

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Frederick M. Crout, Joseph A. Malizia,)
Joseph C. Taber, Bruce Bennett and)
Lakeside Realty, Inc., Individually)
and on Behalf of All Others Similarly)
Situated,)

Plaintiffs,)

v.)

Case No. 3:22-2417-JFA

Cox Industries, Inc. n/k/a Koppers)
Utility and Industrial Products, Inc.)
and Arch Chemicals, Inc.,)

Defendants.)

_____)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1442, 1446, and 1453, Defendant Arch Chemicals, Inc. (“Arch” or “Defendant”), by and with the consent of Defendant Cox Industries, Inc. n/k/a Koppers Utility and Industrial Products, Inc. (“Koppers”), hereby removes to this Court the instant civil lawsuit filed in the Court of Common Pleas, Eleventh Judicial Circuit, County of Lexington, South Carolina, Case No. 2021-CP-332-04127.

This case squarely meets the requirements for removal under the Class Action Fairness Act of 2005 (“CAFA”), codified at 28 U.S.C. §§ 1332(d) and 1453, because a member of the class of Plaintiffs is a citizen of a state different from Defendant Arch, the number of all proposed class members in the aggregate is more than 100 and the amount in controversy exceeds the sum or value of \$5,000,000 (five million dollars), exclusive of interest and costs.

I. This Court Has Jurisdiction.

1. On December 21, 2021, Plaintiffs Frederick M. Crout, Joseph A. Malizia, Joseph C. Taber, Bruce Bennett and Lakeside Realty, Inc. (“Plaintiffs”) filed a Summons and Complaint against Defendant Koppers in the Court of Common Pleas, the Eleventh Judicial Circuit for the County of Lexington, South Carolina, Case No. 2021-CP-332-04127 (the “State Court Action”). Arch was not named as a defendant in the original Complaint.

2. On March 31, 2022, Plaintiffs filed an Amended Summons and Complaint which for the first time named Arch as a defendant. See Amended Complaint, attached as **Exhibit 1**.

3. The Amended Complaint contains the following counts: (1) Negligence/Gross Negligence as to Defendant Cox; (2) Negligence/Gross Negligence as to Defendant Arch; (3) Breach of Express Warranty as to Defendant Cox; (4) Breach of Implied Warranties of Merchantability and Fitness for Particular Purpose as to Defendant Cox; (5) Strict Liability/Products Liability as to all Defendants; (6) Breach of Contract as to Defendant Cox; and (7) Breach of Contract as to Defendant Arch. *See* Ex. 1.

4. Defendant Arch was served with a copy of the Amended Summons and Complaint on June 27, 2022.

5. Arch, with the consent of Koppers, now removes the State Court Action to the United States District Court for the District of South Carolina, Columbia Division.

6. Pursuant to 28 U.S.C. §1446(a), copies of all pleadings, process, and orders filed to date in this matter are attached as **Exhibit 2**.

7. Therefore, this Notice of Removal, filed on July 27, 2022, is timely filed pursuant to 28 U.S.C. §§ 1446(b) and 1453(b).

II. Venue Is Proper in this District.

8. Venue lies in the United States District Court for the District of South Carolina in the Columbia Division pursuant to 28 U.S.C. §§ 1441(a) and 1446(a). This action was originally brought in the Court of Common Pleas in the Eleventh Judicial Circuit, County of Lexington, South Carolina.

III. Grounds for Removal

9. A defendant may remove a state court action to federal district court where the district court has original jurisdiction over the action. 28 U.S.C. § 1441. This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1332(d), part of CAFA.

10. This action is a “class action” under CAFA because it is a “civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B); *see also id.* § 1453(a). Plaintiffs bring their class claims pursuant to South Carolina Rule of Civil Procedure 23. *See* Ex. 1, at p. 13, paragraph (1). The language for South Carolina Rule 23 “is drawn principally from Federal Rule 23....” S.C. R. Civ. P. 23(a), note; *see also Davy v. Duck Energy Carolinas, LLC*, 2016 WL 852696, at *2 (D.S.C. 2016) (denying a motion to remand to South Carolina state court where removal to federal court was based on CAFA jurisdiction).

11. Removal of a putative class action under CAFA is proper if three elements are satisfied: (1) there are one hundred (100) or more members in the proposed class; (2) there is minimal diversity (*i.e.*, at least one member of the proposed class is a citizen of a State different from any defendant); and (3) the aggregated claims of the individual class members exceed the sum or value of \$5,000,000.00. *See* 28 U.S.C. § 1332(d)(2), (5), and (6); *see also Lanier v.*

Norfolk S. Corp., 256 F. App'x 629, 631 (4th Cir. 2007). This action satisfies all of these requirements.

- a. The Proposed Class Consists of Hundreds of Individuals. Plaintiffs allege that the “proposed Class is composed of over 100 people and properties dispersed among multiple counties.” Ex. 1, ¶ 25. Further, Plaintiffs’ counsel has stated that there are 500 or more plaintiffs in this case. Thus, CAFA’s 100-class member requirement is satisfied on the face of Plaintiffs’ Amended Complaint.¹
- b. There Is Minimal Diversity Between the Class Plaintiffs and Defendants. The named Plaintiffs are all citizens of South Carolina. *See* Ex. 1 at ¶¶ 1, 2, 3 and 4. Defendant Arch is a Virginia corporation with its principal place of business in New Jersey. *See also* Ex. 1, ¶ 7 (“[Arch] is a corporation organized under the laws of a state other than South Carolina with its principal place of business in a state other than South Carolina”). Minimal diversity sufficient to satisfy CAFA therefore exists.²
- c. The Aggregated Claims of the Putative Class Members Exceed \$5 Million Dollars. Plaintiffs request the following relief, which, aggregated across the putative hundreds of members in the class, Arch reasonably believes places more than \$5,000,000 in controversy, exclusive of interest and costs:

¹ In addition to all other issues related to class certification, Defendants specifically reserve the right to contest the numerosity of any proposed Plaintiffs’ class.

² Although Arch Treatment Technologies, Inc. is the proper Defendant, rather than Arch Chemicals, Inc., minimal diversity still exists because Arch Treatment Technologies, Inc. is a Virginia corporation with its principal place of business in Georgia. *See* Arch Chemicals, Inc.’s Answers to Local Civil Rule 26.01 Interrogatories, No. F.

- i. Plaintiffs seek to recover actual damages for replacement of docks, “including, but not limited to, the cost of investigation, the demolition of the existing dock and removal of substandard Wood Products, design of the repair, the repair itself, loss of use, and other actual, incidental, consequential, special, direct and indirect damages.” Am. Compl., ¶23. While determining the total number of dock owners to be included in the class with precision is difficult, Plaintiffs’ counsel has represented that there are at least 500 separate owners of wooden docks at Lake Murray that were constructed with wood purchased from Defendant Cox and treated with Arch chemicals. Since the putative class has 500 potential members, each class member would need a claim of \$10,000 to exceed the jurisdictional limit. Plaintiffs’ counsel has represented that the average cost for repairing these Lake Murray docks is to be \$10,000 or more per dock. Therefore, the jurisdictional limit is satisfied.
- ii. Additionally, the Amended Complaint contains allegations of “gross negligence, carelessness, recklessness, willfulness and/or wantonness” allegedly sufficient to support an award of punitive damages. *See, e.g.*, Ex. 1, at ¶¶ 29 and 34, p. 13 prayer (4).³ Courts must consider a potential punitive damages award when determining whether CAFA’s amount in controversy requirement is satisfied. *See R.L. Jordan Oil Co. of N. Carolina, Inc. v. Boardman Petroleum, Inc.*, 23 F. App’x 141, 145 n.3 (4th

³ *See* S.C. Code Ann. § 15-32-520 (“Punitive damages may be awarded only if the plaintiff proves by clear and convincing evidence that his harm was the result of the defendant’s wilful, wanton, or reckless conduct.”).

Cir. 2001); *Carter v. Allstate Ins. Co.*, 2012 WL 3637239, at *8 (N.D. W. Va. 2012).

- iii. Plaintiffs also seek to recover attorney's fees. Ex. 1, at p. 13, prayer (5).
See Bartnikowski v. NVR, Inc., 307 F. App'x 730, 736 n.12 (4th Cir. 2009) (attorneys' fees are considered in determining whether the jurisdictional minimum threshold set forth under CAFA is satisfied).

12. Based on Plaintiffs' allegations, requested relief, and information represented to Arch defense counsel by Plaintiffs' counsel, Arch reasonably believes that Plaintiffs' proposed class claims place in controversy an amount exceeding CAFA's \$5,000,000 jurisdictional threshold. Because there are more than 100 putative class members, minimal diversity, and an amount in controversy exceeding \$5,000,000, exclusive of interest and costs, removal pursuant to 28 U.S.C. § 1453 is proper.

13. After the filing of this Notice of Removal, a written notice required by 28 U.S.C. § 1446(d) addressed to Plaintiffs' counsel and to the Lexington County Clerk of Court will be filed with the Lexington County Clerk, along with this Notice of Removal, and both served on Plaintiffs.

14. Defendant Koppers consents to the filing of this Notice of Removal. See **Exhibit 3.**

WHEREFORE, Defendant Arch hereby removes the pending state court action to the United States District Court for the District of South Carolina, Columbia Division, pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1442, 1446, and 1453.

[Signature page follows]

Respectfully submitted,

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Attorneys for Arch Chemicals, Inc.

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July 27, 2022

EXHIBIT 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)

FREDRICK M. CROUT, JOSEPH) C/A. No. 2021-CP-32-04127
MALIZIA, JOSEPH C. TABER, BRUCE)
BENNETT and LAKESIDE REALTY,)
INC., individually, and on behalf of all)
others similarly situated,)

Plaintiffs,)

v.)

COX INDUSTRIES, INC., N/K/A)
KOPPERS UTILITY AND)
INDUSTRIAL PRODUCTS, INC.)
and ARCH CHEMICALS, INC.)

Defendants.)

AMENDED SUMMONS

JURY TRIAL DEMANDED

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on Plaintiffs' attorney, Harrell, Martin & Peace, PA, at their office at 135 Columbia Avenue, Chapin, South Carolina, 29036, within thirty (30) days after service hereof, exclusive of the day of such service; and, if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated this 31st day of March, 2022.

<signature block next page>

Respectfully submitted,

/s Erik T. Norton
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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)

FREDERICK M. CROUT, JOSEPH A.) C/A. No. 2021-CP-32-04127
MALIZIA, JOSEPH C. TABER, BRUCE)
BENNETT and LAKESIDE REALTY,)
INC., individually, and on behalf of all)
others similarly situated,)

Plaintiffs,)

v.)

COX INDUSTRIES, INC., N/K/A)
KOPPERS UTILITY AND)
INDUSTRIAL PRODUCTS, INC.)
and ARCH CHEMICALS, INC.)

Defendants.)

AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Fredrick M. Crout, Joseph A. Malizia, Joseph C. Taber, Bruce Bennett and Lakeside Realty, Inc., individually, and on behalf of all others similarly situated, (collectively “Plaintiffs”) complaining of the Defendants herein, respectfully allege and show as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff Fredrick M. Crout (“Plaintiff Crout”) is a citizen of Lexington County, South Carolina and an owner of 432 Cove View Point, Columbia, South Carolina 29212, a lakefront lot with a wooden dock located on Lake Murray.

2. Plaintiff Joseph A. Malizia (“Plaintiff Malizia”) is a citizen of Lexington County, South Carolina and an owner of 110 Greenleaf Circle, Chapin, South Carolina 29036, a lakefront lot with a wooden dock located on Lake Murray.

3. Plaintiff Joseph C. Taber (“Plaintiff Taber”) is a citizen of Lexington County,

South Carolina and an owner of 326 Osprey Lake Drive, Chapin, South Carolina 29036, a lakefront lot with a wooden dock located on Lake Murray.

4. Plaintiff Bruce Bennett (“Plaintiff Bennett”) is a citizen of Lexington County, South Carolina and an owner of 330 Osprey Lake Drive, Chapin, South Carolina 29036, a lakefront lot with a wooden dock located on Lake Murray.

5. Plaintiff Lakeside Realty, Inc. (“Plaintiff Lakeside”) is a South Carolina corporation organized and existing under the laws of the State of South Carolina. Lakeside owns a wooden dock with 65 boat slips located on Lake Murray for use by residents of the Cedar Cove community, located in Richland County, South Carolina.

6. Defendant Cox Industries, Inc. n/k/a Koppers Utilities and Industrial Products, Inc. (“Cox”) is a South Carolina corporation organized and existing under the laws of South Carolina with its principal place of business in Orangeburg, South Carolina. Defendant manufactured, sold and distributed products and the treated lumber used to construct the wooden docks owned by Plaintiffs (collectively, “Wood Products”).

7. Defendant Arch Chemicals, Inc. (“Arch”) is a corporation organized under the laws of a state other than South Carolina with its principal place of business in a state other than South Carolina. On information and belief, Defendant Arch provided chemicals and wood treatment products to Cox along with instructions, training, monitoring equipment and other complimentary services, all of which were used to treat lumber and create the Wood Products used to construct the docks at issue in this case.

8. This action relates to claims arising from the manufacture, treatment, sale and distribution of substandard and defective Wood Products by Defendants used to construct the wooden docks owned by Plaintiffs and other similarly situated South Carolina Plaintiffs.

9. Jurisdiction and venue are proper before this Court.

FACTUAL ALLEGATIONS

10. Plaintiffs either contracted and paid for new waterfront docks to be built at their properties using Wood Products from Defendants or purchased property with waterfront docks built with Wood Products from Defendants already in place.

11. Defendant Cox supplied Wood Products for the purposes of building docks to contractors and consumers built and used in South Carolina from 2010 to present.

12. Defendant Arch is a global chemical manufacturing company that, upon information and belief manufactured chemical products used by Cox to treat the Wood Products.

13. Upon information and belief, Cox exclusively used Arch chemical products in treating the Wood Products.

14. Upon information and belief, Arch provided Cox training, instructions, and monitoring equipment regarding how to use Arch products to treat and protect the Wood Products.

15. Upon information and belief, Arch knew that its chemical products were being used to treat wood that Cox would then sell to consumers and/or contractors for the construction of waterfront docks.

16. Through product documentation, advertising, and other means, prior to the purchase and sale of the treated lumber material, Cox warranted that the Wood Products would meet the specifications necessary for use and application in construction of a dock, including, but not limited to, resistance to water damage, deterioration and rot. Furthermore, Cox is a specialized merchant relating to treated lumber material and provided the Wood Products for Plaintiffs' docks with knowledge of its intended use, which was the construction of the waterfront docks

17. Defendants knew or reasonably foresaw that their products would reach consumers such as Plaintiffs and Plaintiffs would reasonably rely on Cox's representations that the Wood Products and the chemicals Arch manufactured, sold, supplied, and/or distributed for treatment of lumber were merchantable and suitable for the known purpose of constructing a lakefront or waterfront dock in South Carolina.

18. The Wood Products manufactured, sold, supplied and distributed by Cox after treatment with chemicals supplied by Arch has prematurely failed, or is prematurely failing, throughout the docks (including structural posts). The Wood Products have splintered, lost strength and structural integrity, deteriorated, and/or rotted completely through, or is in the process of doing so, which damage was proximately caused by the products being improperly treated, designed, manufactured, supplied and/or distributed by the Defendants.

19. The defective Wood Products, including the treated lumber treated with chemicals manufactured by Arch, that Cox treated, manufactured and sold, have rendered the docks owned by Plaintiffs unusable, unsafe and in a condition unsuitable for their intended purpose.

20. The premature failure of the defective Wood Products is occurring on docks of other property owners constructed using Defendants' Wood Products manufactured and treated using the same or similar process from 2010 to the present.

21. The premature failure of the defective Wood Products is a latent defect that could not be discovered through reasonable diligence until the manifestation of premature rot and the subsequent discovery of the cause for that rot after reasonable diligence, which has occurred within the last three years for each named Plaintiff.

22. Upon information and belief, Defendants have known, or should have known, about the defective condition of its Wood Products and failed to disclose the information to

Plaintiffs, thereby tolling any applicable statute of limitations or other applicable timelines for bringing Plaintiffs' claims.

23. As direct consequence of Defendants' negligent design, manufacture, treatment and sale of the defective Wood Products, each Plaintiff will be required to expend substantial sums to replace the dock, including, but not limited to, the cost of investigation, the demolition of the existing dock and removal of substandard Wood Products, design of the repair, the repair itself, loss of use, and other actual, incidental, consequential, special, direct and indirect damages all to Plaintiff in an amount to be determined at trial.

CLASS ACTION ALLEGATIONS

24. Plaintiffs bring this action both individually and as a proposed class action against Defendants on behalf of themselves and all other similarly situated persons and entities who own a dock constructed in whole or substantial part with Defendants' Wood Products, including its treated lumber. The Class is more particularly defined as follows:

All persons and entities owning a wooden dock in South Carolina built using Defendants' treated Wood Products from January 1, 2010 to present.

Excluded from the class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants; (c) Defendants' current or former employees, investors, members or officers and members of their families; (d) any property owner that has previously released claims regarding their dock or fully litigated claims precluded by res judicate; and (e) all persons who properly execute and file a timely request for exclusion from the Class.

25. Numerosity: The proposed Class is composed of over 100 people and properties dispersed among multiple counties, the joinder of whom in one action is impractical.

26. Commonality: Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of

the Class. These common legal and factual issues include the following:

- a. Whether the Wood Products manufactured, treated and sold by Defendant Cox Lumber were defective;
- b. Whether the chemical products designed, manufactured, and/or distributed by Arch were defective;
- c. Whether the process for treating lumber to create the Wood Products was deficient or defective;
- d. Whether Defendants knew or should have known of the defects;
- e. Whether Defendants are financially responsible to pay the full costs and expenses to repair the damages caused by the defective materials;
- f. Whether Defendants are obligated to pay compensatory damages, including but not limited to (a) compensation for repairs of the docks; (ii) temporary repairs; and (iii) loss of use; and
- g. Whether Plaintiffs are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

27. Typicality: Plaintiffs' claims are typical of Class member claims because all Class member claims arise out of Defendants' wrongful conduct in manufacturing, treating, and selling Wood Products. Defendants have acted on grounds generally applicable to the class.

28. Adequate Representation: Plaintiffs will fairly and adequately protect the interests of the members of the Class and have no interests adverse to those of the Class. Plaintiffs have retained counsel experienced in construction defect claims and complex litigation, including but not limited to class actions involving product liability and product design defects.

29. Each Class Member has an interest of more than \$100.00.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to Defendant Cox)

25. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

26. At all times relevant hereto, Cox undertook and had a duty to Plaintiffs to exercise and use due care in the design, manufacture, treatment and sale of the Wood Products and to supply suitable treated lumber that would perform in accordance with the applicable building codes, good design, and prevailing industry standards.

27. Cox breached its duties to Plaintiffs by manufacturing, treating and selling substandard Wood Products that have prematurely failed.

28. Cox has acted in a manner that was negligent, grossly negligent, careless, reckless, willful, and/or wanton, as failures in the design, sourcing of materials, processing, treatment, manufacture and/or curing of the Wood Products have rendered them defective, unsuitable for their intended use, and unmerchantable.

29. Plaintiffs have been damaged as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and/or wantonness of Cox and are entitled to recover actual damages and punitive damages in an amount to be determined by the jury.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence as to Defendant Arch)

30. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

31. At all times relevant hereto, Arch undertook and had a duty to Plaintiffs to exercise and use due care in the design, manufacture, and sale of the chemical products used for treatment and sale of Cox's lumber material, and in providing instructions for the proper treatment

process, and in providing monitoring equipment to ensure the effective application of its chemical products. In addition, Arch had a duty to supply chemicals that would allow the lumber, when treated with Arch chemicals, to perform in accordance with the applicable building codes, good design, and prevailing industry standards.

32. Arch breached its duties to Plaintiffs by designing, manufacturing, and selling substandard products that caused the Wood Products to prematurely fail.

33. Arch has acted in a manner that was negligent, grossly negligent, careless, reckless, willful, and/or wanton, as failures in the design, sourcing of materials, processing, and manufacture of its chemical products have rendered the Wood Products defective, unsuitable for their intended use, and unmerchantable.

34. Plaintiffs have been damaged as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and/or wantonness of Arch and are entitled to recover actual damages and punitive damages in an amount to be determined by the jury.

FOR A THIRD CAUSE OF ACTION
(Breach of Express Warranty as to Defendant Cox)

35. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

36. Through product documentation, advertising, and other means, Cox expressly warranted that the Wood Products would meet or exceed applicable performance criteria, including meeting the specifications necessary for use and application in construction of a dock, including, but not limited to, resistance to water damage, deterioration and rot.

37. However, the Wood Products manufactured, sold, supplied and/or distributed by Cox violated this express warranty, as the Wood Products are defective and did not comply with

even minimal standards for treated lumber, as they have prematurely deteriorated and in many cases completely rotted through.

38. These warranties extend to Plaintiffs, who are the foreseeable users of the Wood Products and were reasonably expected to be affected by defective Wood Products. The Wood Products have failed to satisfy the reasonable expectations of consumers and users of the product, proximately causing damage to Plaintiffs.

39. Plaintiffs have been damaged as a direct and proximate result of the Cox's' breach of express warranty and are entitled to recover actual damages in an amount to be determined by the jury.

FOR A FOURTH CAUSE OF ACTION
(Breach of Implied Warranties of Merchantability and Fitness for Particular Purpose as to Defendant Cox)

40. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

41. The design, manufacture, treatment and sale of the Wood Products came with implied warranties that the Wood Products would be properly manufactured, treated, suitable for use, free from latent defects, and specifically included an implied warranty of merchantability and an implied warranty of fitness for particular purpose for use in constructing lakefront or waterfront docks.

42. Cox is a "merchant" under the South Carolina Uniform Commercial Code with respect to goods of the kind that were used for the construction of the dock at Plaintiffs' properties.

43. The Wood Products manufactured, sold, supplied and/or distributed by Cox were defective and did not comply with even minimal standards for treated lumber used for the

construction of lakefront and waterfront docks, as they have prematurely deteriorated and in many cases completely rotted through.

44. The Wood Products are not “merchantable” as they cannot pass without objection in the trade for use as treated lumber, are not of fair average quality for treated lumber, are not fit for the ordinary purpose for which such goods are used, and do not run of even kind and quality within each unit and among all units involved.

45. Based on the defective nature of the Wood Products, Cox has breached the implied warranties of merchantability and fitness for particular purpose. The defective Wood Products designed, manufactured, sold, and supplied by Cox were not “merchantable,” were not fit for the ordinary and intended purposes for which the product was sold and used, and have failed to meet the reasonable expectations of Plaintiffs, as consumers and users of the products.

46. Plaintiffs have been damaged as a direct and proximate result of the Cox’s’ breach of the implied warranties of merchantability and fitness for a particular purpose and are entitled to recover actual damages in an amount to be determined by the jury.

FOR A FIFTH CAUSE OF ACTION
(Strict Liability/Products Liability as to all Defendants)

47. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

48. Defendant Cox is in the business of manufacturing, treating, selling, supplying, and distributing Wood Products.

49. Defendant Arch is in the business of manufacturing, selling, supplying and distributing chemicals and related equipment for the treatment of Cox’s lumber material.

50. In the course of their businesses, Defendants anticipated and expected its end products would reach the public without substantial change in the condition in which they were

sold, including the Wood Products that reached the Plaintiffs.

51. Cox manufactured, treated, sold, supplied, and distributed Wood Products for Plaintiffs' docks that were substandard, defective, and prone to premature failure, such that they were in a defective condition that is unreasonably dangerous to the Plaintiffs, their invitees, and their property.

52. Arch manufactured, treated, supplied, and distributed the chemical products used to treat the lumber material for Plaintiffs' docks, and said chemicals were substandard, defective, and caused premature failure of the Wood Products, such the chemicals were in a defective condition that is unreasonably dangerous to the Plaintiffs, their invitees, and their property.

53. The Wood Products that reached the Plaintiffs were installed without substantial change in condition in which they were manufactured, treated, sold, supplied and/or distributed by Cox.

54. The chemicals, as applied to the lumber, that reached Plaintiffs were applied without substantial change in the condition in which they were manufactured, sold, supplied and/or distributed by Arch.

55. The cost for altering the design, construction and/or repair of the products supplied by Defendants was substantially less than the resulting damage, cost and injury suffered by the Plaintiffs.

56. The design, treatment and manufacture of the products sold by Defendants rendered the products inherently defective as sold and was the proximate cause of the damages suffered by Plaintiffs.

57. As a direct, foreseeable and proximate result of the manufacture, treatment and sale of the defective lumber material, Plaintiffs have been damaged and are entitled to recover actual

damages in an amount to be determined by the jury.

FOR A SIXTH CAUSE OF ACTION
(Breach of Contract as to Defendant Cox)

58. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

59. Plaintiffs were the intended third-party beneficiaries of the contracts of sale between Defendant Cox and the contractors that installed the docks.

60. Cox breached the contracts by providing defective Wood Products as described above.

61. As a direct and proximate result of Cox's breach of contract, Plaintiffs have suffered and continue to suffer actual and consequential damages.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract as to Defendant Arch)

62. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

63. Plaintiffs were the intended third-party beneficiaries of the contracts between Cox and Arch for the chemicals, treating process, and monitoring equipment used to treat the Wood Products used to construct Plaintiffs' docks.

64. Arch breached the contracts by designing, manufacturing and/or providing defective chemical products, treatment instructions and training, or monitoring equipment as described above.

65. As a direct and proximate result of Arch's breach of contract, Plaintiffs have suffered and continue to suffer actual and consequential damages.

WHEREFORE, Plaintiffs, on behalf of themselves and all other members of the Class,

pray that:

- (1) the Court certify this case as a class action under Rule 23, SCRPC;
- (2) they and the Class receive a trial by jury;
- (3) they and the Class be awarded judgment against Defendants in the amount to be determined by the jury to include actual damages, consequential damages, and statutory damages;
- (4) they and the Class be awarded punitive damages;
- (5) they and the Class be awarded reasonable attorney's fees and costs of the suit;
- (6) they and the Class be awarded prejudgment and post-judgment interest;
- (7) they and the Class be awarded any further relief deemed proper by this Court.

/s Erik T. Norton
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Attorneys for Plaintiffs

March 31, 2022
Chapin, South Carolina.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Lake Murray Docks Built with Defective Wood](#)
