

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

AMY HILTON, on behalf of herself and
those persons and entities similarly
situated,

Plaintiff

vs.

Atlas Roofing Corporation,
Atlas Roofing Corporation of Mississippi,

Defendants

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CIVIL ACTION

NO. 05-4204

SECTION "I"
JUDGE AFRICK

MAGISTRATE "4"
MAG. JUDGE ROBY

SECOND AMENDED COMPLAINT

The Second Amended Complaint of Amy Hilton, Plaintiff, on behalf of herself and those persons and entities similarly situated, respectfully represents as follows:

I. INTRODUCTION

(1) Amy Hilton files this Complaint on behalf of herself and all similarly situated persons and entities who purchased roofing shingles manufactured by the Defendants, Atlas Roofing Corporation, Atlas Roofing Corporation of Mississippi, or any of their affiliates, subsidiaries, or related entities (hereinafter collectively referred to as "Atlas") from January 1, 2002 to the present;

(2) The claims asserted herein arise from the defective manufacture of these Atlas roofing shingles and Atlas's misconduct in connection with the design, manufacture, testing and sale of these shingles; and Atlas's representations that the shingles are a superior product for the purposes for which they were designed and warranted, to fulfill

those purposes for the warranted lifetime of said shingle; and Atlas's conduct after learning of defects in the shingles.

(3) As an owner of a home in Madisonville, Louisiana upon which defective Atlas shingles were installed, Plaintiff is a member of the Class she seeks to represent.

(4) Atlas failed to disclose to, and concealed from, Plaintiff and Class members that its shingles are inherently defective, and that they contain materials which did damage to adjacent components of the respective homes and other structures upon which they were installed, and further damaged plant life and other surfaces over which rain fell from the roofs shingled with Atlas's defective shingles. Additional damages may be caused by the defective shingles over a period of time, which have not yet become manifest.

II. JURISDICTION AND VENUE

(5) This Honorable Court has jurisdiction over these claims pursuant to both federal and state laws.

(6) More particularly, this Honorable Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1332 and 1367. Plaintiff is a citizen of the State of Louisiana and Defendants are corporations incorporated under the laws of the State of Mississippi which have their principal places of business in a state other than the State of Louisiana. The matter in controversy exceeds, exclusive of interest and costs, the value specified by 28 U.S.C. § 1332.

(7) Also, Plaintiff seeks damages on behalf of herself and all others similarly situated under laws of the State of Louisiana. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. § 1391 because (a) some of the damages claimed herein

occurred in St. Tammany Parish, Louisiana; (b) a substantial part of the events or omissions giving rise to this claim have occurred in St. Tammany Parish, Louisiana; (c) Defendant did business in St. Tammany Parish by selling, marketing and/or warranting the roof shingles at issue herein; and (d) Plaintiff contracted in St. Tammany Parish, and the contract was executed in St Tammany Parish.

III. PARTIES

(8) Amy Hilton is a resident of, and is domiciled in, Madisonville, Louisiana. In or about early 2004, she hired a licensed general contractor to install Atlas shingles on her home, which was completed in or about December, 2004.

(9) Atlas Roofing Corporation and Atlas Roofing Corporation of Mississippi are Mississippi Corporations. Defendants are principally engaged in the business of design, manufacture, marketing and selling roofing products and maintain their principal place of business in Meridian, Mississippi. At all times pertinent hereto, Atlas transacted business in the State of Louisiana and numerous other states by manufacturing, marketing, advertising and selling the subject shingles. Atlas Roofing Corporation is the parent of a number of affiliate, subsidiary, or alter ego companies which manufacture, market and sell residential and commercial roofing materials. The names of the alter ego companies include, but are not limited to, Atlas Enterprises, Atlas Home Improvement, Atlas Specialty Roofing, Atlas Roof Enterprises and Atlas Roofing Contractors, Inc.

IV. FACTUAL ALLEGATIONS

(10) Atlas has been in the business of manufacturing roofing shingles for a substantial period of time. Said shingles are typically made by incorporating a product known in the industry as “headlap” granules, which are derived from old and discarded

tires. Said shingles are manufactured, promoted and marketed for use in both commercial and residential applications, and for both new construction and re-roofing.

(11) Atlas's shingles marketed under brand names "Pinnacle," have been installed on Plaintiff's home and other homes and structures owned by Class members and have caused damages as a result of rust and discoloration when rain water runs over the subject shingles and upon adjacent structures, plant life, and other materials. Plaintiff further alleges that the defective shingles are not limited to the "Pinnacle" brand of shingle only, but include shingles manufactured and sold by Atlas under the brand names, "Alpine," "Glassmaster," and perhaps others, which all have similar defects. Plaintiff did not become aware that said shingles were defective until approximately June, 2005.

(12) Rust and other discoloration from defective Atlas shingles results in the staining of concrete, bricks and other surfaces upon which the rain water "runoff" makes contact, and kills or otherwise adversely affects grass, shrubs, plants, and other vegetation,. also.

(13) It has come to Plaintiff's attention that a defect in the manufacturing process of these shingles has caused inappropriate metal particles to be included in the composition of each shingle and which, in turn, causes each shingle to create a rust byproduct when in contact with water, including rainwater.

(14) Atlas has acknowledged the defective nature of the subject shingles and the damages caused as a result of them. To address said problems, Atlas has replaced some roofs and has repaired the damages caused thereby. However, many of the Class members are unaware of the subject defect in these shingles and Atlas has not notified Class members, whether by recall notice or otherwise; and has not initiated any program of inspection of Atlas shingles to identify the defective ones. To the contrary, Atlas has

affirmatively concealed defects in its shingles by requiring Confidentiality Agreements from persons seeking to remedy defects in their Atlas shingles by way of Atlas's warranty program..

(15) In addition, Atlas has failed in many instances to provide adequate compensation for the replacement of the subject roof shingles and the repair of other consequential damages caused thereby.

(16) Atlas knew, or should have known, that its manufacturing process relative to these shingles was defective; that the result of such a defective process would cause damages as set forth herein; and yet, Atlas did not attempt to identify and notify purchasers or distributors of the defects in its shingles.

(17) As a result of Atlas' misconduct, Plaintiff and members of the proposed class have suffered actual damages in that the roofs of their homes and other structures have deteriorated and caused rust "runoff;" which has damaged and will continue to cause damage to associated structures, surfaces and plant life and thereby requiring plaintiff and the class members to replace their roofs and remediate associated property damage.

(18) In addition, Plaintiffs and proposed class members assert that further damages may result and have yet to become evident.

V. TOLLING OF STATUTES OF LIMITATION

(19) Atlas is estopped from relying on any prescriptive period or statutes of limitation because of its concealment of the defects in its shingles. Atlas had and continues to have a duty to disclose these defects and to identify and notify purchasers of its defective shingles.

(20) Because the defects with these shingles are not detectable until they become manifest and the damage occurs, Plaintiff and the class members are not reasonably able to discover the problem until long after installation, despite their exercise of due diligence.

(21) Any applicable prescriptive period or statutes of limitations have been tolled by Atlas's concealment and failure to notify Plaintiff and the class members. Plaintiff, the class members and the general public could not reasonably have discovered the defective nature of the subject shingles.

VI. CLASS ACTION ALLEGATIONS

(22) Plaintiff brings this action on behalf of herself and all persons similarly situated who purchased Atlas's defective shingles in Louisiana, pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rule 23.

(23) The Proposed Class is defined as:

All persons or entities who purchased roofing shingles manufactured or sold by Atlas Roofing Corporation or any of its related "Atlas" entities in Louisiana from 2002 to the present.

Excluded from the Class and Subclass are: (a) Atlas, any entity in which it has a controlling interest, and its legal representatives officers directors assigns and successors; (b) the Judge to whom this case is assigned and any member of the Judge's immediate family; (c) claims for personal injuries; and (d) all persons who executed and file a timely request for exclusion from the Class.

(24) The Class numbers more than 100 persons, making joinder of all Members in one action impractical.

(25) There is a well-defined community of interest among the members of the Proposed class. The claims of Plaintiff are typical of the claims of the Class.

(26) There are numerous questions of law and fact common to the Plaintiff and the Class that she seeks to represent and which predominate over any questions that may affect individual Class members, including, without limitation, the following:

- (a) Whether these shingles are defective in that they cause rust discoloration on adjacent structures and any surface upon which rain water “runoff” occurs;
- (b) Whether Atlas knew or should have known that the subject shingles are defective and not suitable for use as an exterior roofing shingle and otherwise not as warranted;
- (c) Whether Atlas fraudulently concealed from Plaintiff and class members the defects in the shingles;
- (d) Whether Atlas had a duty to Plaintiff and class members to disclose the defect in these defective shingles;
- (e) Whether the facts concealed by Atlas from Plaintiff and class members are material facts;
- (f) Whether, as a result of Atlas’ concealment of and/or failure to disclose material facts, Plaintiff and class members acted to their detriment by purchasing, or otherwise permitting the installation of, these defective shingles to their homes and other structures, and/or by purchasing homes or other structures upon which the defective shingles had been installed;
- (g) Whether Atlas engaged in unfair competition or unfair and/or deceptive acts or practices when it failed to represent, through advertising, warranties, or other express representations, that these defective shingles had characteristics that would cause damage;

- (h) Whether Plaintiff and Class members are entitled to compensatory damages, and the amount of those damages;
- (i) Whether the subject defects are redhibitory in nature thereby entitling Plaintiffs and class members to replacement costs, damages and attorney's fees;
- (j) Whether these Atlas shingles contained an inherent defect which is substantially certain to result in damage to surrounding structures and surfaces, and to cause other damages not yet known;
- (k) Whether Atlas should be declared financially responsible for notifying all Class members of its defect of these shingles, and for reimbursing the purchase price for the subject shingles to all Class members who purchase them, and for the cost of expenses to repair, refinish, and/or replace all roof structures on which said shingles have been applied and to otherwise repair all damages associated therewith;
- (l) Whether Atlas should be ordered to disgorge, for the benefit of the Class, all or part of its ill-gotten profits received from the sale of these defective shingles, and/or to make full restitution to Plaintiff and the Members of the Class.

(27) Plaintiff's claims are typical of the claims of the Class. Plaintiff and all class members seek relief under the same legal and remedial theories based on identical facts.

(28) Plaintiff will fairly and adequately protect the interests of the Class.

Plaintiff has retained competent and experienced counsel. Plaintiff and her counsel are committed to prosecuting this action vigorously on behalf of the Class, and have the

financial resources to do so. Neither Plaintiff nor her counsel have any interests that are contrary to or conflict with those of the Class they seek to represent.

(29) Plaintiff and the members of the class have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most members of the class would likely find the cost of litigating their claims to be prohibitive, and with no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few class members could afford to seek legal redress for Defendant's misconduct. Absent a class action, Class members will continue to incur damages and Defendant's misconduct will continue without remedy. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that Class treatment would conserve the resources of the Courts and the litigants, and would promote consistency and efficiency of adjudication.

VII. FIRST CAUSE OF ACTION
**(Violation of Louisiana's Products Liability Act,
LSA-R.S. 9:2800.51, et seq.)**

(30) Plaintiff incorporates each and every preceding paragraph stated above, inclusive, as though the same were fully set forth herein.

(31) Based upon the foregoing allegations of fact, Atlas violated Louisiana's Products Liability Act (LSA-R.S. 9:2800.51, et seq.) in that Atlas manufactured a product which was purchased and installed upon Plaintiff's and class members' homes and which

proximately caused damage from a reasonably anticipated use, namely, the installation of said shingles on Plaintiff's and class members' homes and other structures.

(32) Further, said shingles were unreasonably dangerous because the composition and/or construction thereof deviated in a material way from Atlas' specifications or performance standards for said product and for other identical products manufactured by Atlas.

(33) Further, said shingles were unreasonably dangerous because Atlas failed to provide an adequate warning about the product at the time that it left its control, and/or that Atlas failed to provide an adequate warning after it discovered the defect being that it is a product that possessed an inherent defect that may cause damage to both the product itself and surrounding structures and surfaces.

(34) Further, said shingles were unreasonably dangerous because they did not conform to those express warranties made by Atlas and which express warranties induced Plaintiff and class members to use said shingles to their detriment, resulting in damages as hereinabove set forth.

(35) As the proximate result of the foregoing, Plaintiff and class members sustained economic damages in an amount to be determined by proof at the time of Trial.

WHEREFORE, Plaintiff and Members of the Class pray for relief as set forth herein, and all general and equitable relief to which they may be entitled.

VIII. SECOND CAUSE OF ACTION
(Claim for Redhibition, LSA-C.C. Articles 2520, et seq.)

(36) Plaintiff incorporates each and every preceding paragraph as stated above, inclusive, as though same were fully set forth herein.

(37) Based upon the foregoing allegations of fact, the defects in Atlas' shingles are

redhibitory in nature since said defects rendered its use so inconvenient that Plaintiff and other class members would not have purchased and installed said shingles had they known of said defects.

(38) Further, the subject shingles are not reasonably fit for their ordinary use, namely, the installation thereof on the roofs of residential and commercial structures.

(39) For the above reasons, Plaintiff and Class Members seek all general and equitable relief to which they may be entitled, including costs of litigation and attorney's fees.

(40) The subject redhibitory defects existed at the time of delivery of Atlas's product to Plaintiff and the class members, and, in fact, existed upon leaving Atlas' possession.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and others similarly situated, respectfully prays for judgment against all defendants, including redhibition, attorney's fees and expenses, pre- and post-judgment interest, injunctive and declaratory relief, a program of notice and inspection, relief available under the Louisiana Product Liability Act, actual and statutory damages, disgorgement of ill-gotten gains, and any and all other relief, legal and equitable, to which Plaintiff and the class members may be entitled. Plaintiff also prays for class certification, and that she and her counsel be appointed class representative and class counsel, respectively.

X. JURY DEMAND

Plaintiff and members of the Class hereby demand trial by jury.

/s/ Dawn Adams Wheelahan

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing has been served on all counsel of record by electronic transmission, this 25th day of August, 2006.

/s/ Dawn Adams Wheelahan