:

- Decide whether to include OOP in your claims form, or ask insured to file separately
- If insured OOP is poorly documented, may affect or delay subro recovery
- If you file separately, consider sharing form/documents with insured

Get Organized!

- If you are handling multiple files, organization is critical!
 - Create spreadsheets
 - Compile documentation
 - Be ready to file claims as soon as possible!
 - Pay attention to deadlines to submit!

Completing Claim Forms

- Be sure to answer every question!
 - Leave no blanks!
 - Use N/A if not applicable
 - If submitting on behalf of insurer, indicate on form
 - Typical information requested
 - Examples

Zurn Claim Form v. Uponor Claim Form



Stay Organized!

- Track your claim forms by date submitted
- Follow up with claims administrator for general updates
- CA will not answer questions about timelines for payment on specific claims

Keep Records!

- Make sure your damages are clearly itemized and supported!
- Keep hard or electronic copies of **EVERYTHING** you submit!
- Be prepared to **WAIT** for payment

If you submit an incomplete form:

- Letter describing deficiency
- Strict time period to respond
- May need to ask for more time in writing
 - May not be granted!

GET IT RIGHT THE FIRST TIME

Closing Remarks



- Confirm product is part of class action!
- To sue or not to sue?
- Share information with insured!
- Don't ignore deadlines!
- Organization is key!
- Get it right the first time!
- Keep records!
- Be patient!

Thank you!

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