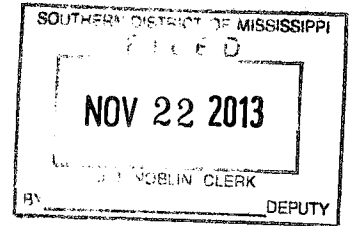


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION



NOBLE BROOKS, JR. on behalf of
himself and all others similarly situated,

Plaintiff,

v.

ATLAS ROOFING CORPORATION,

Defendant.

CASE NO. 4:13cv187CWR-FKB

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, Noble Brooks, Jr., by and through undersigned counsel, on behalf of himself and all other persons and entities similarly situated, sues Defendant, Atlas Roofing Corporation (hereinafter referred to as "Atlas" and/or "Defendant"), and for his Class Action Complaint alleges, upon information and belief and based on the investigation to date of its counsel, as follows:

NATURE OF ACTION

1. This is a class action in connection with defective shingles designed, manufactured, marketed, advertised and sold by Atlas.

2. At all times material hereto, Atlas designed, manufactured, marketed and sold its Atlas Chalet Shingles ("the Shingles" or "Atlas' Shingles"), and represented, marketed, and warranted them to be durable, reliable, free from defects and compliant with certain industry standards such as to be appropriate for use on the homes, residences, buildings, and other structures of Plaintiff and the Class.

3. In contrast to Atlas' warranties and representations concerning the Shingles, the Shingles were defective at the time of sale and thereafter because they blister and crack, leading to early granule loss, increased moisture absorption, and otherwise do not perform as expressly warranted and represented, causing damage to other components of the structures on which they were installed and to property on the interior of the structures. Nevertheless, even after Atlas learned of the defect, it continued to sell the Shingles to the public and to make false representations and warranties, despite knowing the defects would eventually cause consumers enormous property damage and substantial removal and replacement costs. Atlas finally discontinued the manufacture of the Shingles in mid-2010.

4. As a result of Atlas' defective Shingles, Plaintiff and the Class members have suffered and continue to suffer extensive damages. This class action seeks damages, injunctive relief, costs, attorneys' fees, and all other relief available.

INTRODUCTION AND BACKGROUND

5. Atlas designed, manufactured, distributed and sold the Shingles for many years in many states, including throughout Mississippi. Upon information and belief, Atlas was made aware of the potential for blistering of its Shingles but did nothing to correct the defective design or formulation that resulted in blistering or degradation of the life expectancy of the Shingles, or other defects alleged herein.

6. Atlas sold the Shingles to the builders, contractors and suppliers who installed the Shingles in homes owned by Plaintiff and the Class members. In conjunction with each sale, Atlas expressly extended a 30-year warranty to the original homeowner

(and, for a more limited period, to a subsequent purchaser of the home) that the Shingles would be free from defects or it would repair or replace the Shingles.

7. In addition, Atlas represented and warranted that the Shingles conformed to applicable building codes and certain industry standards. It was a part of the basis of the bargain that the Shingles conformed to applicable building codes and these industry standards when Plaintiff and the Class purchased the shingles or purchased the homes with the Shingles installed.

8. Additionally, Atlas made representations to Plaintiff and the Class regarding the existence of its 30-year warranty and the compliance of the Shingles with certain industry standards in documents available to the public, including product brochures, marketing materials and product labels. Atlas made these representations before the original purchase of the Shingles.

9. Plaintiff, the Class and their builders/contractors relied upon these representations and warranties which became a basis of the bargain when Plaintiff, Plaintiff's builders/contractors, Class Members and/or Class Members' builders/contractors purchased the Shingles.

10. However, as discussed herein, the Shingles do not conform to Atlas' express representations and warranties. At the time of sale, the Shingles were not merchantable and not reasonably suited to the use intended based on their defective design and manufacture by Atlas.

11. Specifically, the Shingles are defective because Atlas improperly designed the Shingles to be manufactured in a manner that permits moisture to intrude into the Shingle creating a gas bubble that permits blistering and cracking. The blistering and

cracking is the cause of early granule loss, increased moisture absorption, and reduced life-expectancy of the Shingles.

12. The defects present in Atlas' Shingles make the Shingles unfit for their intended use and are so severe that Plaintiff and members of the Class must repair or replace their Shingles sooner than reasonably expected by ordinary consumers who purchase shingles generally or by consumers who purchased Atlas' Shingles. In addition, the Shingles are so defectively designed and manufactured that they prematurely fail and cause damage to the underlying structures and other property of the Plaintiff and the Class by permitting water leaks. Upon information and belief, Atlas discovered the foregoing defects in the Shingles but continued to market and sell them to the public, including Plaintiff and the Class.

