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

This document relates to:

STRATFORD CLUB CONDOMINIUM ASSOCIATION, on behalf of itself and all other similarly situated, Plaintiff, v. ATLAS ROOFING CORPORATION d/b/a MERIDIAN ROOFING COMPANY, Defendant.	No.: 1:14-cv-01071-TWT

PLAINTIFF STRATFORD CLUB CONDOMINIUM ASSOCIATION'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 the Stratford Club Condominium Association and members of the proposed Virginia class.

If Plaintiff prevails in showing that the manufacturing process caused the defect in the shingles and Atlas knew about the defect, it will have proven the core element of liability for breach of warranty and fraudulent concealment. Because Plaintiff has satisfied the requirements for class certification, the proposed Virginia 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 discuss 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 Prods., 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 Satisfy 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 and implied warranties when it provided defective shingles to class members. To prevail on the breach of express warranty claim, Plaintiff must show that Atlas created an express warranty and failed to conform to it. *See Price Auto. II, L.L.C. v. Mass Mgmt., LLC*, 2015 U.S. Dist. LEXIS 7378, at *26-29 (W.D. Va. Jan. 22, 2015); *see also Ali v. Allergan USA, Inc.*, 2012 U.S. Dist. LEXIS 121417, at *45 (E.D. Va. Aug. 23, 2012) ("[A]n express warranty is breached when the goods fail to conform to the affirmation of fact or

description made by the seller.") Under such circumstances, where the principal issues relate to an express warranty and the existence of an alleged product defect, the predominance requirement is easily met. *See, e.g., Barden v. Hurd Millwork Co.,* 249 F.R.D. 316, 321 (E.D. Wis. 2008).

To prevail on a claim for breach of implied warranty of merchantability, Plaintiff must prove defendant's product was not merchantable at the time of sale. Va. Code Ann. § 8.2-314. ("[A] warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.") Proof as to this time-of-sale requirement is relaxed, however, in the context of a defect that is not immediately visible because, according to Virginia law, "[s]uch latent defects are not those contemplated by Code 8.2-316(3)(b)." *Twin Lakes Mfg. v. Coffey*, 222 Va. 467, 473 (1981). To be merchantable, defendant's product must: (1) pass without objection in the trade under the contract description; (2) be fit for the ordinary purpose for which such good is to be used; and (3) conform to the promises or affirmations of fact made on the container or label. *See* Va. Code Ann. § 8.2-314(2)(a), (c), (f); *Hubbard v. Dresser, Inc.,* 271 Va. 117, 124 (2006).

To establish a breach of an implied warranty for a particular purposed, the claim has three elements: (1) "the seller had reason to know [of] the particular purpose for which the buyer required the goods," (2) "the seller had reason to know the buyer

was relying on the seller's skill or judgment to furnish appropriate goods," and, (3) "the buyer in fact relied upon the sellers skill or judgment[.]" *Id*. (*citing* Va. Code Ann. § 8.2-315).

Atlas has identified a number of defenses to Plaintiff's breach of express and implied warranty claims: (1) class members did not provide Atlas with notice of the defect or an opportunity to cure; (2) class members cannot show common evidence of reliance to prove a breach of implied warranty of fitness for a particular purpose; (3) variations in the warranties preclude the warranty from applying to certain class members; (4) a manufacturing defect did not cause Plaintiff's shingles to fail; (5) 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 their warranty claims with common evidence. As

detailed in Plaintiffs' (Dishman) 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 it uniformly denied warranty claims for cracks, blisters and granule loss in the absence of a leak.[2]

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[1] Plaintiff also contends that the shingles are defective and thus 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 manufacturing problems or covered by its warranties. *See* Dep. of Glynese R. Thomas (ECF #296-16), at 32

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 31 warranty claims have been filed in Virginia. Plaintiff's Opening Brief in Support of Class Certification (ECF #304-1) ("Stratford 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

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(125:1-17) (cracked shingle without leak is not a manufacturing defect); at 33 (126:16-19) (blistering without a leak is not a defect) & (126:23-1274) (granule loss without a leak is not a defect); & 55 (215:14) (Atlas's position is that blistering is not a manufacturing defect).

defect during production years). Because Plaintiff will rely on common evidence to satisfy the notice requirement, notice should be classified as 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.") Routinely failing to insist on compliance 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 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 at 1272, 1287 (S.D. Ga. 2010) (*citing Wheeler* and holding defendant's notice argument failed where no evidence of prejudice). Because Atlas has failed to demonstrate prejudice resulting from any alleged absence of notice, the issue of pre-suit notice does not defeat Plaintiff's warranty claims.

[3] Regardless, notice is not a barrier to the 31 Virginians who filed warranty claims. The claims themselves, which Atlas considered without complaint regarding timing, satisfy the notice requirement.

Common evidence will also be used to prove that Atlas had prior knowledge of the defect, strengthening an element of 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 all warranties also cover 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 nconscionable, the warranties still will uniformly cover all class members.

3. Common Issues Predominate Over Individual Issues.

Atlas's remaining arguments concerning causation, statute of limitations, and damages 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). If the most substantial issues in controversy will be resolved through common proof, class certification will generally achieve the economies of litigation that Rule 23(b)(3) envisions. *In re Air Cargo Shipping Servs. Antitrust Litig.,* 2014 U.S. Dist. LEXIS 180914, at *193-194 (E.D.N.Y. Oct. 15, 2014). 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 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) Reliance

Atlas asserts that Plaintiff must show individualized instances of reliance to allege a claim for breach of implied warranty of fitness of particular purpose. This individualized issue does not predominate over the common issue of a defect that inherently compromised Atlas's representations that the shingles were fit for their particular purpose. In Virginia:

> [I]f a manufacturer or dealer contracts to supply an article which he manufactures or produces, or in which he deals, to be applied to a particular purpose, so that the buyer necessarily trust to the judgment or skill of the manufacturer or dealer, there is an implied term of

[4] *See* Atlas Roofing Corp.'s Answer to Plaintiff's Amended Class Action Complaint ("Answer") (July 24, 2014) (Doc. No. 16) at 4 & 6-8 (Affirmative Defense No. 8 (Limitations) & Affirmative Defenses Nos. 14,16, 19, 19, 20, 21 22 (Causation)).

> warranty that it shall be reasonably fit for the purpose to which it is to be applied.

Bay Point Condo. Ass'n v. RML Corp., 57 Va. Cir. 295, 314 (Cir. Ct. 2002) (*citing Universal Motor Co. v. Snow*, 149 Va. 690, 697, 140 S.E. 653, 655 (1927)). Here, common proof to the class will show that Atlas had reason to know that class members intended to utilize the shingles on the roofs of the buildings. Since Atlas is in the business of selling construction materials, including roofing shingles, it had reason to know that the class would rely on Atlas's skill and judgment in selecting and furnishing shingles suitable to be installed upon rooftops. Atlas's individual defense that certain class members did not, in fact, rely on its skill do not predominate over Plaintiff's common evidence of its case in chief. If Plaintiff cannot establish that the shingles are defective, this court does not even reach Atlas's defenses. If Plaintiff establishes the predominant question of defect, however, Atlas can readily assert its defenses in the second phase of the trial.

b) 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 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

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[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 3**, 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 4,** 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, 40 L. Ed. 2d 732, 94 S. Ct. 2140 (1974)).

[7] *See* Rutila Dep. (ECF #296-22), at 51 (198:14-17); at 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).

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.")

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

Individualized issues of privity, 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

[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).

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 Plaintiff has 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 requires 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 damages 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 Fraudulent Concealment Claim Satisfies the Predominance Requirement Because Plaintiff Can Prove Defect and Prior Knowledge on a Class-wide Basis.

1. The Elements of the Fraudulent Concealment Claim and Atlas's Defenses.

Plaintiff also argues that Atlas fraudulently concealed the defect in the shingles from class members. To prevail on the claim of fraudulent concealment, Plaintiff must prove a: "(1) false misrepresentation, (2) of a material fact, (3) intentionally and knowingly made, (4) with the intent to mislead, (5) reliance by the party misled, and (6) resulting damage to the party misled." *Langmaid v. Lee V*, 86 Va. 118, 126 (Cir. Ct. 2013). Eliminating the fourth element entirely, and modifying the third element with a more lax standard, the Virginia Supreme Court held that constructive fraud by the seller occurs where "a false representation of a material fact was made innocently or negligently, and the injured party was damaged as a result of his reliance upon the

misrepresentation." *Mortarino v. Consultant Eng'g Servs.*, 251 Va. 289, 295 (1996). Plaintiff can establish most of these elements through common proof.

In defense, Atlas asserts that Plaintiff cannot uniformly show reliance on Atlas's representations about the shingles and damages that conform with the economic loss rule. As discussed below, Atlas's defenses do not predominate.

2. Classification of Common and Individual Issues.

Plaintiff alleges that Atlas engaged in a conscious common course of conduct to conceal the defect from its customers. Atlas does not assert it disclosed the defect to some class members, but not others. As a result, whether Atlas concealed the defect is a question that will be answered the same for each class member. Similarly, Atlas's concealment of material facts will be a common issue that can be proved by common evidence as to whether the facts could have been discovered through the exercise of ordinary care. The element of intent can be satisfied by showing that Atlas had actual knowledge of the defect before selling the product and concealed the truth to induce the sale. *Id.* Reliance, an element of the prima facie claim and a defense asserted by Atlas, as well as damages present individualized issues, but do not predominate. For reasons discussed below, the economic loss rule does not change the analysis of predominance with regard to damages.

3. Common Issues Predominate Over Individual Issues.

The need to prove individual damages rarely cause predominance problems and does not do so here, as discussed above. Further, Plaintiff demonstrated, on pages 33 and 34 of the opening brief, how reliance can be proved for each class member based on common circumstantial evidence, an approach approved by the Eleventh Circuit in *Klay v. Humana, Inc.,* 382 F.3d 1241, 1258 (11th Cir. 2004). Simply put, each class member purchased the shingles; there is no evidence that any customer knew or could have known the shingles were defective before buying them; and no customer would have knowingly paid for shingles that prematurely fail and have to be replaced within ten years.[9] Atlas ignores how Plaintiff propose to prove reliance and simply points out that reliance cannot be presumed, a point of law with which Plaintiff does not disagree. Atlas's silence is telling.

Atlas's point that the economic loss rule will bar the claims of certain class members simply presents a damages issue that can be readily resolved in the second phase of the litigation using conventional tools like interrogatories or

[9] Proving reliance circumstantially is easier here than because, unlike in the typical case where reliance creates predominance problems, Plaintiffs have not been exposed to different representations. *Compare Jones v. ConAgra Foods, Inc.*, 2014 U.S. Dist. LEXIS 81292 at *23 (N.D. Cal. June 13, 2014) (reliance on labels that changed over time) *and Aronson v. Greenmountain.com*, 2002 Pa. Super 316, ¶ 7 (2002) (reliance on different TV advertisements) *with Klay,* 382 F.3d at 1258 (reliance on uniform misrepresentations in bills could be proved circumstantially).

questionnaires. While these issues require some investigation into individualized facts, the courts have repeatedly held that individual queries of this nature will rarely defeat class certification.

The predominance requirement is satisfied for fraudulent concealment.

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

Plaintiff has shown that the class is ascertainable, that the requirements of Rule 23(a) have been met and certification under Rule 23(b)(3) is appropriate, as many other courts have found in similar class actions involving defective construction materials and other products.[10] 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.

[10] Because all members of the proposed Rule 23(b)(3) class are seeking damages, Plaintiffs will no longer seek certification under Rule 23(b)(2).

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

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 his Motion for Class Certification.

Dated: April 11, 2016.

Respectfully submitted,

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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
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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:

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This the 11th day of April, 2016.

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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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PLAINTIFF STRATFORD CLUB CONDOMINIUM ASSOCIATION'S APPENDIX OF EXHIBITS RELIED UPON IN SUPPORT OF IT'S 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. Excerpts from the deposition of Hazem Shanab taken on December 17, 2014.

3. Excerpts from the deposition of Dale Rushing taken on January 20, 2015.

Dated: April 11, 2016

By: */s/Daniel K. Bryson*

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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:

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This the 11th day of April, 2016.

/s/ Daniel K. Bryson
Daniel K. Bryson

TAB 1

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

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

TAB 1

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

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

A. Yes, I believe you can.

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

A. Yes.

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

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

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

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

Q. That that --

A. That's something that it provides?

Q. No.

A. I'm not understanding.

TAB 2

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.

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.

