

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA**

LLOYD M. DENSON, JR. and PEGGY  
C. DENSON, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

ATLAS ROOFING CORPORATION,

Defendants.

CASE NO.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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**CLASS ACTION COMPLAINT**

Plaintiffs, Lloyd M. Denson, Jr. and Peggy C. Denson, by and through undersigned counsel, individually and on behalf of all other persons and entities similarly situated, sues the Defendants, Atlas Roofing Corporation, (hereinafter referred to as “Atlas” and/or “Defendants”), and for the Class Action Complaint alleges, upon information and belief as follows:

**NATURE OF ACTION**

1. This is a product liability 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 Plaintiffs 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 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, Plaintiffs 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 Alabama. 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 Plaintiffs 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 Plaintiffs and the Class purchased the shingles or purchased the homes with the Shingles installed.

8. Additionally, Atlas made representations to Plaintiffs 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. Plaintiffs, the Class and their builders/contractors relied upon these representations and warranties which became a basis of the bargain when Plaintiffs, Plaintiffs' 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 for their intended purpose 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 causes 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs and the Class.

13. Atlas knew or should have known of the building code requirements in Alabama, 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 Alabama 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 Plaintiffs 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 Plaintiffs 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. Plaintiffs, Lloyd M. Denson, Jr. and Peggy C. Denson, are citizens and residents of

the State of Alabama and are domiciled at 110 Parliament Road, Maylene, Alabama, and their home contains the Shingles. At the time of the purchase of the house, Mr. and Mrs. Denson were aware of the existence of the Atlas warranty and other representations regarding the quality and performance of the components of the house. Mr. and Mrs. Denson purchased their house based, in part, on the existence of a warranty with the expectation that all of the components of the house, including the Shingles, would be free from defects and would conform to the building code and industry standards.

20. 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.

21. 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.

22. 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**

23. 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 (Plaintiffs are citizens of Alabama and Defendant is domiciled and incorporated in Mississippi and maintains its principal place of business in Mississippi, (ii) the amount in 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 Plaintiffs’ class.

24. This Court also has subject matter jurisdiction over this class action pursuant to 28

U.S.C. § 1332(a) because the Plaintiffs and Atlas are of diverse citizenship and the matter in controversy exceeds seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs.

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

26. Venue lies in this District, pursuant to 28 U.S.C. §1391, because Plaintiffs reside in this Judicial District, and a substantial part of the events or omissions giving rise to Plaintiffs' 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.

27. 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 Alabama, including Plaintiffs, Atlas obtained the benefits of the laws of Alabama and profited from Alabama commerce.

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

### **CLASS ACTION ALLEGATIONS**

29. Plaintiffs bring this class action pursuant to Rule 23 of Federal Rule of Civil Procedure, and case law thereunder individually and on behalf of 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 Alabama 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 Alabama 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. Plaintiffs reserve the right to amend the class definition.

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

31. *Commonality:* The critical question of law and fact common to the Plaintiffs' 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.

32. 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs and the Class are entitled to all costs associated with replacement of their defective Shingles with non-defective shingles; and
- s. Whether Plaintiffs and the Class are entitled to restitution and/or disgorgement;

33. *Typicality*: Plaintiffs' 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.

34. *Adequate Representation*: Plaintiffs will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of the Class. Plaintiffs 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.

35. *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 Alabama 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**

36. Atlas represents to Plaintiffs 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 Plaintiffs and Class Members purchased the Shingles, and Plaintiffs 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.

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

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.**

45. 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 Alabama 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.

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

47. Despite receiving complaints from consumers 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.

48. The damages suffered by Plaintiffs 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.

49. 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.

50. Atlas failed to take any steps to notify Plaintiffs and the Class members of the defects in its Shingles. Furthermore, Atlas has failed to take steps to adequately compensate Plaintiffs 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.

51. As a result of the defects and failures alleged herein, Plaintiffs 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.

52. At all relevant times, Atlas had a duty to disclose to Plaintiffs 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.

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

54. 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 Plaintiffs 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.

55. Plaintiffs seek 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**

56. Plaintiffs are within the applicable statute of limitations for the claims presented hereunder because Plaintiffs did not discover the defect, and could not reasonably have discovered the defect.

57. 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 Plaintiffs 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 Alabama.

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

59. Plaintiffs 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.

60. Atlas did not notify, inform, or disclose to Plaintiffs and the Class that there were defects in the Shingles.

61. Furthermore, Atlas representatives fraudulently misrepresents 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.

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

**COUNT I**  
**BREACH OF EXPRESS WARRANTY**

63. Plaintiffs, individually, and on behalf of all others similarly situated, adopt and incorporate by reference the allegations contained in paragraphs 1 through 62 as though fully set forth herein.

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

65. 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 Plaintiffs and the members of the Class.

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

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

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

69. These representations became the basis of the bargain when Plaintiffs and the Class members purchased the Shingles. Plaintiffs and Class members would not have purchased the Shingles, or the structure on which they were installed, if it was disclosed that the Shingles did not conform to Atlas' express representations and warranties.

70. Atlas breached its express warranties to Plaintiffs 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.

71. 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.

72. 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.

73. 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.

74. Atlas has denied and failed to pay in full to Plaintiffs' and Class Members' valid warranty claims.

75. Atlas' breach of its express warranties has caused Plaintiffs 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 Plaintiffs' and Class members' homes and structures.

76. As a direct and proximate result of Atlas' breach of the express warranties, Plaintiffs and Class Members have suffered actual and consequential damages, including emotional distress



and mental anguish.

**COUNT II**  
**BREACH OF IMPLIED WARRANTIES**

77. Plaintiffs, individually, and on behalf of all others similarly situated, adopt and incorporate by reference the allegations contained in paragraphs 1 through 76 as though fully set forth herein.

78. Because Atlas extended an express warranty for the Shingles to Plaintiffs and the Class, privity of contract exists between Atlas and Plaintiffs and the Class. Alternately, no privity is necessary as the Plaintiffs and those similarly situated that have suffered emotional distress and mental anguish.

79. 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 Alabama.

80. Atlas manufactured and sold its Shingles to Plaintiffs 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.

81. 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.

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

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

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

85. As a result, Atlas breached its implied warranties to Plaintiffs 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.

86. 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 Plaintiffs and the Class members.

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

88. As a direct and proximate result of Atlas' breach of its implied warranties, Plaintiffs and Class Members have suffered actual and consequential damages, including emotional distress and mental anguish.

### **COUNT III**

#### **NEGLIGENCE /NEGLIGENT DESIGN**

89. Plaintiffs, individually, and on behalf of all others similarly situated, adopt and incorporates by reference the allegations contained in paragraphs 1 through 88 as though fully set forth herein.

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

91. Atlas had a duty to Plaintiffs 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.

92. Atlas had a duty to Plaintiffs 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..

93. Atlas breached its duty by producing and selling an inherently defective shingles to Plaintiffs 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.

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

95. 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.

96. Atlas further breached its duty by failing to notify Plaintiffs 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.

97. 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.

98. 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.

99. 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.

100. As a direct and proximate cause of Atlas' negligence, Plaintiffs 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 IV**  
**FRAUDULENT CONCEALMENT**

101. Plaintiffs, individually, and on behalf of all others similarly situated, adopt and incorporates by reference the allegations contained in paragraphs 1 through 100 as though fully set forth herein.

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

103. Atlas made the affirmative representations as set forth in this Complaint to Plaintiffs, Plaintiffs' Builders, the Class and Class Members' builders, and the general public prior to the dates Plaintiffs, Plaintiffs' 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 Plaintiffs) purchase decisions.

104. 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.

These misrepresentations and suppressions were done systematically and uniformly with respect to all the putative class members, such that no individual issues override the common questions of law or fact.

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

106. At all times mentioned herein, Atlas misrepresented that its Shingles met the applicable building codes and industry standards. Further, when it denied Plaintiffs' 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.

107. At all times mentioned herein, Plaintiffs 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 Plaintiffs 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.

108. 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.

109. As a result of the previous and continued concealment or suppression of the facts set forth above, Plaintiffs and the Class members sustained damages in an amount to be determined at trial for compensatory and punitive damages, including emotional distress and mental anguish.

**COUNT V**  
**VIOLATION OF ALABAMA'S EXTENDED MANUFACTURERS LIABILITY**

**DOCTRINE**

110. Plaintiffs, individually, and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in paragraphs 1 through 109 as though fully set forth herein.

111. Plaintiffs and putative class members are parties, persons or entities protected under Alabama's Extended Manufacturers Liability Doctrine (hereinafter referred to as "AEMLD").

112. The Defendant is responsible for its actions or inactions that caused the Plaintiffs and the putative class they seek to represent.

113. The Defendant placed or caused to be placed, the Shingles made the basis of this action into the stream of commerce.

114. The Shingles at issue are products covered under AEMLD, as they are not intended to become a permanent part of the structure and not expected to last for the lifetime of the structure. It is intended and certainly foreseeable that the roof shingles would be expected to be replaced or repaired after the 30 year warranty and in a time which is less than the life expectancy of the structure.

115. The Defendant Atlas was negligent and/or willful and wanton in the manufacturing, designing or selection of materials and oversight of the production of the Atlas brand "Chalet Shingles."

116. The Chalet Shingles reached the consumer in substantially the same condition as manufactured, designed and sold by the Defendant and were not modified by the Plaintiffs or putative class members.

117. The "Chalet Shingles" were defective in that they were unreasonably dangerous when used for their intended purpose and caused damage to the structure and other components and

personal property of the Plaintiffs and putative class.

118. The Plaintiffs and putative class suffered property damage and physical injury including emotional distress and mental anguish.

119. That the damages and injury complained of by the Plaintiffs and putative class was the direct and proximate result of the Defendants' violations of AEMLD as set out in the entirety of the complaint.

## **COUNT VI**

### **UNJUST ENRICHMENT**

120. Plaintiffs, individually, and on behalf of all others similarly situated, adopt and incorporate by reference the allegations contained in paragraphs 1 through 119 as though fully set forth herein.

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

122. Defendant either knew or should have known that the payments rendered by Plaintiffs 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.

123. 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 Plaintiffs and the Class.

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

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

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

**COUNT VII**  
**DECLARATORY RELIEF**

127. Plaintiffs, individually, and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in paragraphs 1 through 126 as though fully set forth herein.

128. Defendant has 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.

129. Plaintiffs seeks a ruling that:

- a. The Shingles have 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.



**WHEREFORE, PREMISES CONSIDERED**, the Plaintiffs, Lloyd M. Denson, Jr. and Peggy C. Denson, individually, and on behalf of 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 Plaintiffs as representative of the Class, and appointing the law firms representing Plaintiffs as counsel for the Class;

b. For compensatory damages, and all other damages allowable under the law, sustained by Plaintiffs and the Class, including damages for emotional distress and mental anguish and punitive damages, if allowable;

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

Respectfully submitted this the 25<sup>th</sup> day of February 2014.

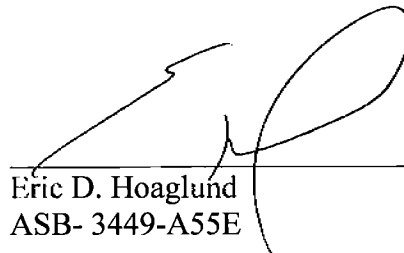


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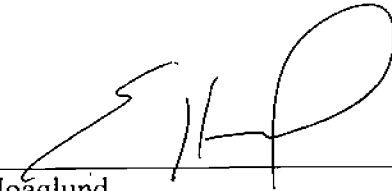
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**DEMAND FOR JURY TRIAL**

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

  
Eric D. Hoaglund

**DEFENDANTS TO BE  
SERVED BY PLAINTIFF'S COUNSEL  
VIA CERTIFIED MAIL  
AT THE FOLLOWING ADDRESS:**

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