13. Atlas knew or should have known of the building code requirements in Mississippi, and that these requirements included conformance with industry standards for asphalt shingles.

14. Atlas knew or should have known that its Shingles did not satisfy these industry standards, and as a result, Atlas knew or should have known its Shingles failed to comply with applicable Mississippi building codes.

15. Atlas also knew or should have known that its shingles were defective in design, were not fit for their ordinary and intended use, were not merchantable, and failed to perform in accordance with the advertisements, marketing materials and warranties disseminated by Atlas or with the reasonable expectations of ordinary consumers such as Plaintiff and the Class.

16. Indeed, because the Shingles blister, which leads to early granule loss and degradation in life expectancy of the Shingles, the Shingles are neither durable nor suitable for use as a building product.

17. This defective condition is common among the Plaintiff and the Class, each owners of structures upon which the Shingles have been installed.

18. Thus, the Shingles have failed to meet Atlas' representations and warranties and, given the blistering, cracking and premature deterioration of the Shingles that requires unexpected repair and replacement, the Shingles have not proven to be of value when compared to other roofing products.

PARTIES

19. Plaintiff, Noble Brooks, Jr., is a citizen and resident of the State of Mississippi and owns a home located at 737 Grand Avenue, Yazoo City, Mississippi.

20. Plaintiff had the Shingles installed on his home on or about November 17, 2006.

21. Plaintiff relied on the Atlas warranty and other representations regarding the quality and performance of the components of the roof at the time of the purchase of the Shingles. A copy of the Atlas warranty for the Shingles is attached hereto as Exhibit A and incorporated herein by reference (the "Atlas Warranty").

22. Plaintiff purchased the Shingles based on the warranty and the expectation that the Shingles, would be free from defects and would conform to the building code and industry standards.

23. Based on the blistering and cracking of the Shingles after installation, Plaintiff filed a warranty claim with Atlas pursuant to the Atlas Warranty. To date, Plaintiff has yet to receive a response from Defendant Atlas.

24. Due to the defects in the Shingles, Plaintiff has had to replace portions of the Shingles at significant cost as well as experienced damage to other property in his home as a result of ceiling leaks related to the faulty Shingles.

25. Defendant Atlas Roofing Corporation is a Mississippi corporation with its principal place of business located at 802 Hwy 19 N., Suite 190, Meridian, Mississippi 39301.

26. Atlas holds itself out to both the construction industry and the public at large as being knowledgeable in the design and manufacture of roofing products and as being providers of quality roofing products, including the Shingles that are the subject of this litigation.

27. Atlas claims to be "an industry leader with 17 plants in North America and worldwide product distribution" and represents that its roofing products "are designed to give our customers value, design and long lasting quality."

JURISDICTION AND VENUE

28. This Court has jurisdiction over the subject matter of this action pursuant to the Class Action Fairness Act, in that (i) the amount in controversy exceeds \$5,000,000.00 (Five Million Dollars) exclusive of interests and costs, and (ii) there are 100 or more members of the proposed Plaintiff class.

29. This Court also has subject matter jurisdiction over this class action pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs.

30. Venue lies in this District, pursuant to 28 U.S.C. §1391, because Plaintiff resides in this Judicial District and Defendant is incorporated in this Judicial District and as a result substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this Judicial District.

31. Furthermore, as a result of Atlas' manufacturing, marketing, distributing, promoting, and/or selling the Shingles, either directly or indirectly through third parties or related entities, to purchasers throughout Mississippi, including Plaintiff, Atlas obtained the benefits of the laws of Mississippi and profited from Mississippi commerce.

32. Atlas conducted systematic and continuous business activities in and throughout the State of Mississippi and otherwise intentionally availed itself of the markets of the State of Mississippi through the promotion and marketing of its business to consumers in Mississippi, including Plaintiff.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this class action pursuant to Rule 23 of Federal Rule of Civil Procedure, and case law thereunder on behalf of themselves and all others similarly situated, with the Class defined as follows:

DAMAGES CLASS:

All persons and entities owning homes, residences, buildings, or other structures physically located in the State of Mississippi on which Atlas Chalet Shingles are currently installed and evidence the defect described

herein or were previously installed and have been replaced by the owners due to the defect.

DECLARATORY RELIEF CLASS:

All persons and entities that own homes, residences, buildings, or other structures physically located in the State of Mississippi on which Atlas Chalet Shingles currently installed and evidence the defect described herein.

Excluded from the Class are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) Atlas and any entity in which Atlas has a controlling interest or which has a controlling interest in Atlas and its legal representatives, assigns and successors of Atlas; and (c) all persons who properly execute and file a timely request for exclusion from the Class. Plaintiff reserves the right to amend the class definition.

34. *Numerosity:* The Class is composed of thousands of persons geographically dispersed throughout the State of Mississippi, the joinder of whom in one action is impractical. Moreover, upon information and belief, the Class is ascertainable and identifiable from Atlas' records or identifying marks on the Shingles.

35. *Commonality:* The critical question of law and fact common to the Plaintiff Class that will materially advance the litigation is whether the Shingles are inherently defective and do not conform to applicable building codes and industry standards, contrary to the expectations imparted by Atlas through its representations and omissions.

36. Furthermore, other questions of law and fact common to the Class that exist as to all members of the Class and predominate over any questions affecting only individual members of the Class include the following:

- a. Whether the Shingles have not or will not perform in accordance with the reasonable expectations of ordinary consumers;
- b. Whether the Shingles are defective;
- c. Whether the Shingles when sold were not merchantable and reasonably suited to the use intended;
- d. Whether Atlas violated its statutory duty of care;
- e. Whether the Shingles conform to the applicable building code and/or relevant industry standards;
- f. Whether Atlas breached its express warranty that the Shingles would be free from defects;
- g. Whether Atlas made express warranties to Plaintiff and the Class by representing that the Shingles complied with applicable building codes and certain industry standards;
- h. Whether Atlas breached its express warranty to Plaintiff and the Class that the Shingles complied with applicable building codes and certain industry standards;
- i. Whether Atlas breached the implied warranty of merchantability in that the Shingles: (i) are not fit for the ordinary purposes for which the Shingles were sold; (ii) would not pass without objection in the trade; or (iii) failed to conform to the promises or affirmations of fact made by Atlas in conjunction with the sale of the Shingles;
- j. Whether and when Atlas knew or should have known of the defect;
- k. Whether Atlas concealed from consumers and/or failed to disclose to consumers the defect;
- l. Whether Atlas' expertise and superior knowledge gave rise to a duty to disclose the material facts which were concealed;
- m. Whether Atlas' express warranty fails of its essential purpose;
- n. Whether Atlas' limitations and exclusions contained in Atlas' Warranty are unconscionable;

- o. Whether the purported disclaimer of implied warranties contained in the Atlas Warranty is rendered unenforceable by being insufficiently conspicuous;
- p. Whether Atlas failed to properly disclaim any limitation to pay for installation of replacement Shingles;
- q. Whether Plaintiff and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by members of the Class for replacement of the Shingles and/or installation costs; (ii) the failure of consideration in connection with and/or difference in value arising out of the variance between the Shingles as warranted and the Shingles containing the defect; (iv) the cost of repair/replacement of Class members' other property damaged as a result of the defective Shingles; and (iii) the diminution of resale value of the residences and buildings resulting from the defect in the Shingles;
- r. Whether Plaintiff and the Class are entitled to all costs associated with replacement of their defective Shingles with non-defective shingles; and
- s. Whether Plaintiff and the Class are entitled to restitution and/or disgorgement.

37. *Typicality*: Plaintiff's claims are typical of the claims of the members of the Class, as all such claims arise out of Atlas' conduct in designing, manufacturing, marketing, advertising, warranting and selling the defective Shingles and Atlas' conduct in concealing the defect in the Shingles to owners, contractors, developers, and suppliers.

38. *Adequate Representation*: Plaintiff will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of the Class. Plaintiff has retained counsel experienced in the prosecution of complex class actions, including but not limited to consumer class actions involving, inter alia, breach of warranties, product liability and product design defects.

39. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class

predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class members be required to bring separate actions, this Court and/or courts throughout Mississippi would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

COMMON FACTUAL ALLEGATIONS

A. Design and Manufacturing of Atlas' Shingles and Atlas' Warranties.

40. Atlas represents to Plaintiff and the proposed Class, in documents generally available to the public, that its Shingles will last for thirty (30) years without problems, or the company would remedy the situation. It also represents that the Shingles meet industry accepted building codes and industry standards. Atlas makes these representations before purchase and at the time of purchase via its written warranty, sales brochures, marketing materials (including but not limited to store displays, sales seminars, and training materials), and on the Shingles packaging. These representations became the basis of the bargain when Plaintiff and Class Members purchased the Shingles, and Plaintiff and Class Members would not have purchased the Shingles (or the homes on

which they were installed) and would have instead purchased a competitor's shingles, had they known the Shingles did not meet the applicable standards.

