

United States District Court for the Northern District of Illinois

*Bishop, et al. v. Behr Process Corporation, et al.*, Case No. 1:17-cv-04464 (N.D. Ill.)

**If you used Behr DeckOver between September 1, 2012 and June 27, 2018 you may be entitled to compensation and this class action settlement may affect your rights.**

*A Federal Court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.*

**A. BASIC INFORMATION**

**1. What is this Notice about?**

A Court authorized this notice because you may have rights pursuant to a proposed Settlement of a class action lawsuit and to inform you of your options and associated deadlines before the Court decides whether to give final approval to the Settlement. The name of the lawsuit is *Bishop, et al. v. Behr Process Corporation, et al.*, Case No. 1:17-cv-04464 (N.D. Ill.). The defendants are Behr Process Corporation, Behr Paint Corp., Masco Corporation, The Home Depot, Inc. and Home Depot, USA, Inc. (“Defendants”). This notice explains the lawsuit, the Settlement and your legal rights. You are NOT being sued. The Court still has to decide whether to finally approve the Settlement. Payments and other benefits will be distributed only if the Court finally approves the Settlement and after any appeals are resolved in favor of the Settlement. Please be patient and check the website identified in this notice regularly. Please do not contact the Parties as the Court has ordered that all questions be directed to the Class Action Settlement Administrator.

*Your legal rights may be affected even if you do not act.  
Please read this Notice carefully.*

**YOUR RIGHTS AND CHOICES**

<b>YOU MAY:</b>		<b>DUE DATE</b>
<b>SUBMIT A CLAIM FORM</b>	Submit a Claim Form seeking payment.  Give up your right to be part of another lawsuit, arbitration or proceeding against Defendants for the same legal claims resolved by this Settlement.	<b><u>February 27, 2019</u></b>  Or one year from the date of purchase, whichever is later.
<b>OBJECT</b>	Write to the Court about why you don’t like the proposed Settlement.	<b><u>October 15, 2018</u></b>
<b>EXCLUDE YOURSELF/ OPT-OUT</b>	Ask to get out (opt-out) of the proposed Settlement. If you do this, you are not entitled to any benefits under the Settlement, but you keep your right to sue Defendants about the issues in the lawsuit.	<b><u>October 15, 2018</u></b>
<b>APPEAR IN THE LAWSUIT OR ATTEND THE FAIRNESS HEARING</b>	You are not required to enter an appearance in the lawsuit in order to participate in the proposed Settlement, but you may enter an appearance on your own or through your own lawyer in addition to filing an objection if you do not opt-out. You can also ask to speak in Court at the Fairness Hearing about the proposed Settlement.	<b><u>October 15, 2018</u></b>  <b><u>Fairness Hearing</u></b>  <b><u>December 6, 2018</u></b>
<b>DO NOTHING</b>	Get no benefits.  Give up your right to be part of another lawsuit, arbitration or proceeding against Defendants for the same legal claims resolved by this Settlement.	

## 2. What is the lawsuit about?

The class action lawsuit claims that Behr manufactures and sells a line of products under the name “DeckOver” that (a) does not live up to the promises made regarding the performance of DeckOver, (b) deteriorates quickly, (c) fails to protect the surfaces to which it is applied, (d) fails to adhere to the surfaces to which it was applied and (e) causes property damage to the surfaces to which it is applied, and asserts claims under the Magnuson Moss Warranty Act, various states’ consumer fraud statutes and implied warranty laws, and the common law theory of unjust enrichment. You can read the First Amended Class Action Complaint by visiting [www.DeckOverSettlement.com](http://www.DeckOverSettlement.com). Defendants deny that they have violated any law and deny any wrongdoing. The parties agreed to resolve these matters before these issues were decided by the Court.

## 3. What customers are included in the Settlement?

The Court has certified a class of DeckOver purchasers that includes:

All persons and entities that, between **September 1, 2012** and **June 27, 2018**, purchased DeckOver in the United States (or caused it to be purchased) and applied it (or caused it to be applied) to any property located in the United States owned or leased by the purchasing person or entity.

Excluded from the Class are Defendants, and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants; Defendants’ legal representatives, assigns and successors; and all judges who have presided over the Action and any member of the judges’ immediate families.

## 4. Why is this a class action?

In a class action, people called “class representatives” sue on behalf of other people who have similar claims. All of these people together are the “Class” or “Class Members” if the Court approves this procedure. Then, that Court resolves the issues for all Class Members, except for those who exclude themselves from (opt-out of) the Class.

## 5. Why is there a Settlement?

Both sides in the Lawsuit agreed to a Settlement to avoid the cost and risk of further litigation, including a potential trial, and so that the Class Members can receive benefits in exchange for releasing Defendants from liability. The Settlement does not mean that Defendants broke any laws and/or did anything wrong, and the Court did not decide which side was right. The Settlement here has been preliminarily approved by the Court, which authorized the issuance of this Notice. Plaintiffs and the lawyers representing them (called “Plaintiffs’ Co-Lead Counsel”) believe that the Settlement is in the best interests of the Class.

The essential terms of the Settlement are summarized in this Notice. The Settlement Agreement along with all exhibits and addenda sets forth in greater detail the rights and obligations of the parties. If there is any conflict between this Notice and the Settlement Agreement, the Settlement Agreement governs.

**QUESTIONS? CALL TOLL FREE 877-235-9549 OR VISIT [WWW.DECKOVERSETTLEMENT.COM](http://WWW.DECKOVERSETTLEMENT.COM)  
PLEASE DO NOT CALL THE JUDGE OR THE CLERK OF COURT**

## B. WHO IS IN THE SETTLEMENT?

To see if you are affected or if you can get money or benefits, you first have to determine whether you are a member of the Class.

### 6. How do I know if I am part of the Settlement?

You are part of the Settlement if between **September 1, 2012** and **June 27, 2018**, you purchased DeckOver in the United States (or caused it to be purchased) and applied it (or caused it to be applied) to any property located in the United States owned or leased by you.

Excluded from the Class are Defendants, and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants; Defendants' legal representatives, assigns and successors; and all judges who have presided over the Action and any member of the judges' immediate families.

### 7. I'm still not sure if I'm included in the Settlement.

If you are not sure whether you are included in the Class, you may call 877-235-9549. Please do not contact the Parties, the Court, or Court staff, as the Court has ordered that all questions be directed to the Administrator.

## C. THE SETTLEMENT BENEFITS—WHAT YOU GET AND HOW TO GET IT

### 8. What does the Settlement provide?

Subject to the terms set forth in the Settlement, Class Members who submit a valid Claim Form are entitled to receive:

- A refund for their purchase of DeckOver; and
- Compensation for money spent removing DeckOver or otherwise repairing their deck.

The amount Class Members are eligible to receive depends on several factors, including what proof they submit with their claim.

The Settlement benefits are outlined below, but more information, including the Agreement, can be found at the Settlement Website, [www.DeckOverSettlement.com](http://www.DeckOverSettlement.com). The Court still has to decide whether to finally approve the Settlement. Benefits will be provided only if the Court finally approves the Settlement and any appeal period expires or any appeals are resolved in favor of the Settlement. We do not know when the Court will finally approve the Settlement, if it will do so, or whether there will be any appeals that would have to be resolved in favor of the Settlement before certain benefits would be provided, so we do not know precisely when any benefits may be available. Please check [www.DeckOverSettlement.com](http://www.DeckOverSettlement.com) for updates regarding the Settlement.

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## **a. Refund**

Class Members may receive a refund by submitting a completed Claim Form with, among other things, the following information: (1) the number gallons of DeckOver purchased; (2) the approximate square footage of the surface to which DeckOver was applied; (3) the price per gallon paid (if known); (4) proof of purchase of DeckOver products consisting of any of the following: (i) receipts; (ii) a photograph of an opened DeckOver container that the Class Member affirms having purchased during the Class Period; (iii) a formula sticker or UPC label taken from a DeckOver container; or (iv) other competent proof; and (5) proof of a problem related to the performance of DeckOver.

