

# Class Action Lawsuit

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IN THE DISTRICT COURT FOR MAYES COUNTY

STATE OF OKLAHOMA

CASE NO. CJ-2004-62  
CLASS ACTION

STEVEN W. LEMMINGS, and CITY OF PRYOR CREEK, on behalf of themselves and  
all other persons or entities similarly situated,

Plaintiffs

vs.

SECOND CHANCE BODY ARMOR, INC.,  
TOYOBO COMPANY, LTD.,  
TOYOBO AMERICA, INC.,  
OKLAHOMA POLICE SUPPLY, INC.,  
JOHN DOE, INSURANCE COMPANIES, SELLERS, DISTRIBUTORS, ADVERTISERS,  
AND INDIVIDUALS,

Defendants.

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## **NOTICE OF PENDENCY OF CLASS ACTION**

TO: PERSONS AND ENTITIES WHO HAVE PURCHASED, POSSESS OR OWN A BULLET PROOF VEST MANUFACTURED BY SECOND CHANCE BODY ARMOR, INC. WHICH CONTAINS ZYLON®, as more specifically described below.

IMPORTANT NOTICE: PLEASE READ THIS NOTICE CAREFULLY, AS IT MAY AFFECT YOUR LEGAL RIGHTS

### **THE LAWSUIT**

A lawsuit is pending in the above Court involving claims that bulletproof vests manufactured by Second Chance Body Armor, Inc. ("Second Chance"), which contain Zylon®, a fiber manufactured and sold by Toyobo Company, Ltd. ("Toyobo"), fail to meet the performance characteristics for which they were warranted ("The Lawsuit"). The Lawsuit further alleges that the vests are unfit for their intended purpose, and that information regarding the allegedly defective condition of the vests was withheld from the marketplace. These vests were sold by Second Chance and its distributors under the names Ultima, Ultimax and Triflex, and were sold to state and local governments, law enforcement officers and others.

Toyobo America, Inc. ("Toyobo America") and Oklahoma Police Supply are also named as defendants in the Lawsuit. Toyobo America, a subsidiary of Toyobo, is alleged to have participated in the manufacture and sale of Zylon®, and Oklahoma Police Supply is alleged to have sold some of the vests at issue. Toyobo, Toyobo America and Oklahoma Police Supply deny the allegations that have been made against them in the Lawsuit.

The Lawsuit is currently scheduled for trial beginning during the Court's August 1, 2005 through August 12, 2005 jury docket against Toyobo, Toyobo America and Oklahoma Police Supply only. The Court, under its inherent case management authority, has the right to change this trial date. The claims asserted against Second Chance cannot be pursued in this action because Second Chance filed for bankruptcy. Those claims are before the bankruptcy court and are not a part of this litigation.

### **THE CLASS CERTIFICATION ORDER**

In the Lawsuit, the Court was asked to certify the case as a class action as authorized under the Oklahoma Pleading Code. On February 9, 2005, the Court entered an Order Certifying Class Action With Findings of Fact And Conclusions of Law ("Certification Order"), finding that the requirements for a class action were met.

**The National Class:** The Court ruled that the Lawsuit shall proceed as a national class action on the breach of warranty claims on behalf of the following persons and entities (the "National Class"):

*All persons and entities in the United States and its territories, who have purchased, possess or own a bulletproof vest manufactured by Defendant Second Chance Body Armor, Inc., which contains Zylon®, a fiber manufactured and sold by Defendants Toyobo Company, Ltd., and Toyobo America, Inc. Excluded from the Class are Defendants; Defendants' affiliates, parents and subsidiaries; all directors, officers, agents, and employees of Defendants; any person or entity who timely opts out of this proceeding; and any claims belonging to the federal government. This class does not include or affect present or future personal injury claims.*

**Oklahoma Subclass:** In addition, the Court ruled that the Lawsuit shall proceed as a class action on behalf of the following persons and entities on claims alleging violations of Oklahoma's Consumer Protection Act, public nuisance, unjust enrichment and for punitive damages (the "Oklahoma Subclass"):

*All persons and entities in the State of Oklahoma who have purchased, possess or own a bullet proof vest manufactured by Defendant Second Chance Body Armor, Inc., which contains Zylon®, a fiber manufactured and sold by Defendants Toyobo Company, Ltd.,*

*and Toyobo America, Inc. Excluded from the Class are Defendants; Defendants' affiliates, parents and subsidiaries; all directors, officers, agents, and employees of Defendants; any person or entity who timely opts out of this proceeding; and any claims belonging to the federal government. This class does not include or affect present or future personal injury claims.*

Neither the National Class nor the Oklahoma Subclass is intended to include the authorized distributors of Second Chance who sold the subject vests.

If you purchased, possess or owned one of the subject vests, you are still a member of the National Class and/or Oklahoma Subclass even though you may no longer possess or own the vest; even though you may have participated in a vest exchange program with Second Chance; even though you may have obtained "performance pacs" from Second Chance; and even though you may have signed a release to Second Chance.

### CLASS REPRESENTATIVES & CLASS COUNSEL

In the Certification Order, the Court designated the named plaintiffs in the Lawsuit - Steven W. Lemmings and City of Pryor Creek, Oklahoma - as representatives of the Class ("Class Representatives").

In the Certification Order, the Court designated the following law firms and their attorneys to represent the plaintiff class in the Lawsuit ("Plaintiffs' Class Counsel"): Allan Kanner & Associates, P.L.L.C., Carr, Tabb, Pope & Freeman, LLP, The Drummond Law Firm, Aamodt & Tobey, and Elliott & Sherrer.

The representation by Class Counsel will be at no out-of-pocket expense to the Class. In the event of a recovery on behalf of the Class through trial or settlement, Class Counsel will petition the Court for an award of fees and reimbursement of expenses in accordance with applicable law.

### YOUR RIGHTS AS A MEMBER OF THE CLASS

- A. The Right To Remain In The Class - IF YOU ARE A MEMBER OF THE NATIONAL CLASS AND/OR THE OKLAHOMA SUBCLASS (COLLECTIVELY THE "CLASS") AND WISH TO REMAIN IN THE CLASS FOR PURPOSES OF THE LAWSUIT, YOU ARE REQUIRED TO **DO NOTHING** AT THIS TIME.

By remaining a member of the Class you will be entitled to the benefits that may be obtained through a trial or a settlement of the Lawsuit. (Whether you are, in fact, a member of the Class and your right to receive benefits that may be obtained will be subject to determination at the time any benefits are obtained.)

If you remain a member of the Class, your legal rights that have been or could have been asserted in the Lawsuit will be extinguished by the trial or settlement of the Lawsuit, whether or not the result is favorable. In other words, the judgment, whether favorable or not, will include all members of the Class who do not request exclusion as provided below.

If you wish to remain a member of the Class, you have the right to enter an appearance through your own attorney at your own cost.

- B. The Right To Exclude Yourself From the Class - IF YOU ARE A MEMBER OF THE CLASS AND DO NOT WISH TO REMAIN IN THE CLASS FOR PURPOSES OF THE LAWSUIT, YOU MUST **EXCLUDE YOURSELF** FROM THE CLASS.

To exclude yourself from the Class, you must **complete and return** the attached Request For Exclusion. So long as the Request For Exclusion is returned, postmarked on or before May 31, 2005, you will be excluded from the Class.

By excluding yourself from the Class for purposes of the Lawsuit, you will not be entitled to the benefits that may be obtained through a trial or settlement of the Lawsuit.

If you exclude yourself from the Class for purposes of the Lawsuit, your legal rights that have been or could have been asserted in the Lawsuit will not be extinguished by the trial or settlement of the Lawsuit. If you exclude yourself from the Class, you may pursue your legal rights at your own expense with or without the assistance of your own attorney.

#### ADDITIONAL NOTICE IF BENEFITS ARE OBTAINED

The purpose of this notice is to inform you of the Lawsuit and your rights to continue as a member of the Class or exclude yourself from the Class. In the event that you continue as a member of the Class and benefits are obtained in the Lawsuit through trial or settlement, then you will be provided with additional notice apprising you as to your rights and the procedure for receiving the benefits that may be obtained.

