

STATE OF MINNESOTA
COUNTY OF STEVENS

DISTRICT COURT
EIGHTH JUDICIAL DISTRICT

Case type: Products Liability

Heidi Picht,

Court File No. _____

Plaintiff,

v.

SUMMONS

James Hardie Building Products, Inc.,

Defendant.

STATE OF MINNESOTA to the above-named Defendant James Hardie Building Products, Inc.

You are hereby summoned and required to serve upon Plaintiff's attorneys an answer to the Complaint which is herewith served upon you within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so judgment by default will be taken against you for the relief demanded in the Complaint.

You are further notified that this case may be subject to Alternative Dispute Resolution pursuant to Minn. Stat. § 543.22 and Rule 114.01 of the General Rules of Practice for the District Courts.

Dated: March 30, 2011

LOCKRIDGE GRINDAL NAUEN P.L.L.P.



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STATE OF MINNESOTA
COUNTY OF STEVENS

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Plaintiff,

v.

**CLASS ACTION COMPLAINT
AND JURY DEMAND**

James Hardie Building Products, Inc.,

Defendant.

Plaintiff Heidi Picht ("Plaintiff"), on behalf of herself and all others similarly situated, by and through her undersigned counsel files this Complaint as to the above-captioned matter, and in support thereof states and avers as follows based upon her own knowledge as to herself and based upon investigation by her counsel as to other facts:

NATURE OF ACTION

A. Background

1. James Hardie Building Products, Inc. ("James Hardie") manufactured, advertised, sold, and distributed fiber cement exterior siding ("Siding") throughout the United States for installation on homes, commercial buildings, and other structures. The Siding was installed on Plaintiff's home and remains there through today.

2. James Hardie markets and warrants its Siding as durable, and as offering long-lasting protection for a specified life of 50 years. The industry and consumers appropriately rely on the transferable warranty and marketing nomenclature to mean a product with a 50-year warranty is expected to have a usable lifetime of 50 years.

3. James Hardie's sales brochures and marketing literature regarding the Siding, which were widely distributed to building professionals who designed, specified, and installed Siding and were generally available at the time of sale, state, among other things, "At James Hardie, we know weather and we know how to stand up to it. We should. We've been doing it for nearly 100 years," "[J]ames Hardie siding is unmatched for its weather resistance, toughness, and natural beauty." "It's hard to say what's more beautiful. The way our siding looks. Or the way it stands up to the elements. James Hardie siding is tough. Remarkably so. And to prove it, most of our products come with a 50-year transferrable warranty. Rain. Hail. Impact. Wind. Fire. Fluctuations in humidity. Even hurricanes. None of it stands a chance against James Hardie," and "which is why you'll appreciate the fact that every James Hardie siding product we make is designed and engineered to defend your home against the worst things you can imagine." James Hardie continues to make similar statements in regulatory filings. James Hardie's Siding has not lived up to James Hardie's representations and, given the early and severe deterioration that requires unexpected maintenance and premature repair and replacement, has not proven to be of value when compared to other siding products.

4. Although James Hardie widely advertises that its Siding carries a 50 year warranty, the company does not make the fact known that the anticipated life of the Siding is for less than 50 years and that Siding components are not warranted at all or for a period of time substantially less than 50 years.

5. James Hardie represented in documents generally available to the public that its Siding would last for 50 years without problems, or the company would remedy the situation. James Hardie made this representation before purchase and at the time of purchase via sales

brochures and marketing materials (including but not limited to store displays, sales seminars, and training materials).

6. As the Siding goes through repeated freeze-thaw cycles, it experiences increased expansion and contraction as a result of excess moisture in the product. As the moisture subsides, the Siding begins to shrink causing gaps, causing the Siding to pull from fasteners, and causing delamination. The Siding also is not properly primed when it is first manufactured which exacerbates or accelerates these problems.

7. The Siding manufactured and sold by James Hardie is defectively designed and manufactured such that it prematurely fails, causing damage to the underlying structures and other property of Plaintiff.

8. The defects present in James Hardie's Siding are so severe that Plaintiff must repair or replace her siding sooner than reasonably expected by ordinary consumers who purchase siding generally and by consumers who purchased James Hardie's siding product specifically.

9. James Hardie knew or reasonably should have known the Siding is defective as designed and manufactured such that the product fails prematurely due to moisture invasion, drying, cracking, delamination, or other defects. The outward manifestation of the Siding deterioration and deformation is cracking, warping, discoloration, and product shrinkage which often results in the Siding being pulled from its fasteners. At the extreme, the Siding breaks and falls off the structure. In short, the Siding does not perform in accordance with the reasonable expectations of consumers that such products be durable and suitable for use as building products.

B. James Hardie's On-going Refusal to Notify Its Customers of the Defects Associated With Its Siding

10. Upon information and belief, James Hardie has received hundreds of warranty claims alleging a manufacturing or design defect in the Siding. Upon information and belief, some of these warranty claims have been improperly rejected and other of the warranty claims have been settled in a manner not strictly consistent with the warranty terms.

11. Despite receiving a litany of complaints from consumers, such as Plaintiff, James Hardie has refused to convey effective notice to consumers about the defects, and refused to fully repair damage caused by the premature failure of its product.

12. James Hardie knew that its product was going to be used in cold weather conditions in Northern climate states, including Minnesota. James Hardie published a best practices installation guide for siding, trim, and interior products that was directed to northern states, including Minnesota. It published similar best practices for other parts of the country.

13. James Hardie's response to customers' warranty submissions and other requests for assistance and compensation is inadequate under these circumstances in that it limits Plaintiff's recovery to replacement costs of individual boards of Siding piece by piece and excludes costs of labor to replace the Siding.

C. James Hardie's Acts and Omissions Have Damaged Plaintiff and the Class

14. As a result of the defects and failures alleged herein, Plaintiff has suffered actual damages. The Siding on her structure has and will continue to fail prematurely compared to the time expected by ordinary consumers, the time marketed by James Hardie, and the time warranted by James Hardie, resulting in and requiring it to expend thousands of dollars to repair the damage associated with the incorporation of the Siding into her structures and to prevent such damage from continuing.

15. Upon information and belief, James Hardie has engaged in a uniform practice of denying warranty claims through a system of obfuscating form letters that misrepresent the defective nature of James Hardie Siding.

16. At all relevant times, James Hardie had a duty at sale and a continuing duty that the Siding was defective, prone to foreseeable and uniform problems, such as the problems described herein, and otherwise was inherently flawed in its design such that the Siding was not suitable for use as an exterior building material.

17. Because the defects in the Siding are latent and not detectable until manifestation, Plaintiff was not reasonably able to discover her Siding was defective until after installation, despite the exercise of due diligence.

18. The Siding manufactured and sold by James Hardie is defectively designed and manufactured such that it fails prematurely, causing damage to the property of Plaintiff and will force her to repair or replace her siding sooner than reasonably expected, than marketed, and than warranted.

19. Plaintiff seeks to recover the costs of repairing the damage to her property and replacing her Siding with a product manufactured by others plus remediation of damage to other property, or, alternatively, injunctive relief requiring James Hardie to replace the defective Siding with a product manufactured by others.

PARTIES

A. Plaintiff

20. Plaintiff Heidi Picht was and is a resident and citizen of the County of Stevens, State of Minnesota.

21. The Siding that is the subject of this lawsuit is installed on a structure Plaintiff owns located in Donnelly, Minnesota.

22. The Siding used on Plaintiff's home was purchased from one or more intermediaries and was installed on Plaintiff's home by a building contractor. The house on which the Siding was installed was not completed until later when it was turned over to Plaintiff's ownership and control.

23. Later, after the home had been completed, Plaintiff began to notice problems with the Siding. The Siding began to shrink, causing gaps and some pieces to pull from fasteners. Warping and delamination occurred which resulted in water penetration into the home itself. The Siding also became severely discolored in places.

24. A warranty claim was forwarded to Defendant. Thereafter, Defendant confirmed the warranty claim, gave notice that Defendant's field representative would be inspecting the home and asserted that the observed defects were caused by others.

25. Plaintiff brings this class action on behalf of herself and all others similarly situated, for all claims alleged herein, pursuant to Minnesota Rule of Civil Procedure 23 in the alternative as follows:

All persons and entities that have owned or own a structure located within the United States that contains Siding. The proposed class includes, without limitation, all such persons or entities who contacted James Hardie or its representatives about their James Hardie Siding and were denied or partially denied warranty coverage for failure of the James Hardie Siding based on a claim that stained products were not covered by the warranty or that other alleged warranty limitations applied.

In the alternative, Plaintiff proposes an alternative class:

All persons and entities that have owned or own a structure located within the State of Minnesota that contains Siding. The proposed class includes, without limitation, all such persons or entities who contacted James Hardie or its representatives about their James Hardie Siding and were denied or partially

denied warranty coverage for failure of the James Hardie Siding based on a claim that stained products were not covered by the warranty or that other alleged warranty limitations applied.

26. Plaintiff specifically excludes James Hardie or its related entities from the proposed class, all subsidiaries or affiliates of James Hardie; any entity in which James Hardie has a controlling interest, and any and all of James Hardie's employees, affiliates, legal representatives, heirs, successors, or assignees.

27. Plaintiff also specifically excludes from the Class any person or entity that has previously commenced and concluded a lawsuit against James Hardie arising out of the subject matter of this lawsuit.

28. Plaintiffs also specifically exclude from the class the Judge assigned to this case and any member of the Judge's immediate family.

29. Plaintiff specifically includes the claims of all persons or entities, like insurance companies, that have paid for the repair, replacement, and/or damage caused by prematurely-failed James Hardie Siding.

B. James Hardie

30. Defendant James Hardie Building Products, Inc. is a Nevada corporation with its principal place of business in California. James Hardie is a leading manufacturer of building materials.

31. James Hardie sells Siding throughout the United States, including in this District.

32. Upon information and belief, customer complaints and warranty claims made regarding James Hardie Siding are processed in California.

33. Upon information and belief, all marketing of James Hardie Siding in the United States, including distribution of advertising as well as marketing and promotional materials, has been managed by offices in California.

JURISDICTION AND VENUE

34. Defendant James Hardie conducts substantial business in this District, including but not limited to the marketing and sale of Siding. This Court has jurisdiction over James Hardie because it has intentionally availed itself to the markets and laws of the State of Minnesota.

35. Jurisdiction is proper in this Court because the Plaintiff is a citizen of Minnesota and the structure on which the Siding is installed is located in this District.

36. Venue is proper in this District because Plaintiff resides within the District.

ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS

37. James Hardie knew or reasonably should have known the Siding was 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 Siding as a dependable product. Defendant's acts of fraudulent concealment include, but are not limited to, failing to disclose that its Siding was defectively manufactured and would deteriorate in less than its expected lifetime, leading to damage to the very structures the Siding was purchased to protect.

38. Because the defects in the Siding are latent and not detectable until manifestation, Plaintiff was not reasonably able to discover her Siding was defective and unreliable until after installation, despite their exercise of due diligence.

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

40. Defendant had a duty to disclose that its Siding was defective, unreliable, and inherently flawed in its design and/or manufacture.

FIRST CAUSE OF ACTION

(Breach of Express Warranty)

41. Plaintiff incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint.

42. Defendant marketed and sold its Siding into the stream of commerce with the intent that the Siding would be purchased by Plaintiff or Plaintiff's contractors and subcontractors.

43. Defendant expressly warranted that its Siding is well-suited as an outdoor siding material for a period of at least 50 years. Defendant's representatives through its written warranties regarding the durability and quality of the Siding created express warranties which became part of the basis of the bargain Plaintiff entered into when they purchased the Siding.

44. Express warranties created by James Hardie go beyond the limited warranties James Hardie relies upon. James Hardie also creates express warranties by the Siding's brochures and marketing materials.

45. Defendant expressly warranted that the structural integrity of the Siding purchased by Plaintiff would last at least 50 years.

46. Defendant breached its express warranties to Plaintiff in that Defendant's Siding did not, and does not, maintain its structural integrity and perform as promised. Defendant's Siding cracks, splits, warps, discolors, falls off the structure, deteriorates prematurely, and

otherwise does not perform as warranted by Defendant. The failure of the Siding has resulted in water penetrating Plaintiff's building and causing damage to other building components.

47. Defendant's warranties fail their essential purpose because they purport to warrant that the Siding will be free from structural breakdown for at least 50 years when, in fact, Defendant's Siding falls far short of the applicable warranty period.

48. Moreover, because the warranties purport to limit Plaintiff's recovery to replacement of the Siding piece by piece, with replacement labor not included, Defendant's warranties are woefully inadequate to repair and replace failed siding, let alone any damage suffered to the underlying structure due to the inadequate protection provided by the product. The remedies available in Defendant's warranties are limited to such an extent that they do not provide a minimum adequate remedy.

49. The limitations on remedies and the exclusions in Defendant's warranties are unconscionable and unenforceable.

50. Defendant has denied or failed to pay the full fees and costs associated with replacing the Siding.

51. As a result of Defendant's breach of its express warranties, Plaintiff has suffered actual damages in that she purchased and installed an exterior siding product that is defective and that has failed or is failing prematurely due to moisture penetration and porosity problems. This failure has required and will require Plaintiff to incur significant expense in repairing or replacing its siding.

52. Plaintiff demands judgment against Defendant for an amount in excess of \$50,000.00.

SECOND CAUSE OF ACTION

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

53. Plaintiff incorporates by reference each of the allegations contained in all of the preceding paragraphs of this Complaint.

54. At all times mentioned herein, Defendant manufactured or supplied James Hardie Siding, and prior to the time said Siding was purchased by Plaintiff or her contractors, Defendant impliedly warranted to Plaintiff, and to Plaintiff's agents, that the product was of merchantable quality and fit for the use for which it was intended.

55. Plaintiff and Plaintiff's agents relied on the skill and judgment of the Defendant in using the Siding for application as a long-lasting product to protect the interior of the building from outside elements.

56. The product was unfit for its intended use and it was not of merchantable quality, as warranted by Defendant, in that it had propensities to break down and fail to perform and protect when put to its normal intended use. The Siding caused Plaintiff to sustain damages as herein alleged.

57. The product was similarly unfit for its particular purpose. James Hardie distributed, marketed, and sold the Siding in cold weather climates. James Hardie knew, or should have known, that its Siding would be subjected to sub-zero temperatures, snow, wind, and sleet and that the Siding would be subjected to freeze-thaw cycles for a substantial period of each year.

58. After Plaintiff was made aware of Plaintiff's damages as a result of the aforesaid product, notice was duly given to Defendant of the breach of said warranty.

59. James Hardie failed to provide adequate remedy and added additional terms to the warranties which independently cause the purported warranty to fail its essential purpose, thereby permitting remedy under implied warranties.

60. As a direct and proximate result of the breach of said warranties, Plaintiff has suffered and will continue to suffer loss as alleged herein in an amount to be determined at trial in excess of \$50,000.00.

THIRD CAUSE OF ACTION

(Unlawful Trade Practices)

61. Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs of this Complaint.

62. Defendant is a manufacturer, marketer, seller, and distributor of Siding.

63. Plaintiff is protected by these statutes as it purchased James Hardie Siding for her home in Minnesota.

64. Minnesota Statute § 325D.13 provides that, “no person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise.” Consumer protection laws of other states, including Pennsylvania, make similar conduct unlawful.

65. By engaging in the conduct described herein, James Hardie violated and continues to violate Minn. Stat. § 325D.13 and the similar laws of other states.

66. Minnesota Statute § 325D.44, subd. 1, provides in part:

a person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

* * *

(5) represents that goods or services have...characteristics, ingredients, uses, benefits, ...that they do not have...

(7) represents that goods or services are of a particular standard, quality, or grade, ... if they are of another....

(13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Consumer protection laws of other states make similar conduct unlawful.

67. Defendant used and employed unfair methods of competition and/or unfair or deceptive acts or practices including, but not limited to the following:

a. Representing that goods have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that person has sponsorship, approval, status, affiliation or connection that he does not have;

b. Representing that goods or services are of a particular standard, quality, or grade or that goods are of a particular style or model, if they are of another;

c. Engaging in other fraudulent or deceptive conduct which created the likelihood of confusion or of misunderstanding; and

d. Utilizing misrepresentations, knowing omissions, and other sharp business practices to mislead or create a misleading impression regarding the integrity, durability, longevity, and warranty of its Siding.

68. Defendant knew or should have known that its Siding was defective, would fail prematurely, was not suitable for use as an exterior Siding product, and otherwise was not as warranted and represented by Defendant.

69. Defendant's misrepresentations, concealment, omissions, and other deceptive conduct were likely to deceive and cause misunderstanding and is associated with Plaintiff being deceived about the suitability of James Hardie's Siding for use as a long-lasting exterior building

product that would be backed by warranties of up to 50 years, indicating the expected useful life of the Siding.

70. Defendant intended that Plaintiff and Plaintiff's representatives and contractors would rely on Defendant's misrepresentations, concealment, warranties, deceptions, and/or omissions regarding the suitability, durability, and useful life of its defective Siding.

71. James Hardie's conduct and omissions described herein repeatedly occurred in James Hardie's trade or business and were capable of deceiving a substantial portion of the consuming public.

72. The facts concealed or not disclosed by James Hardie are material facts in that Plaintiff and any reasonable consumer would have considered in deciding whether to purchase the Siding or purchase a structure constructed with the Siding. Had Plaintiff known the Siding was defective and would fail prematurely she would not have purchased the Siding or she would have either negotiated additional warranty coverage, negotiated a lower price to reflect the risk, or simply avoided the risk altogether by purchasing different siding.

73. Defendant intended that Plaintiff would rely on the deception by purchasing its siding, unaware of the undisclosed material facts. This conduct constitutes consumer fraud.

74. James Hardie's unlawful conduct is continuing, with no indication that James Hardie will cease.

75. Plaintiff has suffered actual, ascertainable losses and damages by virtue of having purchased defective Siding.

76. James Hardie has similarly violated the unlawful Trade Practices Acts of the various states including, but not limited to, California, and these states allow for statutory damages.

77. As a direct and proximate result of James Hardie's violations of the Unfair Trade Practices and Consumer Protection laws as set forth above, Plaintiff seeks injunctive or declaratory relief including, but not limited to, the replacement of all siding, remediating the damage done to other property, and prohibiting Defendant from not honoring the expectation of a 50-year useful life.

FOURTH CAUSE OF ACTION

(False Advertising)

78. Plaintiff incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint.

79. Minnesota Statutes § 325F.67 provides a cause of action to "any person, firm, corporation, or association" who purchases goods or services through advertising which "contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading." Consumer protection laws of other states make similar conduct unlawful.

80. That by engaging in the conduct herein, James Hardie violated and continues to violate Minn. Stat. § 325F.67 and the similar laws of other states.

81. James Hardie's misrepresentations, knowing omissions, and use of other sharp business practices include, by way of example:

a. James Hardie's fraudulent, misleading, and deceptive statements relating to the true characteristics, standards, quality, and grade of the Siding;

b. James Hardie's fraud and misrepresentations by omission, of information about the defective nature of the Siding, the improper design of the Siding, and James Hardie's knowledge of those defects; and

c. James Hardie's concealment of the true nature of its defective Siding.

82. James Hardie and its agents and distributors also made untrue, deceptive, and misleading assertions and representations about the Siding by making and repeating the various statements about the alleged quality of the Siding referenced herein.

83. As a result of James Hardie's conduct, Plaintiff has suffered actual damages in that she has purchased and installed the Siding on her structure. There is an association between James Hardie's acts and omissions as alleged herein and the damages suffered by Plaintiff.

84. As a result of James Hardie's untrue, deceptive, and misleading assertions and representations about the Siding, Plaintiff has and will continue to suffer damages that include not only the full cost to replace the Siding, but also include, without limitation, consequential and incidental damages.

85. James Hardie has similarly violated the consumer protection statutes of the various states including, but not limited to, California.

86. Plaintiff has been damaged in an amount in excess of \$50,000.00

FIFTH CAUSE OF ACTION

(Negligence)

87. Plaintiff incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint.

88. Defendant had a duty to Plaintiff to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, and marketing of the Siding.

89. Defendant breached its duty to Plaintiff by designing, manufacturing, advertising, marketing, and selling to Plaintiff a product that is defective and will fail prematurely, and by failing to promptly remove the Siding from the marketplace or to take other appropriate remedial action.

90. Defendant knew or should have known that the Siding was defective, would fail prematurely, was not suitable for use as an exterior siding product, and otherwise was not as warranted and represented by Defendant.

91. As a direct and proximate cause of Defendant's negligence, Plaintiff has suffered actual damages in that she purchased and installed on her building an exterior siding product that is defective and that fails prematurely due to water absorption, porosity problems, moisture penetration and other inherent defects. The defect causes damage to Plaintiff's building, in addition to damage to the siding itself, by allowing moisture to enter through the siding. These failures have caused and will continue to cause Plaintiff to incur expenses repairing or replacing their siding as well as the resultant progressive property damage.

92. Plaintiff demands judgment against Defendant for an amount in excess of \$50,000.00.

SIXTH CAUSE OF ACTION

(Negligent Failure to Warn)

93. Plaintiff incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint.

94. As the manufacturer of a product, James Hardie had a duty to provide instructions for the proper use of its Siding.

95. As the manufacturer of a product, James Hardie had a duty to instruct or warn of foreseeable dangers inherent in the proper use of its product.

96. To the extent James Hardie claims in this lawsuit that the premature failure of the Siding was a result of weather conditions related to wind, snow, cold, sleet, and ice, James Hardie failed to instruct or warn of those characteristics or dangers and the use of its Siding.

97. As a direct, proximate, and foreseeable result of James Hardie's failure to instruct or to warn, Plaintiff has and will continue to suffer damage.

98. As a result of James Hardie's failure to instruct or warn, Plaintiff has suffered actual damages in that she purchased and installed on her structure Siding that is defective.

99. As a result of James Hardie's failure to instruct or warn, Plaintiff will suffer damages that include not only the full cost to replace the Siding but also include, without limitation, consequential and incidental damages.

100. As a direct, proximate and foreseeable result of James Hardie's failure to instruct or to warn, Plaintiff sustained damages in excess of \$50,000.00.

SEVENTH CAUSE OF ACTION

(Unjust Enrichment)

101. Plaintiff incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint.

102. Substantial benefits have been conferred on Defendant by Plaintiff by purchasing James Hardie Siding, and Defendant has knowingly and willingly accepted and enjoyed these benefits.

103. James Hardie either knew or should have known that the payments rendered by Plaintiff were given and received with the expectation that the James Hardie Siding would perform as represented and warranted. For James Hardie to retain the benefit of the payments under these circumstances is inequitable.

104. Defendant's acceptance and retention of these benefits under the circumstances make it inequitable for Defendant to retain the benefit without payment of the value to the Plaintiff.

105. Plaintiff is entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant, plus interest thereon.

106. As a direct and proximate result of James Hardie's wrongful conduct and unjust enrichment, Plaintiff is entitled to damages in excess of \$50,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, prays for relief against James Hardie as follows:

1. an award of money damages in an amount in excess of \$50,000.00;
2. the award of all statutory damages including, but not limited to, attorney's fees, costs, and disbursements;
3. to certify a class;
4. to enjoin James Hardie from engaging in any further conduct in violation of statute;
5. to enjoin James Hardie from denying Plaintiff's claims for full reimbursement of its damages;
6. declaring the rights and obligations of the parties as prayed for; and
7. such other and further relief the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of any and all issues in this action so triable.

Dated: March 30, 2011

LOCKRIDGE GRINDAL NAUEN P.L.L.P.



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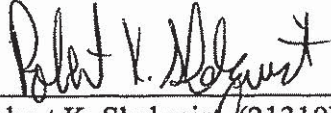
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ACKNOWLEDGMENT

The undersigned hereby acknowledges that pursuant to Minn. Stat. §549.211, sanctions may be imposed if the Court finds violation of this section.

Dated: March 30, 2011



Robert K. Shelquist (21310X)