

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

DALLAS DIVISION

In re Kitec Plumbing System Products § MDL NO. 2098
Liability Litigation § Case No. 09-md-2098-F

**ONTARIO SUPERIOR COURT OF JUSTICE
ONTARIO, CANADA**

Risati et al. Case No. CV-09-13459
v. IpeX Inc. et al.

**SUPERIOR COURT OF QUÉBEC
QUÉBEC, CANADA**

Cooke et al. Case No. 200-06-000121-098
v. IpeX Inc. et al.

[PROPOSED] PLAN OF DISTRIBUTION AND ALLOCATION

Pursuant to the Settlement Agreement in the above-captioned cases, Class Counsel, and with other counsel representing absent Class Members, submit to the Court and the members of the Settlement Class this proposed Plan of Distribution and Allocation (the “Plan”). This Plan of Distribution and Allocation applies to both the United States Class and the Canada Classes, as defined and described in the Agreement of Compromise and Settlement (“Settlement Agreement”).

I. THE SETTLEMENT FUND

Pursuant to the Settlement Agreement, Class Counsel and Defendants IPEX Inc., IPEX USA, Inc., and IPEX USA LLC (“IPEX” or “Defendants”) have agreed to establish a Settlement Fund into which certain cash payments and insurance proceeds will be deposited. Within 15

days from entry of the last of the Preliminary Approval Orders, the IPEX Funding Entities, as defined in the Settlement, shall pay into the settlement account the sum of U.S. \$125,000,000.

Class Counsel will seek U.S. \$25 million in fees, costs and expenses from this Settlement Fund.

The remaining U.S. \$100 million will be set aside for Class Member payments, Class Representative awards, notice costs, inspection costs and claims administration costs. The amount available for payment to Class Members is estimated at no less than U.S. \$93.8 million, the amount of the Settlement Fund after deduction of these awards and costs.

All claims from members of either the United States Class or the Canadian Classes will be paid from the Settlement Fund pursuant to this Plan.

A. Notice and Claims Administration

Class Counsel estimate that the Notice Program, claims administration and inspections, where applicable, during the eight (8) year Claims Period will cost no more than U.S. \$6 million.

Pursuant to the Settlement Agreement and applicable law, these costs will be paid from the Settlement Fund. Class Counsel also estimate that a substantial portion, if not all, of these costs could be paid by interest earned on the funds during the claim period.

B. Incentive Awards to Class Representatives

Pursuant to the Settlement Agreement and applicable law, Class Counsel intend to seek from the Settlement Fund reasonable incentive awards for the approximately thirty-four (34) Class Representatives who are participants in the various actions currently consolidated for coordinated proceedings before the MDL (MDL No. 2098 -- In re: Kitec Plumbing Systems Products Liability Litigation) or the Canadian Actions. Three categories of Class Representatives will receive the following incentive awards:

Category I: Class Representatives who gave depositions and had their homes inspected by IPEX (U.S. \$7,500);

Category II: Class Representatives who had their property inspected, but were not deposed (U.S. \$5,000); and

Category III: Class Representatives who were not deposed and did not have their properties inspected (U.S. \$2,500).

The total amounts of these payments are not expected to exceed U.S. \$200,000.

C. Award of Attorneys= Fees and Costs

Pursuant to the Settlement Agreement and applicable law, Class Counsel intend to seek from the Settlement Fund reimbursement for the costs advanced in the prosecution of this litigation, and an award of attorneys' fees. Class Counsel will apply to the Court for an award of attorneys' fees and costs and will be paid from the settlement amount not to exceed \$25 million.

D. Payments to Class Members

Cash payments to eligible Class Members shall be made from the Settlement Fund. All Class Members will be required to submit appropriate documentation as set forth in detail in the Claim Form. All claims will be subject to review and approval by the Claims Administrator.

II. THE PLAN OF DISTRIBUTION

This Plan of Distribution ("POD") reflects data and analysis from plumbing experts familiar with the Kitec system; including the repair/ replacement costs associated with the Kitec system; that the amount of pipe and fittings sold in North America and the approximate amount of pipe and fittings that are installed in an average home.. In addition, Class Counsel estimates that there are approximately 292,000 installations/ properties with the Kitec system in North America. For purposes of the plan, Class Counsel have also estimated that approximately 30% of

the homes plumbed with Kitec might file a Claim in this Settlement.

Assuming a 30% claims rate, or 87,600 total Claims filed, Class Counsel have conservatively put together the following Distribution Models to compensate qualified Class Members based on a variation of repair/ replacement costs taking into consideration three common installation types for the fittings and pipe.

Qualified Class Members, under the POD will be permitted to file claims anytime they can substantiate a qualified leak in their Kitec system. There shall be no limit on how many claims can be filed and compensated during the eight year claims period. However, predicated upon historical data, two qualified leaks per home is the likely maximum.

There are three common installation types for the Kitec Fittings and Pipe:

- 1) Open and accessible;
- 2) Located behind drywall; and
- 3) Installed in concrete.

The average cost for repairing/ replacing Kitec Fittings and Pipe in each of these installation types are:

- 1) Open and accessible Kitec Fitting or Pipe: U.S. \$225 per claim.
- 2) Kitec Fittings and Pipe located behind drywall: U.S. \$575 per claim.
- 3) Kitec Fittings and Pipe installed in concrete: U.S. \$850 per claim.

Under this POD, qualified claimants will be entitled to the following payment:

1. Open and accessible Kitec Fittings and Pipe: **U.S. \$112.50** per each Kitec Fitting or Pipe that requires repair or replacement (50% of the average cost to repair/ replace);

2. Kitec Fittings and Pipe located behind drywall: **U.S. \$287.50** per each Kitec Fitting or Pipe that requires repair or replacement (50% of the average cost to repair/replace); and
3. Kitec Fittings and Pipe installed in concrete: **U.S. \$425** per each Kitec Fitting or Pipe that requires repair or replacement (50% of the average cost to repair/replace).

Under this model, Class Counsel anticipates a variation of leak repairs and that the majority of these repairs will only require pipe size 1", $\frac{3}{4}$ " and $\frac{1}{2}$ ".

Class Counsel anticipates that approximately 5% of the installations will be open and accessible; 94% will be located behind drywall, and 1% will be installed in concrete. Therefore, Class Counsel anticipate that approximately 4,380 claims will relate to open and accessible installations. Approximately 82,344 claims will relate to installations behind drywall.

Approximately 876 claims relate to installations where fittings are in concrete.

Kitec System Repairs for Hospitals, Hotels, Shopping Centers or other Commercial Entities:

While residential and condominium structures would have similar qualified leak repair/replacement costs (which are illustrated in the models above), qualified leak repairs/ replacement in hospitals, hotels, shopping centers or other commercial entities could be unique and cost as follows:

1. U.S. \$575.00 per claim, under a case-by-case basis.

In this case, hospitals, hotels, shopping centers or other commercial entities will be entitled to receive a payment of **U.S. \$287.50** per each Kitec Fitting or Pipe that requires repair or replacement (50% of the average cost to repair/replace).

Canadian Claims: Canadian claims are included within the foregoing estimated claims payment, however Class Counsel estimate that repair costs for qualified leaks in Canada will cost no more per claim than in the U.S. , and in many instances will be less in many parts of Canada.

A final payment will be made to all qualified Class Members at the end of the eight-year Claims Period such that all qualified Class Members will receive an additional payment in proportion to the value of their claim, in relation to the total value of all claims made during the claims period. The total value of their claim will be the cost of a complete replumb and any unreimbursed consequential damages resulting from the failure of the Kitec system the claimant may have experienced.

Class Counsel reserve the right to petition this Court to modify this Plan of if the actual claims rate, the amount of remaining funds, or other factors, support a modification. The terms of the Settlement Agreement as they relate to the Settlement Fund are not affected by this Plan.

III. THE PLAN OF ALLOCATION

Payments to Class Members who previously replaced their system will not exceed their actual remediation costs. Except for former owners who, by assignment or other agreement, have the right to pursue Claims or otherwise recover on behalf of the current owner, no payment shall be made to a Class Members who was a former owner in excess of their un-reimbursed out-of-pocket expense resulting from property damage. If there is more than one Claimant with respect to a Property, apportionment if any, of the Award between or among those Claimants, will be made by agreement of the Claimants (subject to review by the Special Master) or if necessary solely by the Special Master. The Special Master's decision regarding any apportionment shall be final, binding and not appealable.