

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: ATLAS ROOFING CORPORATION CHALET SHINGLE PRODUCTS LIABILITY LITIGATION	MDL DOCKET No.: 2495 1:13-MD-2495-TWT
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This document relates to:

PENNY SEABERG, individually and on behalf of all other similarly situated, Plaintiff, v. ATLAS ROOFING CORPORATION, Defendant.	No.: 1:14-cv-03179-TWT
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**PLAINTIFF PENNY SEABERG'S REPLY BRIEF
IN SUPPORT OF MOTION FOR CLASS CERTIFICATION**

I. INTRODUCTION

Plaintiff incorporates and joins all sections of *Dishman et al. v. Atlas Roofing Corporation*, Docket No. 1:13-CV-02195 (“Dishman Reply Brf.”) as further identified herein. Accordingly, this Reply Brief will be strictly limited to facts and legal issues unique to Penny Seaberg and members of the proposed Florida class.

If Plaintiff prevails in showing that the manufacturing process caused the defect in the shingles and Atlas knew about the defect, she will have proven the core element of liability for breach of warranty and a claim pursuant to the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”). Because Plaintiff has satisfied the requirements for class certification, the proposed Florida class should be certified.

II. TRIAL PLAN

Plaintiff incorporates by reference the facts and arguments set forth in the Section II (“Trial Plan”) of the Dishman Reply Brief.

III. THE PROPOSED CLASS SATISFIES ALL REQUIREMENTS OF RULE 23(B)(3)

Because Atlas primarily disputes class certification by alleging that individual issues predominate over common issues, Plaintiff begins by establishing predominance and then discusses the requirements of Rule 23(a) and certification

pursuant to Rule 23(c)(4). The Eleventh Circuit recently offered a three-step approach to determine whether predominance is satisfied. *See Brown v. Electrolux Home Products, Inc.*, 2016 U.S. App.. LEXIS 5112, at *14 (11th Cir. Mar. 21, 2016). First, the district court must “identify the parties’ claims and defenses and their elements.” *Id.* Second, the district court should “classify these issues as common questions or individual questions by predicting how the parties will prove them at trial.” *Id.* Third, the district court should determine whether common issues predominate over the individual issues. *Id.* Application of this three-part approach to Plaintiff’s claims for breach of warranty and fraudulent concealment further proves that common questions predominate over individual ones.

A. The Warranty Claims Satisfies the Predominance Requirement Because Plaintiff Can Prove Defect and Prior Knowledge on a Classwide Basis.

1. The Elements of the Warranty Claims and Atlas’s Defenses.

Plaintiff argues that Atlas breached its express warranty when it provided defective shingles to class members. To prevail on her breach of express warranty claim, Plaintiff must show: (1) the sale of goods; (2) the express warranty; (3) breach of the warranty; (4) notice to seller of the breach; and (5) the injuries sustained by the buyer as a result of the breach. *See Dunham-Bush, Inc. v. Thermo-Air Serv., Inc.*, 351 So. 2d 351, 353 (Fla. 1977).

Atlas has identified a number of defenses to Plaintiff's breach of warranty claim: (1) class members did not provide Atlas with notice of the defect or an opportunity to cure; (2) the warranty may not apply to certain class members, for example – subsequent home owners; (3) a manufacturing defect did not cause Plaintiff's shingles to fail; (4) the statute of limitations bars certain class members' claims; and (6) class members have individualized damages determinations. As discussed below, all of these defenses implicate evidence common to the class or present individualized issues that do not predominate over the core common issues – the existence of a manufacturing defect and Atlas's knowledge of the defect.

2. Classification of Common and Individual Issues.

“Common questions are ones where the same evidence will suffice for each member, and individual questions are ones where the evidence will vary from member to member.” *Brown*, 2016 U.S. App. LEXIS 5112, at *14. Here, Plaintiff can prove the prima facie case of her warranty claim with common evidence. As detailed in Plaintiffs Dishmans' Opening Brief in Support of Class Certification (ECF #296-1) (“Dishman Opening Brf.”), at 12-14, Plaintiff's expert, Dean Rutila, will testify that the shingles suffer from a common manufacturing defect manifested by a combination of blistering, cracking and granule loss that was visible on all 351 roofs he inspected and confirmed in the laboratory; and, as a

result of the common defect, roofs with Atlas overlay shingles have effectively failed and need to be replaced because they cannot reliably withstand reasonably foreseeable weather events that will inevitably cause the roof to blow off or leak. Anthony Mattina, who has replaced Chalet shingles on more than 1,000 roofs in the Atlanta area due to this premature failure, will confirm Rutila's opinion and testify that the shingles are not fit for their intended purpose.¹ Moreover, the common evidence will show that Atlas warranted that its shingles were free from defect and excessive granule loss, *id.*, at 5-8, and that Atlas uniformly denied warranty claims for cracks, blisters and granule loss in the absence of a leak.²

With respect to notice, the class will rely on common evidence of consumer complaints to establish that the notice requirement of Atlas's warranties has been satisfied for all class members. At least 96 warranty claims have been filed in

¹ Plaintiff also contends that the shingles are defective and violate applicable warranties because they are unsightly. While denying liability, Atlas agrees that blistering affects aesthetics and a shingle fails if it is not serving its aesthetic function. *See* Dep. of Meldrin Collins (ECF #296-10), at 58 (228:23-229:6) & **Tab 1** at 91:6-8.

² While Atlas paid some warranty claims for customer relations purposes, Atlas maintains that the problems at issue are not caused by manufacturing problems or covered by its warranties. *See* Dep. of Glynese R. Thomas (ECF #296-16), at 32 (125:1-17) (cracked shingle without leak is not a manufacturing defect); 33 (126:16-19) (blistering without a leak is not a defect); 33 (126:23-127:4) (granule loss without a leak is not a defect); & 55 (215:14) (Atlas's position is that blistering is not a manufacturing defect).

Florida. Plaintiff's Opening Brief in Support of Class Certification (ECF #299-1) ("Seaberg Opening Brf."), at 3. Numerous courts have found that a defendant has constructive notice of a defect sufficient to meet the notice requirements of a warranty for all class members when such a large number of consumers bring the defect to its attention. *See, e.g., Muehlbauer v. GMC*, 431 F. Supp. 2d 847, 859 (N.D. Ill. 2006) (consumer complaints provide constructive notice to manufacturers, which satisfies the notice requirement because requiring every single member of a class to provide notice "is not a reasonable proposition"); *Martin v. Ford Motor Co.*, 765 F. Supp. 2d 673, 683 (E.D. Pa. 2011) (widespread complaints are sufficient to satisfy notice requirement); *Samuel-Bassett v. Kia Motors Am., Inc.*, 613 Pa. 371, 414 (2011) (finding that the class could prove notice and opportunity to cure through common evidence at trial where consumers notified the manufacturer of the defect and the manufacturer failed to repair the defect during production years). Because Plaintiff will rely on common evidence to satisfy the notice requirement, notice should be considered a common issue.

Regardless of whether the notice requirement can be satisfied in this way, Plaintiff will prove, through common evidence, that Atlas has waived the requirement. In handling thousands of warranty claims involving the shingles, Atlas did not ask claimants to prove they had filed the claim within 30 days of

discovering a problem and, in fact, never denied a claim based on the notice requirement. Declaration of Amanda K. Mkamanga (Apr. 11, 2016) (“Mkamanga Dec.”), ¶3. (Tab 2). Indeed, Atlas did not even enforce the requirement when it knew the claimant knew of a problem more than 30 days before filing the claim. *Id.* Such evidence is sufficient to establish waiver. *See, e.g., RHL Properties, L.L.C. v. Neese*, 293 Ga. App. 838, 840-41 (2008) (“wherever a contract provides for the forfeiture of rights on account of the failure of one of the parties to comply with certain express conditions as to notice ... courts will readily seize upon any fact or circumstance ... tending to show a waiver of strict compliance, and will seek to avoid the forfeiture and to leave the actual merits of the case open to investigation.”) (internal citation omitted). Routinely failing to comply with the notice requirement in its ordinary business dealings with class members, Atlas should not be permitted to use the requirement to avoid certification.³ Regardless, whether Atlas has waived the requirement is a common issue, not an individualized one.

Even if the Court declines to find that Atlas waived its right to notice, denying Plaintiff a remedy for Atlas’s wrongful breach of warranty because

³ Regardless, notice is not a barrier to the 96 Floridians who filed warranty claims. The claims themselves, which Atlas considered without complaint regarding timing, satisfy the notice requirement.

Plaintiff allegedly did not provide notice runs counter to the UCC. Commentary to the UCC specifically provides that pre-suit notice “is designed to defeat commercial bad faith, not to deprive a good-faith consumer of his remedy.” UCC § 2-607(3)(a) cmt. 4. Courts have cited this comment regarding the liberal application of UCC remedies and the general purpose of the notice requirement and concluded that a defendant *must establish prejudice* from any alleged failure of notice in order to bar a plaintiff’s claim. *Wal-Mart v. Wheeler*, 262 Ga. App. 607, 609-11 (2003); *Terrill v. Electrolux Home Prods.*, 753 F.Supp.2d 1272, 1287 (N.D. Ga. 2010) (*citing Wheeler* and holding defendant’s notice argument failed where no evidence of prejudice). Because Atlas failed to demonstrate prejudice resulting from any alleged absence of notice, the issue of pre-suit notice does not defeat Plaintiff’s warranty claims.

Common evidence will also be used to prove that Atlas had prior knowledge of the defect, strengthening Plaintiff’s claim that certain limitations of the warranty are unconscionable. Dishman Opening Brf., at 29-31. Atlas argues that the warranties changed over time (for example, those issued after 2002 only cover leaks) and require individualized determinations of whether class members can avail themselves of the warranty. However, Plaintiff contends that the warranties all cover inherent manufacturing defects, without regard to whether a roof has

leaked and granule loss after six months. *Id.*, at 6-7. The meaning of the warranties is a common issue that must be resolved the same way for each class member. If the warranty is construed in Plaintiff's favor, no individualized determinations will be needed. Even if the warranties are construed to only apply to leaks, if the jury finds that Atlas concealed the defect, leading the Court to find the alleged limitation unconscionable, the warranties still will uniformly cover all class members.

Furthermore, Atlas argues that its express warranty does not benefit some class members because they are not the direct purchasers of the shingles. Under Florida law, however, remote purchasers can enforce the express warranty against the manufacturer "where the express warranty was intended to benefit subsequent owners." *Aprigliano v. Am. Honda Motor Co.*, 979 F. Supp. 2d 1331, 1340 (S.D. Fla. 2013). Whether Atlas's express warranty was intended to benefit subsequent owners of homes with shingles is a question common to the class. Plaintiff asserts that Atlas's express warranties are intended to benefit the ultimate consumer, including both the original and subsequent owners of homes with Atlas shingles. *See, e.g., Tab 3* (extending coverage to homeowners and subsequent owners). Where warranties clearly extend coverage, Florida courts have permitted remote purchasers to allege breach of express warranty claims. *See, e.g., Mesa v. BMW of*

N. Am., L.L.C., 904 So. 2d 450, 457-58 (Fla. 2005) (holding the plaintiff, a subsequent purchaser who was not in privity of contract with the manufacturer, was entitled to enforce the terms of the manufacturer's warranty because the warranty extended to subsequent purchasers); *Fischetti v. Am. Isuzu Motors, Inc.*, 918 So. 2d 974, 976 (Fla. 2005) (“The manufacturer can hardly be heard to resurrect a common law requirement of privity when it has itself voluntarily provided a warranty that runs in favor of remote purchasers of its product”). Atlas’s affirmative defenses regarding the applicability of the warranty to class members do not effect the predominance analysis because they present issues common to the class.

3. Common Issues Predominate Over Individual Issues.

Atlas’s remaining arguments concerning causation, statute of limitations, damages, and privity do not defeat predominance. Rule 23(b)(3) “does not require a plaintiff. . . to prove that each elemen[t] of [her] claim [is] susceptible to classwide proof.” *Amgen, Inc. v. Conn. Ret. Plans & Tr. Funds*, 133 S. Ct. 1184, 1196 (2013) (citation omitted). Instead, “[t]he predominance requirement is satisfied ‘if resolution of some of the legal or factual questions that qualify each *class member’s case* as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject

only to individualized proof.” *Catholic Health Care W. v. US Foodserv. (In re U.S. Foodserv. Inc. Pricing Litig.)*, 729 F.3d 108, 118 (2d Cir. 2013) (internal citation omitted) (emphasis added). Stated differently, “[a] single common issue may be the overriding one in litigation, despite the fact that the suit also entails numerous remaining individual questions.” *Buford v. H & R Block*, 168 F.R.D. 340, 356 (S.D. Ga. 1996) (citing 1 Newberg on Class Actions § 4.25). The common issues of product defect and Atlas’s knowledge of the defect are obviously more substantial and complicated than any individual ones.

