

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BRIAN DAVID SELTZER, on
behalf of himself and all others
similarly situated,

Plaintiff,

v.

ATLAS ROOFING CORPORATION,

Defendant.

CASE NO.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, Brian David Seltzer, (“Plaintiff”) by and through undersigned counsel, on behalf of himself and all other persons and entities similarly situated, sue Defendant, Atlas Roofing Corporation (hereinafter referred to as “Atlas” and/or “Defendant”), and for their Class Action Complaint allege, 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 asserting claims for products liability including negligent design, unjust enrichment and seeking damages and declaratory relief 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 Ohio. 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.

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' 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 cause 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 Ohio, and that these requirements included conformance with certain 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 Ohio 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 the 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, Brian David Setlzer (“Seltzer”), is a citizen and resident of the State of Ohio and is domiciled at 8176 Jordan Ridge Drive, Cleves, Ohio, and his home contains the Shingles.

20. As a result of blistering and premature cracking of the Shingles, Seltzer’s garage ceiling is now deteriorating from water exposure.

21. 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.

22. 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.

23. Atlas claims to be “an industry leader with 17 plants in North America and worldwide product distribution”¹ and represents that its roofing products “are designed to give our customers value, design and long lasting quality.”

JURISDICTION AND VENUE

24. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d)(2) (diversity jurisdiction) and the Class Action Fairness Act, in that (i) there is complete diversity (Plaintiff is a citizen of Ohio and Defendant is domiciled and incorporated in Mississippi and maintains its principal place of business in Mississippi, (ii) the amount in

¹ http://www.atlasroofing.com/general2.php?section_url=141 (June 16, 2013)

controversy exceeds \$5,000,000.00 (Five Million Dollars) exclusive of interests and costs, and (iii) there are 100 or more members of the proposed Plaintiff class.

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

26. Defendant conducts substantial business in Ohio, including the sale and distribution of the Shingles in Ohio, and has sufficient contacts with Ohio or otherwise intentionally avail themselves of the laws and markets of Ohio, so as to sustain this Court's jurisdiction over Defendant.

27. Venue lies in this District, pursuant to 28 U.S.C. §1391, because Plaintiff resides in this Judicial District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this Judicial District. In addition, Atlas does business and/or transacts business in this Judicial District, and therefore, is subject to personal jurisdiction in this Judicial District and resides here for venue purposes.

28. 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 Ohio, including Plaintiff, Atlas obtained the benefits of the laws of Ohio and profited from Ohio commerce.

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

CLASS ACTION ALLEGATIONS

30. 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 that own homes, residences, buildings, or other structures physically located in the State of Ohio 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 Ohio 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.

31. *Numerosity:* The Class is composed of thousands of persons geographically dispersed throughout the State of Ohio, 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.

32. *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.

33. 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 the Shingles conform to the applicable building code and/or relevant industry standards;
- e. Whether Atlas made express warranties to Plaintiff and the Class by representing that the Shingles complied with applicable building codes and certain industry standards;
- f. Whether and when Atlas knew or should have known of the defect;
- g. Whether Atlas concealed from consumers and/or failed to disclose to consumers the defect;
- h. Whether Atlas' expertise and superior knowledge gave rise to a duty to disclose the material facts which were concealed;
- i. Whether Atlas failed to properly disclaim any limitation to pay for installation of replacement Shingles;
- j. 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;

k. Whether Plaintiff and the Class are entitled to all costs associated with replacement of their defective Shingles with non-defective shingles; and

l. Whether Plaintiff and the Class are entitled to restitution and/or disgorgement;

34. *Typicality*: Plaintiff' 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.

35. *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 have 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.

36. *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 Ohio 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

37. 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 code 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.

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

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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 Ohio 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.

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

48. Despite receiving complaints from 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 due to weather damage and/or installation.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

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

57. 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.

58. In addition, Defendant 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.

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

60. 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.

61. 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.

