

NOTICE OF CERTIFICATION OF IKO ORGANIC SHINGLES CLASS ACTION IN CANADA

If you are a current or former owner or lessee of a building in Canada with IKO Organic Shingles, your legal rights could be affected by a class action. You should read this notice carefully.

IKO Organic Shingles mean all asphalt organic shingles manufactured by or on behalf of IKO Industries Ltd., Canroof Corporation Inc., or I.G. Machine & Fibers Ltd. whether sold under the names Chateau, Renaissance XL, Aristocrat, Total, Armour Seal, Superplus, Armour Lock, Royal Victorian, Cathedral XL, Ultralock 25, Armour Plus 20, Armour Tite, Chateau Ultra Shadow (laminated organic), Crowne 30, or otherwise.

IKO Organic Shingles have not been manufactured since 2008 and have not been sold since 2010. This class action and notice does NOT affect owners / lessees of buildings with IKO Fiberglass Shingles (some of which have been sold under the same brand names listed above for Organic Shingles).

CERTIFICATION OF CLASS ACTION

A class action related to IKO Organic Shingles has been certified by the Ontario Superior Court of Justice. This means that the common issues set out below will be determined in a single proceeding on behalf of members of the Class (defined below) or the Subclass (defined below), as applicable, subject to further order of the Court.

WHAT THE CLASS ACTION IS ABOUT

The representative plaintiff, Kevin Barwin of Ottawa, Ontario, represents himself and the Class in the class action. The Defendants are IKO Industries Ltd., Canroof Corporation Inc., and I.G. Machine & Fibers Ltd.

The representative plaintiff is claiming damages from the Defendants for the alleged negligent design and manufacture of IKO Organic Shingles. Specifically, the representative plaintiff alleges that IKO Organic Shingles were negligently designed and manufactured in a manner that, under normal conditions and usage, would result in premature failure.

In addition, with respect to persons in British Columbia, Saskatchewan, Manitoba, Quebec and/or New Brunswick, the representative plaintiff also asserts claims for breach of consumer protection legislation in those provinces. Specifically, the representative plaintiff alleges that the Defendants breached the consumer protection legislation by representing that IKO Organic Shingles complied with industry standards when he says they did not comply, or were not adequately tested in order to determine whether they did comply.

The representative plaintiff seeks damages, on behalf of himself and the Class, for, among other things, the costs of removing and replacing IKO Organic Shingles, including associated labour costs.

The Defendants deny all of the claims made in the class action.

The court has not taken any position as to the likelihood of recovery on the part of the representative plaintiff or the Class, or as to the truth or merits of the claims or defences asserted by either side. The allegations made by the representative plaintiff have not been proven in court.

THE CLASS

The Class of persons affected by this lawsuit include:

All persons that own, have owned, lease, or have leased, and all those who have or may pursue claims through or in the name or right of those who own or have owned, lease or have leased, buildings, homes, residences, or any other structures located in Canada that contain or have ever contained IKO Organic Shingles.

The Subclass of persons affected by common issues (e) to (k) below include:

All persons that own, have owned, lease, or have leased, and all those who have or may pursue claims through or in the name or right of those who own or have owned, lease or have leased, buildings, homes, residences, or any other structures located in British Columbia, Saskatchewan, Manitoba, Quebec and/or New Brunswick that contain or have ever contained IKO Organic Shingles.

THE COMMON ISSUES

The proceeding was certified on behalf of the Class in respect of the following common issues. This means that these issues will be determined as part of the common issues trial on behalf of the Class:

Negligence Claims

- (a) Did the Defendants, or any of them, owe a duty of care to class members to:
 - (1) ensure that the IKO Organic Shingles were designed and manufactured properly and in a good and workmanlike manner;
 - (2) ensure that the IKO Organic Shingles would under normal conditions, usage and applications last a reasonable period of time;
 - (3) engage in adequate research and testing in respect of the design of IKO Organic Shingles;
 - (4) accurately represent the nature and quality of the IKO Organic Shingles;
and

- (5) upon discovering that the IKO Organic Shingles were defective and prone to premature failure, promptly remove the IKO Organic Shingles from the marketplace, disclose the defects to class members, and take other appropriate remedial action?
- (b) Did the Defendants, or any of them, breach any of the above-listed duties of care to class members?
- (c) If at the conclusion of the common issues trial the court finds that the IKO Organic Shingles are defective and prone to premature failure, are class members entitled to mitigate their damages by removing and replacing their IKO Organic Shingles?

Punitive Damages

- (d) (1) Does the conduct of the Defendants, or any of them, give rise to a prima facie entitlement to punitive damages?
- (2) If the answer to (d)(1) is yes, should an award of punitive damages be made against the Defendants, or any of them? If so, in what amount?

The proceeding was certified on behalf of the Subclass in respect of the following common issues. This means that these issues will be determined as part of the common issues trial on behalf of the Subclass:

Consumer Protection Claims

Fit for Purpose

- (e) Are IKO Shingles “fit for the purpose for which goods of that kind are ordinarily used”, as per *Consumer Protection Act*, RSQ c P-40.1, s 37?
- (f) Are the Defendants subject to and in violation of a deemed warranty that “where the consumer expressly or by implication makes known to the retail seller any particular purpose for which the product is being bought, that the product supplied under the contract is reasonably fit for that purpose, whether or not that is a purpose for which the product is commonly supplied, except that this warranty is deemed not to be given where the circumstances show that: (i) the consumer does not rely on the retail seller’s skill or judgment; or (ii) it is unreasonable for the consumer to rely on the retail seller’s skill or judgment”, as per *The Consumer Protection Act*, RSS 1996, c C-30.1, s 48(e)?

