

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

KEVIN BRUNSON, EUNICE CARO, AND  
CLIFTON SPANN, on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

vs.

LOUISIANA-PACIFIC CORPORATION  
and ABT BUILDING PRODUCTS  
CORPORATION, a/k/a ABTCO,

Defendants.

Case No. 2:07-cv-03186-PMD

**AMENDED COMPLAINT  
(Jury Trial Demanded)**

**CLASS ACTION**

The Plaintiffs, on behalf of themselves and all others similarly situated, allege upon information and belief as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff Kevin Brunson is a citizen and resident of the County of Berkeley, State of South Carolina, and is the owner of real estate located in Berkeley County, South Carolina.

2. Plaintiff Eunice Caro is a citizen and resident of the County of Beaufort, State of South Carolina, and is the owner of real estate located in Beaufort County, South Carolina.

3. Plaintiff Clifton Spann is a citizen and resident of the County of Beaufort, State of South Carolina, and is the owner of real estate located in Beaufort County, South Carolina.

4. Plaintiffs' homes (the "Properties") were constructed with an exterior trim product designed, manufactured, marketed, sold and distributed by the Defendants as discussed more specifically below.

5. Plaintiffs bring this action both individually and on behalf of the class of owners of homes with Defendants' exterior trim product, as the Class is more specifically defined in paragraph 22 below.

6. Defendant Louisiana-Pacific Corporation is a corporation organized under the laws of the State of Delaware, with its headquarters located in Nashville, Tennessee. Upon information and belief, Defendant ABT Building Products Corporation a/k/a ABTCO was a subsidiary of Louisiana-Pacific Corporation, and is now a division thereof. Louisiana-Pacific Corporation and ABT Building Products Corporation a/k/a ABTCO are hereinafter individually and collectively referred to as "Defendants."

7. This Federal District Court has subject matter jurisdiction over this action because the amount in controversy exceeds the sum or value of \$5,000,000 in the aggregate, exclusive of interest and costs, and at least one member of the class of plaintiffs is a citizen of a state different from any defendant.

8. This Court maintains personal jurisdiction over Defendants in this action because Defendants regularly transact business in South Carolina and regularly produce, manufacture, market, sell and distribute products for use or consumption in South Carolina.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c) and 15 U.S.C. § 22 because Defendants reside, are licensed to do business, and/or transact business in this District. Defendants are subject to personal jurisdiction in this District.

10. Plaintiffs demand a jury trial.

**FACTUAL BACKGROUND**

11. Defendants hold themselves out to both the construction industry and the public at large as being knowledgeable in the design and manufacture of exterior building products and as being providers of quality building products, including the exterior trim product that is the subject of this litigation.

12. Defendants designed, manufactured, tested, marketed, sold and distributed a manufactured wood exterior trim product known as LP TrimBoard (hereinafter referred to as "TrimBoard" or "product") for use as fascia, soffit, corner board, window trim, door trim and general exterior use on homes, apartments, condominiums, buildings and other structures in South Carolina and the United States.

13. Defendants represented and marketed their TrimBoard product as being a low maintenance product that would save on painting costs and superior to real wood trim products.

14. Defendants' TrimBoard product is defective and fails to perform as intended because it prematurely deteriorates, rots, swells, buckles, splits, checks, cracks, delaminates, absorbs water, wraps, and/or bulges under normal conditions and exposure; causes consequential water and structural damage; and promotes the growth of health-threatening mold, mildew, fungi, termites and other insects in the structures on which it is installed.

15. Defendants marketed, sold and distributed TrimBoard without adequate installation instructions and warnings regarding the problems, risks and dangers associated with the installation and use of the product.

16. Defendants' TrimBoard product is not merchantable, is not of fair average quality, fails to comply with applicable industry standards and building codes, is not fit for the ordinary purposes for which the product was sold and used, and will not pass without objection in the trade.

17. Defendants knew or should have known that their TrimBoard product was defective, would fail and deteriorate prematurely under normal conditions and exposures, and was not suitable for use as an exterior building product.

18. Upon information and belief, the majority of Defendants' sales of TrimBoard are made through building products distributors to contractors and subcontractors, who in turn sell the TrimBoard product to the end user of the product, the homeowner.

19. Defendants do not affix, label or mark their TrimBoard product with any serial number or stamp that identifies the manufacturer of the TrimBoard product.

20. Defendants' failure to label the TrimBoard product, combined with their knowledge of the defects and their knowledge that most end-users will not buy the TrimBoard product directly from Defendants, constitutes an attempt to avoid warranty claims.

21. As a direct and proximate result of the defects of TrimBoard as described hereinabove, the TrimBoard installed on the Properties has prematurely failed and deteriorated, causing consequential damage to Plaintiffs' homes and depreciation in value.

**CLASS ACTION ALLEGATIONS**

22. Plaintiffs bring this action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure on their own behalf and as representatives of a class of all persons, firms, corporations, and other entities which own homes, apartments, condominiums, buildings and other structures in the State of South Carolina within FEMA's "Designated Hurricane-Susceptible Region," excluding Charleston County, South Carolina, on which Defendants' TrimBoard product is installed, excluding any structure owned by any federal, state or local government, and any structures owned by Defendants or any of their subsidiaries, affiliates or employees. A map indicating FEMA's "Designated Hurricane-Susceptible Region" is attached hereto as Exhibit "A."

23. Members of the Class are so numerous, estimated to be in excess of one thousand end-users, that joinder of all class members in this action is impracticable.

24. Plaintiffs' claims are typical of the claims of the members of the class because the claims of Plaintiffs and all class members arose out of and they were damaged by the same wrongful conduct of the Defendants.

25. There are a number of questions of law and fact common to class members. Questions of law and fact common to members of the class are important and predominate over questions, if any, which may affect only individual members. Among the questions of law and fact common to the class are: the liability of Defendants for the design, development, manufacture, production, marketing, selling and distribution of the defective TrimBoard product; (b) whether Plaintiffs and Class members are entitled to actual, consequential and incidental damages from Defendants;

and (c) whether Plaintiffs and Class members are entitled to attorneys' fees and costs from Defendants.

26. Plaintiffs will fairly and adequately protect the interests of the class. The interests of Plaintiffs are coincident with and not antagonistic to those of the class. In addition, Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class actions and products liability litigation.

27. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein. Plaintiffs estimate that there are hundreds, if not thousands, of property owners in the State of South Carolina, excluding Charleston County, who purchased TrimBoard and who were, as a result, injured by the defective product. Such treatment will permit this large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of claims by many class members who could not afford to individually litigate claims against a large multinational corporate defendant like Louisiana Pacific. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action and no superior alternative exists for the fair and efficient adjudication of this controversy.

28. Defendants have acted on grounds generally applicable to the entire class, thereby making final relief appropriate with respect to the class as a whole.

29. The prosecution of separate actions by individual members of the Class would create the risk of adjudications with respect to individual members of the class

that would establish incompatible standards of conduct for Defendants and, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication of this controversy.

**FOR A FIRST CAUSE OF ACTION**  
**(Breach of Express Warranty)**

30. The allegations in the previous paragraphs are repeated and incorporated by reference as if set forth verbatim.

31. Defendants made express warranties as to the condition, durability and performance of their TrimBoard product; including expressly warranting that their TrimBoard product would be free and defects and perform as was marketed and represented by Defendants.

32. Defendants breached their express warranties because Defendants' TrimBoard product is defective; fails to perform as intended; prematurely deteriorates, rots, swells, buckles, splits, checks, delaminates, absorbs water, wraps, and/or bulges under normal conditions and exposure; causes consequential water and structural damage; promotes health-threatening growth of mold, mildew, fungi, termites and other insects in the structures on which it is installed; and does not perform as represented and warranted.

33. TrimBoard is not merchantable; is not of fair average quality; fails to comply with applicable industry standards and building codes; is not fit for the ordinary and intended purposes for which the product was sold and used; and will not pass without objection in the trade.

34. As a direct and proximate result of the failure of the TrimBoard to perform as warranted, Plaintiffs and Class members have suffered actual, consequential, and

incidental damages; including, but not limited to, damages arising from the need to remove and replace the TrimBoard, damages arising from the cost of repairing water damage and structural damage caused by the defects in, and failure of, the TrimBoard, and damages arising from the depreciation of the value of their homes.

**FOR A SECOND CAUSE OF ACTION**  
**(Breach of Implied Warranties of**  
**Merchantability and Fitness for Particular Purpose)**

35. The allegations in the previous paragraphs are repeated and incorporated by reference as if set forth verbatim.

36. In marketing, selling and distributing their TrimBoard product, Defendants extended implied warranties of merchantability and fitness for intended purpose as to the condition, durability and performance of the TrimBoard, including impliedly warranting that their TrimBoard product would be free of defects and perform as marketed and represented by Defendants.

37. Defendants breached their implied warranties because Defendants' TrimBoard product is defective; fails to perform as intended, prematurely deteriorates, rots, swells, buckles, splits, checks, cracks, delaminates, absorbs water, wraps, and/or bulges under normal conditions and exposure; causes consequential water and structural damage; promotes the health-threatening growth of mold, mildew, fungi, termites and other insects in the structures on which it is installed; and does not perform as represented and warranted.

38. The TrimBoard is not merchantable; is not of fair average quality; fails to comply with applicable industry standards and building codes; is not fit for the ordinary

and intended purposes for which the product was sold and used; and will not pass without objection in the trade.

39. As a direct and proximate result of the failure of the TrimBoard to perform as warranted, Plaintiffs and Class members have suffered actual, consequential, and incidental damages; including, but not limited to, damages arising from the need to remove and replace the TrimBoard, damages arising from the cost of repairing water damage and structural damage caused by the defects in, and failure of, the TrimBoard, and damages arising from the depreciation of the value of their homes.

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

- (1) the Court certify this case as class action under Rule 23;
- (2) they and the Class receive a trial by jury;
- (3) they and the Class be awarded actual, consequential and incidental damages;
- (4) they and the Class be awarded their attorney's fees, expenses and costs of this action; and
- (5) they and the Class be awarded such other and further relief as the Court deems just and proper.

/s/ Paul A. Dominick

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ATTORNEYS FOR PLAINTIFFS KEVIN  
BRUNSON and CLIFTON SPANN, on behalf  
of themselves and all others similarly situated

May 13, 2009

Charleston, South Carolina