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U.S. DISTRICT COURT
EAST DISTRICT OF LA.

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LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

AMY HILTON, ON BEHALF OF
HERSELF AND THOSE PERSONS
AND ENTITIES SIMILARLY SITUATED,

Plaintiff,

V.

ATLAS ROOFING CORPORATION OF
MISSISSIPPI AND ABC INSURANCE
COMPANY,

Defendants.

* CIVIL ACTION
*
*
* NO. 05-4204
*
*
* SECTION I
* JUDGE AFRICK
*
* MAGISTRATE 4
* MAG. JUDGE ROBY
*
*

**ATLAS DEFENDANTS' ANSWER AND AFFIRMATIVE
DEFENSES TO SECOND AMENDED COMPLAINT**

NOW INTO COURT, through undersigned counsel, come Defendants, Atlas Roofing Corporation ("Atlas Corporation"), and Atlas Roofing Corporation of Mississippi ("Atlas Mississippi")¹ (collectively "Atlas"), which state as follows for their Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint (Dkt. #63) (the "Complaint"):

FIRST DEFENSE

Atlas responds to the specific allegations of the Complaint as follows:

¹ Atlas Mississippi does not exist, but this pleading covers that entity as well out of an abundance of caution.

1. With respect to the allegations contained in paragraph 1 of the Complaint, Atlas admits that Plaintiff purports to bring a class action as described therein, but denies that any class action would be proper and otherwise denies the remaining allegations of this paragraph.

2. Atlas specifically denies any misconduct on its part and otherwise denies the remaining allegations contained in paragraph 2 of the Complaint.

3. Atlas denies the allegations contained in paragraph 3 of the Complaint for lack of information sufficient to justify a belief therein.

4. Atlas denies the allegations contained in paragraph 4 of the Complaint.

5. Atlas admits that this Court possesses subject matter jurisdiction over this action but otherwise denies the remaining allegations of paragraph 5 of the Complaint.

6. Atlas admits that Atlas Corporation is a corporation organized under the laws of the State of Mississippi having its principal place of business in a state other than the State of Louisiana and further admits that this Court possesses subject matter jurisdiction over this action, but otherwise denies the remaining allegations of paragraph 6 of the Complaint for lack of information sufficient to justify a belief therein.

7. With respect to the allegations contained in paragraph 7 of the Complaint, Atlas admits that Plaintiff purports to bring a class action as described therein, and admits that venue is proper in this Court, but denies that any class action would be proper and otherwise denies the allegations of this paragraph.

8. Atlas denies the allegations contained in paragraph 8 of the Complaint for lack of information sufficient to justify a belief therein.

9. Atlas admits that Atlas Corporation is a corporation organized under the laws of the State of Mississippi, that its principal place of business is in Meridian, Mississippi, that it is engaged in the business of manufacturing residential roofing shingles and certain types of insulation materials, that its products are used in certain commercial applications, and that its products are distributed to the State of Louisiana and other states, but otherwise denies the remaining allegations of paragraph 9 of the Complaint.

10. Atlas admits that it has been engaged in the business of manufacturing roofing shingles since 1982, that its shingles sometimes contain a component referred to as “headlap granules” which Atlas obtains from third parties, and that some headlap granules are derived from tire rubber, but denies the remaining allegations contained in paragraph 10 of the Complaint, other than to incorporate herein the answer to paragraph 9 of the Complaint.

11. Atlas admits that it distributes shingles under the brand names Pinnacle, Alpine and Glass Master, but denies the remaining allegations contained in paragraph 11 of the Complaint for lack of sufficient information to justify a belief therein (for example, Atlas lacks complete or reliable information about Plaintiff or any individual class member), and specifically denies that there is a defect in its shingles.

12. Atlas denies that its shingles have caused damages, and otherwise denies the remaining allegations contained in paragraph 12 of the Complaint for lack of sufficient information to justify a belief therein, and specifically denies that there is a defect in its shingles.

13. Atlas denies the allegations contained in paragraph 13 of the Complaint, and specifically denies that there is a defect in the manufacturing process.

14. Atlas admits that it has replaced and/or repaired roofing shingles or offered to do so consistent with its Limited Shingle Warranty, but otherwise denies the remaining allegations contained in paragraph 14 of the Complaint, and specifically denies the allegations that there is a defect in its shingles, that Atlas has acknowledged same, that there are “problems,” that its shingles have caused damages, and that it has failed to disclose information that should be disclosed.

15. Atlas denies the allegations contained in paragraph 15 of the Complaint.

16. Atlas denies the allegations contained in paragraph 16 of the Complaint.

17. Atlas denies the allegations contained in paragraph 17 of the Complaint.

18. Atlas denies that its shingles caused any damages and otherwise denies the allegations contained in paragraph 18 of the Complaint for lack of sufficient information to justify a belief therein.

19. Atlas denies the allegations contained in paragraph 19 of the Complaint.

20. Atlas denies the allegations contained in paragraph 20 of the Complaint.

21. Atlas denies the allegations contained in paragraph 21 of the Complaint.

22. With respect to the allegations contained in paragraph 22 of the Complaint, Atlas admits that Plaintiff purports to bring a class action as described therein, but denies that any class action would be proper and otherwise denies the remaining allegations of this paragraph.

23. With respect to the allegations contained in paragraph 23 of the Complaint, Atlas admits that Plaintiff purports to bring a class action on behalf of the persons described therein and that Plaintiff attempts to exclude certain persons from the proposed class, but

denies that any class action would be proper and otherwise denies the remaining allegations of this paragraph.

24. Atlas denies the allegations contained in paragraph 24 of the Complaint.

25. Atlas denies the allegations contained in paragraph 25 of the Complaint.

26. Atlas denies the allegations contained in paragraph 26, including subparts (a)-(l) thereof, of the Complaint.

27. Atlas denies the allegations contained in paragraph 27 of the Complaint.

28. Atlas denies the allegations contained in paragraph 28 of the Complaint.

29. Atlas denies the allegations contained in paragraph 29 of the Complaint.

30. With respect to the allegations contained in paragraph 30 of the Complaint, Atlas incorporates by reference its response to each and every preceding paragraph as if fully set forth herein.

31. Atlas denies the allegations contained in paragraph 31 of the Complaint.

32. Atlas denies the allegations contained in paragraph 32 of the Complaint.

33. Atlas denies the allegations contained in paragraph 33 of the Complaint.

34. Atlas denies the allegations contained in paragraph 34 of the Complaint.

35. Atlas denies the allegations contained in paragraph 35 of the Complaint.

36. Atlas denies the allegations contained in the unnumbered paragraph beginning with the word “Wherefore” following paragraph 35 of the Complaint, and specifically denies that Plaintiff is entitled to any of the relief sought therein.

37. With respect to the allegations contained in paragraph 36 of the Complaint, Atlas incorporates by reference its response to each and every preceding paragraph as if fully set forth herein.

38. Atlas denies the allegations contained in paragraph 37 of the Complaint.
39. Atlas denies the allegations contained in paragraph 38 of the Complaint.
40. Atlas denies the allegations contained in paragraph 39 of the Complaint.
41. Atlas denies the allegations contained in paragraph 40 of the Complaint.
42. Atlas denies the allegations contained in the unnumbered paragraphs beginning with the word “Wherefore” following paragraph 40 of the Complaint, and specifically denies that Plaintiff is entitled to any of the relief sought therein.

SECOND DEFENSE

Plaintiff fails to state a claim upon which relief can be granted.

THIRD DEFENSE

Atlas affirmatively alleges the Plaintiff’s and purported class member’s claims are barred in whole or in part by the applicable statute of limitations or prescriptive period.

FOURTH DEFENSE

Atlas affirmatively alleges that the Plaintiff and purported class members have failed to mitigate their damages as required by law.

FIFTH DEFENSE

Atlas affirmatively states that it is not liable for the damages alleged by Plaintiff and many of the purported class members because those damages were caused by intervening or superseding actions of Plaintiff, the purported class members, and third parties beyond the control of Atlas.

SIXTH DEFENSE

Atlas affirmatively alleges that no privity of contract exists between Plaintiff and/or many of the purported class members and Atlas such that Atlas cannot be liable as a matter

of law.

SEVENTH DEFENSE

Atlas affirmatively alleges that Atlas's obligations to the Plaintiff and the purported class members, if any, is strictly limited to the terms of the Limited Shingle Warranty.

EIGHTH DEFENSE

Atlas affirmatively alleges that many members of the purported class have suffered no injury or damages whatsoever, and that the alleged defect has not manifested itself in these shingles.

NINTH DEFENSE

Atlas affirmatively states that under any warranty-related claim, the potential recovery of the Plaintiff and the putative class members is limited to the performance of repairs and needed adjustments, that Atlas is not liable for incidental or consequential damages, and that recovery is limited or prohibited by the relevant disclaimers of and/or limitations on warranties.

TENTH DEFENSE

Plaintiff and/or many of the purported class members failed to notify Atlas of the alleged brake defect or to present their shingles for repairs in accordance with the terms of applicable law and the Limited Shingle Warranty, failed to provide Atlas with the opportunity to cure any defect, and failed to tender their shingles to Atlas for repair.

ELEVENTH DEFENSE

Plaintiff and some or all of the members of the purported class lack standing to assert claims because they have not suffered damage or injury.

TWELFTH DEFENSE

Plaintiff's claims and those of some or all of the members of the purported class may be premature.

THIRTEENTH DEFENSE

Plaintiff and some or all of the members of the purported class may have sold or otherwise disposed of their "homes and other manmade structures" and are therefore not entitled to the relief sought.

FOURTEENTH DEFENSE

Plaintiff's claims and those of some or all of the members of the purported class may be barred by a lack of reliance.

FIFTEENTH DEFENSE

Plaintiff's claims and those of some or all of the members of the purported class may be barred by assumption of the risk, contributory negligence, or comparative negligence.

SIXTEENTH DEFENSE

Plaintiff's claims and those of some or all of the members of the purported class may be barred by waiver, estoppel, or continued or extensive use.

SEVENTEENTH DEFENSE

Plaintiff's claims and those of some or all of the members of the purported class may be barred by a lack of causation, including a lack of proximate cause.

EIGHTEENTH DEFENSE

The alleged injuries or damages, if any, were the result of product alteration or product abuse, misuse, modification or neglect.

NINETEENTH DEFENSE

The alleged defect at issue does not render the shingles at issue useless, inconvenient, or otherwise diminish the shingles' usefulness or value.

TWENTIETH DEFENSE

The alleged defect at issue was either known at the time of sale or should have been discovered by a reasonably prudent buyer.

TWENTY-FIRST DEFENSE

Atlas is not liable under the Louisiana Products Liability Act or any similar state law on the basis of any and all defenses that are available under those laws.

TWENTY-SECOND DEFENSE

Atlas is not liable under the redhibition articles or any similar state law on the basis of any and all defenses that are available under those laws.

TWENTY-THIRD DEFENSE

Plaintiff's claims and those of some or all of the members of the purported class fail due to settlement, transaction, compromise, accord and satisfaction, offer, discharge of obligation, release, payment, and/or satisfactory repair.

TWENTY-FOURTH DEFENSE

The alleged defect did not exist at or prior to the delivery or the sale of the shingles.

TWENTY-FIFTH DEFENSE

Any damages or recovery are reduced or offset by credit for use and/or the failure to act as a prudent administrator.

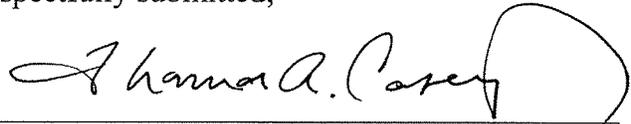
TWENTY-SIXTH DEFENSE

Atlas is not liable to the extent that the shingles and/or the structure(s) on which they were placed were destroyed and/or insured.

WHEREFORE, Defendants, Atlas Roofing Corporation and Atlas Roofing Corporation of Mississippi, deny that Plaintiff is entitled to recovery or relief in any amount whatsoever and respectfully pray that:

- a. the Court enter judgment in favor of Defendants and against Plaintiff, with costs awarded to Defendants; and
- b. the Court provide such other relief to Defendants as is just and proper.

Respectfully submitted,



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**Attorneys for Defendants,
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Atlas Roofing Corporation of Mississippi**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served upon all counsel of record via facsimile and United States mail, postage prepaid and properly addressed, this 12 day of September, 2006.