Durable

- (g) Are IKO Shingles “durable in normal use for a reasonable length of time, having regard to their price, the terms of the contract and the conditions of their use”, as per *Consumer Protection Act*, RSQ c P-40.1, s 38?

- (h) Are the Defendants subject to and in violation of a deemed warranty that “the product and all its components are to be durable for a reasonable period, having regard to all the relevant circumstances of the sale, including: (i) the description and nature of the product; (ii) the purchase price; (iii) the express warranties of the retail seller or manufacturer; and (iv) the necessary maintenance the product normally requires and the manner in which it has been used”, as per *The Consumer Protection Act*, RSS 1996, c C-30.1, s 48(g)?

Design Defect

- (i) Did the Defendants supply a “consumer product that is unreasonably dangerous to person or property because of a defect in design, materials or workmanship”, as per *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1, s 27?

Misrepresentation

- (j) Did the Defendants make a statement on the packaging of IKO Shingles that IKO Shingles comply with CSA A123.1 and/or a statement in the IKO written warranties specifying a particular warranty period? If so, in making such statement(s), did the Defendants engage in an “unfair” or “deceptive” practice in violation of the following statutory provisions:
- 1) *Business Practices and Consumer Protection Act*, SBC 2004, c 2, s 4;
 - 2) for claims arising prior to July 5, 2004, the former *Trade Practice Act*, RSBC 1996, c 457, s 3;
 - 3) *The Business Practices Act*, SM 1990-91, c 6, s 2;
 - 4) *Consumer Protection Act*, RSQ c P-40.1, s 40 and 41; and
 - 5) *The Consumer Protection Act*, RSS 1996, c C-30.1, s 5.
- (k) If at the conclusion of the common issues trial the court finds that IKO has violated the above-referenced statutory provisions, what remedies are members of the subclass entitled to and should the court order restitution of all or part of the monies or other consideration paid by the class members in relation to IKO Shingles?

OPTING OUT OF THE CLASS ACTION

You can opt out of (exclude yourself from) the class action by sending a written request to opt-out to the Opt-Out Administrator at the address listed below, postmarked no later than January 29, 2014:

IKO Organic Opt-Out Administrator
P.O. Box 3355
London, ON N6A 4K3

If you opt out, you will not be eligible to participate in the class proceeding (including any settlement or court award, assuming success on the part of the plaintiff) and will not be bound by any court orders issued in the class action, whether favourable or not. You will however be able to bring litigation against the Defendants on your own in respect of the claims discussed in this notice (subject to any defences the Defendants might have, including any defence that the claim is barred by limitation periods).

If you do not opt out, you will be able to participate in the class action (including any settlement or court award, assuming success on the part of the plaintiff) and will be bound by any court orders issued in the class action, whether favourable or not. However, you will not be able to bring litigation against Defendants on your own in respect of the claims discussed in this notice.

For owners or former owners, the written request to opt-out must include: your name, address, address of the property(ies) with IKO Organic Shingles, the period during which you own / owned the property, a statement that you wish to opt-out of the IKO class action, and your signature.

For lessee or former lessees, the written request to opt-out must include: your name, address, address of the property(ies) with IKO Organic Shingles, the period during which you lease / leased the property, a statement that you wish to opt-out of the IKO class action, and your signature.

FINANCIAL CONSEQUENCES

Subject to further order of the Court, the class proceeding will determine the common issues described above. If the common issues are determined in favour of the Class, class members might be entitled to receive financial compensation from the Defendants. In that event, participation of individual class members will likely be required to determine individual claims.

In the interim, you should retain copies of all documents and evidence that might be relevant to the determination of your individual claim. Such documents and evidence might include: related invoices and receipts, photographs showing the condition of your shingles, sample shingles (both any unused shingles and shingles removed from your roof), and any reports from your roofing contractor describing the condition of your shingles.

No class member, other than the representative plaintiff, will be liable for costs with respect to the determination of the common issues. Class members will be liable for costs with respect to the determination of their own individual claims if unsuccessful.

Class Counsel have entered into an agreement with the representative plaintiff with respect to legal fees and disbursements. The agreement provides that Class Counsel will only be paid in the event of success in the case (i.e., a settlement or court award). The agreement provides that the Class will pay to Class Counsel a percentage contingency fee plus disbursements and applicable taxes. Class Counsel's fees and disbursements must be approved by the court. The agreement also provides that any costs awarded to the representative plaintiff will be retained by Class Counsel to defray litigation expenses.

ADDITIONAL INFORMATION

The certification order and other information are available online at <http://www.classaction.ca/actions/Products-Liability/Current-Actions/IKO-Roofing-Shingles.aspx>.

Siskinds LLP is Class Counsel in this action. For further information, please contact Siskinds LLP at the address listed below:

Siskinds LLP
Re: IKO Class Action
680 Waterloo Street,
London, ON N6A 3V8

Toll-free: 1-800-461-6166 ext. 2446
Email: ikoclassaction@siskinds.com

To ensure that you receive future notices regarding this class action, including notices about any settlement that might be achieved in the class action, please register online at <http://www.classaction.ca/actions/Products-Liability/Current-Actions/IKO-Roofing-Shingles.aspx>.

This notice was approved by order of the Ontario Superior Court of Justice. The court offices will be unable to answer any questions about the matters in this notice.