That conclusion is particularly true here because the individual issues Atlas enthusiastically points to arise only as a result of its affirmative defenses. The Eleventh Circuit has recently reaffirmed the well-established rule that individual affirmative defenses do not defeat predominance. *Brown*, 2016 U.S. App. LEXIS 5112 at *28-29 (“The general rule, regularly repeated by courts in many circuits, is that ‘[c]ourts traditionally have been reluctant to deny class action status under Rule 23(b)(3) simply because affirmative defenses may be available against individual members”). Atlas itself recognizes that the issues of causation and statute of limitations are affirmative defenses.⁴ Any affirmative defenses remaining

⁴ See Atlas Roofing Corp.’s Answer to Plaintiffs Amended Class Action Complaint (“Answer”) (August 13, 2014) (Doc. No. 4) at 3-5 (Affirmative Defense No. 8 –

after resolution of the common issues relating to Plaintiff's liability case, as discussed above, can be resolved in the second phase of the litigation.

a) Causation

Atlas contends that individual issues of causation will predominate, namely – what may have caused the roofs to blister, crack and loose granules other than a manufacturing defect.⁵ But Atlas simply restates its defense on the merits, which is not relevant to class certification.⁶

A jury could find, based on the testimony of Plaintiff's experts and Atlas's own documents, that excessive moisture in the manufacturing process caused a

(Limitations) & Affirmative Defenses Nos. 14,16, 18, 19, 20, 21, 22 – (Causation)).

⁵ Atlas suggests that some or all of these problems could also be the result of installation errors, design errors or storm damage. Nonetheless, Atlas admits that moisture in the manufacturing problem contributed to blistering. **Tab 4**, at 32:20-24 (agreeing that moisture in the manufacturing process contributed to the blistering of the Chalet overlay shingles) and it was unable to solve the blistering problem. **Tab 5**, at 92:9-12; 215:22-216:1.

⁶ See *Gunnells v. Healthplan Servs.*, 348 F.3d 417, 428 (4th Cir. 2003) (“The sufficiency of the evidence as to proximate cause presented by Plaintiffs goes to the merits of Plaintiffs’ case - an issue the Supreme Court has held courts may not consider in ruling on a motion for class certification”) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974)).

defect in every shingle that existed at the time it was sold,⁷ and it could reject Atlas's arguments about alternative causes, without the need for a roof by roof analysis. *See, e.g., Sanchez-Knutsen v. Ford Motor Co.*, 310 F.R.D. 529, 538 (S.D. Fla. 2015). Plaintiff, therefore, can establish a prima facie case of causation based upon common evidence. Atlas can argue that an intervening cause, such as a storm, was legally responsible for the damage suffered by a particular class member, but Atlas bears the burden of proof on this defense, *see, e.g., Morensi v. Evans*, 257 Ga. App. 670, 677 (2002), and its proof can be assessed in the second phase without creating predominance problems.⁸ *See, e.g., Brooks v. GAF Materials Corp.*, 2012 U.S. Dist. LEXIS 150717, at *18 (D.S.C. Oct. 19, 2012) (certifying class of owners of allegedly defective decking despite GAF's argument that "other things could have caused the shingles to fail such as improper installation or handling").

⁷ *See* Rutila Dep. (ECF #296-22), at 51 (198:14-17); 62 (242:15-21) (moisture in manufacturing process likely cause of blistering); 51 (198:2-7) (moisture in manufacturing process contributes to cracking) & (198:8-11) (likely connection between moisture in manufacturing process and loss of granule).

⁸ Atlas recognizes that causation is an affirmative defense. *See* Atlas's Answer at 6-8 (Affirmative Defenses Nos. 14, 16, 19, 20, 21, 22).

b) Statute of Limitations, Wind Damage, and Damages.

Individualized issues of statute of limitations and damages, as a matter of law, rarely predominate and, thus, typically do not defeat class certification. *See, e.g., Brooks*, 2012 U.S. Dist. LEXIS 150717, at *24-25, *clarified on denial of reconsideration*, 2013 U.S. Dist. LEXIS 15842 (D.S.C. Feb. 6, 2013) (inquiries into the statute of limitations “do not prevent class certification and the statute of limitations is not a complete bar to class certification in the Fourth Circuit.”); *Brown*, 2016 U.S. App. LEXIS 5112, at *26 (the need for individualized proof of damages alone will *not* defeat class certification); *Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir. 1975) (“The amount of damages is invariably an individual question and does not defeat class action treatment.”). That is particularly true in a case such as this one, where the common issues of defect and Atlas’s knowledge drive the litigation and any individual issues can be readily resolved in a second phase of the proceedings.

Atlas’s argument that proving damages will require complicated individualized determinations is based on a damages theory that Plaintiffs have not asserted. Rutila found that, at each property he inspected, “at least ten percent of the shingles have blisters, granule loss and/or cracking” (SGH Report, at 50) and concluded that each roof needed to be replaced. According to Atlas, Rutila’s

conclusions require Plaintiff to inspect each class member's roof to show that at least ten percent of the shingles on a roof are damaged to recover replacement costs. However, that is not Rutila's opinion. His opinion – shared by Mattina – is that *all* the shingles must be replaced because none can withstand foreseeable weather events. *Id.*, at 53. Rutila has calculated replacement costs on a per square foot basis (subject to regional adjustments and complexity), *id.*, allowing class members to easily prove simply by showing the size of his or her roof. Even if that were not the case, class members can prove actual damages using estimates they obtain from roofers. *See, e.g., Allapattah Servs. v. Exxon Corp.*, 333 F.3d 1248, 1256-58, 1261 (11th Cir. 2003).

Similarly, statute of limitations issues regarding the warranty claims can be handled in a second phase without creating predominance problems. Under its own analysis, Atlas has no statute of limitations defense with regard to a large percentage of the proposed class who purchased their shingles within four years of the filing of this action. For other class members, Atlas will have an opportunity in the second phase to discover the facts and obtain an individualized determination for each class member who participates.

B. The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) Claim Satisfies the Predominance Requirement Because Plaintiff Can Prove Defects and Prior Knowledge on a Classwide Basis.

1. The Elements of the FDUTPA Claim and Atlas’s Defenses.

Plaintiff also argues that Atlas engaged in deceptive trade practices, for example, by concealing the defect in the shingles from class members. To prevail, Plaintiff must show: “(1) a deceptive act or unfair practice; (2) causation; and (3) actual damages.” *Rollins, Inc. v. Butland*, 951 So. 2d 860, 869 (Fla. 2006). Florida Courts have generally held that these elements are susceptible to common proof such that class certification is appropriate. *See, e.g., Id.*, at 883; *Latman v. Costa Cruise Lines, N.V.*, 758 So. 2d 699, 702-04 (Fla. 2000); *Fitzpatrick v. Gen. Mills, Inc.*, 263 F.R.D. 687 (S.D. Fla. 2010), *vacated & remanded on other grounds*, 635 F.3d 1279 (11th Cir. 2011).

As its defense, Atlas asserts that Plaintiff cannot uniformly show reliance on Atlas’s representations about the shingles or damages. As discussed below, Atlas’s defenses either do not apply to Plaintiff’s claims or do not predominate.

2. Classification of Common and Individual Issues.

As previously demonstrated in Plaintiff’s Opening Brief, nearly all of the elements of a FDUTPA claim can be established by common proof. Plaintiff’s Brief in Support of Class Cert. (ECF #299), at 18-20. In sum, whether Atlas engaged in

unfair and deceptive trade practices turns on Atlas's common course of conduct of failing to tell customers about the defective nature of the shingles. As a result, class members currently own shingles that have blistered, cracked, and shown granule loss and, therefore, failed before the end of the warranty period.

Atlas maintains that class members cannot assert claims under the FDUTPA because they did not rely on uniform representations as to the shingles. This issue, however, does not effect the predominance inquiry because class members do not need to allege reliance. To succeed under FDUTPA, "the question is not whether the plaintiff *actually relied* on the alleged deceptive trade practice, but whether the practice *was likely to deceive a consumer acting reasonably in the same circumstances.*" *Davis v. Powertel, Inc.*, 776 So. 2d 971, 974 (Fla. 2000) (emphasis added); *accord Fitzpatrick*, 263 F.R.D., at 695; *Latman*, 758 So. 2d, at 703 (*quoting Dix v. Am. Bankers Life Assurance Co.*, 429 Mich. 410, 418 (1987)) ("We hold that members of a class proceeding under [FDUTPA] need not individually prove reliance on the alleged misrepresentations. It is sufficient if the class can establish that a reasonable person would have relied on the representations").

Atlas's only remaining defense as to the calculation of damages raises individualized issues that do not predominate.

3. Common Issues Predominate Over Individual Issues.

As discussed above, damages involve individualized inquiries that do not predominate over the common issues of defect and knowledge. *See* discussion *surpra*.

IV. THE PROPOSED CLASS IS ASCERTAINABLE AND SATISFIES ALL REQUIREMENTS OF RULE 23(A).

Plaintiffs have shown that the class is ascertainable, the requirements of Rule 23(a) have been met, and certification under Rule 23(b)(3) is appropriate, as many courts have found in similar class actions involving defective construction materials and other products.⁹ *See, e.g., Thomas v. La.-Pac. Corp.*, 246 F.R.D. 505 (D.S.C. 2007). Nonetheless, Atlas asserts that the class is not ascertainable and – without any real analysis, using less than a page of its brief – challenges the existence of commonality, typicality and adequacy. Atlas is wrong for the reasons set forth in Section IV (“The Proposed Class Is Ascertainable And Satisfies All Requirements Of Rule 23(A)”) of the Dishman Reply Brief incorporated here by reference.

V. ALTERNATIVELY, THE COMMON ISSUES MAY BE CERTIFIED PURSUANT TO RULE 23(C)(4)

⁹ Because all members of the proposed Rule 23(b)(3) class are seeking damages, Plaintiffs no longer request certification under Rule 23(b)(2).

Plaintiff incorporates by reference the facts and arguments set forth in Section V (“Alternatively, The Common Issues May Be Certified Pursuant To Rule 23(C)(4)”) of the Dishman Reply Brief.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant her Motion for Class Certification.

DATED: APRIL 11, 2016.

Respectfully submitted,

/s/Daniel K. Bryson

Daniel K. Bryson
Whitfield Bryson & Mason LLP
900 W. Morgan Street
Raleigh, NC 27603
Tel: 919-600-5000
Fax: 919-600-5035
Email: dan@wbmlp.com
Plaintiff's Co-Lead Counsel

Christopher L. Coffin
Pendley, Baudin & Coffin, LLP
1515 Poydras Street, Suite 1400
New Orleans, LA 70112
Tel: 504-355-0086
Fax: 504-523-0699
Email: ccoffin@pbclawfirm.com
Plaintiff's Co-Lead Counsel

Kenneth S. Canfield
GA Bar No.: 107744
Doffermyre Shields Canfield &
Knowles, LLC
1355 Peachtree Street, Suite 1600
Atlanta, GA 30309
Tel: 404-881-8900
Email: kcanfield@dsckd.com
Plaintiff's Liaison Counsel

On the Brief:

Gary E. Mason
Ben Branda
Whitfield Bryson & Mason LLP
1625 Massachusetts Ave, Suite 605
Washington, DC 20036
Tel: 202-429-2290
Fax: 202-429-2294
Email: gmason@wbmlp.com
bbranda@wbmlp.com

Stan Baudin
Pendley, Baudin & Coffin, LLP
1515 Poydras Street, Suite 1400
New Orleans, LA 70112
Tel: 504-355-0086
Fax: 504-523-0699
Email: sbaudin@pbclawfirm.com

Counsel for Plaintiff

LOCAL RULE 7.1 COMPLIANCE CERTIFICATE

Pursuant to L.R. 7.1D, this is to certify that the foregoing pleading complies with the font and point selections approved by the Court in L.R. 5.1B. The foregoing pleading was prepared on a computer using the Times New Roman font (14 point).

This the 11th day of April, 2016.

/s/ Daniel K. Bryson

Daniel K. Bryson

CERTIFICATE OF SERVICE

I, Daniel K. Bryson, do hereby certify that the foregoing was electronically filed through the CM/ECF system for the Northern District of Georgia, which will send a notice of electronic filing to the following attorneys of record:

Joel G. Pieper
William M. Ragland, Jr.
Womble Carlyle Sandridge & Rice,
LLP
271 17th Street, N.W., Suite 2400
Atlanta, GA 30363-1014
Email: jpiper@wcsr.com
Email: wragland@wcsr.com

Keith A. Clinard
Womble Carlyle Sandridge & Rice,
LLP
One West Fourth Street
Winston-Salem, NC 27101
Email: kclinard@wcsr.com

Henry B. Smythe, Jr.
James E. Weatherholtz
Womble Carlyle Sandridge & Rice,
LLP
PO Box 999
Charleston, SC 29402
Email: hsmythe@wcsr.com
Email: jweatherholtz@wcsr.com

This the 11th day of April, 2016.

/s/ Daniel K. Bryson

Daniel K. Bryson

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: ATLAS ROOFING CORPORATION CHALET SHINGLE PRODUCTS LIABILITY LITIGATION	MDL DOCKET No.: 2495 1:13-MD-2495-TWT
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This document relates to:

<p>PENNY SEABERG, individually and on behalf of all other similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ATLAS ROOFING CORPORATION,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">No.: 1:14-cv-03179-TWT</p>
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**PLAINTIFF PENNY SEABERG'S APPENDIX OF EXHIBITS RELIED
UPON IN SUPPORT OF HER REPLY BRIEF
IN SUPPORT OF MOTION FOR CLASS CERTIFICATION**

Tab: Description:

1. Excerpts from the deposition of Kenneth M. Lies taken on November 12, 2015.
2. Declaration of Amanda K. Mkamanga dated April 11, 2016.

3. SEABERG 000045 – Atlas Warranty.
4. Excerpts from the deposition of Hazem Shanab taken on December 17, 2014.
5. Excerpts from the deposition of Dale Rushing taken on January 20, 2015.

Dated: April 11, 2016

By: /s/Daniel K. Bryson

Daniel K. Bryson
Whitfield Bryson & Mason LLP
900 W. Morgan Street
Raleigh, NC 27603
Telephone: 919-600-5000
Facsimile: 919-600-5035
Email: dan@wbmlp.com

Plaintiffs' Co-Lead Counsel

Christopher L. Coffin
Pendley, Baudin & Coffin, LLP
1515 Poydras Street, Suite 1400
New Orleans, LA 70112
Telephone: 504-355-0086
Facsimile: 504-523-0699
Email: ccoffin@pbclawfirm.com

Plaintiffs' Co-Lead Counsel

Kenneth S. Canfield
GA Bar No.: 107744
Doffermyre Shields Canfield &
Knowles, LLC
1355 Peachtree Street, Suite 1600
Atlanta, GA 30309
Telephone: 404-881-8900
Email: kcanfield@dsckd.com

Plaintiffs' Liaison Counsel

On the brief:

Gary E. Mason
Ben Branda
Whitfield Bryson & Mason LLP
1625 Massachusetts Ave. NW
Suite 605
Washington, D.C. 20036
Telephone: 202. 429.2290
Facsimile: 202.429.2294
Email: gmason@wbmlp.com
bbranda@wbmlp.com

Stan Baudin
Pendley, Baudin & Coffin, LLP
1515 Poydras Street, Suite 1400
New Orleans, LA 70112
Telephone: 504-355-0086
Facsimile: 504-523-0699
Email: sbaudin@pbclawfirm.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Daniel K. Bryson, do hereby certify that the foregoing was electronically filed through the CM/ECF system for the Northern District of Georgia, which will send a notice of electronic filing to the following attorneys of record:

Joel G. Pieper
William M. Ragland, Jr.
Womble Carlyle Sandridge & Rice,
LLP
271 17th Street, N.W., Suite 2400
Atlanta, GA 30363-1014
Email: jpiper@wcsr.com
Email: wragland@wcsr.com

Keith A. Clinard
Womble Carlyle Sandridge & Rice,
LLP
One West Fourth Street
Winston-Salem, NC 27101
Email: kclinard@wcsr.com

Henry B. Smythe, Jr.
James E. Weatherholtz
Womble Carlyle Sandridge & Rice,
LLP
PO Box 999
Charleston, SC 29402
Email: hsmythe@wcsr.com
Email: jweatherholtz@wcsr.com

This the 11th day of April, 2016.

/s/ Daniel K. Bryson

Daniel K. Bryson

Kenneth M. Lies, AIA

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

IN RE: ATLAS ROOFING)
CORPORATION CHALET SHINGLE)
PRODUCTS LIABILITY) MDL Docket No. 2495
LITIGATION) ALL CASES
)
)

VIDEOTAPED DEPOSITION OF KENNETH M. LIES, AIA
(Taken by Plaintiffs)
November 12, 2015

9:37 a.m.

Suite 2400
171 17th Street N.W.
Atlanta, Georgia

Reported by:

F. Renee Finkley, RPR, RMR, CRR, CLR, CCR-B-2289

Kenneth M. Lies, AIA

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1 A. It needs to be -- it has to be water
2 shedding. That's a primary function. It has to be
3 resistant to wind. It has to serve its aesthetic
4 function. Those are the three main things, I
5 believe.

6 Q. So you could have a shingle failure if the
7 shingle is not serving its aesthetic function?

8 A. Yes, I believe you can.

9 Q. In your opinion, on the aesthetic function
10 is that it's fine?

11 A. Yes.

12 Q. And I believe we've already established
13 though that you don't have any peer-reviewed
14 literature to -- that discusses aesthetic function
15 for a shingle, correct?

16 A. I don't understand what you just asked.

17 Q. You don't have any peer-reviewed
18 literature that discusses aesthetic function for a
19 shingle?

20 A. What, that that's a proper --

21 Q. That that --

22 A. That's something that it provides?

23 Q. No.

24 A. I'm not understanding.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: ATLAS ROOFING CORPORATION CHALET SHINGLE PRODUCTS LIABILITY LITIGATION	MDL Docket No.: 2495 Hon. Thomas W. Thrash, Jr.
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This Document Relates to All Actions

DECLARATION OF AMANDA K. MKAMANGA

I, Amanda K. Mkamanga, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a paralegal in the law firm of Whitfield Bryson & Mason LLP, one of the law firms of record for Plaintiffs.
2. I have reviewed all of the Atlas claims files produced in this litigation. These documents appear to have been submitted pursuant to the terms of Atlas's Limited Warranty. On the basis of this review, I offer the following observations:
 - a. Since **January 1, 2002**, Class Members have submitted thousands of warranty claims related to blistering, cracking, or granule loss of their shingles.

b. Atlas does not appear to require claimants to prove that they have filed their claim in accordance with the warranty's 30-day notice requirement. Atlas's claim intake form does not have a field relevant to this requirement.

3. I was unable to identify any claims where Atlas denied the claim on the basis of the claimant's failure to comply with the 30-day notice requirement.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 11th day of April, 2016.

s/ Amanda Mkamanga
Amanda Mkamanga
Whitfield Bryson & Mason LLP
900 W. Morgan Street
Raleigh, NC 27603
Tel: 919-600-5000
Fax: 919-600-5035
Email: *Amanda@wbmlp.com*



Limited Shingle Warranty

Limited Warranty: ATLAS ROOFING CORPORATION ("Atlas") warrants to you, the original owner of its roofing product, that the roofing products listed in the chart below, are free from manufacturing defects, which result in leaks.

The limited warranty is the sole and exclusive remedy, and during the warranty period specified in the chart below, the maximum repair or replacement

cost to ATLAS shall not exceed during the Premium Protection years, the replacement cost to the owner for the product plus replacement application cost (exclusive of metal work, flashing or other work). During the remaining Warranty period, ATLAS will adjust valid claims (materially affected by a manufacturing defect), by an amount determined by decreasing monthly the replacement cost of the product only in proportion to the unexpired warranty period. In no event shall ATLAS' liability extend to any cost for the tear off of the product or for the replacement installation cost of the new product during the prorated period.

Limited Wind Warranty: (covers Shingles only) ATLAS warrants that its shingles will resist damage by wind gusts up to a maximum of the Wind Speed Limits specified herein for the first five (5) years only, from the date of installation provided that the shingles have been installed in accordance with the printed application instructions on the shingle bundle wrapper, and have had the opportunity to seal down. If during this five (5) year period, damage occurs to the shingles as a result of wind gusts under the specified Wind Speed Limits, ATLAS will furnish at no charge, replacement shingles for the damaged shingles only, but no replacement labor. Sealant Feature: In order to activate the sealant feature, the shingles must be exposed to direct sunlight for a continued period of time for the shingles to seal. Shingles installed in fall or winter and not exposed to adequate surface temperatures, or other conditions, which temporarily or permanently preclude activation of the sealant, may never seal and must be hand sealed at the time of installation. It is not a manufacturing defect if shingles fail to seal under the above circumstances, and Atlas will not be responsible for repair, replacement, or hand sealing shingles under these circumstances. However, in the event the shingles fail to self-seal after proper installation and climatic exposure, and Atlas is notified within the 1st year after installation, ATLAS' sole responsibility shall be to pay a reasonable cost to hand seal the affected shingles.

Limited Algae Resistant Warranty: (if applicable) ATLAS warrants that its algae resistance shingles (ARS) will remain free of obvious and unsightly discoloration due to algae growth for a period of ten (10) years from the date of installation. In the event the algae resistant shingles fail to meet this coverage, ATLAS' sole and only liability shall be, to pay the reasonable cost of repair or replacement of the defective shingles, up to the following limits: (a) during the Premium Protection Period, the maximum repair or replacement to ATLAS shall be the replacement cost of those shingles exhibiting discoloration due to algae, including replacement installation cost; (b) during the remainder of the algae warranty period (if applicable), the maximum repair or replacement cost to ATLAS shall be the replacement cost of those shingles exhibiting algae discoloration, in proportion to the unexpired warranty period, excluding all installation costs.

Sole Warranty: THE LIMITED WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND LIMITS AS TO DURATION ALL OTHER WARRANTIES WHETHER EXPRESSED OR IMPLIED BY LAW INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE TO THE TIME PERIODS STATED ABOVE. ATLAS MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, OTHER THAN THE LIMITED WARRANTY SET FORTH HEREIN. THIS LIMITED WARRANTY CONTAINS ALL OF THE PROVISIONS OF YOUR REMEDIES FROM ATLAS. ATLAS' LIABILITY IS LIMITED TO THE PROVISIONS OF THIS LIMITED WARRANTY, WHETHER ANY CLAIM AGAINST IT IS BASED UPON STRICT LIABILITY, NEGLIGENCE, BREACH OF WARRANTY OR ANY OTHER THEORY OR CAUSE OF ACTION. NO PERSON IS AUTHORIZED TO ALTER THIS LIMITED WARRANTY EITHER ORALLY OR IN WRITING. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

Limitations of Coverage (what is not covered): ATLAS shall not be liable for and the Limited Warranties set forth herein do not apply to:

- b. DAMAGE TO THE PRODUCTS CAUSED BY UNACCEPTABLE VENTILATION (Note: Ventilation must meet the FHA and HUD Minimum Property Standards or a minimum of one (1) square foot free venting area per 150 square feet of attic floor area, whichever provides the most ventilation);
- c. Replacement of products for the first six (6) months after application due to:
 1. Loss of Granules: Products when first applied will have some excess granule wash off.
 2. Discoloration: i) Some color shading may occur due to positioning or embedment of the granule; ii) Yellow staining and/or powder-like shading may occur due to transfer of backing materials.

The conditions listed in section (c) are normal and should be eliminated by natural weathering conditions over a six (6) month period after application;

- d. Damage to a roof due to settlement, distortion, failure or cracking of the roof deck, walls or foundation of a building or to any defect in or failure of material used as a roof base over which products are applied or for damage by foot traffic on the roof;
- e. Damage from any cause other than inherent manufacturing defect;
- f. Acts of God including lightning, winds in excess of the specified Wind Speed Limits listed herein, hurricane, tornado, hailstorm, impact of foreign objects or other violent storms;
- g. We are not liable to you if you make a warranty claim in the future, or make structural changes and any replacement shingles vary in color either due to natural weathering or changes in our product line or color blend.
- h. Claims by owners or transferees not qualifying as Original Owners or Authorized Transferees under this Limited Warranty.

TRANSFERABILITY: The original owner may transfer this warranty to the subsequent owner, with the following limitations: For transfer of this warranty during the product PREMIUM PROTECTION PERIOD, the remaining portion of the warranty for the new owner will be the same as for the original owner. This will include any remaining time available for the PREMIUM PROTECTION PERIOD. For product warranties transferred after the PREMIUM PROTECTION PERIOD has elapsed, the remaining portion of the transferred warranty will be two years from the date of the real estate transfer. The second owner MUST NOTIFY ATLAS IN WRITING (see attached warranty transfer card) WITHIN 30 DAYS after the real estate transfer for any coverage to be transferred. However after you have transferred this warranty to the purchaser of your home, it may not be transferred again. That is, the purchaser of your home may not transfer this warranty to any subsequent purchasers.

replacement card within 30 days of the installation date of your shingles to qualify for your warranty coverage.

TAB 3

CLAIM REPORTING PROCEDURE: Any claim made hereunder must be made within thirty (30) days after discovery of the alleged defect by calling 1-800-478-0158 or in writing.

Atlas Roofing Corporation
 Attn: Consumer Services
 2564 Valley Road
 Meridian, MS, 39307

To fully evaluate your claim we may ask you to provide and forward, at your expense, price your shingles and/or 2 full shingle samples for us to test. Repairs made prior to or during investigation period without Atlas Roofing Corporation's prior written approval shall be owner's expense. With all claims, the original proof of purchase must be submitted with any claim information requested.

WARRANTY NOT VALID IF INFORMATION IS ERRONEOUS. This warranty is effective on all product types stated herein and sold in the United States 1/1/2007.

STORMMASTER DG Product Limited Warranty
 StormMaster DG is warranted to the installer to be free of manufacturing defects for a period of five (5) years. StormMaster DG is warranted to the building owner for the warranty life of the covering being installed, or as a limit of 30 years maximum. This is for all STORMMASTER DG ONLY. Atlas is not liable for any consequential damages, including building, its contents, or any persons therein. Removal or replacement of any shingles of over StormMaster DG material will void this warranty. IN NO INSTANCE IS ATLAS RESPONSIBLE FOR SPECIAL, INDIRECT CONSEQUENTIAL DAMAGES. THE DURATION OF ANY IMPLIED WARRANTY HEREIN LIMITED IN DURATION TO THAT OF THE EXPRESS WARRANTY SET FORTH HEREIN. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the limitations or exclusions may not apply to you.

Product	Warranty Period	Premium Protection Period	Prorated Reduction Figure	Wind Speed Limits
StormMaster [®] LM	50 years (600 months)	5 years	1/600	102 mph
StormMaster [®] ST	30 years (360 months)	3 years	1/360	102 mph
Pinnacle [®] 45	45 years (540 months)	5 years	1/540	80 mph
Pinnacle [®] 35	35 years (420 months)	5 years	1/420	70 mph
Alpine [®]	25 years (300 months)	3 years	1/300	60 mph
Chalet [™] (High Wind Application)	30 years (360 months)	3 years	1/360	80 mph*
Chalet [™] (Standard Application)	30 years (360 months)	3 years	1/300	60 mph*
Legend [™]	25 years (300 months)	3 years	1/300	60 mph*
Stratford [®] (High Wind Application)	30 years (360 months)	3 years	1/360	80 mph*
Stratford [®] (Standard Application)	30 years (360 months)	3 years	1/300	60 mph*
GlassMaster [®] 25	25 years (300 months)	3 years	1/240	54 mph
GlassMaster [®] 20	20 years (240 months)	3 years	1/300	60 mph
GlassMaster [®] T-Lok	25 years (300 months)	3 years	1/300	60 mph
WeatherMaster [®] T-Lok	25 years (300 months)	3 years	1/300	60 mph
WeatherMaster [®] ST	25 years (300 months)	3 years	1/300	60 mph
WeatherMaster [®] 20	20 years (240 months)	3 years	1/240	54 mph

Hazem Shanab

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

MDL Docket No. 2495

ALL CASES

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IN RE: ATLAS ROOFING CORPORATION
CHALET SHINGLE PRODUCTS
LIABILITY LITIGATION

-----X

VIDEOTAPED DEPOSITION OF HAZEM SHANAB

Atlanta, Georgia

December 17, 2014

Reported by:

JoRita B. Meyer, RPR, RMR, CRR, CCR

<p style="text-align: right;">Page 30</p> <p>1 But I'm sure there was a lot of efforts. 2 Q. Well, just to be clear, sir, you're 3 here today to answer the questions that are 4 posed to you in the clearest way you can. And 5 if there's anything I ask you that you simply 6 don't know the answer to, you are welcome to 7 say: I don't know. 8 So let's go back to my question, sir. 9 And with regards to the efforts by Atlas to 10 eliminate moisture from the manufacture of the 11 Chalet shingle, do you recall any other efforts 12 besides the three you've told me, which is 13 renting a chiller, purchasing a vacuum oven, 14 and killing the overspray? 15 A. I'm trying to answer your questions. 16 But if you don't give me the opportunity to 17 tell you the background around the answer, then 18 I think you're just handcuffing the answer. 19 I'm trying to give you a very 20 precise, accurate answer because I think that's 21 what you deserve and that's what you need. 22 But, unfortunately, you're not giving me the 23 opportunity. You try to -- all the effort you 24 keep sticking to, so I don't know what all the</p>	<p style="text-align: right;">Page 32</p> <p>1 backyard, if you would -- that may potentially 2 contribute to this blistering. 3 So we were trying to make sure that 4 we're covering, turning every stone, looking at 5 every -- under every rock. That's what we were 6 after, just to see: Can we do anything? 7 Q. Is there any other reason, sir, 8 besides the answer you just gave as to why 9 Atlas was making a concerted effort to 10 eliminate the moisture from the manufacture of 11 the Chalet shingle? 12 A. We are -- we were trying to eliminate 13 moisture in all our product lines. Does that 14 put it in perspective? 15 Q. I'm only asking you about the 16 manufacture of the Chalet shingle, sir. 17 A. I understand. No, we were just 18 looking at -- you know, moisture is not good 19 for our process. 20 Q. Have you ever had a reason to believe 21 that moisture in the manufacturing process 22 could have been contributing to the blistering 23 of the Chalet overlay shingle? 24 A. Yes.</p>
<p style="text-align: right;">Page 31</p> <p>1 effort. And I keep telling you the answer. 2 Q. Are you aware of any besides the 3 three you've told me so far, sir? Easy 4 question. 5 A. As I sit here today, in this room, 6 you know, I need to think was there -- there 7 was a lot of efforts by a lot of folks, and it 8 was not just we were just looking at moisture. 9 Q. Well, let's stay with moisture for 10 just a second and then we'll come back to what 11 else you all looked at. All right? 12 With regards to the efforts to 13 eliminate moisture from the manufacture of the 14 Chalet shingle, tell us, if you would, please, 15 why Atlas was making an effort to eliminate 16 moisture from the manufacture of the Chalet 17 shingle. 18 A. That question I can understand. And 19 thank you. 20 Really, as a researcher -- and maybe 21 you can appreciate this -- we were trying to 22 see, among all the factors that may contribute 23 to asphalt blistering or shingle blistering, 24 what can we do in our own processes -- our own</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. And what was the theory behind that, 2 please? 3 A. I had a lot of theories. I thought 4 maybe it gets in there and eventually it gets 5 out. So that's kind of what one of the 6 theories were. 7 Q. What other theories do you have? And 8 then I'll come back and ask you in more detail 9 about those theories. 10 A. Basically, that it got into the 11 membrane. And that's kind of, you know, the 12 theory. 13 Q. That moisture would get into the 14 membrane during the manufacturing process? 15 A. Yeah, I speculated that perhaps there 16 is a chance, and I wanted to look at the 17 speculation. 18 Q. Okay. And then you referenced it 19 getting out. What does that have to do with 20 blistering? 21 A. At the time, one of the speculations 22 I made is: Could it be moisture? And could it 23 be something in our process? So that's -- that 24 was the speculation back then.</p>

Dale Rushing

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

MDL Docket No. 2495

ALL CASES

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IN RE: ATLAS ROOFING CORPORATION
CHALET SHINGLE PRODUCTS
LIABILITY LITIGATION

-----X

VIDEOTAPED DEPOSITION OF DALE RUSHING
Atlanta, Georgia
January 20, 2015

Reported by:
JoRita B. Meyer, RPR, RMR, CRR, CCR

<p style="text-align: right;">Page 90</p> <p>1 shingles that we've had blistering claims on. I'm 2 not aware of any particular study, investigation, 3 that sort of thing. But claims, yes. 4 Q What other type of shingles are you aware 5 of claims on, blistering claims? 6 A I'd say over the course of my career, all 7 of them. 8 Q All Atlas' shingles have had blistering 9 claims? 10 A I -- most of them. Let's just say it that 11 way, I -- only because I'm not -- I don't know every 12 single product that we've made. But I'd say a good 13 many of them, we've had a claim or claims over the 14 years filed for blistering. 15 Q Have any of the product lines, any of the 16 Atlas shingle product lines, had more blistering 17 claims than the other product lines? 18 A I don't have the data. I don't know. 19 Q Okay. And you are -- you are currently, 20 and have been for some eight years now, the vice 21 president of manufacturing in charge of all five 22 roofing plants, correct? 23 A That is correct. 24 Q And the vice president of manufacturing</p>	<p style="text-align: right;">Page 92</p> <p>1 A What we solved was -- what we attempted to 2 solve was removing variability, improving our 3 process, and our people. 4 Q Was the blistering solved? 5 A What blistering? 6 Q In the Chalet shingle. 7 A I mean, we know there's a whole lot of 8 different reasons why a shingle, Chalet or any 9 other, will blister. So to answer your question, 10 then, we solved -- we didn't solve any of those, or 11 any of those other opportunities, or other 12 possibilities. We knew that. We knew that there 13 were other ways that -- and we weren't -- we weren't 14 attempting to solve those. We were trying to 15 improve our process and take out anything that we 16 might be doing that would be part of the cause. 17 Q So blistering continued? 18 A The number of the claims continued, yes. 19 Q And y'all would check those claims to see 20 whether or not they had, in fact, blistered, 21 correct? 22 A When you say "y'all" -- 23 Q Atlas. 24 A Atlas, through our process of the claims</p>
<p style="text-align: right;">Page 91</p> <p>1 for Atlas is unaware as to whether or not any of the 2 Atlas shingle product lines have had more blistering 3 claims than any other product line? 4 A I am unaware, yes. 5 Q Let's go forward in time on the Chalet. 6 As I understand it, the overlay 7 modifications we've been looking at from late 2003 8 and early 2004 were implemented by the end of 2004? 9 A Or the first of 2005, yeah. 10 Q And did these modifications solve the 11 blistering issue? 12 MR. WEATHERHOLTZ: Objection. 13 THE WITNESS: Which blistering issue are 14 you referring to? 15 BY MR. LUCEY: 16 Q The ones you were attempting to solve by 17 making modifications. 18 A We didn't recognize this as an issue that 19 was specific to these modifications. Or at least I 20 didn't. 21 Q Okay. Sir, was the Chalet quality issue 22 that you referred to as "the biggest quality issue 23 at Hampton" on March 23, 2004 solved by the 24 modifications that were implemented by early 2005?</p>	<p style="text-align: right;">Page 93</p> <p>1 filed, yes, we -- we go through the process of 2 investigating. 3 Q And Atlas continued to see blisters on 4 these claims being made by consumers, correct? 5 A We continued to see claims. 6 Q And you checked for blisters on these 7 roofs, correct? 8 A We checked for whatever they were 9 complaining about, whatever the claim was for. 10 Q And you confirmed the existence of 11 blisters on many of these claims' roofs, correct? 12 MR. WEATHERHOLTZ: Objection. 13 THE WITNESS: Many? I don't -- that's too 14 vague of a term, I guess. 15 BY MR. LUCEY: 16 Q How about "some"? 17 A We would, yes, see some blistering on some 18 shingles on roofs. Yes. 19 Q Tell me, if you would, please, what 20 efforts, if any, you're aware of that Atlas made to 21 investigate the cause of blistering on the Chalet 22 overlay shingle after early 2005. 23 A Repeat the question, please. 24 MR. LUCEY: Read the question back,</p>

Dale Rushing

<p style="text-align: right;">Page 214</p> <p>1 was some general history on Chalet, some general 2 discussion about how shingles are made in general. 3 I think we talked about some of the raw materials 4 that go into making the shingle. But I don't 5 remember specifically talking about theories behind 6 it. 7 You know, I think our goal by going into 8 the meeting was, they could help us figure out those 9 things. 10 Q Sir, do you deny that the purpose of the 11 Georgia Tech consultation was with regards to 12 learning the cause of the blistering of the overlay 13 shingle? 14 MR. WEATHERHOLTZ: Objection. 15 THE WITNESS: You asked me if we discussed 16 these theories. To my knowledge, we didn't 17 discuss any theories. 18 When Mel reached out to Georgia Tech, I 19 can't say for sure what his goal was as far as 20 identifying things that were happening in our 21 process that were showing up in the -- the 22 vacuum oven or, you know, things that were 23 happening out in the field. I don't know that 24 we knew what we would get out of Georgia Tech.</p>	<p style="text-align: right;">Page 216</p> <p>1 there beyond our control. So no, I don't think 2 that was the purpose of the meeting. 3 I think the purpose of the meeting was to 4 see if they could help us understand how raw 5 materials and changes in our process might be 6 affecting what we're doing. 7 BY MR. LUCEY: 8 Q Sir, can you tell us what the title of the 9 background paper is that Atlas provided to Georgia 10 Tech for the consultation? 11 A I'm sorry. I don't -- background paper? 12 Q Yes. Plaintiffs' Exhibit 123. This was 13 provided to Georgia Tech, correct? 14 A Yes. 15 Q And it provides background, correct? 16 A It provides a problem statement, product 17 history, manufacturing -- I mean, I'm missing your 18 question. 19 Q What is the title of the document? 20 A "Overlay Shingle Blistering Overview for 21 Georgia Tech Research Institute." 22 Q Now, do you still deny you consulted with 23 Georgia Tech on the blistering issue? 24 MR. WEATHERHOLTZ: Objection.</p>
<p style="text-align: right;">Page 215</p> <p>1 BY MR. LUCEY: 2 Q Let's try a simple approach. Did y'all 3 discuss blistering with Georgia Tech? 4 A I'm sure that blistering was discussed, 5 yes. 6 Q Was the purpose of the consult to solve 7 the blistering issue? 8 MR. WEATHERHOLTZ: Objection. 9 THE WITNESS: The purpose of the consult 10 or the meeting was to give them an overview of 11 what we had experienced up until then. 12 BY MR. LUCEY: 13 Q Regarding blistering? 14 MR. WEATHERHOLTZ: Objection. 15 THE WITNESS: Regarding Chalet, the 16 process, the raw materials, that sort of thing. 17 BY MR. LUCEY: 18 Q You deny you consulted with Georgia Tech 19 purely for the purpose of solving the Chalet 20 blistering? 21 MR. WEATHERHOLTZ: Objection. 22 THE WITNESS: I don't think we ever 23 thought we would solve blistering. There's 24 just too many other variables that are out</p>	<p style="text-align: right;">Page 217</p> <p>1 THE WITNESS: We consulted with Georgia 2 Tech on various things that were done in our 3 process. We discussed Chalet. We discussed 4 raw materials. But there never was a -- a 5 feeling that by doing this, this was going to 6 eliminate blistering. 7 Again, there's just too many -- too many 8 reasons, too many causation -- too much 9 causation. 10 BY MR. LUCEY: 11 Q You were simply trying to reduce 12 blistering? 13 A We were simply trying to see where they 14 might be able to help us in our efforts. 15 Q To reduce blistering? 16 MR. WEATHERHOLTZ: Objection. 17 THE WITNESS: To improve our process, to 18 take out unknowns, raw material, that sort of 19 thing. 20 BY MR. LUCEY: 21 Q And, sir, have you ever heard at Atlas the 22 theory that the blistering might have something to 23 do with the use of SBS rubber in the modified 24 asphalt?</p>