62. Furthermore, Atlas representatives fraudulently misrepresented to the 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.

63. 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
PRODUCT DEFECT IN DESIGN OR FORMULATION
Ohio Revised Code §2307.75 and Similar State Product Liability Statutes

64. Plaintiff, individually, and on behalf of all others similarly situated, repeats, reiterates and re-alleges each and every allegation set forth in the prior paragraphs with the same force and effect as though set forth fully herein.

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

66. 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.

67. Atlas had a duty to Plaintiffs and Class Members to ensure that the Shingles complied with all applicable building codes and industry standards.

68. Atlas breached its duty by producing and selling an inherently defective shingles to Plaintiff and the Class members.

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

70. 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.

71. 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.

72. 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.

73. 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.

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

75. 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 Plaintiffs' 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 Plaintiffs and the Class to incur expenses repairing or replacing their Shingles as well as the resultant progressive property damage.

COUNT II
NEGLIGENCE

76. Plaintiff, individually, and on behalf of all others similarly situated, repeats, reiterates and re-alleges each and every allegation set forth in the prior paragraphs with the same force and effect as though set forth fully herein.

77. Atlas owed a duty to Plaintiff and other members of the Class not to design, market, warrant and sell defective Shingles.

78. Atlas breached its duty to Plaintiff and the other members of the Class.

79. Absent Atlas' breach of its duty, Plaintiff and other members of the Class would not have suffered harm resulting therefrom.

80. As a direct and proximate result of Atlas' misconduct, Plaintiff and the other members of the Class have been damaged in an amount to be proven at trial.

81. In addition to compensatory damages, Plaintiff and other members of the and Class are entitled to punitive damages because Atlas' conduct was gross, oppressive, aggravated or involved a breach of trust or confidence.

82. In addition to damages, Plaintiff and other members of the Class seek injunctive relief. Such relief is proper because Plaintiff and other members of the Class will suffer future harm to their property.

COUNT III
UNJUST ENRICHMENT

83. Plaintiff, individually, and on behalf of all others similarly situated, repeats, reiterates and re-alleges each and every allegation set forth in the prior paragraphs with the same force and effect as though set forth fully herein.

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

85. 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.

86. 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.

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

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

89. 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 IV
DECLARATORY RELIEF

90. Plaintiff, individually, and on behalf of all others similarly situated, repeats, reiterates and re-alleges each and every allegation set forth in the prior paragraphs with the same force and effect as though set forth fully herein.

91. Defendant 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.

92. Plaintiff seeks a ruling that:

- a. The Shingles has a defect which results in premature failure;
- b. Defendant must notify owners of the defect;
- c. Defendant will reassess all prior warranty claims and pay the full costs of repairs and damages; and

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of themselves and all others similarly situated, pray for a judgment against Atlas Roofing Corporation as follows:

- a. For an Order certifying the Class, pursuant to Rule 23, appointing Plaintiff as representatives 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 manufactured from 1999 until the present 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 from 1999 until the present 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.

This 9th day of July, 2013.

Respectfully submitted:

s/ John R. Climaco

John R. Climaco (0011456)

jrcim@climacolaw.com

John A. Peca (0011447)

japeca@climacolaw.com

**CLIMACO, WILCOX, PECA,
TARANTINO & GAROFOLI CO., L.P.A.**

55 Public Square, Suite 1950

Cleveland, OH 44113

Telephone: (216) 621-8484

Telecopier: (216) 771-1632

Patrick G. Warner (0064604)

pgwarn@climacolaw.com

**CLIMACO, WILCOX, PECA,
TARANTINO & GAROFOLI CO., L.P.A.**

35 North Fourth Street, Suite A

Columbus, OH 43215

Telephone: (614) 437-2522
Telecopier: (614) 386-1029

Attorneys for Plaintiff

CIVIL COVER SHEET

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Lists various legal categories and codes.

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, 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):
Brief description of cause:

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 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: