

193.9

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPT.

CIVIL ACTION NO. 2182CV01044

MARINA BAY RESIDENCES, LLC,

Plaintiff,

v.

CUBE 3 STUDIO, LLC and CALLAHAN,
INC,

Defendants.

CALLAHAN, INC.

Third-Party Plaintiff

v.

EXTERIOR DESIGNS, INC.; SHAWLEE
CORPORATION, LLC; WELLESLEY
ROOFING, INC; d/b/a/ BOSTON ROOFING;
OPTILINE ENTERPRISES, LLC; AND BASF
CORPORATION,

Third-Party Defendants

EXTERIOR DESIGNS, INC.

Plaintiff-in-Crossclaim

v.

SHAWLEE CORPORATION, LLC;
WELLESLEY ROOFING, INC; d/b/a/
BOSTON ROOFING; LLC; OPTILINE
ENTERPRISE, LLC; AND BASF
CORPORATION,

Defendants-in-Crossclaim.

EXTERIOR DESIGNS, INC.

Fourth-Party Plaintiff

v.

COPPOLA CONSTRUCTION &
REMODELING CORP.; FASADEx
DESIGNS, LLC; IMPERIOR HAMMER
CONTRACTING, LLC; PROFESSIONAL
WATERPROOFING & CAULKING, LLC;
TIM CAREY; HARVEY INDUSTRIES, INC.;
PLYCEM USA LLC; RIVERSIDE
CONSTRUCTION, INC.; EMPRIE

**CONSOLIDATED STATEMENT OF
MATERIAL FACT REGARDING
HARVEY'S MOTION FOR SUMMARY
JUDGMENT AS TO THE CLAIMS OF
EXTERIOR DESIGNS, INC. AND
EXTERIOR DESIGNS, INC.'S
RESPONSES THERETO**

RECEIVED & FILED
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NORFOLK COUNTY
6/20/25

REMODELING, INC.; WHITE CAP SUPPLY HOLDINGS, LLC, successor-in-interest to and/or formerly known as KENSEAL CONSTRUCTION PRODUCTS CORPORATION; and FRY REGLET CORPORATION.

Fourth-Party Defendants.

HARVEY INDUSTRIES, INC.

Fifth-Party Plaintiff,

v.

ELEMENTIA USA, INC., AND ALLURA USA

EDI'S GENERAL OBJECTION TO HARVEY'S STATEMENT OF FACTS

EDI objects generally to Harvey's statement of facts based on the reasons stated in its motion to strike filed herewith.

1. Elementia USA, Inc., is the parent company of Plycem USA, LLC. *See* 10/24/24 Perez Dep. 17:4-6, attached as J.A. Ex. 3.

EDI Response: Admits

2. Plycem USA, LLC is a Texas company based out of Houston, TX, that manufactures, among other things, the Allura-branded fiber cement panels. *See* 10/24/24 Perez Dep. 10:21-22, attached as J.A. Ex. 3

EDI Response: Admits

3. Elementia USA, Inc. and Plycem USA, LLC, do business in the United States under the business name "Allura". *See* 10/24/24 Perez Dep. 17:4-6, attached as J.A. Ex. 3

EDI Response: EDI admits that Plycem is a subsidiary of Elementia and sells the Allura branded products, but is without sufficient information to say whether either company is an Allura d/b/a.

4. Cube 3 Studios, Callahan, and Exterior Designs were collectively in contact with representatives of Elementia and Plycem regarding the use of Allura siding for use on the Project. *See* 05/25/16 Larson Chain Email, attached as J.A. Ex. 20.

EDI Response: Admits

5. Plycem Entities agreed to sell Allura siding for use on the Project a fixed and discounted price. *See* Allura Multi-Family Job Quote, attached as J.A. Ex. 9. (“This Special Pricing Allowance (SPA) is exclusive for THIS JOB ONLY and does not extend to any other products, orders, projects, or jobs”).

EDI Response: The document speaks for itself. EDI further states that this document was not provided to EDI as it is a quote between Plycem and Coastal Forest Products. EDI further states that it purchased the Allura products from Harvey.

6. The Allura siding used on the Project was manufactured in Plycem’s manufacturing facilities in North Carolina. *See* 10/24/24 Perez Dep. 79:11-21, attached as J.A. Ex. 3.

EDI Response: Admits this is in the cited testimony, but can neither admit nor deny its validity since EDI has no knowledge.

7. Plycem Entities shipped Allura siding used on the Project directly from its North Carolina facilities to the Project site. *See* 10/24/24 Perez Dep. 79:11-21, attached as J.A. Ex. 3.

EDI Response: Admits only that some of the products were direct shipped. However, some of the products that were used on the Project, including those on or about February 6, 2019, were located at Harvey’s warehouse in Braintree, MA. *See* Email chain between Anzalone and Patt dated Feb. 6, 2019 attached as J.A. Ex. 35R.

8. Plycem retained United Transportation Logistics, Inc., as an independent contractor to ship the aforementioned Allura siding from its facilities in North Carolina to the Project site. *See* Plycem Invoice, attached as J.A. Ex. 11.

EDI Response: Repeats and realleges its response to 7.

9. Exterior Designs began receiving and accepting delivery of Allura siding at the Project site beginning on or about November 8, 2016. *See* 11/08/16 Harvey Invoice, attached as J.A. Ex. 12; 03/03/25 Patt Dep. 49:15-21, attached as J.A. Ex..

EDI Response: Denies. *See* JOSF, ¶ 24 below and JSOF, ¶85 (Harvey Invoices).

10. Plycem retained Trinity Engineering to provide engineering services and/or supplemental testing related to the suitability of the Allura siding for the Project. *See* 06/09/16 Trinity Email & Enclosed Letter, attached as J.A. Ex. 13; 07/20/16 Herrington Email & Enclosed Trinity Report, attached as J.A. Ex. 14.

EDI Response: Admits

11. The reason Plycem required Trinity was because published testing data for Allura siding was inadequate for installation on structures higher than sixty (60) feet in height *See* 05/25/16 Laron Email Chain, attached as J.A. Ex. 13; 07/20/16 Herrington Email & Enclosed Trinity Report, attached as J.A. Ex. 14.

EDI Response: Admits that was part of the reason that Trinity was retained. EDI further states that wind speeds and other project conditions required a custom fastening design to affix the Allura products to the structure since Plycem did not have a prescriptive fastening design appropriate for project conditions. EDI further directs the Court to the Trinity report attached at J.A. Ex. 13.

12. Plycem Entities retained the non-party Coastal Forest Products, Inc. to act as an on-paper middleman between itself and Exterior Designs for sale for the Allura siding. *See* 03/03/24

Patt Dep. 14:20-15:6, attached as J.A. Ex. 4; 10/24/24 Perez Dep. 65:10-19, 66:17-23, attached as J.A. Ex. 3.

EDI Response: EDI objects to the use of the term “on-paper middleman.” EDI also objects to Harvey’s failure to identify the true relationship of the parties. Upon information and belief, Coastal Forest Products purchased the Allura products from Plycem and sold them to Harvey who then sold them to EDI.

13. Harvey placed a drop-ship order with Coastal for the delivery of Allura siding to Exterior Designs. *See* 06/14/17 Patt Email Regarding Allura Delivery, attached as J.A. Ex. 25.

EDI Response: EDI objects to the term “drop-ship order” and restates and realleges its response to JSOMF ¶12.

14. Coastal placed orders with Plycem Entities for the delivery of Allura siding to Exterior Designs. *See* Allura Multi-Family Job Quote, attached as J.A. Ex. 9.

EDI Response: Denies. EDI restates and realleges its response to 12 and further states that products were delivered to the jobsite except EDI restates its response to 7.

15. Plycem delivered the Allura siding directly to Exterior Designs’ custody at the Project site. *See* Allura Multi-Family Job Quote, “Delivery Location”, attached as J.A. Ex. 9.

EDI Response: EDI restates its response to 7.

16. Aaron Bancroft, on behalf of Cube 3, testified as follows:

- A. So it's -- at the bottom of the page, the numbers that I believe all of you have been referencing, it would be page -
- BASF, Exhibit B, and at the bottom of the page it says 00
-- it's kind of cut off here -- I think it is 001928.

And on that page there is a bunch of air leakage testing and various testing.

At the bottom one, it says drainage efficiency, ASTM E2273, 99 percent.

Q. So when we use the word "drainability," is it appropriate to substitute "drainable" or "drainability" with "waterproof," 99 percent waterproof or is that not --

A. Well, it should be 100 percent waterproof.

Q. Okay.

A. Yeah.

Q. What is the --

A. It is the air/water barrier, so we got to keep water out.

Q. So when we say it's 99 percent drainable, what about that 1 percent, what happens to that?

A. That's a good question.

I don't know where that goes, sir.

See 10/22/24 Bancroft Dep. 239:19-22, attached as J.A. Ex. 2B.

EDI Response: EDI objects and moves to strike this testimony. Harvey is attempting to use lay testimony as expert testimony. See EDI's Motion to Strike filed herewith.

17. Subcontractors responsible for installation of the building envelop left large t the joints of the OSB substrate to which the Enershield product was applied and Allura panels ultimately affixed. 03/25/25 Broulliard Dep. 171:14-172:4, attached as J.A. Ex. 6.

EDI Response: EDI objects to this statement as vague and incoherent, and, thus, unanswerable. To the extent Harvey is suggesting EDI or its subcontractors performed any of work in an unworkmanlike manner, denies.

18. Shawn Bryan, on behalf of Wellesley Roofing, testified as follows:

Q. All right. Let me see if I can find one.

At any point after Wellesley Roofing completed the roofing work at the project, did I perform any additional work for the owner, other than the roofing work?

A. As I recall, we found several hundred holes on the roof due to construction damage.

Q. When was that?

A. After the roof was completed.

Q. When were those observed?

A. So TPO membrane, it's very hard to see a cut or a hole in it because of the reflective nature.

And I believe that there was isolated leaks in certain units that were due from the roof.

And so, upon investigation, we found widespread holes all over the roof.

See 03/11/25 Bryan Dep. 92:5-22, attached here as Exhibit 5.

EDI Response: The testimony speaks for itself.

19. Shawn Bryan, on behalf of Wellesley Roofing, testified as follows:

A. Positive slope, which is towards the interior drains or the inside of the roof.

You've got negative slope, which is away from the interior of the roof towards the outside.

And you have got dead-level flat.

Q. And your testimony earlier was that you could tell the slope just by looking at it?

A. I have been doing this for 40 years. I am an ex-commercial framer, so I know -- I could look at a roof, or anything, and tell you whether it is level or not by eye.

Q. So if a parapet is six inches wide under the standards that you just testified to, would that mean that there would be an eighth of inch negative slope over that span?

MR. TROIANO: Objection.

A. There was not a negative slope on the six-inch parapets. There was a negative slope on the wide parapets.

Q. I understand that you are saying that the six-inch parapets were not sloped at the Marina Bay project.

What I am asking is a little bit different.

What I am asking is if a parapet cap is six inches wide and the required slope is a quarter inch a foot, does that mean that the slope of the parapets on the Marina Bay project, the six-inch parapets, should have been an eighth of an inch negative slope?

MR. TROIANO: Objection.

A. It should have been an eighth of an inch positive slope, minimum.

Q. Thank you.

I get it.

See 03/11/25 Bryan Dep. 122:2-123:14, attached as J.A. Ex. 5.

EDI Response: EDI objects to the testimony because it seeks expert testimony from that of a lay person

20. Michael Dion, on behalf of Exterior Designs, testified as follows:

Q. Okay. You'd agree with me, sir, that as you sit here today, you do not have any direct factual knowledge that Harvey did anything to cause or contribute to the water intrusion or the damages in the Marina Bay project, correct?

MR. BROWN: Objection.

A. Other than selling us -- well, you know, they sold us material that has been alleged to be defective or that has been alleged to, you know, be part of a wall design that leaks. So, you know, if it's found out that that wall -- that they sold the material, you know, I think there's some responsibility there.

Q. Aside from any attorneys, who has alleged that?

MR. ROURKE: Objection.

MR. TAYLOR: Objection.

A. I'd have to reread the lawsuits, but I'm pretty sure Hines, the owner, and Callahan have both alleged that, and there may be others. Maybe WSJ too.

See 06/16/24 Dion Dep. 149:1-20, attached as J.A. Ex. 1A.

EDI Response: The testimony speaks for itself. EDI further states that the testimony is only a small portion of Mr. Dion's testimony and not the whole of the testimony and/or position of EDI in this matter. EDI objects to the testimony because it seeks expert testimony from that of a lay person. EDI objects and moves to strike this testimony. See EDI's Motion to Strike filed herewith.

21. The WJE Report references Allura siding panels to indicate that certain were physically damaged when inspected after substantial completion. *See* WJE Report, attached as J.A. Ex. 7.

EDI Response: EDI objects to this paragraph because it does not identify where in the report WJE allegedly says this. EDI further states that there was destructive testing which would have led to any alleged damage to materials including the siding panels when they were removed during this testing. Therefore, denies.

22. Other than to note physical damage, the WJE Report references only to indicate where they needed to be removed to inspect the building envelop. *See* WJE Report, attached as J.A. Ex. 7.

EDI Response: See response to 21. Denies and further states this statement ignores the allegations WJE made regarding the Allura products. *See* JSOF, ¶¶ 100, 102-107.

23. Allura siding used on the Project was shipped from a manufacturing facility in North Carolina, owned and operated by Plycem. *See* Plycem Invoices, attached as J.A. Ex. 11.

EDI Response: See response to 7.

24. Exterior Design began installing the Allura siding and/or was in receipt of the same on by May 2, 2016. *See* Harvey Invoices, attached as J.A. Ex. 12.

EDI Response: Denies. The Project did not receive the Trinity report until on or about August, 2016 and could not install the Allura Products prior to then. J.A. 13.

25. The Certificate of Occupancy for the northern Project building was issued by the Town of Quincy on July 31, 2017. *See* 552 Victory Road Certificate of Occupancy, attached as J.A. Ex. 15.

EDI Response: Admits.

26. The Certificate of Occupancy for the southern Project building was issued by the Town of Quincy on June 27, 2018. *See* 550 Victory Road Certificate of Occupancy, attached as J.A. Ex. 16.

EDI Response: Admits

27. Jeff Brouilard, an employee of a consulting firm retained by the owner regarding the building envelop, testified as follows:

Q. During [] walk-throughs [to inspect the building envelope materials] [you][] would you make any observations as to the quality of installation of the Allura siding panels?

MS. ZEPEDA: Objection. Calls for expert testimony.

A. If I saw something that was out of what we would expected, not according to what the mock-up had told us, that kind of thing, yes, I would have pointed it out.

Q. And, during these walk-throughs, you would just observe what was observe and that anyone else on site would have been able to see; is that correct?

MR. ROURKE: Objection.

A. Yes, with the caveat of anyone having the same access.

So, for instance, if I was up on staging, you know, that kind of thing.

Q. So if there were any breakage or physical deformities with any of the materials that you saw, would you have documented that in subsequent reports?

A. Yes.

Q. Yes. At any time during your inspection, did you observe any physical deformations or imperfection with the fiber cement panels?

MS. ESSINGER: Objection.

A. The answer I have is if I didn't put it into a report, then I didn't observe it.

See 03/25/25 Broulliard Dep., attached as J.A. Ex. 6.

EDI Response: EDI objects and moves to strike this testimony. Harvey is attempting to use lay testimony as expert testimony. See EDI's Motion to Strike filed herewith.

28. Mathew Bouchard included on emails alongside representatives of Callahan and Cube 3 during design and/or material use discussions. *See 06/24/16 Bouchard Email Re Trinity Testing, attached as J.A. Ex. 23.*

EDI Response: EDI admits Bouchard was on certain emails however denies that Bouchard or anyone else from EDI or working as a subcontractor did any design work and EDI further objects to the generality and vagueness of the use of the words "included on emails."

29. Mathew Bouchard was an active participant in discussions with Plycem Entities and Trinity for the testing of Allura siding for its fitness for use on the Project. *See 05/17/16 Larson Email, attached as J.A. Ex. 17.*

EDI Response: EDI objects on the grounds that this statement is vague and general. EDI admits Bouchard was on certain emails with Plycem and Trinity but denies the characterization that he was an active participant since Plycem and Trinity were the ones testing and designing the custom fastening pattern for the Project.

30. Michael Dion, on behalf of Exterior Designs testified as follows:

Q. Sure. At the time that you purchased these goods from Harvey, the Allura siding and various products we looked at in the purchase orders and the order confirmation, there was never any claim by EDI that they were defective, correct?

A. Not to my knowledge.

See 06/16/24 Dion Dep. 153:14-20, attached as J.A. Ex. 1A.

EDI Response: EDI objects and moves to strike this testimony. Harvey is attempting to use lay testimony as expert testimony. See EDI's Motion to Strike filed herewith.

31. Aaron Bancoft, on behalf of Cube 3, testified as follows:

Q. To go back to my original question, just to make sure that I'm clear on the answer, did anyone that you are aware of do a test to make sure that the -- that the exterior cladding system would work to keep out water on the Marina Bay project, was any testing done?

MR. TAYLOR: Objection.

A. Well, we were -- we were, you know, relying on the BASF self-sealing.

There was the submittals for Allura and BASF. That was the extent of the testing.

There wasn't any sort of on-site testing, if that's what you're referring to.

* * *

Q. Who constructed this mock-up of the external cladding?

A. Well, Callahan would have been in charge, and I think it would have been EDI as the exterior subcontractor.

Q. So the mock-up you just described, that incorporated the exterior cladding, did it also incorporate the BASF product?

A. Yes, behind it.

Q. And you said Elkus Manfredi evaluated the mock-up for aesthetics.

Were there any other evaluations of the mock-ups that were done?

A. I am sure Hines was there, too. I am sure Hines was there as well.

Q. I guess what I'm asking, though, is what -- for what purpose was the mock-up evaluated other than aesthetics, if any?

A. That was the main purpose of the mock-up.

Q. Okay. Was any water penetration testing done of the cladding mock-up?

A. No.

I don't believe that's ever been done on any project that I'm aware of.

See 10/22/24 Bancroft Dep. 118:9-22, 121:19-122:18, attached as Exhibit 2B.

EDI Response: EDI states that the testimony speaks for itself.

32. Michael Dion, on behalf of Exterior Designs., testified as follows:

Q. Okay. You'd agree with me, sir, that as you sit here today, you do not have any direct factual knowledge that Harvey did anything to cause or contribute to the water intrusion or the damages in the Marina Bay project, correct?

MR. BROWN: Objection.

A. Other than selling us -- well, you know, the sold us material that has been alleged to be defective or that has been alleged to, you know, be part of a wall design that leaks. So, you

know, if it's found out that that wall – that they sold the material, you know, I think there's some responsibility there.

See 07/16/24 Dion Dep. 159:1-13, attached as J.A. Ex. 1A.

EDI Response: EDI objects and moves to strike this testimony. Harvey is attempting to use lay testimony as expert testimony. See EDI's Motion to Strike filed herewith. EDI further states that the testimony speaks for itself and is only a small portion of Mr. Dion's testimony and not the whole of the testimony and/or position of EDI in this matter.

33. Michael Dion, on behalf of Exterior Designs, testified as follows:

Q. So as you sit here today, you don't have any direct factual evidence that anything that Harvey did with respect to its simply shipping the products in a box to the Marina Bay project caused or contributed any damage to the project, correct?

MR. BROWN: Objection.

A. I don't think we know that yet. I don't think we know.

Q. Well, I'm only asking what you know today, sir.

A. Correct.

Q. Because you're under oath today. It's your deposition. This lawsuit was started three years ago. So three years into the lawsuit, this is what you know today as the corporate representative, correct?

A. Correct.

Q. And you'd agree with me that that's really speculation on your part and EDI's part to say that we may, we meaning Harvey, may have contributed to the damage at the Marina Bay project for water infiltration, right?

MR. BROWN: Objection.

A. Yes, I guess it is speculation, but it's very possible.

See 07/16/24 Dion Dep. 165:7-166:7, attached as J.A. Ex. 1A.

EDI Response: EDI objects and moves to strike this testimony. Harvey is attempting to use lay testimony as expert testimony. See EDI's Motion to Strike filed herewith. EDI further answers that the testimony speaks for itself and is only a small portion of Mr. Dion's testimony and not the whole of the testimony and/or position of EDI in this matter.

34. Michael Dion, on behalf of Exterior Designs, testified as follows:

Q. Do you have any knowledge of EDI discussing the design with Plycem during the purchasing phase?

A. No, not during the purchasing phase, I don't believe; but I think -- I think Plycem was involved very early on in the design of the nailing -- the nailing pattern.

And, if my memory serves me right, I think Plycem was -- gave us the answers on how to -- how to nail this to the building, you know, how to -- you know, they did the calculations with the wind loads.

I believe they actually work -- Plycem worked with an engineer on that, too.

Q. And --

A. They were --

Q. Sorry.

I didn't mean to interrupt you.

A. I want to say very early on, Allura and Plycem, they were very much involved in the design of this.

Q. And when you say "the design of this," what do you mean?

A. They saw how it was being used.

They saw the details.

They helped us through with the design, with the nailing patterns.

So, you know, I guess what I'm saying is they didn't just drop the materials on the ground and leave.

They knew exactly -- Plycem knew exactly how this was being used.

See 01/21/25 Dion Dep. 164:24-15, attached as J.A. Ex. 1B.

EDI Response: The testimony speaks for itself. EDI further states that the testimony is only a small portion of Mr. Dion's testimony and not the whole of the testimony and/or position of EDI in this matter.

35. Michael Dion, on behalf of Exterior Designs, testified as follows:

Q. Are you aware of any evidence that the siding or panels were themselves defective?

A. No.

See 01/21/25 Dion Dep. 172:17-19, attached as J.A. Ex. 1B.

EDI Response: EDI objects and moves to strike this testimony. Harvey is attempting to use lay testimony as expert testimony. See EDI's Motion to Strike filed herewith. EDI further answers that the testimony speaks for itself and is only a small portion of Mr. Dion's testimony and not the whole of the testimony and/or position of EDI in this matter.

36. Exterior Designs agreed that expert testimony would be necessary to establish Harvey's liability in this matter:

Q. And can you tell me how the owner of siding played any role in these leaks?

MR. BROWN: Objection.

A. I think it's going to have to come down to what the experts -
- what the experts say.

See 07/16/24 Dion Dep. 160:24-161:4, attached as J.A. Ex. 1A.

EDI Response: EDI objects and moves to strike this testimony. Harvey is attempting to use lay testimony as expert testimony. See EDI's Motion to Strike filed herewith. The testimony speaks for itself. EDI further states that the testimony is only a small portion of Mr. Dion's testimony and

not the whole of the testimony and/or position of EDI in this matter. EDI also objects to Harvey's characterization of a single portion of the testimony.

37. Exterior Designs further affirmed that its claims are based wholly upon the allegations of the Plaintiff's expert, Wiss, Jenney. *See* 07/16/25 Dion Dep. 161:19-163:23, attached as J.A. Ex. 1A.

EDI Response: Denies. EDI filed its own fourth party complaint against, among others, Harvey on the grounds stated therein. EDI objects and moves to strike this testimony. Harvey is attempting to use lay testimony as expert testimony. *See* EDI's Motion to Strike filed herewith.

38. The WJE Report does not identify any manufacturing or design defect with the Allura siding used on the Project. *See* WJE Report, attached as J.A. Ex. 7.

EDI Response: Denies. Again, Harvey is blatantly ignoring the defects of the Allura products pointed out by WJE in its report. *See* Appendix Ex. ¶35C. *See* EDI's Additional Statement of Facts below.

39. The Updated WJE Report does not identify any manufacturing or design defects with the Allura siding used on the Project. *See* Updated WJE Report, attached as J.A. Ex. 8.

EDI Response: Denies. *See* EDI's Additional Statement of Facts below.

40. Stephen Patt, on behalf of Harvey, testified as follows:

Q. Okay. And so when EDI purchased the material from Harvey, it was purchased through purchase orders; is that correct?

A. Well, they would send -- they would send us a material list.

I wouldn't say it was a purchase order.

They would just send me a list.

Q. Okay.

A. There was no contract or anything.

They would send me a list of what was needed, and we would place the order and go.

See 03/03/25 Patt Dep. 28:11-21, attached as J.A. Ex. 4.

EDI Response: Admits only that EDI would issue material lists. Denies there was no contract.

Further answering, see EDI's statement of facts below.

41. Harvey's issued invoices to Exterior Designs in response to Exterior Designs' requests for Allura siding that contained the following language:

All claims for storage or error must be made on receipt of goods. Any material proving defective will be replaced, but no claims for labor or damage can be allowed. Prices subject to change without notice. Purchaser agrees to pay all reasonable costs, collection fees, attorney fees, and expenses incurred by seller in event of failure of purchaser to pay this amount when due.

See Harvey Invoice, attached as J.A. Ex. 12.

EDI Response: The document speaks for itself.

42. Plycem was the supplier of Allura siding for the Project. *See 10/24/24 Perez Dep 190:5-191:9, attached as J.A. Ex. 3.*

EDI Response: EDI states that Plycem manufactured the Allura products and delivered the majority of the products to the Project. EDI restates response 7. EDI objects to the term "supplier" given the involvement of Harvey and Coastal in the transaction.

43. Exterior Designs initial "purchase order" to Harvey contained the following language: "Supplier to furnish industry standard on-site technical and installation support from qualified technical representatives[.]" *See Exterior Designs Purchase Order, attached as J.A. Ex. 18.*

EDI Response: The document speaks for itself.

44. Exterior Designs provided representatives of Plycem Entities with copies of purchase orders issued to Harvey. *See* 06/28/16 Bouchard Email with Purchase order, attached as J.A. Ex. 21.

EDI Response: EDI admits the Bouchard forward one purchase order on June 28, 2016 to David Noonan as stated in J.A. Ex. 21. EDI is unsure based on the Exhibit if David Noonan worked for Plycem and is unsure if any other parties or invoices were forward based upon the Exhibit.

45. Michael Dion, on behalf of Exterior Designs, testified as follows:

A. You'll have to repeat that again, please.

Q. Sure. At the time that you purchased these goods from Harvey, the Allura siding and various products we looked at in the purchase orders and the order confirmation, there was never any claim by EDI that they were defective, correct?

A. Not to my knowledge.

See 01/21/25 Dion Dep. 153:14-21, attached as J.A. Ex. 1B.

EDI Response: EDI objects and moves to strike this testimony. Harvey is attempting to use lay testimony as expert testimony. *See* EDI's Motion to Strike filed herewith. EDI further answers that the testimony speaks for itself and is only a small portion of Mr. Dion's testimony and not the whole of the testimony and/or position of EDI in this matter.

46. On June 7, 2016, Timothy Larson sent an email to Matthew Bouchard that stated, among other things, "This is a most unusual method of installing our products in very extreme conditions and it is taking time to thoroughly investigate your proposed designs." *See* 06/07/16 Larson Email Re Unusual Methods, attached as J.A. Ex. 22.

EDI Response: The email speaks for itself.

47. Ricardo Perez, on behalf of Plycem USA, LLC, testified, "Allura had never seen a wall assembly similar to the type that was used at Marina Bay."
See 11/04/24 Perez Dep. 186:6-111, attached as J.A. Ex. 3.

EDI Response: The testimony speaks for itself.

48. Richardo Perez, on behalf of Plycem USA, LLC, testified, "in [Plycem's] list of tests that we have, and also we didn't identify it in any of the public testing reports[.]" *See* 11/04/24 Perez Dep. 188:4-7, attached as J.A. Ex. 3.

EDI Response: The testimony speaks for itself.

49. Cube 3 required the use of "ASTM C 1186, Type A, Grade II, fiber-cement board, noncombustible when tested according to ASTM E 136" based on the design of "Allura Fiber Cement Products by Plycem USA, LLC, Houston, TX" be utilized in construction. *See* Fiber Cement Specifications, attached as J.A. Ex. 24.

EDI Response: The Project Specifications are documents that speak for themselves. EDI further states that the Allura products were approved for Project by the Project architect.

50. Aaron Bancroft, on behalf of Cube 3, testified as follows:

Q. You mentioned that -- the decision to go with Allura.

Was it because of the Hardie decision to request the furring strips behind the panels?

A. So that is part of it.

So that technical bulletin, you know, that was -- we had to look at that in great detail.

We talked to Allura.

We talked to Hardie.

You know, we basically had to go back, you know -- and this wasn't all happening prior to the decision -- but went back and we were concerned about the other projects that we did

with Hardie for 12, 14 years, was Hardie saying that there was a problem?

And the answer was no.

Then why are you doing this?

We think it's going to be better.

So there was a big concern there, and a big discussion that occurred with all of the project team.

Q. I see.

And then can you discuss the communications you had with Allura about that, because you mentioned "we spoke to Allura."

A. Yeah.

So with Allura, you know, they pointed us towards a legal action that was ongoing with Hardie.

And so we did, you know, an online search -- and others as well, Hines maybe -- you know, and there were -- there were lawsuits that were popping up which said it seemed to lean toward, you know, product failure.

And Allura was saying their product was fine; their product was superior.

Q. And you relied on those representations by Allura in order to select the Allura product; is that fair to say?

MR. TAYLOR: Objection to form.

MR. TROIANO: Objection.

THE WITNESS: I can answer?

MR. SCHAEFER: You can answer.

If you need him to repeat it, you can have him repeat it.

A. Yes, that was a big factor.

See 10/21/24 Bancroft Dep. 87:8-89-5, attached as J.A. Ex. 2A.

EDI Response: The testimony speaks for itself.

51. Aaron Bancroft, on behalf of Cube 3, testifies as follows:

Q. But am I correct that CUBE 3 itself doesn't perform independent testing of these materials, or did you?

A. No, correct.

We rely -- you know, it is -- as architects, we rely on test data, you know, from the manufacturers or from the -- UL is an independent agency, so we rely on that, you know, throughout our documents.

Q. So you rely either on the independent agency or from the manufacturer?

A. Yeah.

See 10/21/24 Bancroft Dep. 116:10-21, attached as J.A. Ex. 2A.

EDI Response: The testimony speaks for itself.

52. Aaron Bancroft, on behalf of Cube 3, testified as follows:

Q. What was the basis for the design for the cement fiberboard system?

A. Allura.

Q. And did Allura provide any computer-aided design or design details for the system?

A. No.

It would have been, you know -- well, perhaps. Maybe.

I'm not sure, but you get -- you know, there's -- Allura has their standard details that we would have had to incorporate.

Q. And so that is how the details for the fiber cement panels were developed, based on their standard details?

A. Yes, sir.

Q. In developing the assembly for the fiber cement panels, the Allura panels, did CUBE 3 or anyone on behalf of CUBE 3, any of your sub consultants, or partners, perform a vapor transmission analysis on the proposed wall assemblies?

MR. SCHAEFER: Objection.

A. No.

Like a WUFI® analysis?

Q. Yes, a vapor transmission analysis.

A. No, it was -- you know, a wall assembly that we have used successfully many times.

Q. So you relied on your prior successful experience with it in lieu of doing any vapor analysis -- I'm sorry, vapor transmission analysis?

MR. SCHAEFER: Objection.

A. Yes.

I mean, we were confident in the assembly -- the wall assembly that we had used successfully with Veitas and our other consultants.

See 10/22/25 Bancroft Dep. 297:8-298:13, attached here as J.A. Ex. 2B.

EDI Response: The testimony speaks for itself.

53. Aaron Bancroft, on behalf of Cube 3, testified as follows:

Q. You testified, I think, several times that prior to Marina Bay, you had been involved with several project while at CUBE 3 that used fiber cement, correct?

A. Yes, sir.

Q. And have you been involved with projects since Marina Bay that have used fiber cement?

A. Yes, sir.

Q. Can you give me a ballpark of how many projects since Marina Bay have used fiber cement?

A. Dozens.

MR. SCHAEFER: Objection.

A. Dozens and dozens.

Q. Do you know if -- if the manufacturer of other -- of the fiber cement used in those projects has included Allura since Marina Bay?

A. I believe so.

Q. Okay. Is it CUBE 3's position in this litigation that Allura siding was defective?

A. No. I don't believe Allura siding was defective on any of CUBE 3's project.

See 10/22/24 Bancroft Dep. 266:5-267:2, attached as J.A. Ex. 2B.

EDI Response: The testimony speaks for itself.

54. Stephen Patt, on behalf of Harvey, testified as follows:

Q. And what did Coastal Forest Products have to do with this project?

A. So we -- we, on this product, were just the middleman where Coastal Forest Products would send an order to Plycem, and then Plycem would distribute the material directly to the job site.

We did not have this material out of warehouse.

It went from Plycem to the job site.

Coastal is where we had placed the order to get the material from Plycem.

See 03/03/25 Patt Dep 14:20-15:6, attached as J.A. Ex. 4.

EDI Response: The testimony speaks for itself. EDI further denies and refers to its response to 7 where Harvey did have material at its warehouse.

55. Exterior Designs engaged in direct price negotiation of the Allura siding with Plycem Entities. *See Allura Multi-Family Job Quote, "Restrictions", attached as J.A. Ex. 9.*

EDI Response: Denies. EDI received all of its price quotes, including the final quote from Harvey. This is patently false.

56. Exterior Designs received direct shipment of the Allura siding from Plycem Entities. *See Plycem Invoices, attached as J.A. Ex. 11.*

EDI Response: See response 7.

57. William Gregg, on behalf of Callahan, testified as follows:

Q. Well, in the contract documents, does an architect specify a particular brand or a brand material or do architects specify any type of mater that will be installed?

(Objection.)

Q. And I'm speaking generally?

(Objection.)

A. Generally, there is a basis of design product that is identified. Generally, there is the capacity to have equal products used in place of that which is based on design.

Q. Understood. Who identified Allura as a product to be used in this Marina Bay project?

A. I believe it was through Cube 3, and it was part of its specifications.

See 11/21/24 Gregg Dep. 133:18-134:8, attached as J.A. Ex. 8.

EDI Response: The testimony speaks for itself.

58. Exterior Designs, directly or through its subcontractors, was responsible for executing upon the specifications for installation of the Allura siding for the Project.

See 07/16/24 Dion Dep. 82:4-10, attached as J.A. Ex. 1A.

EDI Response: EDI objects because this is a characterization of the testimony rather than the testimony itself. EDI further states that the testimony is only a small portion of Mr. Dion's testimony and not the whole of the testimony and/or position of EDI in this matter.

59. Stephen Patt, on behalf of Harvey, testified as follows:

Q. Did you or anyone else at Harvey ever have any direct contact with Allura?

A. No.

Q. Were you or anyone else at Harvey ever made aware about issues regarding the Allura product prior to this lawsuit?

A. No.

MS. ESSINGER: Objection.

Q. Have you or anyone -- well, have you heard of a company called Trinity or Trinity ERD?

A. No.

Q. I am going to share my screen and show what's been marked previously as Exhibit No. 94.

Can you see my screen, sir?

A. Yes.

Q. Okay. Can you see a letter dated June 9, 2016?

A. Yes.

Q. Okay. I'm just going to scroll through it quickly, and tell me if this is something you have ever seen before.

(Scrolling through document.)

A. I have not seen it, no.

Q. Were you or anyone else at Harvey made aware that in order for the Allura product to be used at this project there -- it required some different nailing pattern to be used than normal?

A. I --

MS. ESSINGER: Objection.

THE COURT REPORTER: Sir, did you answer?

A. I was not aware, no.

See 03/03/25 Patt Dep. 32:3-33:10, attached as J.A. Ex. 4; 06/09/16 Trinity Email & Enclosed Letter, attached as J.A. Ex. 13.

EDI Response: The testimony speaks for itself.

60. Stephen Patt, on behalf of Harvey, testified as follows:

Q. When Harvey sells products to its customers, does it provide a warranty?

A. We don't supply the warranty --

MR. SULLIVAN: Object to the form. Go ahead.

A. Harvey's doesn't perform the warranty.

The warranty is through the manufacturer, not Harvey's.

Q. So does Harvey take responsibility at all for the products it sells?

MR. SULLIVAN: Objection. You can answer.

A. We -- we -- Harvey would not cover the warranty. The warranty would be through the manufacturer.

So we wouldn't -- if there was any warranty claim, it wouldn't be through us; it would be through the manufacturer.

Q. Okay. So if Harvey's selling something to a customer, it takes no responsibility for that?

MR. SULLIVAN: Objection. Asked and answered. You can answer again.

A. It would be through the manufacturer, not through Harvey's.

See 03/03/25 Patt Dep. 34:10-35:10, attached as J.A. Ex. 4.

EDI Response: The testimony speaks for itself.

61. There was neither any agreement nor written or oral communication between Harvey and Plycem related to the Allura siding used for the Project. See Plycem

USA, LLC's Answers to Harvey Industries, Inc.'s Interrogatories, Nos. 3 and 4, attached here as J.A. Ex. 19.

EDI Response: Denies since this is a statement of law and there are certain legal relationships, responsibilities and agreements pursuant to M.G.L. c. 106 and common law that govern the relationship between a manufacturer, seller, purchaser and others.

EDI'S STATEMENT OF MATERIAL FACTS

General Objection to EDI's Noncompliance Statement of Fact:

Harvey generally objects to each and every additional statement of material fact set forth by EDI on the grounds that EDI set forth an excessive number of such facts (75) in an attempt to dilute the factual record with a deluge of erroneous, unnecessary, and/or irrelevant facts. This practice is strictly prohibited under Superior Court Rules. A party responding to the moving party's statement of fact "*shall not[] [a]ssert any additional facts.*" Sup.Ct.R. 9A(b)(5)(iii)(A)(d). (Emphasis added). "Additional facts may be included in the response only in the manner [as provided in the Superior Court Rules]." "Opposing parties who argue that additional facts warrant denying summary judgment shall include those facts in the opposition memorandum... except in support of a cross-motion for summary judgment". Id. at 9A(b)(5)(iii)(B).

EDI did not serve a cross-motion for summary judgment. As such, its Statement of Material Facts is an attempt to wear down this Court and induce judicial fatigue through the review of inconsequential factual disputes unnecessary to resolve Harvey's Motion for Summary Judgment. Accordingly, EDI's Statement of Material Fact should be stricken for its violation of the rules governing this Court and improper gamesmanship.

Subject to and without waiving said objection, Harvey shall respond:

62. Owner, Marina Bay Residences, LLC (Marina Bay), brought this action against its architect, Cube3 Studio, LLC (Cube3), and construction manager, Callahan, Inc. (Callahan), alleging that their faulty design and construction, respectively, of two oceanside apartment buildings located at Marina Bay in Quincy (Project) caused systemic water infiltration and damage. (Marina Bay's Complaint)

Harvey Response: Admit.

63. Located just steps from the ocean, the 352-unit Project experiences extreme weather conditions, including high winds, heavy precipitation, and saltwater exposure. (Marina Bay's Complaint) (Ex. 28A, pgs. 107-108, 135-137, 184-186); (Ex. 28B, pgs. 185-186, 195-196); (Ex. 28C, pgs. 70-74, 96-97, 192-195, 210-211, 232); (Ex. 29, pgs. 146-147, 193-194); (Ex. 2A, pgs. 73, 93-96); (Ex. 2B, pgs. 115-116, 267-269); (Ex. 3, pgs. 161-162, 222); (Ex. 6, pgs. 66, 151-153, 181-185); (Ex. 31, pg. 112); (Ex. 8A, pgs. 134-135, 144-146); (Ex. 35A).

Harvey Response: Admit for the purpose of summary judgment only.

64. Marina Bay seeks over \$40,000,000, in part, to redesign and reconstruct the buildings' envelopes, including the roof and exterior wall assemblies. (Marina Bay Complaint) (Ex. 28B, pgs. 242-244); (Ex. 28C, pg. 146-159, 221-230); see generally (Ex. 35B).

Harvey Objection: Harvey objects on the grounds that Paragraph No. 64 relies upon information produced as part of confidential settlement discussions and should therefore be stricken from the record.

Harvey Response: Admit for the purpose of summary judgment only.

65. Callahan maintains third-party claims against four subcontractors, including exterior siding subcontractor EDI Holdings, LLC f/k/a Exterior Designs, Inc. (EDI), multiple sub-subcontractors, and manufacturers of components of the exterior assembly, including the

manufacturer of the fiber cement exterior siding that moving party, Harvey Industries, Inc. (Harvey), sold to EDI. (Callahan's Second Amended Third-Party Complaint)

Harvey Response: Admit to the extent that Callahan maintains a claim against Plycem USA, LLC, to the extent that it provided engineering advice for this Project through Trinity Engineering, a third-party engineering firm it retained for that purpose. *See* Ex. 23, 26, and 27. Denied to the extent that EDI implies that Callahan has any extant claims or rights of action against Harvey.

66. Callahan alleges that the Allura siding sold by Harvey was defective, unfit for its intended purpose, and not of merchantable quality. (Callahan's Second Amended Third-Party Cpl. at ¶¶ 442-448)

Harvey Response: Denied. *See* 04/09/25 W. Gregg Dep. 375:13-21, 377:5-21, attached as J.A. Ex. 38 (Callahan denied the WJE Report, which served as both the basis of the Plaintiff's and Callahan's claims, related to the fitness of the Allura siding products for the Project).

67. In turn, EDI asserts various fourth-party claims, including counts against Harvey as seller and distributor of the Allura siding. (EDI's Second Amended Fourth-Party Complaint)

Harvey Response: Admit to the extent that EDI asserted claims against various Fourth Party Defendants. Denied to the extent that those allegations were "[i]n turn" rather than misapplications of the Plaintiff and Callahan's actual claims. *See* 04/29/25 D. Walker Dep. 240:12-241:3, attached as J.A. Ex. 39; 04/09/25 W. Gregg Dep. 375:13-21, 377:5-21, attached as J.A. Ex. 38.

68. Figures 1 and 2 depict Cube3's design of the exterior wall assemblies. (Ex. 35, ¶3); (Ex. 37, ¶3); (Ex. 35B, pgs. 16-17¹) (MB2 003196-003197).

¹ Page references to Ex. 35, par. 2, sub-Ex. B are to the .pdf pages which begin at page 1 and end at page 251 followed by the Bates Stamp numbers assigned during document production.

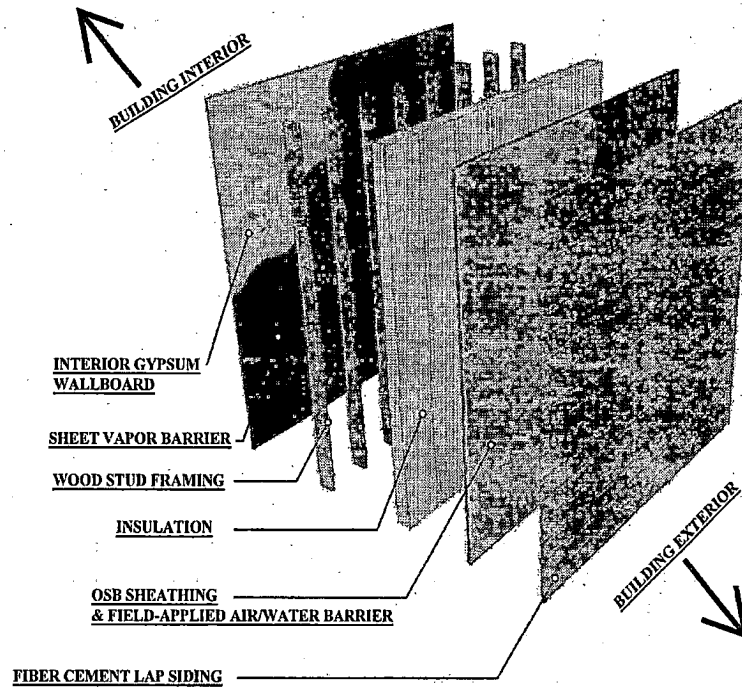


FIG. 1

Harvey Response: Admit for the purpose of summary judgment only.

69. Figure 1 above shows the wall assembly with Allura clapboard fiber siding (Clapboard). (Ex. 35, ¶3); (Ex. 37, ¶3); (Ex. 35B, pgs. 16-17) (MB2 003196-003197).

Harvey Response: Admit for the purpose of summary judgment only.

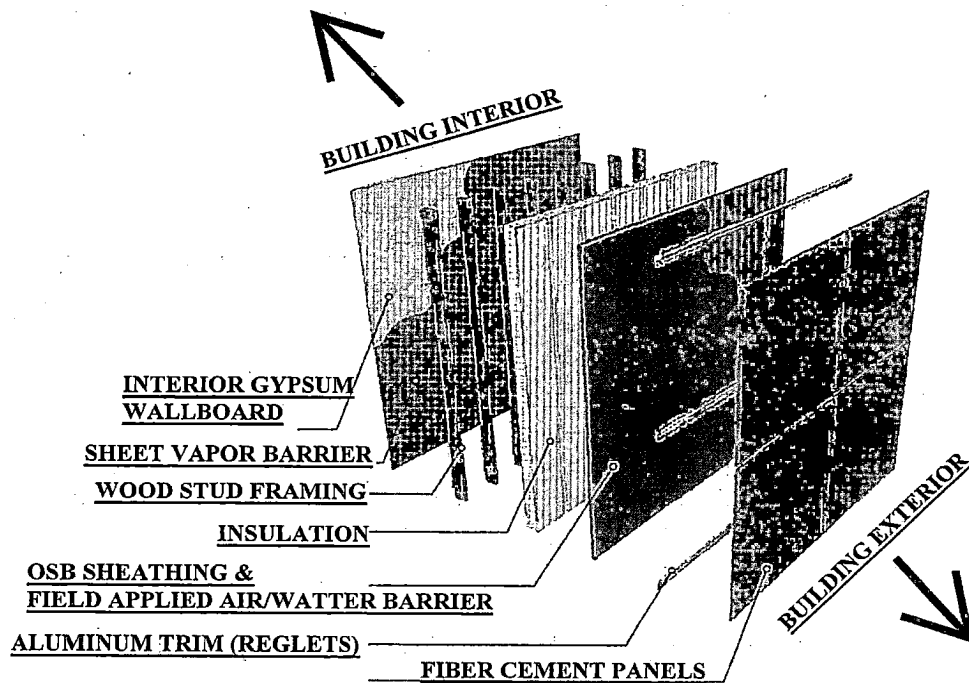


FIG. 2

70.

Figure 2 shows the same assembly, but with much larger Allura panels (Panels) (collectively, Siding). (Ex. 35, ¶3); (Ex. 37, ¶3); (Ex. 35B, pgs. 16-17) (MB2 003196-003197).

Harvey Response: Admit for the purpose of summary judgment only.

71. Cube3's design required two primary reveal sizes for the Clapboard - a 4" and 8". (Ex. 28A, pgs. 77-84, 226-227); (Ex. 28B, pgs. 122-124); (Ex. 28C, pgs. 180-187, 212-213); (Ex. 2A, pgs. 122-124, 164-168); (Ex. 2B, pg. 122-26); (Ex. 3, pgs. 143-144, 151, 172-173); (Ex. 29, pgs. 143-144); (Ex. 35B, pg. 126) (MB2 003401).

Harvey Response: Admit for the purpose of summary judgment only.

72. In contrast, the Panels were typically 4' wide and 8'-10' high and weighed around 65 pounds. (Ex. 37, ¶3); (Ex. 29, pg. 320); (Ex. 28B, pg. 136); (Ex. 3, pgs. 143, 173-175); (Ex. 2B, pg. 217); (Ex. 35B, pgs. 16-17) (MB2 003196-003197).

Harvey Response: Admit for the purpose of summary judgment only.

73. From the interior to the exterior, Cube 3's design required: (1) gypsum wallboard (Drywall), with a sheet vapor barrier (Vapor Barrier) affixed to its exterior, and attached to wood stud framing (Framing); (2) batt insulation (Insulation); (3) oriented strand board sheathing (Sheathing) fastened the Framing; and (4) liquid applied air-water barrier (AWB) on the exterior face of the Sheathing. (Ex. 35, ¶3); (Ex. 37, ¶4); (Ex. 35B, pgs. 16-17) (MB2 003196-003197).

Harvey Response: Admit for the purpose of summary judgment only.

74. Depending on location, either Clapboard or Panels were fastened to the Sheathing, by screws or nails which penetrated the Siding, AWB and Sheathing and which were embedded in the Framing. (Ex. 28A, pgs. 78-81); (Ex. 28B, pgs. 122-123, 180-181); (Ex. 28C, pg. 182); (Ex. 2B, pgs. 124-125, 152-153); (Ex. 35B, pgs. 16-17) (MB2 003196-003197).

Harvey Response: Denied to the screws, not nails were used to penetrate through the sheathing. See 04/10/25 Subasic Dep. 67:3-24, attached as J.A. Ex. 40. Otherwise, admit for the purpose of summary judgment only.

75. Cube3's design required the 4" Clapboard to be "blind" nailed to the Sheathing, meaning all nails were covered by the next Clapboard row and not exposed to view. (Ex. 28A, pgs. 79-80, 84-86, 102-105, 125-126); (Ex. 28B, pgs. 122-123); (Ex. 28C, pgs. 180-189); (Ex. 2A, pgs. 122-124, 164-168); (Ex. 2B, pgs. 150-152, 303); (Ex. 6, pgs. 174-177); (Ex. 31, pgs. 50-53); (Ex. 29, pgs. 142-144) (Ex. 35B, pg. 126) (MB2 00340).

Harvey Response: Denied to the extent that nails, rather than screws, were used to penetrate through the sheathing. *See* 04/10/25 Subasic Dep. 67:3-24, , attached as J.A. Ex. 40. Otherwise, admit for the purpose of summary judgment only.

76. In contrast, the 8" Clapboard and the Panels were to be "face" fastened, so that all fasteners (in these applications – screws) were screwed through the face of the Siding and exposed to view. (**Ex. 28A**, pg. 79-80); (**Ex. 28B**, pgs. 122-123); (**Ex. 28C**, pgs. 180-189, 213-214); (**Ex. 2A**, pgs. 122-124); (**Ex. 2B**, pgs. 123-125); (**Ex. 6**, pgs. 154-155, 174-175); (**Ex. 31**, pgs. 50-53); (**Ex. 29**, pgs. 142-145); (**Ex. 35B**, pgs. 126, 153) (MB2 003401, 003333).

Harvey Response: Denied to the extent that the screws came pre-applied with flashing "paint" during their installation. *See* 04/10/25 Subasic Dep. 68:1-21, attached as J.A. Ex. 40.

77. Plycem offered no recommendation for, or restrictions on how, its Siding should be affixed to the buildings. (**Ex. 35C**, see generally); (**Ex. 28C**, pgs. 90-92); (**Ex. 2B**, pgs. 264-265); (**Ex. 3**, pgs. 141-142, 177-181, 217-219); (**Ex. 4**, pg. 41-42).

Harvey Response: Denied. Plycem provided specific instructions about fastener patterns after engineering analysis of multiple configuration through Trinity Engineering. *See* Trinity Engineering Report, attached as J.A. Ex. 26. This report was provided to EDI, among others. *See* 06/24/16 Email from Mathew Bouchard, attached as J.A. Ex. 23.

78. Cube3's design required the Siding be direct fastened to the Sheathing (Direct Apply) with no drainage or drying cavity between the Siding and the Sheathing. (**Ex. 35B**, pgs., 16-17, 126 (MB2 003196-003197, 003401); (**Ex. 3**, pgs. 176, 213-215); (**Ex. 6**, pg. 166); (**Ex. 32**, pg. 91-92); (**Ex. 1B**, pgs. 229-230); (**Ex. 2A**, pgs. 95-97); (**Ex. 2B**, pgs. 263-266); (**Ex. 28C**, pgs. 90-92, 125-127); (**Ex. 33**, pgs. 102-103); (**Ex. 8B**, pgs. 314-315, 393).

Harvey Response: Denied to the extent that Cube 3 testified that the “texture” on Enershield layer on top of the OSB and the back of the Allura siding products was intended to form a drainage system. *See* 10/22/24 Bancroft Dep. 300:22-301:11, attached as J.A. Ex. 2B. Otherwise, admit for the purpose of summary judgment only.

79. From August 2015 through the end of June 2016, Harvey and Coastal Forest Products, Inc. (Coastal) sent EDI numerous quotes to supply all Allura Siding and related accessories for the Project. (**Ex. 35D**); (**Ex. 4**, pgs. 26-31); (**Ex. 3**, pgs. 59-62, 125-128); (**Ex. 1B**, pgs. 49-53, 178).

Harvey Response: Denied to the extent that “Harvey and Coastal” provided EDI quotes. Coastal provided Harvey with “special pricing” quotes, which Harvey subsequently shared with EDI. *See* 10/24/24 Perez Dep. 61:3-21, attached as J.A. Ex. 3; 01/13/16 Patt Email, attached as J.A. Ex. 35D, p. 6.

80. Harvey sold Plycem’s product as a dealer of the Allura Siding for Plycem. (**Ex. 3**, pgs. 64, 69-71); (**Ex. 35E**); (**Ex. 4**, pgs. 13-15, 18, 26-31, 36-37); (**Ex. 28C**, pgs. 274-275).

Harvey Response: Denied to the extent that Harvey was a “dealer” acting on behalf of Plycem. None of the proffered exhibits establish that Harvey had a formal business relationship with Plycem, was a “dealer”, or otherwise acted as Plycem’s agent.

81. Harvey testified: “One of my customers, EDI, came to me looking for material for the large job at Marina Bay... we gave them pricing... they went with us for the job.” (**Ex. 4**, pg. 26).

Harvey Response: Denied to the extent that the quote implied Harvey is the source of pricing. Plycem expressly testified that Allura produced a “special pricing allowance” exclusively for the Allura siding product that did not apply to other products, orders, projects, or jobs. *See*

10/24/24 Perez Dep. 61:3-21, attached as J.A. Ex. 3. Cube 3 testified that it made the decision to utilize Allura panels because it was made aware of legal action against Hardie, the manufacturer of another fiber cement panel being considered at the time, by Plycem d/b/a Allura. *See* 10/22/24 Bancroft Dep. 212:10-17, attached as J.A. Ex. 2B.

82. By a purchase order sent by EDI to Harvey on June 28, 2016, EDI accepted a final quote of \$486,016.32 from the prior day, which established quantities and unit prices for all Siding and accessories to be furnished by Harvey. (Ex. 35F); (Ex. 4, pg. 26) (Ex. 37, ¶5, Ex. 37B).

Harvey Response: Admit to the extent that the “purchase order” sent by EDI on June 28, 2016 indicated quantities and unit prices for products identified in the document. Otherwise denied on grounds that a “purchase order” unilaterally generated and transmitted by one party does not establish the existence of an agreement.

83. Over the course of 33 months of construction, EDI sent Harvey periodic “Material Lists” to obtain delivery of Siding and related accessories, as it was needed. (Ex. 35G); (Ex. 4, pgs. 28, 30, 38-39, 49); (Ex. 1A, pg. 165). EDI’s material list was based on the previously agreed price. (Ex. 4, pgs. 28-39, 48-49); (Ex. 35G).

Harvey Response: Denied to the extent that information provided by Harvey as to their product price schedule constituted a “previously agreed upon price.” Harvey expressly testified that that the “price and the quantity” of products produced to EDI was based on the specific “purchase order” that was sent by Harvey. *See* 03/03/25 Patt Dep. 38:15-23, attached as J.A. Ex. 4. Otherwise, admit for the purpose of summary judgment only.

84. Upon receipt of EDI’s Material Lists, Harvey invoiced EDI which EDI promptly paid. (Ex. 4, pg. 49) (Ex. 37, ¶6).

Harvey Response: Admit for the purpose of summary judgment only. Harvey states further that the invoices generated and sent to EDI contained additional terms which were incorporated into each the terms of each individual contract for sale of goods. *See* Harvey Invoice, attached as J.A. Ex. 35G (“All claims for shortage or error must be made on receipt of goods. Any materials proving defective will be replaced, but no claims for labor or damage can be allowed.”).

85. EDI received Allura Siding and related accessories from Harvey beginning in June 2016 and ending in 2019. (Ex. 4, pgs. 28, 30, 49); (Ex. 35G); (Ex. 37, ¶¶7-9) Between mid-September 2017 and mid-February 2019, EDI requested, and Harvey delivered, multiple shipments of Allura Siding and related accessories pursuant to their contract, as follows:

EDI Material Request Date	Harvey Invoice Date	Allura Siding Products	Related Siding Products
1/29/2019	3/18/2019	x	
4/30/2018	5/3/2018	x	
3/19/2018	3/20/2018	x	
3/16/2018	3/16/2018		x
3/16/2018	3/16/2018		x
3/15/2018	3/15/2018		x
2/28/2018	3/1/2018		x
2/20/2018	2/20/2018		x
2/2/2018	2/2/2018		x
1/23/2018	1/24/2018	x	
10/2/2017	10/4/2017	x	
10/2/2017	10/4/2017	x	
9/26/2017	9/26/2017	x	
9/20/2017	9/21/2017	x	
9/19/2017	9/21/2017	x	
9/13/2017	9/14/2017	x	
9/3/2017	9/15/2017		x
9/3/2017	10/6/2017		x

(Ex. 4, pgs. 28-39, 48-49); (Ex. 35G); (Ex. 37 at ¶8).

Harvey Response: Denied to the extent that EDI and Harvey had a contract, as each exchange of purchase order/material list/invoice was an independent transaction. *See* Harvey Invoice, attached as J.A. Ex. 35G (“Prices subject to change without notice”). Further denied on the grounds that Paragraph No. 85 implies that the post-construction remediation work performed

by EDI after January 27, 2018, was part of the original Project. Otherwise, admit for the purpose of summary judgment only.

86. Harvey never told EDI that it was working as a middleman for Plycem and Harvey never told EDI that it was disclaiming any responsibility for the products it sold. (Ex. 4, pgs. 39-40).

Harvey Response: Denied on the grounds that Plycem provided Project-specific engineering advice to directly to EDI, but not Harvey. See Trinity Structural Performance Testing, attached as J.A. Ex. 25; Email Chain re: Hines Marina Bay—Allura Fastners, attached as J.A. Ex. 35A. Stephen Patt, Harvey's corporate representative, further testified that customers that had questions about a product would be directed to the manufacturer. See 03/03/25 Patt Dep. 48:6-15, attached as J.A. Ex. 4.

87. After EDI received the Siding and related accessories, Harvey promptly invoiced EDI. (Ex.4, pg. 31-40); (Ex. 37, ¶9).

Harvey Response: Admit for the purpose of summary judgment only.

88. Plycem, and by extension its local distributor Harvey (located in Waltham, Massachusetts), was aware of the Project's oceanside location, climate conditions, and the Direct Apply requirements of the design long before it ever made a delivery of Siding. (Ex. 4, pg. 22); (Ex. 35G).

Harvey Response: Denied to the extent that Harvey was a "dealer" acting on behalf of Plycem. None of the proffered exhibits establish that Harvey had a formal business relationship with Plycem, was a "dealer", or otherwise acted as Plycem's agent.

89. Cube3 worked with Plycem to establish certain design and engineering elements necessary before the Siding could be used. (Ex. 2A, pgs. 87-97); (Ex. 3, pgs. 87-97); (Ex. 35H).

Harvey Response: Admit.

90. Cube 3 sent Plycem and/or its engineers Project data, including exterior wall assembly drawings, a project site map, aerial site photos, building code data, typical floor plans, exterior elevations, cladding profiles, wind pressures, negative pressures, and other weather data so Plycem could determine if the Siding was appropriate for the Project. (Ex. 3, pgs. 152-162); (Ex. 2A, pgs. 87-97); (Ex. 35H).

Harvey Response: Admit.

91. As recounted by Cube3's representative, Plycem assured Cube3 about the appropriateness of this product [Allura siding] ... they [Plycem] made assurances that it could be used; that they could come up with the fastener pattern...[and] [t]hat it was appropriate for this location, appropriate for this building type, that we could use it. (Ex. 2A, pgs. 91-95); see generally (Ex. 2B, pgs. 115-119, 150-162, 269-270).

Harvey Response: Admit

92. When asked if Plycem's assurances to Cube3 extended to Allura's capability to avoid water penetration, Cube3's Bancroft responded, "Yeah.", and later added that Plycem assured Cube3 that its product would also work with the fluid-applied air/water barrier. (Ex. 2B, pgs. 115-118).

Harvey Response: Admit.

93. Mr. Bancroft testified: "Yes, I believe they [Plycem] were provided the drawings, which would have included that information. I believe we were all on the same page during this time." When asked "when you said 'we were all on the same page', you mean they assured you it would work and be suitable for the project; is that right?", to which Mr. Bancroft responded, "Yes". (Ex. 2B pgs.115-118); see generally (Ex. 3, pgs. 152-162); (Ex. 35H).

Harvey Response: Admit.

94. Plycem provided a fifty-year warranty that the Siding will be free from manufacturing defects and will not crack, rot or delaminate. (Ex. 37, ¶2 and Ex. 37A) Plycem also guaranteed that the Siding is resistant to “salt spray” and its “proprietary primer/sealer ensures better weather-resistance by sealing out harmful moisture”. (Ex. 37, ¶2 and Ex. 37A); (Ex. 35C)

Harvey Response: Admit for the purpose of summary judgment only.

95. Plycem and Harvey were (or should have been) familiar with the location (Harvey is based in Waltham) and design requirements of the Project. (Ex. 3, pgs. 152-162); (Ex. 2A, 87-97); (Ex. 2B, pgs. 91-95); (Exs. 35G&H); (Ex. 4, pg. 22).

Harvey Objection: Harvey objects on the grounds that Paragraph No. 95 asserts a legal conclusion should therefore be stricken from the record.

Harvey Response: Denied on the grounds that none of the proffered exhibits establish that Harvey had any knowledge or familiarity with the Project Site or design requirements of the Project.

96. Cube3 and Marina Bay relied on Plycem’s assurances that the Siding would work for its intended use, including preventing water infiltration, and EDI relied on the manufacturer’s installation instructions, which did not mention any Rainscreen requirement. (Ex. 2A, pg. 92-94); (Ex. 2B, pgs. 115-119, 150-162, 269-270); (Ex. 28B, pgs. 195-196); (Ex. 28C, pgs. 211, 274-275); see also (Ex. 3, pgs. 152-162); (Ex. 35H)

Harvey Response: Admit for the purpose of summary judgment only.

97. With expert disclosures/reports not yet due, not a single trial expert has opined on which, if any, designers, contractors, subcontractors, sub-subcontractors, manufacturers, and/or product sellers contributed to cause the water infiltration alleged by Marina Bay. (Ex. 35, ¶4).

Harvey Response: Harvey objects on the grounds that EDI waived any objection to the timeliness of expert disclosure requirements by failing to raise any objections during conference held pursuant to Sup.Ct.R. 9C.

Harvey Response: Denied. The Plaintiff has produced multiple expert reports, including as the WJE Report incorporated into its allegations against Callahan; Callahan's allegations against EDI, and EDI's allegation against Harvey. EDI was also able to produced an affidavit of its expert architect providing testimony about the architectural design decisions. *See* Affidavit of David Doughlas, attached as J.A. Ex. 36.

98. Multiple witnesses indicate that the Siding caused or may have contributed to cause the water infiltration. (Ex. 35B, pgs. 4-9, 45-66, 197, 129) (MB2 003184-003189, 003225-003246, 003377, 003404); (Ex. 36 at ¶11); (Ex.2A, pgs. 92-94); (Ex. 2B, pgs. 107-118, 150-153); (Ex. 29, pgs. 307-324; 349-353); (Ex. 8A, pgs. 39-47, 146-148, 201); (Ex. 33, pgs. 83, 113-116, 221-222); (Ex. 28B, pgs. 175-182, 220-223); (Ex. 28C, pgs. 224-228); (Ex. 34, pgs. 88-94, 176-180); (Ex. 32, pgs. 80-84); (Ex. 6, pgs. 162-180); (Ex. 31, pgs. 51-53, 191); (Ex. 1B, pgs. 153-157); (Ex. 34, pgs. 99-105); (Ex. 30, pg. 43); (Ex. 35 I, J, K, L,&M); (Ex. 8B, pgs. 314-315, 393, 395-396).

