

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

JAIME GONZALEZ, and all others)	
similarly situated,)	Case No. 5:13-cv-00032
)	
Plaintiff,)	
v.)	Judge George P. Kazen
)	
OWENS CORNING SALES, LLC and)	
OWENS CORNING,)	
)	
Defendants.)	

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff Jaime Gonzalez (“Plaintiff”) on his own behalf and on behalf of all others similarly situated (“Class”), by his attorneys, files this class action complaint against Owens Corning Sales, LLC and Owens Corning (“Owens Corning” or “Defendants”), and alleges as follows, upon knowledge as to himself and upon information and belief as to other facts as set forth herein.

NATURE OF ACTION

A. Background

1. This is a consumer class action on behalf of all persons and entities in Texas who purchased Oakridge fiberglass shingles (“Shingles”) manufactured and distributed by Owens Corning.
2. Upon information and belief, Owens Corning sold or distributed Shingles throughout Texas from 1986 to present.
3. Upon information and belief, all Owens Corning Shingles are manufactured using the same basic formula: a fiberglass mat saturated with asphalt and a top layer of mineral granules with a strip of asphalt sealant.

4. Defendants manufactured and marketed its Oakridge Shingles for sale nationwide.

5. Upon information and belief, Defendants marketed and sold the Shingles to thousands of Texas consumers.

6. Owens Corning markets and warrants its Shingles as durable and as offering long-lasting protection for a specified life ranging various years. The industry and consumers recognize the warranty nomenclature as having meaning. Additionally, Shingles with a lower year warranty are generally priced at a lesser dollar amount than Shingles with a higher year warranty.

7. Owens Corning's sales brochures and marketing literature, which were widely distributed to building and roofing professionals and generally available to all Plaintiff and the Class at the time of sale, state that the Shingles are, among other things (from Defendants' website):

Every shingle we make combines consistent quality with long-lasting beauty and maximum protection. Performance is at the heart of every Owens Corning roofing product.

...

Home sweet home. It's the place where you want to feel the most comfortable. Safe. Protected. But no matter how much you love your house, it seems the work is never completely done. And if purchasing a new roof is on your to-do list, it may seem like a daunting task. But you don't have to worry about it anymore. We're here to help. You can feel confident about choosing our roofing products—Owens Corning has been a recognized leader in the building materials industry for over 65 years. We're known for making homes more comfortable, beautiful and durable.

...

This is your chance to choose a roof that not only has outstanding performance, but also has exceptional beauty. One that can transform the look of your entire home. So for years to come, you'll feel great every time you pull in the driveway. Safe. Protected. Home.

Owens Corning's Shingles are not "long lasting" or "durable" and result in early and severe deterioration that requires premature tear-off and replacement – at a great cost to purchasers.

8. Owens Corning described its warranty in widely distributed documents to building and roofing professionals. Concerning its warranty, Owens Corning boasts that (from Defendants' website):

Whoever you are, wherever you live, whatever your style, Owens Corning has a shingle line that is right for you. Every Owens Corning asphalt shingle delivers beauty and performance combined with a very strong warranty.

Owens Corning's Shingles have not lived up to that promise.

9. Owens Corning represents to Plaintiff and the proposed Class, in documents generally available to the public, that its Shingles would last for a specified period of time without problems, or the company would remedy the situation. It also represents that the Shingles meet industry accepted ASTM standards. Owens Corning makes these representations before purchase and at the time of purchase via sales brochures, marketing materials (including but not limited to store displays, sales seminars, and training materials), and on the Shingles packaging.

10. The Shingles manufactured and sold by Owens Corning are defectively designed and manufactured in such a way that they fail prematurely, causing damage to the underlying structures (including roof, structural elements, interior walls and ceilings) and other property of Plaintiff and members of the Class. The Shingles are non-conforming.

11. The defects present in Owens Corning Shingles are so severe that Plaintiff and members of the Class must repair or replace their roofs' sooner than reasonably expected by ordinary consumers who purchase shingles generally and by consumers who purchased these Shingles specifically.

12. All of Owens Corning's Shingles are uniformly defective such that Plaintiff and Class members' Shingles are failing before the time periods advertised, marketed, and guaranteed by Owens Corning or otherwise expected by ordinary consumers purchasing Shingles.

13. Owens Corning knew or reasonably should have known the Shingles are defective as designed and manufactured such that they fail prematurely due to moisture invasion. The outward manifestation of the Shingle deterioration and deformation is cracking, curling, degranulation, blistering, fishmouthing, clawing, and discoloration. At the extreme, the Shingles break at the edges or blow off roofs. In short, the Shingles do not perform in accordance with the reasonable expectations of consumers that such products be durable and suitable for use as a roofing product.

14. The following represents a small sampling of internet postings by Owens Corning products purchasers' general frustrations with the defective Shingles:

I had an Owens-Corning roof (Oakridge 40 Deep Shadow) with a 40-year warranty installed in August, 1999. The granules started running off immediately, but I assumed it was just because it was new. It is now 10 years later and they are still running off, quite a lot, so I asked about the warranty. I was sent a form and told to take off two shingles and send them in with the forms. I am an old woman of 64. Doing this is out of the question, which means I have to pay someone to do it. I believe these shingles are defective since others are having the same problem. How do I get Owens-Corning to replace my roof at their cost? Replacing the whole roof would cost money that I don't have. The reason I had the 40-year roof put on in the first place was so I would not have to go through this and now I can't afford it.

I purchased Oakridge 40 year shingles in 2001. Now my roof is leaking and there are large cracks in the shingles. Is there a class action suit that I can get in with against this company? I have been in touch with them with my

complaint. And I have to do a host of work, plus ship the defective shingles and show ridiculous proof of ownership of my home. I have read on the internet that their offer is minimal. I am very upset.

We had 40-years Owens Corning shingles put on the roof of our house at ** in Jamestown, KY in the fall of 1994. Last year, cracking was noticed. This spring, the roof began to leak. A claim was submitted and denied. The reason given was that our deck was moving. The house is 23 years old and the deck is not moving. Our insurance company is sending an engineer from *** to inspect the property. We do not yet know the extent of the damage. When the shingles are removed and the roof is inspected, we will know what has to be replaced. So far we have had our maintenance man remove and send in shingles and try to stop the leaking. There has been some interior damage due to leaking.

I purchased a new home in August 2008 that has Owen Corning Shingles. I kept noticing granules from the shingles on the driveway ... I have called probably 8 to 12 times to customer service with their unwillingness to take care of this claim, always saying to call back later and they would give a time that they would come to my home. Can anyone tell me what to do to get this settled? It has been almost two months. We are in our rainy season and I don't want the possibility of damage to my home.

Very poor. We built a new home in 2001 using Oakridge 30 harbor blue. Shingle turned grey after eight years and made my home look ugly. I sent numerous correspondence to Owens Corning and also went back to the place of purchase. No help on any end. I spent over \$10,000 on roof system.

I am writing on behalf of a client who owns a home built in 2000. The Owens Corning Oakridge 40-year-laminate shingle was installed on client's home in 2000. The shingle had horizontal cracking, nearly over the entire roof. The client had to replace this very big roof with an expected 40-year life, just 11 years after it was installed. Owens Corning would not file a claim as client was the 2nd owner of the home, and is not listed on a warranty. Do they warrant an owner or their products?

I had Owens corning shingles installed on my roof in 1994. The roof has been losing massive amounts of granules the last few years. The insurance adjuster said there was no hail damage. A roofer said there was a problem with the shingles. Now it's looking really bad. Is this the shingle that has had the class action suit? How do I find out?

B. Owens Corning's Failure to Comply with ASTM D3462 Industry Standards

15. Purchasers and users of shingles require that manufacturers of shingles certify that the shingles comply with standards promulgated by relevant certification and standards organizations.

16. ASTM International is a standard setting organization that establishes and maintains industry standards for many different products.

17. ASTM International establishes engineering and product testing standards. Shingles are among the products for which ASTM has developed standards and product testing programs. ASTM D3462 – Standard Specification for Asphalt Shingles Made from Glass Felt and Surfaced with Mineral Granules – is recognized by the roofing industry as the critical standard for fiberglass-reinforced asphalt shingles.

18. Model building codes in the United States reference ASTM D3462 as the minimum requirement for product performance for fiberglass-reinforced asphalt shingles. As a result, shingles that do not comply with ASTM D3462 cannot be legally installed on homes and buildings in the United States.

19. One requirement of ASTM D3462 is that the fiberglass shingles pass certain strength tests that measure the shingles' ability to withstand tearing, cracking and general deterioration.

20. If manufacturers of fiberglass shingles did not warrant their compliance with the applicable standards – including ASTM D3462 – consumers or the consumers’ agents would not purchase those shingles and would instead purchase competitor shingles that did in fact meet the applicable standards.

21. Fiberglass shingles that do not meet ASTM D3462, do not meet industry standards, are not marketable, have no market value, and cannot be sold to consumers at any price.

22. Based on information and belief, Owens Corning’s Shingles do not meet ASTM standards and Owens Corning did not represent such failures to unsuspecting purchasers who relied on Owens Corning’s written representations affixed to the Shingles packaging (bundle wrappers) purchased and installed. The Shingles fail prematurely before the life of their purported warranties.

C. Owens Corning’s Warranty

23. Owens Corning sells warranties with its Shingles ranging from 20 to 50 years. The warranties are marketed and create an expectation within the industry and by ordinary consumer purchasers that the Shingles will last as long as the warranty period. The warranty furthers these expectations by guaranteeing that a Shingle will last for a specified period of time. The Class was generally charged more to purchase Shingles with a Warranty as the warranty period increased in length thereby creating the expectation that a longer warranty period advertised and guaranteed had meaning.

24. Owens Corning established a warranty period to be advertised and guaranteed for its Shingles without conducting appropriate testing to determine if the Warranty period was supported by actual or simulated use. As to some of the Shingles, it appears that the warranty

period increased in duration with Owens Corning making substantial changes to the design or manufacturing process of its Shingles and without further or appropriate testing.

25. Upon information and belief, Owens Corning did not use a process or formula for determining the length of its warranties, but rather extended the length of warranties as the business environment changed so that Owens Corning would not be put at a marketing disadvantage vis-à-vis its competitors.

26. Upon information and belief, as Owens Corning's competitors began to offer longer warranty periods for similar shingles, Owens Corning lengthened the warranty period of its Shingles without adequate or appropriate testing to determine if the increase of warranty was justified, supportable, or otherwise true.

D. Owens Corning's Handling of Warranty Claims

27. Owens Corning uses an overly burdensome warranty claims process that is designed to deter warranty claimants from filing, and reduce the number of "valid" claims that it receives. Much of the information that Owens Corning requires is not available to homeowners, especially those who purchased a new home from a builder or were not the original owners of the roof.

28. Owens Corning will not consider a warranty claim until a customer submits all of the following information to the company:

- a. Two full shingle samples from the affected area on the roof;
- b. Proof of purchase;
- c. Description of the problem;
- d. Area of roof affected;
- e. Number of shingle squares affected;
- f. Square feet of roof;

- g. Whether felt was used under the shingles;
- h. The installers information; and
- i. Photographs of the roof.

29. Instead of providing compensation based upon the terms of warranty, Owens Corning intentionally misleads warranty claimants, including Plaintiff and the Class, by requiring them to accept a release of warranty in exchange for cash compensation.

30. The consideration offered by Owens Corning in exchange for a signed release is woefully inadequate to compensate claimants for Owens Corning's defective Shingles because it does not cover the full cost of replacement shingles, labor, disposal, or other related costs incurred by Plaintiff and the Class.

31. The release is Owens Corning's attempt to "buy off" any future claims relating to its Shingles and relieve itself of the burden and responsibility of future warranty claims concerning any possible remaining Shingles on a warranty claimant's roof.

32. The consideration offered for an executed release is based upon a fraction of the cost of replacing only the shingles that exhibit the defect at that time, but the release waives the warranty on the entire roof, regardless of whether the claimant was compensated for the release.

E. Owens Corning's On-going Refusal to Notify Its Customers of the Defects Associated With Its Oakridge Fiberglass Shingles.

33. Upon information and belief, Owens Corning has received thousands of warranty claims alleging a manufacturing or design defect in the Shingles.

34. Despite receiving a litany of complaints from consumers, such as Plaintiff and other members of the Class, Owens Corning has refused to convey effective notice to consumers about the defects, and refused to repair defective roofs fully or repair the property damaged by the premature failure of its product.

35. Owens Corning's response to customers' warranty submissions is woefully inadequate under these circumstances in that it limits Plaintiff and Class members' recovery to replacement costs of individual Shingles piece by piece and excludes costs of labor to replace the Shingles.

F. Owens Corning's Acts and Omissions Have Damaged Plaintiff and the Class

36. As a result of the defects and failures alleged herein, Plaintiff and the Class have suffered actual damages. The Shingles on their homes, buildings, and other structures have and will continue to fail prematurely compared to the time expected by ordinary consumers, the time marketed by Owens Corning, and the time warranted by Owens Corning, resulting in damage to the underlying roof and housing structure and requiring them to expend thousands of dollars to repair damage associated with the incorporation of the Shingles into their homes, buildings, and other structures, and to prevent such damage from continuing. Damage caused by the defective Shingles includes, but is not limited to: damage to the underlying felt, damage to structural roof components (including the rotting and degradation of plywood sheathing, trusses, and rafters), damage to plaster and sheetrock, and damage to walls, ceiling, and other components either as a result of the Shingles themselves or damage at the time when the Shingles are removed and replaced.

37. Because the defects in the Shingles are latent and not detectable until manifestation, Plaintiff and the Class members were not reasonably able to discover their Shingles were defective until after installation, despite the exercise of due diligence. Indeed, at the time of first sale, building and construction professionals would not be able to detect the latent defect unless they subjected the Shingles to their own testing, modeling, or analysis.

38. Because the size of the typical individual Class member's claim is relatively small, and because most homeowners and/or property owners have only modest resources, it is unlikely that individual Class members could afford to seek a full and fair recovery against Owens Corning on their own. This is especially true in light of the size and resources of Owens Corning. A class action is, therefore, the only reasonable means by which Class members can obtain relief from these Defendants.

39. The Shingles manufactured and sold by Owens Corning are defectively designed and manufactured such that they fail prematurely, causing damage to the property of Plaintiff and members of the Class and forcing them to repair or replace their roofs sooner than reasonably expected, than marketed, and than warranted.

40. Plaintiff seeks to recover, for himself and the Class, the costs of repairing the damage to their property and replacing their roofs, or injunctive relief forcing Owens Corning to replace their defective roofs.

PARTIES

Plaintiff Mr. Jaime Gonzalez

41. At all relevant times Plaintiff and class representative Mr. Jaime Gonzalez was a citizen of Texas and resident of Webb County.

42. Mr. Gonzalez purchased Owens Corning Oakridge Shingles in January 2004 and installed the shingles on the roof of his personal residence shortly thereafter.

43. At the time Mr. Gonzalez purchased the Owens Corning Shingles, Owens Corning represented to Mr. Gonzalez that the Shingles have a useful life of at least 30 years. Mr. Gonzalez reasonably expected that the Shingles would last that long.

44. Mr. Gonzalez first became aware of the problem with his Shingles in 2012 when he notice that the Shingles were blistering, fraying, de-granulating, shrinking and allowing water to penetrate the roof. These problems caused leaking and severe water damage to the interior structure of his home and living quarters.

45. In August 2012, Mr. Gonzalez contacted Owens Corning to make a warranty claim, and at that time, he notified Owens Corning that his Shingles were defective. (Owens Corning issued Mr. Gonzalez warranty claim number 417895.)

46. In response to the warranty claim, Owens Corning offered to pay a credit to Mr. Gonzalez \$162.63. Mr. Gonzalez refused to accept Owens Corning's inadequate offer.

47. Mr. Gonzalez received a repair estimate of approximately \$26,000 to correct the problems caused to his roof and house interior by Owens Corning's Shingles.

48. Mr. Gonzalez had no reasonable way to discover the Shingles were defective until after he received an estimate to repair his roof to correct the problems caused by Owens Corning's Shingles.

49. The following photos are a sampling of the external problems Plaintiff Gonzalez has experienced as a result of using Owens Corning Shingles:





Defendants Owens Corning Sales, LLC and Owens Corning

50. Defendants Owens Corning's and Owens Corning Sales, LLC's principle place of business are in Toledo, Ohio. Despite warranties to the contrary, and as set forth herein, the Shingles are designed, manufactured, advertised, warranted and sold in a defective manner to scores of putative class members in Texas. Owens Corning maintains manufacturing plants in Houston and Irving, Texas.

JURISDICTION AND VENUE

51. Owens Corning, throughout its various subsidiaries and affiliates, operates over a dozen manufacturing plants in the United States (two of which are located in Houston and Irving, Texas), has significant business operations in the state of Texas where it sells, markets, and services Owens Corning Shingles, and has sufficient contact with Texas or otherwise

intentionally avails itself to the laws and markets of Texas so as to sustain this Court's jurisdiction over the Defendants.

52. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d) in that Plaintiff and class members are citizens of Texas and Defendants are citizens of Ohio; and the amount in controversy exceeds Five Million Dollars (\$5,000,000.00).

53. Venue is proper in this district pursuant to 28 U.S.C. § 1391 *et seq.*, because a substantial part of the events or omissions giving rise to this claim occurred in the state of Texas.

CLASS ACTION ALLEGATIONS

54. This action has been brought and properly be maintained as a state of Texas class action pursuant to Federal Rule of Civil Procedure 23, with the Class defined as follows:

All individuals and entities that have owned, own, or acquired homes, residences, buildings or other structures physically located in Texas, on which Owens Corning Oakridge Shingles are or have been installed since 1986.

Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest of Defendants, and Defendants' legal representatives, assigns and successors. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

55. Plaintiff reserves the right to re-define the Class prior to class certification.

56. While the precise number of Class members is unknown to Plaintiff, upon information and belief, Plaintiff believes the number is well in excess of 1,000 and the Class likely includes many thousands such that joinder is impracticable. The true number of Class members is likely known by Defendants. Disposition of these claims in single class action will provide substantial benefits to all parties and the Court.

57. The claims of the representative Plaintiff are typical of the claims of the Class in that the representative Plaintiff, and all Class members, own homes, residences, or other structures on which defective Shingles manufactured by Owens Corning have been installed. Those Shingles have failed, and will continue to fail, prematurely. The representative Plaintiff, like all Class members, has been damaged by Owens Corning's conduct in that he has incurred or will incur the costs of repairing or replacing his roof and repairing the additional property damaged by the Shingles' premature failure. Furthermore, the factual basis of Owens Corning's conduct is common to all Class members, resulted in injury to all members of the Class.

58. There are numerous questions of law and fact common to Plaintiff and the Class. Those questions predominate over any questions that may affect individual Class members, and include the following:

- a. Whether Owens Corning Shingles are defective in that they fail prematurely and are not suitable for use as an exterior roofing product for the length of time advertised, marketed and warranted;
- b. Whether the Shingles are defectively designed or manufactured;
- c. Whether Owens Corning knew or should have known of the defective nature of the Shingles;
- d. Whether the Shingles failed to perform in accordance with the reasonable expectations of ordinary consumers or with ASTM standards;
- e. Whether Owens Corning properly instructed consumers about the likelihood of premature failure;

- f. Whether the Shingles fail to perform as advertised and warranted or expected by an ordinary consumer;
- g. Whether Owens Corning's conduct in marketing and selling its Shingles involved misrepresentations, internal omissions, or was otherwise unfair and deceptive;
- h. Whether Plaintiff and the Class are entitled to compensatory, exemplary and statutory damages, and the amount of such damages;
- i. Whether Owens Corning should be declared financially responsible for notifying all Class members about their defective Shingles and for all damages associated with the incorporation of such Shingles into Class members' homes, residences, buildings, and other structures; and
- j. Whether Owens Corning has changed or altered its warranty program without notice to the Plaintiff and the Class.

59. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting statewide, multistate and national consumer class actions, actions involving defective products, and, specifically, actions involving defective construction materials. Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the Class they represent, and have the financial resources to do so. Neither Plaintiff nor their counsel has any interests adverse to those of the Class. Counsel for Plaintiff has filed cases against Defendants in Pennsylvania and California. Counsel for Defendants here is the same for those states.

60. Plaintiff and the members of the Class have suffered and will continue to suffer harm and damages as a result of Owens Corning's conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, the vast majority of the Class members likely would find the cost of litigating their claims to be prohibitive, and would have no effective remedy at law. Because of the relatively small size of the individual Class member's claims, it is likely that only a few Class members could afford to seek legal redress for Owens Corning's conduct. Further, the cost of litigation could well equal or exceed any recovery. Absent a class action, Class members will continue to incur damages 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 will promote consistency and efficiency of adjudication.

ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS

61. Owens Corning knew or reasonably should have known the Shingles were defective prior to the time of sale, and intentionally concealed that material information and the truth concerning their product from Plaintiff and the general public, while continually marketing the Shingles as dependable products. Defendants' acts of fraudulent concealment include failing to disclose that its Shingles were defectively manufactured and would deteriorate in less than their expected lifetime, leading to damage to the very structures they were purchased to protect.

62. Because the defects in the Shingles are latent and not detectable until manifestation, Plaintiff and the Class members were not reasonably able to discover their

Shingles were defective and unreliable until after installation, despite their exercise of due diligence.

63. Plaintiff had no reasonable way to discover this defect until shortly before Plaintiff filed this complaint.

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

FIRST CAUSE OF ACTION

(Breach of Express Warranty)

65. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

66. Defendants marketed and sold their Shingles into the stream of commerce with the intent that the Shingles would be purchased by Plaintiff and members of the Class.

67. Defendants expressly warranted that its Shingles are permanent, impact resistant, met ASTM standard D3462, and would maintain their structural integrity. Defendants' representations, through its written warranties regarding the durability and the quality of the Shingles, created express warranties which became part of the basis of the bargain Plaintiff and members of the Class entered into when they purchased the Shingles.

68. Express warranties created by Owens Corning go beyond the limited warranties Owens Corning relies upon. Owens Corning also creates express warranties on the Shingles packaging and in product brochures and marketing materials.

69. Defendants expressly warranted the structural integrity of the Shingles purchased by Plaintiff and the Class.

70. Defendants breached their express warranties to Plaintiff and the Class in that Defendants' Shingles do not maintain their structural integrity and perform as promised.

Defendants' Shingles crack, split, curl, blister, warp, discolor, de-granulate, delaminate, blow off the roof, deteriorate prematurely, and otherwise do not perform as warranted by Defendants; and they have caused or are causing damage to the underlying roof elements, structures or interiors of Plaintiff and Class members' homes, residences, buildings and structures.

71. Defendants' warranties fail their essential purpose because they purport to warrant that the Shingles will be free from structural problems. Defendants' Shingles fail far short of the applicable warranty period.

72. Moreover, because the warranties limit Plaintiff and Class members' recovery to replacement of the Shingles piece by piece, with replacement labor not included, Defendants' warranties are woefully inadequate to repair and replace failed roofing, let alone any damage suffered to the underlying structure due to the inadequate protection provided by the Owens Corning Shingles. The remedies available in Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

73. The limitations on remedies and the exclusions in Defendants' warranties are unconscionable and unenforceable.

74. Defendants have denied or failed to pay in full the warranty claims or have not responded to warranty claims adequately.

75. As a result of Defendants' breach of its express warranties, Plaintiff and the Class have suffered actual damages in that they purchased and installed on their homes and other structures an exterior roofing product that is defective and that has failed or is failing prematurely due to moisture penetration. This failure has required or is requiring Plaintiff and the Class to incur significant expenses in repairing or replacing their roofs. Replacement is

required to prevent on-going and future damage to the underlying roof elements, structures or interiors of Plaintiff's and Class members' homes and structures.

76. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendants for compensatory damages for himself and each member of the Class, for the establishment of the common fund, plus attorney's fees, interest and costs.

SECOND CAUSE OF ACTION

**(Breach of Implied Warranties of Merchantability and
Fitness for a Particular Purpose)**

77. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

78. At all times mentioned herein, Defendants manufactured and/or supplied Owens Corning Shingles that were purchased by Plaintiff and impliedly warranted to be of merchantable quality and fit for the use for which it was intended.

79. Plaintiff and his agents relied on the skill and judgment of the Defendants in using the aforesaid product.

80. The product was unfit for its intended use and it was not of merchantable quality as warranted by Defendants in that it had propensities to break down and fail to perform and protect when put to its intended use. The aforesaid product did cause Plaintiff and Class members to sustain damages as herein alleged.

81. The product was similarly unfit for its particular purpose.

82. After Plaintiff was made aware of his damages as a result of the aforesaid product, notice was duly given to Defendants of the breach of said warranty.

83. Owens Corning failed to provide adequate remedies and add additional terms to the warranties which caused them to fail their essential purposes.

84. As a direct and proximate result of the breach of said warranties, Plaintiff and the Class members suffered and will continue to suffer loss as alleged herein in an amount to be determined at trial.

85. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendants for compensatory damages for himself and each member of the Class, for establishment of the common fund, plus attorney's fees, interest and costs.

THIRD CAUSE OF ACTION

(Breach of Contract)

86. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

87. Plaintiff and the Class Members have entered into certain contracts and warranty agreements with Defendants, including an express warranty. Pursuant to these contracts and agreements, including the express warranty, Defendants would provide Plaintiff and the Class members with Shingles that were of merchantable quality and fit for the use for which they were intended. Defendants were further obligated pursuant to the express warranty to repair or replace any defects or problems with the Shingles that Plaintiff and the Class members experienced. In exchange for these duties and obligations, Defendants received payment of the purchase price for these Shingles from Plaintiff and the Class.

88. Plaintiff and the Class satisfied their obligations under these contracts, warranties, and agreements.

89. Defendants failed to perform as required by the express warranty and breached said contracts and agreements because they provided Plaintiff and the Class with Shingles that were defective and unfit for their intended use and failed to appropriately repair or replace the Shingles.

90. As a result of the foregoing, Plaintiff and the Class Members are entitled to compensatory damages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

(Fraudulent Concealment)

91. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

92. At all times mentioned herein, Defendants, through their experience, were in a position of superiority to Plaintiff and the Class Members and as such had a duty and obligation to disclose to Plaintiff the true facts and their knowledge concerning the Owens Corning Shingles; that is that said product was defective, would prematurely fail, and otherwise were not warranted and represented by Defendants. Defendants made the affirmative representations as set forth in this Complaint to Plaintiff, the Class, and the general public prior to the dates Plaintiff purchased the Owens Corning Shingles, while at the same time concealing the material defects described herein. All of these facts were material to consumers' (such as Plaintiff) purchase decisions.

93. The material facts concealed or not disclosed by Owens Corning are those which a reasonable person would have considered to be important in deciding whether or not to purchase Owens Corning's Shingles.

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

95. At all times mentioned herein, Defendants misrepresented that its Shingles met the ASTM D3462 standard.

96. At all times mentioned herein, Plaintiff and members of the Class reasonably relied on Defendants to disclose to those material facts as set forth above. If Defendants had disclosed the above facts to Plaintiff and Class and they had been aware of said facts, they would have either negotiated additional warranty coverage, negotiated a lower price to reflect the risk or simply avoided the risk all together by purchasing different shingles.

97. Owens Corning continued to conceal the defective nature of its Shingles even after members of the Class began to report problems. Indeed, Owens Corning continues to cover up and conceal the true nature of the problem. Based on information and belief, Defendants have received thousands of warranty claims concerning its Shingles.

98. As a result of the previous and continued concealment or suppression of the facts set forth above, Plaintiff and the Class members sustained damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

(Negligence)

99. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

100. Defendants had a duty to Plaintiff and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, and marketing of the Shingles.

101. Defendants breached their duty to Plaintiff and the Class by designing, manufacturing, advertising and selling to Plaintiff and the Class a product that is defective and will fail prematurely, and by failing to promptly remove the Shingles from the marketplace or to take other appropriate remedial action.

102. Defendants knew or should have known that the Shingles were defective, would fail prematurely, were not suitable for use as an exterior roofing product, and otherwise were not warranted and represented by Defendants.

103. As a direct and proximate cause of Defendants' negligence, Plaintiff and the Class have suffered actual damages in that they purchased and installed on their homes, residences, buildings and other structures an exterior roofing product that is defective and that fails prematurely due to moisture penetration. These failures have caused and will continue to cause Plaintiff and the Class to incur expenses repairing or replacing their roofs as well as the resultant, progressive property damage.

104. Plaintiff on behalf of himself and all others similarly situated, demands judgment against Defendants for compensatory damages for himself and each member of the Class, for establishment of a common fund, plus attorney's fees, interest and costs.

SIXTH CAUSE OF ACTION

(Unjust Enrichment)

105. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

106. Substantial benefits have been conferred on Defendants by Plaintiff and the Class by purchasing Owens Corning Shingles, and Defendants have knowingly and willingly accepted and enjoyed these benefits.

107. Owens Corning either knew or should have known that the payments rendered by Plaintiff and the Class were given and received with the expectation that the Owens Corning Shingles would perform as represented and warranted. For Owens Corning to retain the benefit of the payments under these circumstances is inequitable.

108. Defendants' acceptance and retention of these benefits under the circumstances make it inequitable for Defendants to retain the benefit without payment of value to the Plaintiff and the Class.

109. Plaintiff and the Class are entitled to recover from Defendants all amounts wrongfully collected and improperly retained by Defendants, plus interest thereon.

110. As a direct and proximate consequence of Defendants' improper conduct, Plaintiff and the Class members were injured. Defendants have been unjustly enriched, and in equity, should not be allowed to obtain this benefit.

SEVENTH CAUSE OF ACTION

(Violation of Texas Deceptive Trade Practices Act)

111. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

112. At all relevant times herein, Defendants were the designers, developers, testers, manufacturers, distributors, marketers, and sellers of its Shingles.

113. Defendants engaged in the business of designing, developing, testing, manufacturing, distributing, marketing, and selling the Shingles at issue herein.

114. Defendants knew and/or should have known and expected that the Shingles would reach the ultimate user and/or consumer without substantial change and in the condition in which it was sold by Defendants.

115. At all relevant times, Defendants owed a duty of reasonable care to Plaintiff and the Class in the design, development, manufacture, distribution, marketing, sale, and selection of materials for its Shingles. It was foreseeable to Defendants that the defective, dangerous, unsafe, and unfit Shingles would cause damages to the end users of the product.

116. Defendants breached this duty by, among other things:

- a. Manufacturing, designing, developing, distributing, marketing, selling and placing into the stream of commerce the defective, dangerous, unsafe, and unfit Shingles;
- b. Misrepresenting that its Shingles met the ASTM D3462 standard;
- c. Failing to adequately and properly inspect and test the Shingles;
- d. Failing to adequately and properly select and utilize non-defective materials;
- e. Failing to adequately and properly design components that would operate and/or perform in a non-defective manner so as to prevent damage; and
- f. Failing to adequately and properly warn of the damages arising from the installation and use of the Shingles.

117. But for the Defendants' conduct alleged herein and their breach of duty, Plaintiff and the Class would not have suffered the damages and losses alleged herein.

118. Defendants knew and/or should have known the Shingles at issue were defective, making it foreseeable to Defendants that failure of the Shingles would cause damages to the end users.

119. As a direct and proximate result of Defendants' acts and/or omissions as alleged herein, and according to Tex. Bus. & Com. Code Ann. § 17.46, *et seq.*, Plaintiff and the Class have sustained, are sustaining, and will sustain damages and losses as alleged herein.

EIGHTH CAUSE OF ACTION

(Declaratory and Injunctive Relief)

120. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

121. Plaintiff, on behalf of himself and putative Class members, seeks a Court declaration of the following:

- a. All Defendants' Shingles manufactured from 1986 until the present have defects which cause them to fail and leak, resulting in water damage to property and the necessity of the removal and replacement of the Shingles;
- b. All Defendants' Shingles manufactured from 1986 until the present have a defect in workmanship and material that causes failures;
- c. Defendants knew of the defects in their Shingles and that the limitation contained in the warranties is unenforceable;
- d. Defendants shall re-audit and reassess all prior warranty claim on their Shingles, including claims previously denied in whole or in part, where the denial was based on warranty or other grounds; and
- e. Defendants shall establish an inspection program and protocol to be communicated to Class members, which will require Defendants to inspect, upon request, a Class member's structure to determine whether a Shingle failure is manifest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, request the Court to enter judgment against Owens Corning as follows:

- a. Enter an order certifying the proposed Class, designate Plaintiff as the named Class Representatives of the class, and designating the undersigned as Class Counsel;
- b. Declare that Owens Corning is financially responsible for notifying all Class members of the problems with Owens Corning products;

- c. Enter an order enjoining Owens Corning from further deceptive advertising, marketing, distribution, and sales practices with respect to Owens Corning products, and requiring Owens Corning to remove and replace Plaintiff and Class members' roofs with a suitable alternative roofing material of Plaintiff and Class members' choosing
- d. Enter an award in favor of Plaintiff and Class that includes compensatory, exemplary or punitive damages, and statutory damages, including interest thereon, in an amount to be proven at trial;
- e. Declare that Owens Corning must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of Owens Corning materials, or order Owens Corning to make full restitution to Plaintiff and the members of the Class;
- f. Enter an award of attorneys' fees and costs, as allowed by law;
- g. Enter an award of pre-judgment and post-judgment interest, as provided by law;
- h. Grant Plaintiff and the Class leave to amend the Complaint to confirm to the evidence produced at trial; and
- f. Grant such other or further relief as may be appropriate under the circumstances.

JURY DEMAND

Plaintiff, on behalf of himself and the members of the Class, hereby demands a trial by jury of any and all issues in this action so triable.

Dated: April 5, 2013

/s/ Sam Lock

Sam Lock

LAW OFFICES OF SAM LOCK

Sam Lock (Attorney-In-Charge, State Bar No. 24000470, Federal Bar No. 1054191)

1011 S. Alamo

San Antonio, TX 78210

(210) 226-0965

Fax: (210) 226-7540

sam@locklawfirm.com

CUNEO GILBERT & LADUCA, LLP

Charles J. LaDuca

Brendan S. Thompson

8120 Woodmont Avenue, Suite 810

Bethesda, MD 20814

(202) 789-3960

AUDET & PARTNERS, LLP

Michael McShane

221 Main Street, Suite 1460

San Francisco, CA 94105

(415) 568-2555

LOCKRIDGE GRINDAL NAUEN, P.L.L.P.

Robert K. Shelquist

100 Washington Avenue South, Suite 2200

Minneapolis, MN 55401

(612) 339-6900

LEVIN FISHBEIN SEDRAN & BERMAN

Charles Schaffer

510 Walnut Street, Suite 500

Philadelphia, PA 19106-3697

(215) 592-1500

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2013, a true and correct copy of the foregoing document was filed with the Court via the Court's CM/ECF system and was forwarded to all known counsel of record by electronic mail.

/s/ Sam Lock

Sam Lock