Each Class Member who provides the information described above will receive a full refund, less up to 20% in reimbursed attorney fees or litigation expenses (as discussed in Section 14 below). Class Members who do not provide proof of purchase that contains the amount spent on DeckOver will be compensated at thirty dollars (\$30.00) per gallon, again subject to attorney fees and litigation expenses.

## **b. Compensation for Removal or Repair**

Class Members shall be eligible to receive compensation from Behr relating to removing DeckOver or otherwise repairing their decks upon submitting a completed Claim Form with the following information: (a) the same information listed directly above under the 8-a “Refund” section, including the approximate square footage of the surface to which the DeckOver was applied; and (b) proof of damage to a deck or other substrate relating to the performance of DeckOver and consisting of (i) an invoice or estimate from a contractor to address damage to a deck or other substrate; or (ii) a receipt for supplies or equipment used to repair damage to a deck or other substrate; or (iii) other competent proof.

Each Class Member who provides the information described above will receive seventy-five percent (75%) of the cost of removing DeckOver and otherwise repairing their decks (provided that compensation will not exceed six dollars (\$6) per square foot of substrate damage), less up to 20% in reimbursed attorney fees or litigation expenses (as discussed in Section 14 below).

Class Members who cannot provide the information in subsection (b) and attest that they repaired damage caused by DeckOver and that they cannot provide estimates, invoices or receipts for the repair work, will receive seventy-five percent of four dollars (\$4) per square foot for the substrate’s surface area (again, less up to 20% in reimbursed attorney fees or litigation expenses (as discussed in Section 14 below)).

## **c. Alternative Dispute Resolution.**

Class Members who are not satisfied with the relief offered above may opt to participate in a free alternative dispute resolution (“ADR”) process by selecting ADR on the Claim Form.

The Class Action Settlement Administrator will then provide additional information regarding the ADR process. ADR shall be conducted before Hon. Wayne Andersen (ret.) at JAMS, at Behr’s expense and based upon written submissions only, unless the Class Member seeking ADR requests otherwise.

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## 9. What am I giving up in exchange for the Settlement benefits?

If the Settlement becomes final, Class Members who do not exclude themselves from the Class will release Defendants from liability and will not be able to sue them about the issues in the lawsuit. The Settlement Agreement describes the released claims in necessary legal terminology, so read it carefully. The Settlement Agreement is available at [www.DeckOverSettlement.com](http://www.DeckOverSettlement.com). You can talk to one of the lawyers listed in Question 15 below for free or you can, of course, talk to your own lawyer at your own expense if you have questions about the released claims or what they mean.

### D. EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue Defendants over the legal issues in the lawsuit, then you must take steps to remove yourself from this Settlement. This is called asking to be excluded from the Class, also referred to as “opting-out” of the Class.

## 10. If I exclude myself, can I get anything from this Settlement?

If you exclude yourself, you cannot receive the Settlement benefits described above. But, if you timely and properly request exclusion, the Settlement will not prevent you from suing, continuing to sue or remaining in a different lawsuit to which you are a party, or becoming part of a different lawsuit against Defendants in the future about the issues in the lawsuit. If you exclude yourself, you will not be bound by anything that happens in this lawsuit and you may not object to the Settlement.

## 11. If I don't exclude myself, can I sue later?

Unless you exclude yourself, you give up the right to sue Defendants for the claims resolved by this Settlement. If the Settlement is finally approved, you will be permanently enjoined and barred from initiating or continuing any lawsuit or other proceeding against Defendants about the issues in the lawsuit.

## 12. How do I get out of the Settlement?

To exclude yourself from the Settlement, you **must** send a letter by mail saying that you want to be excluded from the Settlement in *Bishop, et al. v. Behr Process Corporation, et al.*, Case No. 1:17-cv-04464 (N.D. Ill.). In the letter, you **must** include your name, address and your personal signature (not the signature of a representative or attorney). A member of the Class may opt-out on an individual basis only. So-called “mass” or “class” opt-outs, whether filed by third parties on behalf of a “mass” or “class” of class members or multiple class members where no personal statement has been signed by each and every individual class member, shall not be allowed.

You **cannot** ask to be excluded over the phone or on the Settlement Website. Your exclusion request **must** be postmarked no later than **October 15, 2018** and **mailed to:**

**DeckOver Settlement  
Attn: Exclusion  
PO Box 15850  
Philadelphia, PA 19103**

Your exclusion request must be mailed to the Class Action Settlement Administrator by the date shown above in order to be considered by the Court. The deadlines found in this Notice may be changed by the Court. Please check [www.DeckOverSettlement.com](http://www.DeckOverSettlement.com) regularly for updates regarding the Settlement.

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## E. THE LAWYERS REPRESENTING YOU

### 13. Do I have a lawyer in the case?

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called “Plaintiffs’ Co-Lead Counsel”: Katrina Carroll of Lite DePalma Greenberg, LLC; Daniel Herrera of Cafferty Clobes Meriwether and Sprengel LLP; Eric Gibbs of Gibbs Law Group LLP; and Joseph G. Sauder of Sauder Schelkopf LLC. You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

### 14. How will the lawyers be paid?

In contrast to other cases in the past, where plaintiffs’ counsel received about 33% of the recovery, Plaintiffs’ Co-Lead Counsel are requesting to be paid 20% of the amount awarded to each Class Member under the Settlement (*i.e.*, if the Class Member’s claim is for one hundred dollars (\$100), the Class Member will receive eighty dollars (\$80) and Plaintiffs’ Co-Lead Counsel will receive twenty dollars (\$20)) for attorneys’ fees and out-of-pocket expenses for time and expenses incurred in prosecuting this case and estimated time and expenses through the final implementation of this Settlement Agreement. This reduction was made possible because Behr agreed to pay a portion of the fees and costs (in the amount of one million five hundred thousand dollars (\$1,500,000)) separate from the amounts to be paid to the class.

Plaintiffs are asking that the Court award each Plaintiff between \$1,000 and \$2,000 for their time invested in connection with the Actions and securing the benefits of this Settlement for the Class. The Court may award less than these amounts.

## F. OBJECTING TO THE SETTLEMENT

You can tell the Court if you don’t agree with the Settlement or some part of it.

### 15. How do I tell the Court if I don’t like the Settlement?

If you are a Class Member, and you don’t exclude yourself from the Class, you can object to the Settlement if you don’t like some part of it. You can give reasons why you think the Court should not approve it. To object, you **must** send a written objection saying that you object to the Settlement in *Bishop, et al. v. Behr Process Corporation, et al.*, Case No. 1:17-cv-04464 (N.D. Ill.), to Plaintiffs’ Co-Lead Counsel and Behr’s Counsel at the address below so that the objection is postmarked no later than **October 15, 2018**. To have your objection considered by the Court, you also **must** file the objection with the Clerk of Court (identified below) so that it is filed no later than **October 15, 2018**. In your objection, you must include (a) your full name, address and telephone number; (b) the location of the deck or other substrate to which DeckOver was applied (if different from the current address); (c) proof that you are a member of the Class; (d) the number of gallons of DeckOver purchased; (e) a full statement of your objections, the reasons therefor, and all supporting papers, including, without limitation, all briefs, written evidence, and declarations; (f) a statement of whether you or your attorney intend to appear at the Final Approval Hearing; (g) a detailed list of any other objections submitted by you or your attorney to any class action settlements submitted in the previous five years; and (g) your signature and the signature of any attorney you.

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<b><u>Clerk of Court</u></b>	<b><u>Plaintiffs' Co-Lead Counsel</u></b>	<b><u>Behr's Counsel</u></b>
United States District Court Northern District of Illinois 219 South Dearborn Street Chicago, IL 60604	Katrina Carroll Lite DePalma Greenberg, LLC 111 W. Washington Suite 1240 Chicago, Illinois 60602	Kathleen P. Lally Latham & Watkins LLP 330 North Wabash Avenue, Suite 2800 Chicago, IL 60611
Attention: Bishop, et al. v. Behr Process Corporation, et al., Case No. 1:17-cv-04464 (N.D. Ill.)	Joseph G. Sauder Sauder Schelkopf LLC 555 Lancaster Avenue Berwyn, Pennsylvania 19312	

## 16. What's the difference between objecting and excluding?

Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you. Objecting is telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class.

If you are a Class Member and you do nothing, you will remain a Class Member and all of the Court's orders will apply to you. You will not receive any benefits from the Settlement and you will not be able to sue Defendants over the issues covered by the lawsuit.

### G. THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to grant final approval to the Settlement. If you have filed an objection on time and attend the hearing, you may ask to speak, but you don't have to attend or speak.

## 17. When and where will the Court decide whether to grant final approval of the Settlement?

The Court will hold a Fairness Hearing at **9:45 a.m. on December 6, 2018** at the Everett McKinley Dirksen United States Courthouse, United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, IL 60604. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will only listen to people who have met the requirement to speak at the hearing (*See* Question 19 below). After the hearing, the Court will decide whether to grant final approval the Settlement, and, if so, how much to pay the lawyers representing Class Members. We do not know how long these decisions will take.

## 18. Do I have to come to the hearing?

No. Plaintiffs' Co-Lead Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it – but you can if you provide advance notice of your intention to appear (*See* Question 19 below). As long as you filed a written objection with all of the required information on time with the Court and delivered it on time to Plaintiffs' Co-Lead Counsel and Behr's Counsel, the Court will consider it. You may also pay another lawyer to attend, but it is not required.

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## 19. May I speak at the hearing?

You or your attorney may ask the Court for permission to speak at the Fairness Hearing. To do so, you **must** provide notice that it is your intent to appear in *Bishop, et al. v. Behr Process Corporation, et al.*, Case No. 1:17-cv-04464 (N.D. Ill.) to Plaintiffs' Co-Lead Counsel, Behr's Counsel and the Class Action Settlement Administrator identified above in response to Question 15 so that they receive it no later than **October 15, 2018**. You must also file the document with the Clerk of Court so that it is received and filed no later than **October 15, 2018**. You **must** include your name, address, telephone number and your signature as well as the name of any attorney representing you and his or her name, address, phone number, e-mail address and state bar(s) to which he or she is admitted. Any attorney hired by a Class Member for the purpose of objecting to the Agreement or to the proposed Settlement or to the attorneys' fees and expenses will be at the Class Member's own expense. If you intend to request the Court allow you to call witnesses at the Fairness Hearing, you must provide a list of any such witnesses together with a brief summary of each witness's expected testimony no later than **October 15, 2018**.

Anyone who has requested permission to speak must be present at the start of the Fairness Hearing at **9:45 a.m. on December 6, 2018**. You cannot speak at the hearing if you excluded yourself from the Class.

## H. GETTING MORE INFORMATION

### 20. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in the Agreement, including its exhibits and addenda. You can get a copy of the Agreement and other information about the Settlement, including, but not limited to, answers to frequently asked questions and the Claim Forms, at [www.DeckOverSettlement.com](http://www.DeckOverSettlement.com). You can also call the toll-free number, 877-235-9549, or write the Administrator at DeckOver Settlement, PO Box 15850, Philadelphia, PA 19103. You can also look at the documents filed in the lawsuit at the Court at the address provided above in response to Question 15.

### 21. When will the Settlement be final?

The Settlement will not be final unless and until the Court grants final approval of the Settlement at or after the Fairness Hearing and after any appeals are resolved in favor of the Settlement. Please be patient and check the website identified in this Notice regularly. Please do not contact the Parties, the Court, or Court staff, as the Court has ordered that all questions be directed to the Administrator.

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