Harvey Response: Denied on the grounds that all the above-referenced constitutes bare speculation and/or fails to implicate that defects in the Allura siding (as opposed to the architectural design decisions) caused or contributed to water infiltration.

99. Project documents demonstrate and witnesses have testified that interior assemblies were wet at or near siding fastener locations designed by Plycem and that the lack of or inadequate drainage plane created by the Siding allowed exterior assemblies to remain wet and allow moisture build up compromising the integrity and performance of the exterior assemblies such as the AWB and tape and liquid flashing. (Ex. 35B, pgs. 4-9, 45-66, 197, 129) (MB2 003184-003189, 003225-

003246, 003377, 003404); (Ex. 36, ¶¶9-11); (Ex. 2B, pgs. 107-118, 150-153); (Ex. 29, pgs. 307-324; 349-353); (Ex. 8A, pgs. 39-47, 146-148, 201); (Ex. 33, pgs. 83, 113-116, 221-222); (Ex. 28B, pgs. 175-182, 220-223); (Ex. 28C, pgs. 224-228); (Ex. 34, pgs. 88-94, 176-180); (Ex. 32, pgs. 80-84); (Ex. 6, pgs. 162-180); (Ex. 31, pgs. 51-53, 191); (Ex. 1B, pgs. 153-157); (Ex. 34, pgs. 99-105); (Ex. 30, pg. 43); (Ex. 35I, J, K, L, & M); (Ex. 8B, pgs. 314-315, 393, 395-396).

Harvey Response: Admit for the purpose of summary judgment only.

100. WJE's report, provided to EDI in July 2020 and updated since then, identifies Plycem's Siding as the first and most important line of defense of the exterior wall system to water infiltration, writing: "Fiber cement panel cladding, such as that installed on the Meriel Marina Bay project, functions as a drainage assembly with respect to water management within the cladding system. As with most cladding types, the exterior face of the fiber cement panels, including joints and adjacent construction, provide the primary barrier to rainwater." (Ex. 35B, pg. 33) (MB2 003213).

Harvey Response: Admit for the purpose of summary judgment only.

101. Marina Bay alleges it discovered water intrusion in various areas of the Project including at or near wall cladding. (Marina Bay Complaint at ¶¶ 31, 32)

Harvey Response: Admit for the purpose of summary judgment only.

102. WJE writes: "As a result of water intrusion into the building shortly after construction, the general contractor completed repairs to fiber cement wall panels at isolated locations o[f] [sic] the building." (Ex. 35B, pg. 14) (MB2 003194); see also (Marina Bay Complaint at ¶ 40).

Harvey Response: Admit for the purpose of summary judgment only.

103. Most importantly, finding water stains surrounding fasteners in multiple locations, WJE writes: "In addition, water bypassed the AWB through panel siding and reglet fasteners." (Ex. 35B, pg. 6) (MB2 003186) ; see also (Ex. 2B, pgs. 107-118); (Ex. 29, pgs. 307-324; 349-353); (Ex. 8A, pgs. 39-47, 146-148, 201); (Ex. 33, pgs. 83, 113-116, 221-222); (Ex. 28B, pgs. 175-182, 220-223); (Ex. 28C, pgs. 224-228); (Ex. 34, pgs. 88-94, 176-180); (Ex. 32, pgs. 80-84); (Ex. 6, pgs. 162-180); (Ex. 31, pgs. 51-53, 191); (Ex. 1B, pgs. 153-157); (Ex. 34, pgs. 99-105, 176-180); (Ex. 30, pg. 43); (Ex. 35B, pgs. 4-9, 45-66, 197, 129) (MB2 003184-003189, 003225-003246, 003377, 003404); (Exs. 35I, J, K, L, & M); (Ex. 8B, pgs. 395-396)

Harvey Response: Admit for the purpose of summary judgment only.

104. As to its observations of these fastener conditions WJE writes: the fastener ends "protruding through the sheathing were wet to the touch and water was dripping from one fastener. The leak revealed that water continued to bypass the sheathing through panel fastener penetrations."; "the fiber cement panel fastener screws were wet to the touch and water was observed dripping from one screw"; "the as-built construction demonstrated that water bypasses the sheathing through AWB deficiencies and fastener penetrations."; "water can bypass the new AWB and plywood sheathing through panel fastener penetrations." (Ex. 35B, pgs. 6, 46) (MB2 003186, MB2 003226); see also (Ex. 2B, pgs. 107-118); (Ex. 29, pgs. 307-324; 349-353); (Ex. 8A, pgs. 39-47, 146-148, 201); (Ex. 33, pgs. 83, 113-116, 221-222); (Ex. 28B, pgs. 175-182, 220-223 and Ex. 28C, pgs. 224-228); (Ex. 34, pgs. 88-94, 176-180); (Ex. 32, pgs. 80-84); (Ex. 6, pgs. 162-180); (Ex. 31, pgs. 51-53, 191); (Ex. 1B, pgs. 153-157); (Ex. 34, pgs. 99-105, 176-180); (Ex. 30, pg. 43); (Exs. 35I, J, K, L, & M); (Ex. 8B, pgs. 395-396).

Harvey Response: Admit for the purpose of summary judgment only.

105. WJE includes examples of its observation in Figure B19 which it describes “Water stains at panel and reglet fastener penetrations”. (Ex. 35B, pg. 51) (MB2 003231).

Harvey Response: Admit for the purpose of summary judgment only

106. WJE includes examples of its observation in Figure B105 which it describes as “Interior surface of plywood with water dripping from fiber cement panel fastener, north wall of closet”. (Ex. 35B, pg. 66) (MB2 003246)

Harvey Response: Admit for the purpose of summary judgment only

107. WJE concludes that: “The pattern of deterioration of the AWB encountered was widespread predominantly at fiber cement cladding panels that were secured using face-fasteners with heads that were exposed to the weather and trimmed out with aluminum reveal trim components, particularly at Cladding Types 1 and 2. The pattern of the OSB deterioration correlated with that of the AWB. Water was absorbed into OSB at areas of defective AWB and flashings, at fastener penetrations, and at gaps in sheathing panel edges. Once absorbed, the OSB fibers swell and splinter, causing the areas that are coated with AWB to crack, dislodge, delaminate, and debond, exacerbating the failure of the AWB and OSB, and subjecting the stud framing to water.” (Ex. 35B, pg. 129) (MB2 003404).

Harvey Response: Admit for the purpose of summary judgment only.

108. During design, Marina Bay and Cube3 narrowed its choice of Siding manufacturer to Plycem or James Hardie Industries (Hardie). (Ex. 2A, pgs. 85-90, and Ex. 2B, pgs. 200-202, 210-214); (Ex. 28A, pgs. 136-139; Ex. 28B, pg. 228)

Harvey Response: Admit for the purpose of summary judgment only.

109. Plycem permitted the Direct Apply of its Siding to the Sheathing without incorporation of an air cavity to create a drainage plane, whereas Hardie did not. (Ex. 35B&C);

(Ex. 28C, pgs. 69-70, 90-92, 184-185); (Ex. 2A, pgs. 90-92 and Ex. 2B, pgs. 263-266); (Ex. 3, pgs. 177-181, 214-219); (Ex. 1B, pg. 184); (Ex. 8A, pgs. 39-47, 146-148, 201); (Ex. 33, pgs. 83-84, 113-116, 221); (Ex. 34, pgs. 100-105); (Ex. 32, pgs. 90-93) (Ex. 8B, pgs. 314-315, 393).

Harvey Response: Denied Cube. See 10/22/24 Bancroft Dep. 300:22-301:11, attached as J.A. Ex. 2B (Cube 3 testified that the texture on the Eersheild coating and back side of Allura siding was intended to create a drainage plane).

110. Plycem describes a “rainscreen” in its product bulletin as consisting of: “an exterior cladding, a cavity that is typically created through the use of furring strips behind the cladding, and an inner wall that incorporates a weather-resistant barrier.” (Ex. 35C, p. 6) (BASF 001668).

Harvey Response: Admit for the purpose of summary judgment only

111. A Rainscreen’s purpose is threefold – (1) it establishes a drainage plane for water and water vapor management and drainage; (2) it allows air circulation to promptly and fully dry wetted Siding, fasteners, AWB, and sheathing behind the Siding; and (3) it slows deterioration and degradation of the exterior assemblies behind the cladding and assists in prevent organic growth. (Ex. 36, ¶¶9-11); see generally (Ex. 35N); (Ex. 2A, pgs. 90-94, and Ex. 2B, pgs. 107-110, 151-153); (Ex. 29, pgs. 307-353); (Ex. 8A, pgs. 146-148); (Ex. 33, pgs. 83-84, 113-116); (Ex. 28B, pgs. 175-182, 220-225 and Ex. 28C, pgs. 224-228); (Ex. 34, pgs. 99-100); (Ex. 32, pgs. 80-84, 91, 187); (Ex. 6, pgs. 162-180); (Ex. 1B, pgs. 153-157); (Ex. 30, pgs. 43).

Harvey Response: Admit for the purpose of summary judgment only

112. In high-exposure climates like coastal New England, Rainscreens are commonly used to prevent moisture buildup and subsequent leaks. (Ex. 36, ¶10); (Ex. 8A, pgs. 145-148); (Ex. 34, pgs. 156-157); (Ex. 28C, pgs. 95-97); (Ex. 32, pgs. 80-84, 91-92, 157-158); (Ex. 6, pgs. 152-154, 162-185); (Ex. 29, pgs. 307-353); (Ex. 35N).

Harvey Response: Admit for the purpose of summary judgment only

113. Without a rainscreen or appropriate drainage space, water, in liquid and vapor form, became trapped between the siding and the exterior sheathing, eventually degrading the wall assemblies, like the air/water barrier and causing water infiltration into the interior wall assembly via the siding fasteners. (Ex. 36, ¶9); (Ex. 29, pg. 341-345); (Ex. 33, pgs. 113-116); (Ex. 6, pgs. 42-43, 54-55); (Ex. 1B, pg. 200); (Ex. 35B, pgs. 4-9, 45-66, 197, 129) (MB2 003184-003189, 003225-003246, 003377, 003404).

Harvey Response: Admit for the purpose of summary judgment only

114. The Allura Siding technical bulletin provides: “[w]ater management is key to protecting every part of your home, including your siding”, a rainscreen promotes “airflow and moisture management behind the exterior cladding products”, and “Allura Fiber Cement Siding...must be allowed to breathe”, yet nowhere these 57 pages does Plycem require, warn, or even suggest, that its Siding be only with a Rainscreen. (Ex. 35C).

Harvey Response: Admit for the purpose of summary judgment only.

115. Not requiring a rainscreen allowed Plycem and Harvey to offer lower upfront costs, making its product more attractive to an Owner looking for value, especially in light of Plycem’s assurances that the product would be appropriate for the design and location of the Project. (Ex. 28C, pgs. 87-99); (Ex. 2A, pgs. 85-90, and Ex. 2B, pgs. 210-212, 263-266); (Ex. 8A, pgs. 145-148); (Ex. 33, pgs. 202-204); (Ex. 34, pg. 104); (Ex. 1B, pg. 230); (Ex. 29, pgs. 349-353).

Harvey Response: Denied. None of the proffered exhibits establish that Harvey was involved in Plycem’s decision to not recommend a rainscreen or the Plaintiff and/or Cube 3’s decision not to utilize a rainscreen in the Project. Harvey further states that none of the proffered

exhibits establish that the decision by Plycem, the Plaintiff, and/or Cube 3 not to include a rainscreen enabled it to “offer lower upfront costs”.

116. Marina Bay has testified that the backside of the Panels had small striations creating a *de minimis* and inadequate drainage plane; others indicated there was a textured backside to the Panels to create a drainage plane. (Ex. 28C, pgs. 87-89, 226); (Ex. 2B, pgs. 85-90); (Ex. 3, pgs. 180-181, 198-199).

Harvey Response: Admit for the purpose of summary judgment only

117. Plycem designed and engineered a custom fastening pattern for the Panels and 8” Clapboard since it did not have a “prescriptive” fastening pattern that would work in the extreme conditions at the Project. (Ex. 3, pgs. 153-155); (Ex. 28C, pgs. 181-183, 207-210, 232); (Ex. 8A, pg. 123); (Ex. 2A, pgs. 90-95, and Ex. 2B, pgs. 165-167, 269-270); (Ex. 29, pgs. 144, 183-190); (Ex. 350&P).

Harvey Response: Admit for the purpose of summary judgment only

118. To this end, Plycem hired Trinity Engineering to design and engineer a solution. (Ex. 3, pgs. 153-156); (Ex. 28C, pgs. 181-183, 189, 206-210); (Ex. 8A, pg. 123); (Ex. 2A, pgs. 90-95, and Ex. 2B, pgs. 165-167, 269-270); (Ex. 29, pgs. 183-190); (Ex. 350&P).

Harvey Response: Admit for the purpose of summary judgment only

119. After almost three months of testing from May 2016 to August 2016, Plycem finally produced a report detailing the necessary pattern and number of fasteners necessary for the Panels and 8” Clapboard to ensure that the Siding would be appropriate for the Project. (Ex. 350&P); (Ex. 29, pgs. 186-189, 215); (Ex. 28C, pgs. 207-210).

Harvey Response: Admit for the purpose of summary judgment only

120. Plycem's design increased to approximately twice as many of face-screwed fasteners required to hold the Siding in place. (Ex. 28B, pgs. 216 and Ex. 28C, pgs. 182); (Ex. 35O, P&Q); (Ex. 3, pgs. 91, 101, 112, 152-155, 181-183); (Ex. 1B, pgs. 166-170); (Ex. 34, pgs. 89-90, 155-156, 175-176); (Ex. 6, pgs. 173-175).

Harvey Response: Admit for the purpose of summary judgment only

121. These fasteners, which were exposed to the weather, and penetrated the Siding, AWB, and Sheathing, became conduits for water infiltration into the interior wall assemblies at the Project. (Ex. 35B, pgs. 6, 46) (MB2 003186, MB2 003226); (Ex. 35I, J, K, L&M); (Ex. 36 ¶11); (Ex. 2B, pgs. 107-118); (Ex. 29, pgs. 307-324; 351-353); (Ex. 8A, pgs. 39-47, 146-148, 201); (Ex. 33, pgs. 113-116, 221-222); (Ex. 28B, pgs. 175-182, 220-223 and Ex. 28C, pgs. 224-228); (Ex. 34, pgs. 88-94, 176-180); (Ex. 32, pgs. 80-84); (Ex. 6, pgs. 162-180); (Ex. 31, pgs. 51-53, 191); (Ex. 1B, pgs. 153-157); (Ex. 34, pgs. 99-105); (Ex. 30, pg. 43).

Harvey Response: Admit for the purpose of summary judgment only

122. Plycem's fastening design caused many of the fasteners to not be embedded in the Framing as required by its own installation instructions. (Ex. 28C, pgs. 183-185); (Ex. 2B, pgs. 124-125); (Ex. 34, pgs. 90-91, 159-160, 177-180); (Ex. 1B, pgs. 166-170); (Ex. 3, pgs. 91, 101, 111-112, 152-155); (Ex. 8A, pgs. 43, 82-83)

Harvey Response: Admit for the purpose of summary judgment only

123. Harvey Supplied a Product to EDI that: (1) was manufactured without an adequate drainage space for Direct Applications to sheathing; (2) should have carried a requirement that it be installed with a drainage space, or at a minimum, a warning to purchasers, designers and end users of the deficiencies and problems associated with an inadequate drainage space in connection with direct applications, especially given the location of the Marina Bay Project; (3) allowed water

to pass through the fastener locations and access the air water barrier behind Panels and larger Clapboard Siding; (4) were sold with an excessively dense face fastening pattern designed by Plycem which significantly increased the number of pathways for water infiltration, especially though the exposed fasteners given the location of the Marina Bay Project – all of which contributed to cause water infiltration at the Project. (Ex. 36, ¶¶1-13).

Harvey Objection: Harvey objects on the grounds that Paragraph No. 123 on the grounds that EDI has failed to disclose the expert credentials of the individual that purports to offer expert testimony and should therefore be stricken

Harvey Response: Admit to the extent that EDI's expert proffered the above-referenced testimony. Harvey further states that none of said experts critique of the Plaintiff and/or Cube 3's design choices, or Plycem's engineering advice, is relevant to EDI's claims against Harvey.

124. WJE writes: "Weather exposed facades oriented toward wind-driven rain exhibited damage from water, particularly at areas clad with fiber cement panel siding. The water protection provided by the fiber cement panel cladding system performed poorly relative to locations with plank siding." (Ex. 35B, pg. 7) (MB2 003187). As discussed by WJE in its report, during storms, wind-driven rain, snow, precipitation and moisture accumulated behind the directly applied Siding which then degraded the air water barrier and other assemblies and permitted water to migrate on Siding fasteners to the interior of the building. (Ex. 35B, pgs. 32, 129) (MB2 003212, 003404).

Harvey Response: Admit for the purpose of summary judgment only.

125. Callahan alleges that defects in and associated with the Allura Siding "caused or contributed to cause the Plaintiff's damages". (Callahan's 2nd Amd. Third-Party Complaint at ¶¶ 28, 99, 100, 109-142, 440-452).

Harvey Response: Denied. 04/09/25 W. Gregg Dep. 375:13-21, 377:5-21

126. Marina Bay filed its original complaint on November 18, 2021. (Court Docket).

Harvey Response: Admit.

127. EDI filed its fourth party complaint against Harvey on July 28, 2022. (Court Docket)

Harvey Response: Admit.

128. Mock-ups are not intended to replicate real-world environmental conditions. (Ex. 37, ¶10)

Harvey Response: Denied. Michael Dion, on behalf of EDI, testified that he lacked any knowledge of whether testing was performed on the mock-up. 01/21/25 Dion Dep. 208:15-24, attached as J.A. Ex. 1B.

129. Rather, they are typically used to demonstrate aesthetic appearance, installation techniques, and coordination among trades. (Ex. 37, ¶10)

Harvey Response: Denied. Michael Dion, on behalf of EDI, testified that he lacked any knowledge about the mock-up, including whether testing was performed on the mock-up. 01/21/25 Dion Dep. 208:15-24, attached as J.A. Ex. 1B. David Walker, on behalf of the Plaintiff, further testified that there was “a directive [] to coordinate construction of mock-up to permit inspection by owner’s testing agency of air/water resistive barrier before external cladding is installed” in March of 2016. *See* 11/15/24 Walker Dep.

130. They are installed in atypical, controlled conditions and do not include all critical components (such as roofing or parapets). (Ex. 37, ¶10)

Harvey Response: Denied. Michael Dion, on behalf of EDI, testified that he lacked any knowledge about the mock-up, including whether testing was performed on the mock-up. 01/21/25 Dion Dep. 208:15-24, attached as J.A. Ex. 1B.

131. Mock-ups are conducted at the direction of the architect and construction manager, and subcontractors are not permitted to undertake forensic testing on them. (Ex. 37, ¶10)

Harvey Response: Denied. Michael Dion, on behalf of EDI, testified that he lacked any knowledge about the mock-up, including whether testing was performed on the mock-up. 01/21/25 Dion Dep. 208:15-24, attached as J.A. Ex. 1B.

132. Moreover, even if water testing had been conducted, it would not have reflected the actual conditions experienced in the completed structure—conditions that include wind pressures, driving rain, and integration with adjacent materials on upper stories. (Ex. 37, ¶10)

Harvey Response: Denied. Michael Dion, on behalf of EDI, testified that he lacked any knowledge about the mock-up, including whether testing was performed on the mock-up. 01/21/25 Dion Dep. 208:15-24, attached as J.A. Ex. 1B.

133. EDI did not receive any notice that its work might be implicated in causing water infiltration until mid-July 2020, when it received a written notification from Callahan along with the WJE report. (Ex. ¶11, Ex. 37C).

Harvey Response: Denied. Michael Dion, on behalf of EDI, testified that he lacked any knowledge about the mock-up, including whether testing was performed on the mock-up. 01/21/25 Dion Dep. 208:15-24, attached as J.A. Ex. 1B.

134. Prior to mid-July 2020, while some leaks had been identified and remediated during construction, it was EDI's understanding that these issues were caused by other trades—namely, the roofers, framers, and balcony installers. (Ex. 37, ¶11)

Harvey Response: Denied. The uncontroverted testimony is that any person with access to the Project Site had the same ability and opportunity to conduct inspections as the Plaintiff's building envelop consultant. See 03/25/25 Brouillard Dep., attached as J.A. Ex. 6.

135. EDI was paid to assist in repairing those unrelated deficiencies. (Ex. 37, ¶11)

Harvey Response: Admit to the extent that Edi was paid to engage in post-construction repairs.

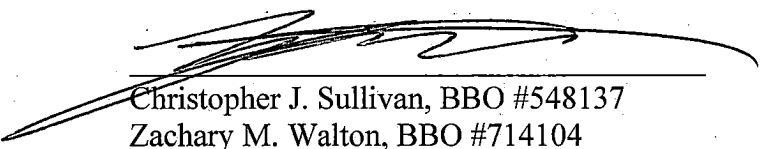
136. EDI subcontracted its installation work and did not install the Allura Siding. (Ex. 37, ¶12)

Harvey Response: Denied to the extent that subcontracting work which a party is required under contract to perform constitutes not performing said work.

Date: May 29, 2025

Respectfully submitted,

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