#### COURT'S CASE MANAGEMENT AUTHORITY

The Court has the authority and discretion to manage its docket, including the Lawsuit. This authority includes the right to change the trial date or amend the Certification Order. In the event that date for trial of the Lawsuit is changed, no further notice will be required. In the event that the Court modifies the Certification Order in a manner that does not materially affect the substantial rights of the Class, no further notice is required.

#### CONTACT INFORMATION

If you have questions about this notice or the Lawsuit, **DO NOT CONTACT THE COURT**. Please contact:

Zylon Class Administrator

P.O. Box 1700

Faribault, MN 55021-1700

(877) 567-2754

[www.zylonvestclassaction.com](http://www.zylonvestclassaction.com)

#### SUMMARY OF YOUR RIGHTS & TIME LIMITS

If you wish to remain in the Class, do nothing at this time. If you wish to exclude yourself from the Class, you must **complete and return** the attached Request For Exclusion, **postmarked by May 31, 2005**.

#### APPROVAL OF NOTICE BY COURT

This Notice has been approved by, and is issued pursuant to, Court Order.

The Honorable James T. Goodpaster,

Judge District Court of Mayes County, Oklahoma

#### REQUEST FOR EXCLUSION

Re: *Steven W. Lemmings and City of Pryor Creek, on behalf of themselves and all other persons or entities similarly situated v. Second Chance Body Armor, Inc., Toyobo Company, Ltd., Toyobo America, Inc., Oklahoma Police Supply, Inc., Oklahoma Police Supply, LLC, et al*, Case No. CJ-2004-62, The Honorable James D. Goodpaster, Judge ("The Lawsuit")

I understand that I or my organization may be a member of a Class of persons and entities who purchased, possess or own a bullet proof vest manufactured by Second Chance Body Armor, Inc. ("Second Chance") which contains Zylon®, a fiber manufactured and sold by Toyobo Company, Ltd. ("Toyobo"). I understand that these vests were sold by Second Chance and its distributors under the names Ultima, Ultimax and Triflex.

I understand that certain legal claims have been asserted on behalf of the Class in the Lawsuit described above. I understand that I have the right to exclude myself or my organization from the Class by following the instructions below.

I hereby choose to EXCLUDE myself or my organization from the Class. I understand that by excluding myself or my organization from the Class, I will not be entitled to any benefits that may be obtained through a trial or settlement of the Lawsuit. I understand that I may pursue my legal rights at my own expense with or without the assistance of my own attorney.

I understand that this REQUEST FOR EXCLUSION must be **completed and returned** by first class mail, **postmarked on or before May 31, 2005**, to:

Zylon Class Administrator

P.O. Box 1700

Faribault, MN 55021-1700

In submitting this REQUEST FOR EXCLUSION, I state that the information provided below is true and correct. I further represent and understand that I am submitting this REQUEST FOR EXCLUSION for myself, or that I am authorized to submit this REQUEST FOR EXCLUSION on behalf of the entity listed below.

**INDIVIDUALS**

**\*This should be a personal MAILING ADDRESS so we may contact you in the future.**

Name: \_\_\_\_\_  
          First                  M.I.                  Last

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Country, if not US: \_\_\_\_\_

Agency Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Country, if not US: \_\_\_\_\_

Home Phone:(\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Work Phone:(\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Ext.: \_\_\_\_\_

Model & NIJ Threat Level:   ™ IIA   ™ II   ™ IIIA

Front Panel Serial Number: \_\_\_\_\_

Front Panel Size: \_\_\_\_\_

Back Panel Serial Number: \_\_\_\_\_

Back Panel Size: \_\_\_\_\_

**ORGANIZATIONS**

Name: \_\_\_\_\_  
                    First                      M.I.                      Last

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Country, if not US: \_\_\_\_\_

Phone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Number of vests purchased: \_\_\_\_\_

Contact Person: \_\_\_\_\_

                    First                      M.I.                      Last  
Work Phone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Ext.: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature