EXHIBIT H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: Kitec Plumbing System Products Liability Litigation	CASE NO. 09-MD-2098

ORDER CERTIFYING CLASS FOR SETTLEMENT AND APPROVING CLASS ACTION SETTLEMENT

On April 29, 2011, the Court entered its Order Granting Motion For Preliminary Approval of Class Action Settlement (Doc. No. 97) in this Multidistrict Litigation proceeding. On November 17, 2011, the Court conducted a Formal Fairness Hearing to consider the Motion of the Plaintiff Class for Final Approval of Class Action Settlement (Doc. No. 144) relating to the parties' Class Action Settlement and Release Agreement ("Settlement Agreement"). For purposes of this Order, the Court adopts all defined terms as set forth in the Settlement Agreement. All defined terms used herein shall have the meaning set forth in the Settlement Agreement.

Having considered the Motion and the evidence and arguments presented in connection with the Motion, the Court hereby ORDERS that (1) the U.S. Class is certified for purposes of the Settlement Agreement and pursuant to Fed. R. Civ. P. 23(b)(3); (2) the Settlement Agreement is approved pursuant to Fed. R. Civ. P. 23(e) as fair, reasonable, and adequate; (3) all of the claims asserted in all of the cases that comprise this Multidistrict Litigation are hereby dismissed with prejudice; and (4) all of the Settlement Class Members in the U.S. Class are enjoined from participating in any other proceeding related to the Kitec System or the claims released in the Settlement Agreement.

IT IS FURTHER ORDERED AS FOLLOWS:

1. This Court has jurisdiction over the subject matter of the U.S. Kitec MDL Class Action, the Class Representatives, other members of the U.S. Class, and the IPEX Defendants.

Class Certification Pursuant to FRCP 23(b)

2. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court certifies for purposes of the Settlement Agreement a U.S. Class defined as follows:

> 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 the United States that contain or have ever contained Kitec Systems manufactured and/or sold by the IPEX Defendants, excluding only the Clark County Class. For purposes of this definition, individuals and entities shall include any and all of the individuals' or entities' spouses, joint owners, heirs, executors, administrators, insurers, mortgagees, tenants, creditors, lenders, predecessors, successors, subrogees, assignees, subsequent owners or occupants, trusts and trustees, attorneys, agents, and assigns and all persons who are entitled to assert a claim on behalf thereof.

3. As provided in the Settlement Agreement, the following persons are excluded from the U.S. Class: (i) all Persons who filed an individual lawsuit concerning Kitec Systems in any court of law, provided that claim has been resolved with a final judgment, whether or not favorable to the Person; (ii) the IPEX Defendants, any entity in which the IPEX Defendants has a controlling interest, any entity which has a controlling interest in the IPEX Defendants, and IPEX Defendants' legal representatives, assigns, and successors; and (iii) the judge to whom the U.S. Kitec MDL Class Action is assigned and any member of the judge's immediate family.

4. In addition, excluded from the U.S. Class are persons identified in Exhibits A, B, C, D, E, and F to the Court Appointed Claims Administrator's Declaration and Opt-Out Report (Doc. No. 145-7), included within the Appendix to Motion of the Plaintiff Class For Final

Approval of Class Settlement filed on November 10, 2011, who are class members that timely and validly exercised their rights under Rule 23 of the Federal Rules of Civil Procedure to opt out of the Settlement Agreement. Those persons identified in Exhibits G, H, and I to the Court Appointed Claims Administrator's Declaration and Opt-Out Report (Doc. No. 145-7), did not timely and validly exercise their opt-out rights and therefore are not excluded from the U.S. Class.

5. For purposes of settlement approval only, this Court finds that the requirements of Fed. R. Civ. P. 23 are satisfied with respect to the U.S. Class as defined above. In particular:

(a) The U.S. Class is so numerous that joinder is impracticable;

(b) There exists at least one question of fact or law common to the U.S. Class in that they allege defects in the Kitec System;

(c) The claims of the U.S. Class Representatives are typical of the claims of the U.S. Class that are being settled;

(d) The U.S. Class Representatives and Class Counsel will fairly and adequately protect the interests of the U.S. Class; and

(e) A resolution of this action in the manner proposed by the Settlement Agreement is superior to other available methods for a fair and efficient adjudication of the action, and common issues predominate over individual issues. The Court also notes that, because this action is being settled rather than litigated, the Court need not consider manageability issues that might be presented by the trial of the underlying class action. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997).

Settlement Approval Pursuant to FRCP 23(e)

6. Federal Rule of Civil Procedure 23(e) provides that a class action "may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). In approving a settlement, the court must determine whether, taken as a whole, the settlement is fundamentally fair, adequate, and reasonable. *See In re Corrugated Container Antitrust Litig.*, 659 F.2d 1322, 1324 (5th Cir. 1981). In reviewing a proposed settlement for fairness, the court examines factors including:

- whether the settlement was a product of fraud or collusion;
- the complexity, expense, and likely duration of the litigation;
- the stage of the litigation and available discovery;
- the probability of plaintiffs' prevailing on the merits;
- the range of possible recovery and certainty of damages; and
- the opinions of class counsel, class representatives, and absent class members.

See Newby v. Enron, 394 F.3d 296, 301 (5th Cir. 2004); *see also Parker v. Anderson*, 667 F.2d 1204, 1208-09 (5th Cir. 1982).

7. Compromise is the essence of a settlement, and "inherent in compromise is a yielding of absolutes and an abandoning of highest hopes." *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 649 (N.D. Tex. 2010) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)). A proposed settlement need not be the largest conceivable recovery to be worthy of approval, but must be fair and adequate in light of all of the facts and circumstances. *Id.*

8. Having considered all the relevant factors, the Court finds the Settlement Agreement to be fair, adequate, and reasonable and fully and finally approves it pursuant to Federal Rule of Civil Procedure 23(e) and all other applicable law.

9. The Settlement Agreement resolves a cross-border class action asserted by three classes of persons located in the U.S. and Canada. Given the cross-border nature of the claims asserted, the Settlement Agreement is expressly conditioned upon issuance of final, formal approval orders by the Courts in which the Canadian Actions are pending, as well as this Court. If either Canadian court does not fully and finally approve the Settlement Agreement and enter judgment thereon, or an approval order in either Canadian court does not become final for purposes of paragraph 118 of the Settlement Agreement, Class Counsel or the IPEX Defendants shall give notice to this Court, which, upon either parties' request, shall vacate this Order and the Final Judgment entered simultaneously with this Order.

10. No one contests that the Settlement Agreement resulted from extensive, good-faith, arm's-length negotiations between able counsel on all sides. The Honorable Daniel H. Weinstein, the co-founder of JAMS, presided during an eighteen-month period over four mediations sessions that ultimately resulted in the Settlement Agreement. Plaintiffs and the IPEX Defendants spent several months thoroughly briefing Judge Weinstein on the issues. On September 23, 2009, the parties participated in a day-long mediation with Judge Weinstein in New York City, but could not reach an agreement. The parties agreed to continue discussions, and met for a second mediation session with Judge Weinstein on January 21, 2010. Again, the parties failed to reach a resolution. Discovery continued. A third two-day session before Judge Weinstein took place on September 14 and 15, 2010, where the consulting experts for each side made presentations, so as to give both the parties and the mediator a better understanding of both the "technical" issues and the strengths and weaknesses of their respective cases. On January 10 and 11, 2011, the parties engaged in a fourth two-day mediation in New York, with Judge Weinstein's offices participating by telephone. During this fourth session, and with the

continued oversight of Judge Weinstein, the parties reached an agreement in principle. It took the parties weeks more to agree on the specific terms of the Settlement Agreement.

11. Based on his extensive experience in this case and many others, Judge Weinstein has testified that:

- All parties to the negotiations were represented "through zealous and able counsel, who negotiated aggressively and at arm's length."
- The $125 million obtained for the Settlement Classes through the Settlement "represents a fair and reasonable result for all parties involved" and "represents the highest settlement amounts that the Settlement Classes could have achieved at this time."
- Releases of third parties such as builders and plumbers was essential to the Settlement because IPEX and its insurers "realized that they could never obtain a negotiated end to the Kitec System allegations without the releases." The Settlement "would not work" if IPEX or its insurers were exposed to additional liability through third-party actions following the settlement.
- IPEX's primary and excess insurers raised "serious insurance coverage issues that threatened the ability to fund any Settlement and pending coverage litigation was on file." The prospect of having to fund a settlement or fight litigation with limited or no insurance was "untenable to IPEX's business and financial condition."
- The multitude of class actions facing IPEX "threatened its survival."

12. This MDL proceeding consists of more than a dozen independent lawsuits originally filed in different jurisdictions around the country. Additional separate lawsuits are pending in Canada. Each case is complicated by many intricate factual and legal issues. The Settlement Agreement allows the Settlement Class Members to avoid significant expenses associated with continued litigation in both countries. Absent the Settlement Agreement, the cases likely would be returned to the fora in which they were filed for trial. The Court estimates that trial of any one of these cases in a U.S. court would take several weeks to several months to complete.

13. The timing of the Settlement Agreement weighs strongly in favor of approval. The parties are sufficiently informed to assess the strengths and weaknesses of their positions and

to make a reasoned evaluation of whether and on what terms to settle. The facts in the case are well-developed. The parties began litigating this dispute almost a year before the MDL Panel transferred cases to this Court. Both parties conducted substantial discovery before and after the MDL consolidation and transfer. The parties have exchanged written discovery requests and answers. The IPEX Defendants produced, and Plaintiffs reviewed, hundreds of boxes of hard-copy documents and hundreds of thousands of electronic documents. Plaintiffs also served twenty subpoenas on IPEX's distributors, leading to collection of further documents. Plaintiffs deposed numerous IPEX employees and corporate designees and retained two sets of consulting experts in the areas of plumbing engineering, resin analysis, and metallurgy. The IPEX Defendants inspected several of the Class Representatives' homes and removed samples of piping and fittings manufactured by Kitec and other manufacturers for inspection and testing. IPEX's experts also collected water samples from each of the homes for testing.

14. In February of 2009, the parties preliminarily explored the prospect of a settlement, but it ultimately took two years before the parties reached an agreement. Discovery continued during the negotiations, including discovery related to key liability and damages issues that surfaced as a result of the on-going settlement discussions. For the next several months, the parties engaged in telephone discussions, held a meeting of counsel in Houston, and exchanged settlement proposals as they continued with discovery. Eventually, the parties retained Judge Weinstein as a mediator and began formal negotiations.

15. The risk and uncertainty to Settlement Class Members in continued litigation also weigh significantly in favor of approval. In evaluating the settlement, the Court compares the benefits of settling against the risks and burdens of potentially protracted litigation. Here, obstacles to the Class Plaintiffs' recovery are numerous and weighty. The litigation has been

hotly contested. The IPEX Defendants deny any fault, wrongdoing, illegal conduct, or liability whatsoever on their part, and have asserted numerous affirmative defenses to the facts and causes of action alleged in the U.S. Kitec MDL Class Action and the Canadian Actions. In particular, the IPEX Defendants deny that their products were defectively designed or manufactured. There is evidence that the Kitec System complied with applicable construction and plumbing codes and industry standards and that the vast majority of class members have not experienced a problem with their plumbing system. Further, legitimate factual disputes exist regarding the cause of any problems with the systems in question. A trial would likely involve a battle of experts that by its nature is fraught with uncertainty.

16. Other affirmative defenses to the Class are presented by the fact that the IPEX Defendants never sold plumbing systems directly to the public and had no contractual or other relationship with class members. The IPEX Defendants manufactured and sold plumbing systems to independent distributors, who in turn sold to plumbing contractors who installed plumbing under the direction of developers. Further, the IPEX Defendants sold the plumbing systems pursuant to warranties that extend only to the purchaser and limit liability to repair or replacement of the product in the event of defects in materials or workmanship.

17. If the case were tried instead of settled, all of these issues would require significant expenditure of resources and present significant uncertainty of recovery for the class. Any trial would be lengthy and regardless of the outcome would likely be followed by appeals that could take years to resolve. Such litigation would consume substantial judicial and attorney time and resources, and avoiding such costs weighs in favor of settlement.