TAB 2

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

MDL Docket No. 2495
ALL CASES

----------X
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

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But I'm sure there was a lot of efforts.
Q. Well, just to be clear, sir, you're here today to answer the questions that are posed to you in the clearest way you can. And if there's anything I ask you that you simply don't know the answer to, you are welcome to say: I don't know.
So let's go back to my question, sir. And with regards to the efforts by Atlas to eliminate moisture from the manufacture of the Chalet shingle, do you recall any other efforts besides the three you've told me, which is renting a chiller, purchasing a vacuum oven, and killing the overspray?
A. I'm trying to answer your questions. But if you don't give me the opportunity to tell you the background around the answer, then I think you're just handcuffing the answer.
I'm trying to give you a very precise, accurate answer because I think that's what you deserve and that's what you need. But, unfortunately, you're not giving me the opportunity. You try to -- all the effort you keep sticking to, so I don't know what all the

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effort. And I keep telling you the answer.
Q. Are you aware of any besides the three you've told me so far, sir? Easy question.
A. As I sit here today, in this room, you know, I need to think was there -- there was a lot of efforts by a lot of folks, and it was not just we were just looking at moisture.
Q. Well, let's stay with moisture for just a second and then we'll come back to what else you all looked at. All right?
With regards to the efforts to eliminate moisture from the manufacture of the Chalet shingle, tell us, if you would, please, why Atlas was making an effort to eliminate moisture from the manufacture of the Chalet shingle.
A. That question I can understand. And thank you.
Really, as a researcher -- and maybe you can appreciate this -- we were trying to see, among all the factors that may contribute to asphalt blistering or shingle blistering, what can we do in our own processes -- our own

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backyard, if you would -- that may potentially contribute to this blistering.
So we were trying to make sure that we're covering, turning every stone, looking at every -- under every rock. That's what we were after, just to see: Can we do anything?
Q. Is there any other reason, sir, besides the answer you just gave as to why Atlas was making a concerted effort to eliminate the moisture from the manufacture of the Chalet shingle?
A. We are -- we were trying to eliminate moisture in all our product lines. Does that put it in perspective?
Q. I'm only asking you about the manufacture of the Chalet shingle, sir.
A. I understand. No, we were just looking at -- you know, moisture is not good for our process.
Q. Have you ever had a reason to believe that moisture in the manufacturing process could have been contributing to the blistering of the Chalet overlay shingle?
A. Yes.

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Q. And what was the theory behind that, please?
A. I had a lot of theories. I thought maybe it gets in there and eventually it gets out. So that's kind of what one of the theories were.
Q. What other theories do you have? And then I'll come back and ask you in more detail about those theories.
A. Basically, that it got into the membrane. And that's kind of, you know, the theory.
Q. That moisture would get into the membrane during the manufacturing process?
A. Yeah, I speculated that perhaps there is a chance, and I wanted to look at the speculation.
Q. Okay. And then you referenced it getting out. What does that have to do with blistering?
A. At the time, one of the speculations I made is: Could it be moisture? And could it be something in our process? So that's -- that was the speculation back then.

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

MDL Docket No. 2495
ALL CASES

----------X
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

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shingles that we've had blistering claims on. I'm not aware of any particular study, investigation, that sort of thing. But claims, yes.
Q What other type of shingles are you aware of claims on, blistering claims?
A I'd say over the course of my career, all of them.
Q All Atlas' shingles have had blistering claims?
A I -- most of them. Let's just say it that way, I -- only because I'm not -- I don't know every single product that we've made. But I'd say a good many of them, we've had a claim or claims over the years filed for blistering.
Q Have any of the product lines, any of the Atlas shingle product lines, had more blistering claims than the other product lines?
A I don't have the data. I don't know.
Q Okay. And you are -- you are currently, and have been for some eight years now, the vice president of manufacturing in charge of all five roofing plants, correct?
A That is correct.
Q And the vice president of manufacturing

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for Atlas is unaware as to whether or not any of the Atlas shingle product lines have had more blistering claims than any other product line?
A I am unaware, yes.
Q Let's go forward in time on the Chalet.
As I understand it, the overlay modifications we've been looking at from late 2003 and early 2004 were implemented by the end of 2004?
A Or the first of 2005, yeah.
Q And did these modifications solve the blistering issue?
MR. WEATHERHOLTZ: Objection.
THE WITNESS: Which blistering issue are you referring to?
BY MR. LUCEY:
Q The ones you were attempting to solve by making modifications.
A We didn't recognize this as an issue that was specific to these modifications. Or at least I didn't.
Q Okay. Sir, was the Chalet quality issue that you referred to as "the biggest quality issue at Hampton" on March 23, 2004 solved by the modifications that were implemented by early 2005?

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A What we solved was -- what we attempted to solve was removing variability, improving our process, and our people.
Q Was the blistering solved?
A What blistering?
Q In the Chalet shingle.
A I mean, we know there's a whole lot of different reasons why a shingle, Chalet or any other, will blister. So to answer your question, then, we solved -- we didn't solve any of those, or any of those other opportunities, or other possibilities. We knew that. We knew that there were other ways that -- and we weren't -- we weren't attempting to solve those. We were trying to improve our process and take out anything that we might be doing that would be part of the cause.
Q So blistering continued?
A The number of the claims continued, yes.
Q And y'all would check those claims to see whether or not they had, in fact, blistered, correct?
A When you say "y'all" --
Q Atlas.
A Atlas, through our process of the claims

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filed, yes, we -- we go through the process of investigating.
Q And Atlas continued to see blisters on these claims being made by consumers, correct?
A We continued to see claims.
Q And you checked for blisters on these roofs, correct?
A We checked for whatever they were complaining about, whatever the claim was for.
Q And you confirmed the existence of blisters on many of these claims' roofs, correct?
MR. WEATHERHOLTZ: Objection.
THE WITNESS: Many? I don't -- that's too vague of a term, I guess.
BY MR. LUCEY:
Q How about "some"?
A We would, yes, see some blistering on some shingles on roofs. Yes.
Q Tell me, if you would, please, what efforts, if any, you're aware of that Atlas made to investigate the cause of blistering on the Chalet overlay shingle after early 2005.
A Repeat the question, please.
MR. LUCEY: Read the question back,

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was some general history on Chalet, some general discussion about how shingles are made in general. I think we talked about some of the raw materials that go into making the shingle. But I don't remember specifically talking about theories behind it.

You know, I think our goal by going into the meeting was, they could help us figure out those things.

Q Sir, do you deny that the purpose of the Georgia Tech consultation was with regards to learning the cause of the blistering of the overlay shingle?

MR. WEATHERHOLTZ: Objection.

THE WITNESS: You asked me if we discussed these theories. To my knowledge, we didn't discuss any theories.

When Mel reached out to Georgia Tech, I can't say for sure what his goal was as far as identifying things that were happening in our process that were showing up in the -- the vacuum oven or, you know, things that were happening out in the field. I don't know that we knew what we would get out of Georgia Tech.

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BY MR. LUCEY:

Q Let's try a simple approach. Did y'all discuss blistering with Georgia Tech?

A I'm sure that blistering was discussed, yes.

Q Was the purpose of the consult to solve the blistering issue?

MR. WEATHERHOLTZ: Objection.

THE WITNESS: The purpose of the consult or the meeting was to give them an overview of what we had experienced up until then.

BY MR. LUCEY:

Q Regarding blistering?

MR. WEATHERHOLTZ: Objection.

THE WITNESS: Regarding Chalet, the process, the raw materials, that sort of thing.

BY MR. LUCEY:

Q You deny you consulted with Georgia Tech purely for the purpose of solving the Chalet blistering?

MR. WEATHERHOLTZ: Objection.

THE WITNESS: I don't think we ever thought we would solve blistering. There's just too many other variables that are out there beyond our control. So no, I don't think that was the purpose of the meeting.

I think the purpose of the meeting was to see if they could help us understand how raw materials and changes in our process might be affecting what we're doing.

BY MR. LUCEY:

Q Sir, can you tell us what the title of the background paper is that Atlas provided to Georgia Tech for the consultation?

A I'm sorry. I don't -- background paper?

Q Yes. Plaintiffs' Exhibit 123. This was provided to Georgia Tech, correct?

A Yes.

Q And it provides background, correct?

A It provides a problem statement, product history, manufacturing -- I mean, I'm missing your question.

Q What is the title of the document?

A "Overlay Shingle Blistering Overview for Georgia Tech Research Institute."

Q Now, do you still deny you consulted with Georgia Tech on the blistering issue?

MR. WEATHERHOLTZ: Objection.

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THE WITNESS: We consulted with Georgia Tech on various things that were done in our process. We discussed Chalet. We discussed raw materials. But there never was a -- a feeling that by doing this, this was going to eliminate blistering.

Again, there's just too many -- too many reasons, too many causation -- too much causation.

BY MR. LUCEY:

Q You were simply trying to reduce blistering?

A We were simply trying to see where they might be able to help us in our efforts.

Q To reduce blistering?

MR. WEATHERHOLTZ: Objection.

THE WITNESS: To improve our process, to take out unknowns, raw material, that sort of thing.

BY MR. LUCEY:

Q And, sir, have you ever heard at Atlas the theory that the blistering might have something to do with the use of SBS rubber in the modified asphalt?