41. Specifically, Atlas provides a 30-year warranty that its products will be "free from manufacturing defects."

42. Atlas also warrants and guarantees that its Shingles conform to all applicable industry standards and building codes such as ASTM D 3018, Type 1; ASTM D 3161, ASTM D 3462 and ASTM E 108. However, the Shingles do not conform to these warranties.

43 In order to comply with applicable building codes and industry standards as represented by Atlas, Atlas must manufacture its shingles from a rolled glass fiber felt that is impregnated and coated with an asphaltic material.

44. The asphaltic material used to impregnate, laminate and coat the glass felt is permitted to be compounded with a mineral stabilizer. Glass fibers are permitted to be compounded with the asphalt in addition to, or instead of, the mineral stabilizer. The bottom side of the Shingles is required to be covered with a suitable material such as pulverized sand, talc, or mica to prevent the shingles from sticking together in the package.

45. The weather surface of a shingle must be uniform in finish and may be embossed to simulate a grainy texture. The mineral granules shall cover the entire surface and shall be firmly embedded in the asphalt coating. The granules may project into the mat to a limited degree.

46. The finished Shingles are required to be free of visible defects such as holes, edges, blisters, cracks or indentations and should not have excessive moisture.

47. Throughout the manufacturing process, care must be taken not to introduce moisture into the shingles, as moisture creates gas bubbles that flatten and will expand when exposed to the sun resulting in blistering and cracks in the shingles.

48. Atlas' design and manufacturing process of the Shingles, however, permits moisture to intrude into the Shingles, creating a gas bubble that expands when the Shingles are exposed to the sun resulting in cracking, blistering and premature deterioration of the Shingles. Due to the defect in Atlas' design and manufacturing of the Shingles, the Shingles do not conform to Atlas' express representations and warranties and do not conform to the applicable building codes or industry standards.

B. Atlas Refused to Notify Customers That Defects and Failures are Associated with Its Shingles.

49. Upon information and belief, Atlas has received hundreds of warranty claims alleging the same design and/or manufacturing defect that is the subject of this class action throughout Mississippi and the United States. Upon information and belief, Atlas has improperly rejected some of these warranty claims and settled others in a manner not strictly consistent with the warranty terms and well below the actual cost to repair and replace the Shingles with other non-defective Shingles.

50. Atlas' response to customers' warranty submissions and other reasonable requests for assistance and compensation is woefully inadequate.

51. Specifically, Atlas' response to Plaintiff's and Class Members' warranty claims are inadequate and unconscionable. For instance, after noticing that the Shingles on his houses were cracking, splitting and blistering, as discussed previously, Plaintiff submitted

warranty claims in accordance with Atlas' warranty requirements notifying Atlas of the defects present in the Shingles.

52. Atlas has failed to respond to Plaintiff's warranty claim.

53. Despite receiving complaints from consumers such as Plaintiff and other members of the Class regarding the defect in design and manufacturing, Atlas has refused to convey effective notice to consumers concerning the defects associated with the Shingles and refused to fully repair the damage caused by the premature failure(s) of its product. Instead, Atlas has asserted that the defects in the Shingles are not a manufacturing problem.

54. The damages suffered by Plaintiff were a foreseeable result of Atlas' design and manufacture of a product with the defects discussed herein. Likewise, the manufacturing, production, marketing, distribution, and sale of its defective product are in the complete control of Atlas, and, thus, the defects were foreseeable to Atlas.

55. Atlas has received and continues to receive numerous complaints and claims from homeowners, property owners, developers and installers regarding the failure of Atlas Shingles, and, thus, Atlas knew or should have known that its product was and is defective.

56. Atlas failed to take any steps to notify Plaintiff and the Class members of the defects in its Shingles. Furthermore, Atlas has failed to take steps to adequately compensate Plaintiff and the Class in order to make them whole for the damage they have suffered and continue to suffer as a result of the defective Shingles.

57. As a result of the defects and failures alleged herein, Plaintiff and the Class have suffered actual damages. The Shingles on their homes, residences, buildings, and other structures have and will continue to fail prematurely compared to the time expected

by ordinary consumers, the time marketed by Atlas, and the time warranted by Atlas, resulting in and requiring them to expend large sums of money to repair the damage caused by the defective Shingles and to prevent such damage from continuing.

58. At all relevant times, Atlas had a duty to disclose to Plaintiff and the Class that its Shingles were and are defective, prone to foreseeable and uniform problems such as the problems described herein, and otherwise were inherently flawed in design such that the Shingles are not reasonably suitable for use as an exterior building material.

59. Since the defects in the Shingles are latent and not detectable until manifestation, Plaintiff and the Class members were not reasonably able to discover their Shingles were defective until after installation, even with the exercise of due diligence.

60. The Shingles designed, manufactured, produced, marketed, and sold by Atlas are defectively designed and manufactured such that they fail prematurely, causing damage to the property of Plaintiff and members of the Class and forcing them to repair or replace their Shingles sooner than reasonably expected, marketed, and warranted in order to prevent additional damage such as water leaks which cause damage to the drywall and other personal property within the homes.

61. Plaintiff seeks to recover for themselves and the Class the costs of repairing the damage to their property and replacing their Shingles. They also seek injunctive relief requiring Atlas to replace the defective Shingles and modify the warranty claims process to uniformly provide relief in accordance with its obligations under the law.

**ESTOPPEL FROM PLEADING STATUTES
OF LIMITATIONS OR REPOSE**

62. Plaintiff is within the applicable statute of limitations for the claims presented hereunder because Plaintiff did not discover the defect, and could not reasonably have discovered the defect. Plaintiff has brought the warranty claim prior to the expiration of the warranty.

63. In addition, Atlas is estopped from relying on any statutes of limitation or repose by virtue of their acts of fraudulent concealment, which include Defendant's intentional concealment from Plaintiff and the general public that their Shingles were defective, while continually marketing the Shingles as a durable and suitable product to be installed on homes throughout Mississippi.

64. Atlas had a duty to disclose that its Shingles were defective, unreliable, and inherently flawed in design and/or manufacture.

65. Plaintiff and the Class had no knowledge of, and no reasonable way of discovering, the latent defects found in Atlas' Shingles at the time they purchased the product or when the Shingles were installed on their homes, residences, buildings, and other structures.

66. Atlas did not notify, inform, or disclose to Plaintiff and the Class that there were defects in the Shingles. After discovering the defective nature of the Atlas Shingles, Plaintiff adequately notified Atlas and participated fully in Defendant's warranty claim process.

67. Furthermore, Atlas representatives fraudulently misrepresented to Class members that the damage they observed was not the result of manufacturing defects.

Statements such as these constitute an active effort by Atlas to conceal and misrepresent the true cause of the damage and hide the fact that the product is defective.

68. Because Atlas failed in its duty to notify Plaintiff and Class members that its product was defective and actively attempted to conceal this fact, Atlas should be stopped from asserting defenses based on statutes of limitation or repose.

COUNT I
BREACH OF EXPRESS WARRANTY

69. Plaintiff, individually, and on behalf of all others similarly situated, adopts and incorporates by reference the allegations contained in paragraphs 1 through 68 as though fully set forth herein.

70. Atlas marketed and sold Shingles into the stream of commerce with the intent that the Shingles would be purchased by Plaintiff and members of the Class and it extended express warranties to Plaintiff and Class Members.

71. Through its written warranties, brochures, and marketing materials regarding the durability and quality of the Shingles, Atlas created express warranties that became part of the basis of the bargain with Plaintiff and the members of the Class.

72. Atlas expressly warranted to Plaintiff and Class members that the structural integrity of the Shingles purchased by Plaintiff and Class members was free from defects that would substantially impair their operation or performance and that they would last at least 30 years.

73. Atlas' express warranty is a warranty of future performance.

74. Atlas also expressly represented that the Shingles would conform to all applicable building codes and industry standards.

75. These representations became the basis of the bargain when Plaintiff and the Class members purchased the Shingles. Plaintiff and Class members would not have purchased the Shingles if it was disclosed that the Shingles did not conform to Atlas' express representations and warranties.

76. Atlas breached its express warranties to Plaintiff and the Class in that its Shingles did not, and do not, maintain their structural integrity or perform as promised or conform to all applicable building codes and industry standards. Atlas' Shingles blister and have early granule loss, wear pits, increased moisture absorption, premature failure, reduced life expectancy, and otherwise do not perform as warranted by Defendant.

77. Atlas' warranties fail their essential purpose because they purport to warrant that the Shingles will be free from defects for at least 30 years when in fact the Shingles fall far short of the applicable warranty period. To the contrary, due to the blisters in the Shingles, Atlas' Shingles begin failing after only several years' or less use.

78. Moreover, Atlas' warranties are woefully inadequate to repair and replace failed Shingles, let alone reimburse for any damage suffered to the underlying structure due to the inadequate protection provided by the product. The remedies available in Atlas' warranties are limited to such an extent that they do not provide a minimum adequate remedy. Further, the warranty is inadequate because Atlas asserts that the defect is caused by the weather and/or installation.

79. The limitations on remedies and the exclusions in Atlas' warranties are unconscionable and unenforceable in light of the fact that Atlas knew or should have known that the Shingles suffered from the inherent design and manufacturing defects described herein.

80. Atlas has denied and failed to pay in full to Plaintiff's and Class Members' valid warranty claims.

81. Atlas' breach of its express warranties has caused Plaintiff and the Class actual damages, including, without limitation, the expense of repairing or replacing the Shingles. Replacement is required to prevent on-going and future damage to the underlying structures or interiors of Plaintiff's and Class members' homes and structures.

82. As a direct and proximate result of Atlas' breach of the express warranties, Plaintiff and Class Members have suffered actual and consequential damages.

COUNT II
BREACH OF IMPLIED WARRANTIES

83. Plaintiff, individually, and on behalf of all others similarly situated, adopts and incorporates by reference the allegations contained in paragraphs 1 through 68 as though fully set forth herein.

84. Because Atlas extended an express warranty for the Shingles to Plaintiff and the Class, privity of contract exists between Atlas and Plaintiff and the Class.

85. Atlas is a designer, manufacturer and supplier of the Shingles and for a number of years, marketed, warranted, distributed, and/or sold the Shingles in Mississippi.

86. Atlas manufactured and sold its Shingles to Plaintiff and the Class members, and, in so doing, impliedly warranted to them that the product was of merchantable quality and fit for its intended use.

87. However, Atlas' Shingles were not of merchantable quality and not fit for intended use when they left the factory due to the defects in the Shingles described herein.

88. Atlas's Shingles would not pass without objection in the trade under Atlas' product description.

89. The numerous and serious defects described herein make the Shingles unfit and inappropriate for its intended use as a covering for building exteriors.

90. Even after Plaintiff became aware of the blistering and gave proper notice to Atlas, Atlas failed to provide an adequate remedy.

91. As a result, Atlas breached its implied warranties to Plaintiff and Class members by producing, manufacturing, distributing and selling them a defective product that was unfit for its intended use and for a particular purpose.

92. Also, for the reasons set forth more fully above, the limitations and exclusions contained in the Atlas Warranty, including the purported exclusion of implied warranties, are unconscionable and cause the Atlas Warranty to fail of its essential purpose. Accordingly, such limitations and exclusions should not be enforced against Plaintiff and the Class members.

93. In addition, the alleged disclaimer of implied warranties in the Atlas Warranty is not sufficiently conspicuous and is therefore not enforceable.

94. As a direct and proximate result of Atlas' breach of its implied warranties, Plaintiff and Class Members have suffered actual and consequential damages.

COUNT III
NEGLIGENCE /NEGLIGENT DESIGN

95. Plaintiff, individually, and on behalf of all others similarly situated, adopts and incorporates by reference the allegations contained in paragraphs 1 through 68 as though fully set forth herein.

96. At all times material hereto, Atlas designed and manufactured the Shingles.

97. Atlas had a duty to Plaintiff and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, and marketing of the Shingles either through its own testing or by verifying third-party test results.

98. Atlas had a duty to Plaintiff and Class Members to ensure that the Shingles complied with all applicable building codes and industry standards including, but not limited to, ASTM D 3018, Type 1; ASTM D 3161, ASTM D 3462 and ASTM E 108..

99. Atlas breached its duty by producing and selling inherently defective shingles to Plaintiff and the Class members that did not conform to all applicable building codes and industry standards such as ASTM D 3018, Type 1; ASTM D 3161, ASTM D 3462 and ASTM E 108.

100. Atlas failed to exercise ordinary and reasonable care in the design and manufacture of the Shingles.

101. As described herein, Atlas' defective Shingles have failed in numerous ways, including blistering, early granule loss, wear pits, increased moisture absorption, premature failure, and reduced life expectancy.

102. Atlas further breached its duty by failing to notify Plaintiff and the Class members of the defects in the Shingles they were purchasing and installing and by failing to take any remedial action once Atlas was on notice that its product was defective.

103. Atlas knew or should have known that the Shingles were defective, would fail prematurely, were not suitable for use as an exterior Shingles product, and otherwise were not as warranted and represented by Atlas.

104. Were the design defects known at the time of the manufacture, a reasonable person would conclude that the utility of the product did not outweigh the risk inherent in marketing a product designed in that manner.

105. It was also completely foreseeable to Atlas that Plaintiff and the Class members would rely upon Atlas' marketing claims of long-term durability and a supposedly inclusive warranty when purchasing Atlas Shingles.

106. As a direct and proximate cause of Atlas' negligence, Plaintiff and the Class have suffered actual damages in that they purchased and installed on their homes, residences, buildings, and other structures an exterior Shingles product that is defective and that fails prematurely due to blistering, early granule loss, wear pits, premature failure, reduced life expectancy, moisture penetration, and other inherent defects. On information and belief, the defect has caused damage to Plaintiff's and Class members' existing homes, residences, buildings, and other structures, in addition to damage to the Shingles themselves, by permitting leaks to enter into the homes on which they are installed. These failures have caused and will continue to cause Plaintiff and the Class to incur expenses repairing or replacing their Shingles as well as the resultant progressive property damage.

COUNT IV
FRAUDULENT CONCEALMENT

107. Plaintiff, individually, and on behalf of all others similarly situated, adopts and incorporates by reference the allegations contained in paragraphs 1 through 68 as though fully set forth herein.

108. At all times mentioned herein, Atlas, through its experience, was in a position of superiority to Plaintiff and the Class Members and as such had a duty and obligation to

disclose to Plaintiff the true facts and their knowledge concerning the Shingles; in that they did not conform to all applicable industry standards and building codes such as ASTM D 3018, Type 1; ASTM D 3161, ASTM D 3462 and ASTM E 108.

109. Atlas made the affirmative representations as set forth in this Complaint to Plaintiff, Plaintiff's Builders, the Class and Class Members' builders, and the general public prior to the dates Plaintiff, Plaintiff's Builders, the Class Members and/or Class Members' builders purchased the Shingles, while at the same time concealing the material defects described herein. All of these facts were material to consumers' (such as Plaintiff) purchase decisions.

110. The material facts concealed or not disclosed by Atlas are those which a reasonable person would have considered to be important in deciding whether or not to purchase Shingles.

111. At all times mentioned herein, Atlas intentionally, willfully, and maliciously concealed or suppressed the facts set forth above from Plaintiff and with the intent to defraud as herein alleged.

112. At all times mentioned herein, Atlas misrepresented that its Shingles met the applicable building codes and industry standards. Further, when it denied Plaintiff's warranty claim, Atlas misrepresented that the defects in the Shingle were simply cosmetic rather than a defect in the design and manufacturing of the Shingles.

113. At all times mentioned herein, Plaintiff and members of the Class reasonably relied on Atlas to disclose to those material facts as set forth above. If Atlas had disclosed the above facts to Plaintiff and Class and they had been aware of said facts, they would have either negotiated additional warranty coverage, negotiated a lower price to reflect the

risk or simply avoided the risk all together by purchasing different shingles from one of Atlas' competitors.

114. Atlas continued to conceal the defective nature of its Shingles even after members of the Class began to report problems. Indeed, Atlas continues to cover up and conceal the true nature of the problem. Based on information and belief, Atlas has received thousands of warranty claims concerning its Shingles.

115. As a result of the previous and continued concealment or suppression of the facts set forth above, Plaintiff and the Class members sustained damages in an amount to be determined at trial.

COUNT V
UNJUST ENRICHMENT

116. Plaintiff, individually, and on behalf of all others similarly situated, adopts and incorporates by reference the allegations contained in paragraphs 1 through 115 as though fully set forth herein.

117. Substantial benefits have been conferred on Defendant by Plaintiff and the Class and Defendant has knowingly and willingly accepted these benefits.

118. Defendant either knew or should have known that the payments rendered by Plaintiff and the Class were given and received with the expectation that the Shingles would perform as represented and warranted. For Defendant to retain the benefit of the payments under these circumstances described herein would be inequitable.

119. Defendant's acceptance and retention of these benefits under the circumstances make it inequitable for Defendant to retain the benefits without payment of the value to the Plaintiff and the Class.

120. Defendant, by the deliberate and fraudulent conduct complained of herein, have been unjustly enriched in a manner that warrants restitution.

121. Plaintiff and the Class are entitled to recover from Atlas all amounts wrongfully collected and improperly retained by Atlas, plus interest thereon.

122. As a proximate consequence of Defendant's improper conduct, the Plaintiff and the Class members were injured. Defendant has been unjustly enriched, and in equity, should not be allowed to obtain this benefit.

COUNT VI
DECLARATORY RELIEF

123. Plaintiff, individually, and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 122 as though fully set forth herein.

124. Defendants have acted or refused to act on grounds that apply generally to the Declaratory Relief Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole within the meaning of Fed. R. Civ. P. 23.

125. Plaintiff seeks a ruling that:

- a. The Shingles has a defect which results in premature failure;
- b. Defendant's warranty fails of its essential purpose;
- c. Defendant's warranty is void as unconscionable;
- d. Defendant must notify owners of the defect;
- e. Defendant will reassess all prior warranty claims and pay the full costs of repairs and damages; and

- f. Defendant will pay the costs of inspection to determine whether any Class member's Shingles needs replacement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Noble Brooks, Jr., on behalf of himself and all others similarly situated, prays for a judgment against Atlas Roofing Corporation as follows:

- a. For an Order certifying the Class, pursuant to Rule 23, appointing Plaintiff as representative of the Class, and appointing the law firms representing Plaintiff as counsel for the Class;
- b. For compensatory damages, and all other damages allowable under the law, sustained by Plaintiff and the Class;
- c. For equitable and/or injunctive relief;
- d. For an Order declaring that all Atlas Chalet Shingles have defects that cause them to fail and leak, resulting in blistering of the Shingles and water damage to property and the necessity of the removal and replacement of the Shingles; ordering that all Atlas Shingles manufactured have a defect in workmanship and material that causes failures; ordering that Atlas knew of the defects in its Shingles in that the limitations contained in its purported limited warranties are unenforceable; ordering that Atlas shall re-audit and reassess all prior warranty claims on the Shingles, including claims previously denied in whole or in part, where the denial was based on warranty or other grounds; and ordering that Atlas shall establish an inspection program and protocol to be communicated to Class members that will require Atlas to inspect, upon request, a Class member's structure to determine whether a Shingle failure is manifest;

e. For an Order declaring that Atlas must account and disgorge for the benefit of the Class all or part of the ill-gotten profits it received from the sale of Atlas materials, or ordering Atlas to make full restitution to Plaintiff and the members of the Class

f. For payment of costs of suit herein incurred;

g. For both pre-judgment and post-judgment interest at the maximum rate allowable at law on any amounts awarded;

h. For payment of reasonable attorneys' fees and expert fees as may be allowable under applicable law; and

i. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

^{21st}
This the 20th day of November, 2013.

**NOBLE BROOKS, JR. on behalf of himself
and all other similarly situated**

BY:

JAMES R. REEVES, JR. (MSB #9519)
Reeves & Mestayer, PLLC
P. O. Drawer 1388
Biloxi, MS 39533
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Fax: 228/374-6630
Email: jrr@rmlawcall.com

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

4:13cv187CWR-FKB

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Noble E. Brooks, Jr. on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Yazoo County, MS
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
James R. Reeves, Jr., Esq., Reeves & Mestayer, PLLC
P. O. Drawer 1388, Biloxi, MS 39533
228/374-5151

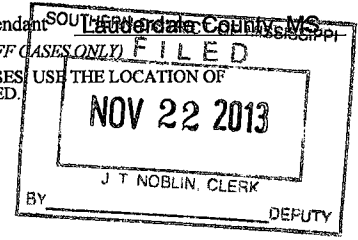
DEFENDANTS

Atlas Roofing Corporation

County of Residence of First Listed Defendant Southern Yazoo County, MS
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)



II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|----------------------------|---|---------------------------------------|
| PTF | DEF | PTF | DEF |
| <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of This State | | Incorporated or Principal Place of Business In This State | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen of Another State | | Incorporated and Principal Place of Business In Another State | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | | Foreign Nation | |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Class Action Fairness Act; 28 USC Sect. 1332(a); 28 U.S. C. Sect. 1391

Brief description of cause:

Class action involving defective shingles designed, manufactured, marketed, advertised & sold by Defendant

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/21/13

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

34643024853