18. Even if U.S. Class Representatives ultimately were successful in recovering a judgment against the IPEX Defendants, significant hurdles also would attend collecting any such

judgment. The IPEX Defendants' insurers have formally contested any obligation to cover class members' claims, and there is pending coverage litigation to address the dispute between IPEX and its insurers. Pursuant to the Settlement Agreement, the IPEX Defendants' insurers agreed to contribute to funding the $125 million Settlement Fund, but the evidence suggests that the prospect of losing any insurance coverage would be a significant risk to the plaintiffs of proceeding with litigation rather than settlement. There is evidence that the IPEX Defendants faced a funding crisis such that the prospect of having to fund a settlement or fight litigation with only limited insurance or no insurance at all was untenable to IPEX's business and financial condition. The multitude of class actions facing IPEX threatened its survival. In addition, the IPEX Defendants' ultimate parent corporation is located in Europe and is privately held, and the IPEX Defendants assert that the parent is sheltered from liability for the IPEX Defendants or the Kitec System.

19. There is a real risk that, were these cases to be tried, the class would obtain no significant monetary recovery. In any event, it would be years before there would be a final resolution of all the various litigation in this country and Canada. The Settlement Agreement provides class members with an immediate and certain resolution and alleviates the burden on class members to prove that the Kitec System is defective and that the IPEX Defendants are legally liable. The Settlement Fund already has been funded and is being maintained in an interest-bearing account. Class members can begin making claims immediately and can continue to make claims on the Settlement Fund over the eight-year life of the Settlement Fund. While the Court may in the future entertain motions for interim distribution, in evaluating such a motion and fashioning any relief or in denying relief altogether, the Court will make sure that only qualifying claims will be paid, at first only incrementally, to insure fairness as between claimants

whose claims are filed at the beginning of the Claims Period and those whose claims are filed at the end of the Claims Period eight years from now. Any future changes to the plan of allocation shall, at a minimum, preserve the Settlement Fund so that no one class member or class member category is advantaged over another. Beginning on February 28, 2012 and each February 28 thereafter, Class Counsel shall provide the Court an annual report regarding the status of the Settlement Fund, which report shall identify the number of claims submitted, the amount of each claim, the number of claims paid and the amount paid, the interest earned on the funds in the Settlement Fund, and the balance remaining in the Settlement Fund. Class Counsel shall also file a report at the end of the Claims Period.

20. The eight year Settlement Fund, totaling $125,000,000, is substantial and reasonable, taking into account the significant uncertainty and risk and the potential factual and legal obstacles to recovery on claims against the IPEX Defendants. The settlement terms fall within a reasonable range of recovery, given the likelihood of the plaintiffs' success on the merits. The Settlement Fund represents a reasonable portion of the Class Members' alleged damages, taking into account the legal and factual disputes between the parties, the uncertainty of a jury trial and the possibility of a defense verdict, the risk and delay associated with continued litigation, the near certainty of an appeal following any judgment, and other facts and circumstances particular to this case. Expert evidence suggests that relatively few Kitec Systems will experience an actual failure during their expected lifetime. It is undisputed that, although the Kitec System was first sold in the 1990's, the vast majority of properties with Kitec Systems has not experienced a leak or failure in that system to date. The Claims Administrator has currently received approximately 250 claims forms and just over 3,300 requests for additional information and/or claim forms. Even if all of these were to represent claims on the Settlement Fund, they

total just 1.2% of the estimated class members in the U.S. and Canada Classes. For purposes of evaluating the settlement, Class Counsel assumed a claims rate more than 30 times what the actual historical claims experience has been. Assuming a claims rate over the next eight years that falls anywhere between the historical experience (less than 1%) and the conservative estimate used by Class Counsel (30%), the Settlement Fund will afford claimants significant financial compensation that will cover all or a substantial portion of the costs associated with either repair of a leak or replacement of the Kitec System during the next eight years that the Settlement Fund will exist. The remedy offered by the settlement far exceeds that available under the limited warranty by which IPEX sold Kitec, which limits the buyer's remedy to repair, replacement, or reimbursement of costs for defective parts, not to exceed the purchase price of the part. The plan of distribution for the Settlement Fund logically targets funds to those class members who experience actual out-of-pocket losses. Moreover, to the extent that a leak is the result of negligence on the part of a plumber related to installation or results in a personal injury, the Class member is not foreclosed from prosecuting those claims.

21. Experienced, competent, and well-informed Class Counsel recommend approval of the Settlement Agreement. The overwhelmingly positive reaction of the U.S. Class and the Canada Classes also weighs in favor of approval. All of the U.S. Class Representatives support the Settlement. The parties estimate that there are approximately 250,000 persons in the U.S. Class and Canada Classes. Only three objections to the Settlement Agreement were submitted by U.S. Class Members, and all of these were withdrawn prior to the Formal Fairness Hearing. Only two objections were submitted by Canada class members, and those will be heard by the Canadian courts. U.S. Class members who are represented by counsel and previously objected to preliminary approval of the Settlement Agreement have not objected to final approval. In

addition, among a class estimated to number approximately 250,000, the Claims Administrator received approximately 250 valid requests to opt out of the settlement. Approximately 266 persons already have submitted claim forms seeking recovery from the Settlement Fund, and approximately 3,300 persons have requested information and/or claim forms regarding making a claim, which has been mailed to them.

22. No one has objected to the release language in the Settlement Agreement for purposes of final approval. The Court thoroughly considered the release provisions in ruling on objections to preliminary approval that have not been renewed. As the Court previously ruled in the Preliminary Approval Order, practically speaking, if the Settlement did not release the Released Parties, the very purpose of the agreement would be undermined. Absent a release of builders and plumbers, there would be no incentive for the IPEX Defendants to settle. The release provisions of the Settlement Agreement are fair and reasonable in the context of the Agreement as a whole.

Notice of Settlement

23. The notice given the members of the U.S. Class fully and adequately informed the U.S. Class Members of the pendency of this action, all material terms of the Settlement Agreement, class certification, the Formal Fairness Hearing, the right to object or opt out, the right to appear at the Formal Fairness Hearing, the Claims Process, and other matters referred to in the Settlement Notice, and constituted the best notice practicable under the circumstances. The extensive notice campaign that the parties conducted fully satisfies the requirements of Fed. R. Civ. P. 23, the requirements of 28 U.S.C. § 1715, due process requirements under the United States Constitution, and other applicable rules or law.

24. The notice campaign included direct mailings to approximately 25,000 individual

property owners, builders, plumbers, trade associations, and more than a dozen insurers that had notified the IPEX defendants of a particular existing subrogation claim. Notice also was published in widely read periodicals such as *Parade* magazine, *USA Weekend* magazine, and construction trade publications. Notice also was delivered via 60-second television ads airing on both national cable networks and local broadcast stations (e.g., NBC, ABC, CBS, Fox, MY, and CW affiliates), internet banner advertising, and a press release via PR Newswire and made to over 2,000 major U.S. and Canada print and electronic media outlets.

25. The direct mail, published notices, and television ads directed attention to a toll free telephone number and website (www.kitecsettlement.com) that provides detailed information regarding the lawsuits and the settlement. The website has been active since the Preliminary Approval Order was entered, and approximately 31,542 people have visited it. All notice material and the website clearly advise Settlement Class Members of their rights to object and/or opt out of the settlement and detail the process for doing so. The toll free number and website will remain active for the entirety of the Claims Period.

26. Due and sufficient proof of the giving of such notice has been filed with the Court. *See* Affidavit of Matthew P. Hanson of CAC Services Group Regarding the Notice Plan (Doc. Nos. 145-1, 145-2, 145-3).

Releases, Dismissal, and Permanent Injunction

27. The Settlement Agreement releases and discharges the Released Parties from each and every claim of liability, on any legal or equitable ground whatsoever, including relief under federal law or the laws of any state or province, regarding or related to the Kitec System, including without limitation all claims, damages, or liability on any legal or equitable ground whatsoever, and regardless of whether such claims might have been or might be brought directly,

or through subrogation or assignment or otherwise, on account of or related to the Kitec System, which were alleged or could have been alleged in the Complaints in the actions consolidated in the U.S. Kitec MDL Class Action. Excepted from the release, as specified in the Settlement Agreement, are personal injury claims and certain claims against a contractor or installer related solely to installation and claims by Ipex Defendants against its suppliers of raw materials, components, or ingredients used in the manufacture of the Kitec System, which claims are assigned to the IPEX Defendants.

28. In accordance with the Settlement Agreement, each of the lawsuits and all of the claims comprising the U.S. Kitec MDL Class Action are hereby DISMISSED WITH PREJUDICE.

29. All Settlement Class Members in the U.S. Class are hereby permanently enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding in any jurisdiction based on or relating to the Kitec System, the claims released in the Settlement Agreement, or the facts and circumstances relating thereto. In addition, all Settlement Class Members in the U.S. Class are hereby permanently enjoined from filing, commencing, prosecuting or maintaining any other lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action in any jurisdiction) on behalf of members of the U.S. Class, if such other class action is based on or relating to the Kitec System, the claims released in the Settlement Agreement, or the facts and circumstances relating thereto. Issuance of this permanent injunction is necessary and appropriate in aid of the Court's jurisdiction over this

action and to enforce this Court's Final Judgment. The Court finds no bond is necessary for issuance of this injunction.

30. The Court hereby sets the Claims Period as eight years from the Effective Date. After the Claims Period has expired, all claims against the Settlement Fund shall be barred.

Invalid Insurance Opt Outs

31. As the Court previously ordered (Doc. Nos. 135, 115, 116) and for the reasons expressed in those orders, the Invalid Insurance Opt Outs (as defined in the Court's previous orders) are invalid for purposes of the Settlement Agreement. Pursuant to the terms of an "Accord" between Class Counsel and counsel for the insurers that was filed November 11, 2011, the insurers who submitted the Invalid Insurance Opt Outs have withdrawn those opt outs and therefore, the Court's Orders referenced in this paragraph are now moot. The insurers' motion for entry of judgment pursuant to Rule 54(b) (Doc. No. 140) is hereby DENIED.

32. To the extent a claim is made on the Settlement Fund during the Claims Period based on an asserted right of subrogation through a class member, the subrogated insurer will have the right to comment on Class Counsel's annual report and recommendations to the Court related to the plan of distribution and allocation. Class Counsel and the insurers and their counsel must provide to counsel for the IPEX Defendants written notice of any papers filed or otherwise submitted to the Court in connection with the Settlement Fund simultaneously with such filing.

33. The IPEX Defendants retain the right to oppose or otherwise comment upon any of the annual report by Class Counsel or any position asserted by the subrogated insurers, their counsel, or others regarding the plan of distribution and allocation, including any request for distributions from the Settlement Fund before expiration of the eight-year Claims Period. The IPEX Defendants retain the right to oppose or otherwise comment upon any request by the

insurers or their counsel for withdrawal of any of the Court's prior orders regarding the Invalid Insurance Opt-Outs.

34. Class Counsel shall maintain the Settlement Fund during the eight year Claims Period such that all Settlement Class Members who make a proper claim at any time during the eight-year Claims Period are treated equally, i.e., ultimately receive payment of an equal percentage of their qualifying claim. Based on Class Counsel's experience in similar cases, Class Counsel currently anticipate that any payments beyond those initial, partial payments contemplated in the original Plan of Distribution and Allocation, would not begin to take place before the third or fourth year of the claims period. The statement in the "Accord" between Class Counsel and the insurers that "each claimant will be paid the full value of their claim" is simply an acknowledgment that -- based on the size of the Settlement Fund and the current claims rate -- Class Counsel believe that all Settlement Class Members filing proper claims ultimately will receive the full value of their qualifying claim. It is not to be interpreted that in year one or any singular year during the eight-year Claims Period that a single claimant will then be paid the full value of his or its claim. Claimants may be required to wait eight years to receive the full value of their qualifying claim. Even if Class Counsel recommends accelerated claims payment during this time frame, the amount paid to class members still may not be 100% of the value of their qualifying claim.

Attorneys' Fees, Costs, and Awards to Class Representatives

35. Class Counsel are qualified, experienced, and have aggressively litigated this case and are hereby reaffirmed as Class Counsel. Consistent with the terms of the Settlement Agreement, Class Counsel have requested attorneys' fees and reimbursement of costs and expenses to be awarded from the Settlement Fund in the amount of $25,000,000.00. When viewed as a percentage of the cash fund created, this amount is reasonable given the risk,

complex nature of the litigation, that the case was taken entirely on a contingency basis, and that future work over the course of eight years to oversee the administration of the class and to report to this Court remains. The amount is also fair and reasonable in light of a lodestar cross check submitted by the law firms prosecuting the action who reported a lodestar of $10,761,181 and expenses totaling $1,047,554 directly related to the prosecution of this MDL and the cases comprising this MDL. The Court is satisfied that the amount is fair in light of the factors found in *Johnson v. Georgia Highway Express, Inc.* 488 F.2d 714 (5th Cir. 1974), overruled on other grounds, *Blanchard v. Bergeron*, 489 U.S. 87 (1989). After expenses, the attorney fee award of $23,952,446 represents a multiplier of 2.2, which is within the fees awarded by other Courts in this Circuit. *See Klein v. O'Neill*, 705 F.Supp.2d 632 (N.D.Tex. 2010); *Billitteri v. Sec. Am., Inc.*, 2011 WL 358583 at *9 (N.D.Tex. 2011). Class Counsel are hereby awarded a total award of $25 million from the Settlement Fund for attorneys' fees, costs and expenses. Class Counsel, subject to any orders of the Canadian Courts, are given absolute discretion to finally determine the amount to be paid to all counsel.

36. In recognition of the efforts that Class Representatives undertook in connection with the prosecution of this MDL, the Court awards payment from the Settlement Fund as follows: 1) Class Representatives who were deposed and had their property inspected by IPEX receive $7,500; 2) Class Representatives who had their property inspected receive $5,000; and 3) all other Class Representatives receive $2,500.

Other Matters

37. Neither the Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of the Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim, or of any wrongdoing or liability of any Released Party; or (ii) is or may be deemed to be or may be used as an

admission of, or evidence of, any fault or omission of any Released Party in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. The IPEX Defendants may file the Settlement Agreement, this Order, or the Final Judgment in any other action that may be brought against it related to a Kitec System in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

Conclusion

38. For the above-stated reasons, the Motion for Final Approval of Class Action Settlement is GRANTED in its entirety. The U.S. Class is certified pursuant to Fed. R. Civ. 23(b)(3), and the Settlement Agreement is approved pursuant to Fed. R. Civ. P. 23(e) as fair, adequate, and reasonable.

39. Except as otherwise provided in the Settlement Agreement or this Order, the settling parties shall bear their own attorneys' fees and costs in connection with the U.S. Kitec MDL Class Action.

40. Without affecting the finality of this Order, the Court retains continuing jurisdiction over (i) the Settlement Agreement, including its administration, consummation, claims procedures, enforcement, implementation, construction, interpretation and any other issues or questions that may arise and expressly including, without limitation, the winding up and closing of the Settlement Fund at the close of the eight year period and the payment of the reversion interest, if any, owned by IPEX Funding Entities; (ii) the Settling Parties; (iii) any applications for attorneys' fees, expenses and costs related to the Settlement Agreement; (iv) all proceedings related to the Settlement Agreement both before and after this Order and the Final Judgment become final for purposes of paragraph 118 of the Settlement Agreement, including

jurisdiction to vacate this Order and the Final Judgment if the Effective Date does not occur or the Settlement Agreement does not become effective for any reason; and (v) enforcement of this Order and the Final Judgment.

41. The Settlement Agreement shall be implemented in accordance with its terms.

42. Each of the lawsuits and all of the claims comprising the U.S. Kitec MDL Class Action are hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Signed this 17th day of November, 2011.

Royal Furgeson

The Honorable Royal Furgeson
Senior United States District Judge