

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(NORTHERN DIVISION)

LARRY BRYANT *
2005 Flourmill Court *
Crownsville, MD 21032 *
on behalf of himself and *
all others similarly situated *

and *

DEIDRA BRYANT *
2005 Flourmill Court *
Crownsville, MD 21032 *
on behalf of herself and *
all others similarly situated *

Civil Action No. _____

Plaintiffs. *

v. *

KOPPERS, INC. *
436 Seventh Ave *
Pittsburgh, PA 15219 *

Serve on: *

CSC Lawyers Incorporating Service *
Company, *
7 St. Paul Street, Suite 820 *
Baltimore, MD 21202 *

and *

CULPEPER OF FEDERALSBURG, LLC *
501 North Main Street *
Culpeper, VA 22701 *

Serve on: *

David E. Rutkoski, Resident Agent *
2000 Industrial Park *
Federalsburg, MD 21643 *

Defendants. *

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Larry Bryant and Deidra Bryant (together, the “Bryants” or “Plaintiffs”), on behalf of themselves and on behalf of the entire class of persons similarly situated, by and through their attorneys, Aidan F. Smith, Mark D. Maneche, and Pessin Katz Law, P.A., hereby sues Koppers, Inc. (hereinafter “Koppers”) and Culpeper of Federalsburg, LLC (“Culpeper”) (together, the “Defendants”).

Introduction

The Bryants had a deck constructed on their property with wood that was chemically treated by Culpeper with chemicals that were manufactured by Koppers. The Defendants guaranteed that the chemical treatment would prevent rot and fungus. Despite this promise from the Defendants, the deck is now unusable due to fungus and rot, which have destroyed the deck.

This problem is incredibly common. Koppers changed the chemical formulation for its wood treatment in 2004. The problems with the wood are not only caused by the changed formula, but are also caused by Culpeper using inadequate amounts of the chemical to treat the wood.

Thousands of decks were built in the past ten years using these chemicals and the inadequate treatment level. It is, therefore, expected that this problem is wide spread and thousands of other decks will need to be repaired or replaced.

Defendants and Jurisdiction

1. Defendant Koppers is a corporation duly organized under the laws of Pennsylvania with its principal place of business in Pittsburgh, Pennsylvania. Koppers is engaged in the design, manufacture, and sale of chemicals and chemically-treated wood, and is duly licensed to do business in the State of Maryland and in fact does business in Maryland (*i.e.*, the sale and/or

manufacture of chemically-treated wood). Koppers carries on a regular business throughout the State of Maryland.

2. Defendant Culpeper is a corporation duly organized under the laws of Virginia with its principal place of business in Culpeper, Virginia. On information and belief, Culpeper is a seller of Koppers-treated wood products and does business in Maryland. Culpeper carries on a regular business throughout the State of Maryland.

3. Jurisdiction in the United States District Court for the District of Maryland is proper under 28 U.S.C. § 1332 because the Defendant is diverse from all Plaintiffs and the amount in controversy in this action exceeds \$75,000.00.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to the instant claim occurred in the Northern Division of the District of Maryland.

Class Representatives

5. Class Representative Plaintiff Lawrence Bryant is a resident of Anne Arundel County, Maryland.

6. Class Representative Plaintiff Deidra Bryant is a resident of Anne Arundel County, Maryland.

7. Plaintiffs Lawrence and Deidra Bryant bring this action pursuant to Federal Rule of Civil Procedure 23 as a class action on their own behalf and on behalf of all persons similarly situated.

The Class

8. The members of the Plaintiff class are so numerous that their joinder is impracticable. The size of the class exceeds 1,000 members, many of whom live in the State of Maryland. The class is defined as all persons who:

(a) have decks on their property constructed with wood that has been chemically-treated, manufactured and/or sold by Koppers and/or Culpepper, (b) had these decks constructed from on or around January 1, 2004 until the present, and (c) relied on the Defendants' express written warranty and Defendants' legal duty to sell a product free of known or reasonably discoverable defects.

Each class member similarly has discovered that his or her deck was constructed with defectively designed and/or manufactured wood, which was treated by Culpepper with a chemical designed and manufactured by Koppers and this defective chemical and treatment has rendered their decks unsafe for normal use.

Maintainability of this Action

9. There are questions of law and/or fact that are common to the class, *e.g.*, whether the Defendants have breached their express warranties that the wood has been adequately treated to extend the life of the wood and to preserve it from rot, mold, and fungi.

10. The claims of the Class Representative Plaintiffs are typical of and similar to the claims of the other class members. The Class Representative Plaintiffs will fairly and adequately represent the interests of the class.

11. This action is properly brought as a class action under Federal Rule 23 in that questions of law or fact common to members of the class predominate over any questions affecting only individual members, joinder would be impracticable, there is a risk of inconsistent or varying adjudications amongst individual suits, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy between the class and Defendants.

Desirability of a Class Action

12. The commonality of issues of law and fact, as well as the relatively limited liability to each class member, substantially diminishes the interest of members of the class in individually controlling the prosecution of separate actions. Many of the members of the class are unaware of

their rights to prosecute a claim against the Defendants. There has been little, if any, litigation already commenced by members of the class to determine the questions presented herein. It is desirable that the claims be concentrated in this forum due to the fact that many witnesses reside in the State of Maryland. This class action can be managed without undue difficulty because the Class Representative Plaintiffs will vigorously pursue the interests of the class by virtue of the specific damages they have incurred as a result of purchasing Defendants' product.

Qualifications of Class Counsel

13. Counsel for the Class Representative Plaintiffs and for the proposed class, Mark D. Maneche and Aidan F. Smith ("Class Counsel"), collectively have decades of experience handling complex litigation matters, including class action litigation matters like this one. Class Counsel have handled numerous class certification and class action litigation matters in Maryland state courts, as well as in federal courts in Maryland and elsewhere. As reflected in their respective biographies, which may be found at <https://www.pklaw.com/attorneys/maneche-mark-d/> and <https://www.pklaw.com/attorneys/smith-aidan-f/>, Class Counsel are well qualified to represent the Class Representative Plaintiffs and the proposed class in this case.

Facts Specific to the Class Representative Plaintiffs

14. On or about June 27, 2007, the Class Representative Plaintiffs entered into a contract with ProBuilt Construction, Inc. ("ProBuilt") to build a deck on their home located at 2005 Flourmill Court, Crownsville, Maryland.

15. The deck was built in accordance with the contract in or about September of 2009, and Plaintiffs paid \$145,096.00 for the design, materials, and labor.

16. On information and belief, the deck was constructed using pressure-treated wood, which was treated by Culpeper with chemicals manufactured by Koppers in order to preserve the wood from rot, mold, fungi, and the like.

17. In 2019, Plaintiff Deidra Bryant was walking on the deck when a support beam gave way, causing her to fall. Fortunately, she suffered no major injuries in the accident.

18. After Mrs. Bryant's fall, the Plaintiffs inspected the deck and discovered the underlying wood joists were rotten, decayed, and caving in. On information and belief, this condition was caused by a fungus, which rots wood from the inside out, and causes a visible white residue on the wood. Wood that contains fungus is not a safe or stable material for a structure. If the wood used to construct the deck had been properly treated by Culpeper with an appropriate chemical manufactured by Koppers, then the fungus would not have formed on the deck and the deck would be fit for normal use.

19. Due to Mrs. Bryant's fall and subsequent inspection of the deck, it became apparent to the Plaintiffs that the deck was no longer structurally sound for use. Plaintiffs ceased use and enjoyment of their deck at that time due to safety concerns.

COUNT I – NEGLIGENCE
(Class Action Claim – Against All Defendants)

21. Plaintiffs incorporate the above paragraphs as if fully set forth herein.

22. Culpeper is engaged in the design, manufacturing, treatment, and sale of chemically-treated wood. Koppers supplies the chemicals that are used to treat chemically-treated wood.

23. Defendants have a duty to design, manufacture, and sell products that are free from any and all defects, safe for use, and fit for their intended purpose.

24. Defendants breached that duty when they manufactured and/or sold a defective, unsafe, and unfit product that was ultimately used in Plaintiffs' deck.

25. In or about 2019, Plaintiffs became aware that their deck in its current condition is permanently structurally unstable and unsafe for use due to its composition of defective pressure-treated wood.

26. As a proximate result of this negligently designed and/or manufactured product, Plaintiffs have suffered damages in excess of \$75,000 insofar as their deck is unstable, unsafe, and unusable for its intended purpose.

WHEREFORE, Class Representative Plaintiffs Lawrence and Deidra Bryant request that this Court certify this action as a class action and demand judgment for the Class Representative Plaintiffs and members of the class against Defendants in an amount in excess of \$75,000, plus interest, costs and attorneys' fees.

COUNT II – STRICT PRODUCTS LIABILITY
(Class Action Claim – Against All Defendants)

37. Plaintiffs incorporate the above paragraphs as if fully set forth herein.

38. Defendants are engaged in the design, manufacturing, treatment, and sale of chemically-treated wood and the chemicals used to treat that wood. Defendants have a duty to design, manufacture, and sell products that are free from defects, safe for use, and fit for their intended purpose.

39. Defendants placed a defective product into the stream of commerce when they sold the defectively designed and/or manufactured and unreasonably dangerous pressure-treated wood and the chemicals used to treat that wood. These products were ultimately used to construct Plaintiff's deck.

40. On information and belief, the pressure-treated wood reached the Plaintiffs' deck without any substantial change in its condition on the part of Plaintiffs or any other third party. Plaintiffs have used the deck in a reasonably foreseeable and expected manner since it was built.

41. In 2019, Plaintiffs were made aware that their deck, in its current condition, is permanently structurally unstable and unsafe for use due to the deterioration of the pressure-treated wood. Continued use of the deck would risk substantial injury or death to those on or near the structure.

42. As a proximate result of this defectively designed and/or manufactured product, Plaintiffs have suffered damages in excess of \$75,000 insofar as their deck is unstable, unsafe, and unusable for its intended purpose.

WHEREFORE, Class Representative Plaintiffs Lawrence and Deidra Bryant request that this Court certify this action as a class action and demand judgment for the Class Representative Plaintiffs and members of the class against Defendants in an amount in excess of \$75,000, plus interest, costs and attorneys' fees.

Count III – UNFAIR OR DECEPTIVE TRADE PRACTICES
(Class Action Claim – Against All Defendants)

43. Plaintiffs incorporate the above paragraphs as if fully set forth herein.

44. Defendants falsely represented to consumers that the wood they treated and the chemicals they supplied for this treatment would be “protected from . . . fungal decay.”

<https://www.culpeperwood.com/wp-content/uploads/pdf/pdfmplifewoodbrochure1.28.09.pdf>.

This representation was false. Defendants knew that this statement was false when it was made.

45. Defendants' representation that its product would not be impacted by fungal decay falsely deceived, had the capacity to deceive, and misled consumers by implying that the

wood treated by or with a chemical supplied by Defendants would not be detrimentally impacted by fungal decay.

46. By making these knowingly false and deceptive statements, the Defendants violated the Maryland Consumer Protection Act, Md. Code, Commercial Law § 13-303.

WHEREFORE, Class Representative Lawrence and Deidra Bryant request that this Court certify this action as a class action and demand judgment for the Class Representative Plaintiffs and members of the class against Defendants in an amount in excess of \$75,000, plus interest, costs and attorneys' fees.

DEMAND FOR JURY TRIAL

Plaintiffs Colin and Sheila Withers assert their right under the Seventh Amendment to the U.S. Constitution and demand, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues so triable.

Respectfully submitted,

/s/ Mark D. Maneche

Mark D. Maneche (Fed. Bar No. 23368)

mmaneche@pklaw.com

Aidan F. Smith (Fed. Bar No. 29312)

asmith@pklaw.com

Pessin Katz Law, P.A.

901 Dulaney Valley Road, Suite 500

Towson, Maryland 21204

(410) 938-8800

(410) 832-5628 (fax)

Counsel for Plaintiffs

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Larry Bryant and Debra Bryant
2005 Flourmill Court
Crownsville, MD 21032

(b) County of Residence of First Listed Plaintiff Anne Arundel
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Mark D. Maneche, Pessin Katz Law, P.A.
901 Dulaney Valley Rd., Ste. 500, Towson, MD 21204
(410) 938-8800

DEFENDANTS

Koppers, Inc., 436 Seventh Ave., Pittsburgh, PA 15219
Culpeper of Federalsburg, LLC, 501 N. Main St., Culpeper, VA 22701

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:
Product liability for defective wood decks

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 75,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/09/2021 SIGNATURE OF ATTORNEY OF RECORD /s/Mark D. Maneche

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

LARRY BRYANT, et al.

Plaintiff(s)

v.

KOPPERS, INC., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Culpeper of Federalsburg, LLC
501 N. Main Street
Culpeper, VA 21643
Serve on: David E. Rutkoski, Resident Agent
2000 Industrial Park
Federalsburg, MD 21643

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

LARRY BRYANT, et al.

Plaintiff(s)

v.

KOPPERS, INC., et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Koppers, Inc.,
436 Seventh Ave.
Pittsburgh, PA 15219
Serve on: CSC Lawyers Incorporating Service Co.
7 St. Paul Street, Suite 820
Baltimore, MD 21202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: