

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY MARYLAND

THE CHESAPEAKE BAY FOUNDATION, INC.
6 Herndon Avenue
Annapolis, Maryland 21403

and

SMITHGROUP, INC. d/b/a KCF-SHG
INCORPORATED
1850 K Street, N.W., Suite 2500
Washington, D.C. 20006

and

CLARK CONSTRUCTION GROUP, LLC f/k/a
THE CLARK CONSTRUCTION GROUP, INC.
7500 Old Georgetown Road
Bethesda, Maryland 20814

Plaintiffs,

v.

Civil Action No. 341442

WEYERHAEUSER COMPANY formerly d/b/a
TRUS JOIST MACMILLAN
33663 Weyerhaeuser Way South
Federal Way, Washington 98003

SERVE:

Daniel Fulton, President
33663 Weyerhaeuser Way S
Federal Way, Washington, 98003

and

WEYERHAEUSER NR COMPANY formerly
d/b/a TRUS JOIST MACMILLAN
33633 Weyerhaeuser Way South
Federal Way, Washington 98003

RECEIVED

DEC 3 - 2010

Clerk of the Circuit Court
Montgomery County, Md.

SERVE:)
Daniel Fulton, President)
33633 Weyerhaeuser Way S)
Federal Way, Washington, 98003)
))
Defendants.)
_____)

COMPLAINT

Plaintiffs, The Chesapeake Bay Foundation, Inc. (“CBF”), SmithGroup, Inc. d/b/a KCF-SHG Incorporated (“SmithGroup”), and Clark Construction Group, LLC f/k/a The Clark Construction Group, Inc. (“Clark”) (collectively “Plaintiffs”), respectfully submit this Complaint and for their causes of action state as follows:

Parties

1. Plaintiff CBF is a non-stock, non-profit corporation whose stated mission it is to save the Chesapeake Bay. CBF is organized under the laws of the State of Maryland, with its principal place of business in Annapolis, Maryland.

2. Plaintiff SmithGroup is an architectural and engineering services corporation, organized under the laws of the State of Michigan, with its principal place of business in Detroit, Michigan.

3. Plaintiff Clark provides general contracting services and is organized as a limited liability company under the laws of the State of Maryland, with its principal place of business in Bethesda, Maryland.

4. Defendant Weyerhaeuser Company formerly d/b/a Trus Joist MacMillan is a publicly-traded integrated forest products company with reported 2010 third-quarter net earnings of \$1.116 billion. Upon information and belief, Weyerhaeuser Company is a corporation

organized and existing under the laws of the State of Washington with its principal place of business in Federal Way, Washington.

5. Defendant Weyerhaeuser NR Company formerly d/b/a Trus Joist MacMillan is, upon information and belief, a wholly owned subsidiary of Weyerhaeuser Company and is incorporated under the laws of the State of Washington with its principal place of business in Federal Way, Washington. Upon information and belief, Weyerhaeuser NR Company is the successor in interest to Weyerhaeuser Company's manufacturing operations with respect to the building products that are the subject of this lawsuit (Weyerhaeuser Company and Weyerhaeuser NR Company are collectively referred to as "Weyerhaeuser" in this Complaint).

Statement Regarding Jurisdiction and Venue

6. Among other reasons, the exercise of personal jurisdiction over Weyerhaeuser is appropriate, pursuant to Md Code Ann. § 1-501, because this suit arises from business done and goods supplied by Weyerhaeuser in the State of Maryland and because Weyerhaeuser regularly conducts business in the State of Maryland.

7. Among other reasons, venue in this Circuit Court is appropriate, pursuant to Md. Code Ann. § 6-202, as the Defendants are not residents of this State and at least one Plaintiff is a resident of Montgomery County.

Factual Background

8. This lawsuit concerns the supply by Weyerhaeuser of defective, inferior, and or unsuitable building products for a construction project in Annapolis, Maryland known as the Phillip Merrill Environmental Center.

9. CBF entered into a contract with Clark dated September 27, 1999 (the "Contract") pursuant to which Clark agreed to serve as the general contractor for the construction of CBF's

new headquarters building (the "Project"). A true and correct copy of the CBF/Clark Contract is appended at Exhibit A. CBF intended to use the Project as its new headquarters.

10. By a separate agreement dated August 6, 1998, CBF contracted with SmithGroup for the Project's architectural design. A true and correct copy of the CBF/SmithGroup Contract is appended at Exhibit B.

11. The Project design contemplated the use of recycled and environmentally-friendly construction products, consistent with CBF's mission. And, to that end, SmithGroup designed a building meant to support and achieve a sustainable relationship with the Chesapeake Bay. A significant portion of the design of the Project's structure, including the roof truss system and various columns and beams, consisted of glue-laminated wood members. Per the Project design, some of these glue-laminated members were completely exposed to the weather, particularly the glue-laminated wood members that comprise the south-facing structural wall system. The Project site, and the south-facing structural wall, is no more than 35 yards from the shore of the Chesapeake Bay.

12. Clark contracted with Weyerhaeuser through a purchase order dated March 3, 2000, for the supply of the glue-laminated structural wood members (the "Purchase Order"). A true and correct copy of the Clark/Weyerhaeuser Purchase Order is appended at Exhibit C.¹

13. The materials to be supplied under the Purchase Order were based on the design documents identified in Exhibit F to the Purchase Order (the "Contract Documents"). These Contract Documents include certain architectural and structural drawings as well as certain specification sections addressing the glue-laminated wood and the preservative treatment for the glue-laminated wood products.

¹ The Purchase Order was between Clark and Trus Joist MacMillan. At the time the Purchase Order was executed, Trus Joist MacMillan was a division of Weyerhaeuser.

14. Notably, the Purchase Order required Weyerhaeuser to adhere to the requirements of the Contract Documents:

[Weyerhaeuser] shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of shop drawings, product data, samples or similar submittals unless [Weyerhaeuser] has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval of the specific deviation. [Weyerhaeuser] shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Architect's approval thereof.

15. Further, Weyerhaeuser agreed to the following indemnity provision in the Purchase Order:

[Weyerhaeuser] shall indemnify and hold harmless [Clark] from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from [Weyerhaeuser's] performance under this Order, provided that such claims, damages, losses or expenses are attributable to ... injury to or destruction of tangible property including loss of use resulting therefrom but only to the extent caused in whole or in part by the negligent acts or omissions of [Weyerhaeuser]....

16. The Contract Documents allowed as an acceptable alternate to the glue-laminated wood members a product known as "Parallel Strand Lumber (PSL)" or Parallams. Parallams are fabricated by using wood waste materials, generally 2-foot to 8-foot long wood veneer strands from second growth trees. The individual wood strands are bonded together under pressure by a high-strength adhesive. The finished product is then cut (milled) to the desired dimensions.

17. The Contract Documents also provided the specifications for the wood preservative to be applied to the glue-laminated wood members. The applicable specification section provides: "Equivalent to ACQ Preserve by Chemical Specialties, Inc., Charlotte, NC." ACQ² Preserve is a water-based wood preservative. The Contract Documents also required that

² ACQ is an acronym for "Ammoniacal Copper Quaternary."

the pressure preservative treatment was to be applied in compliance with the standards of the American Wood Preservers Association ("AWPA"), and that a specified retention level was to be achieved.

18. Weyerhaeuser was provided all materials included as Contract Documents, and upon information and belief, Weyerhaeuser reviewed and was familiar with the Contract Documents at the time it entered into the Purchase Order.

19. Despite the specification reference to ACQ Preserve, Clark understood glue-laminated members could be treated with a mineral-based preservative with the Architect's approval: "Glue laminate suppliers have used a mineral based product for the pressure preservative treatment in lieu of a water borne product. Pending approval by the Architect."

20. In fact, the Purchase Order provided that the Parallams would be treated with PolyClear 2000, a mineral-based preservative.

21. Initially, CBF and/or SmithGroup had concern as to the chemical make-up of PolyClear 2000. To promote the objectives behind the sustainable design, CBF did not desire a wood product that contained chromium or arsenic that could leach into the groundwater or the Chesapeake Bay.

22. On October 11, 1999, Weyerhaeuser forwarded product data from the PolyClear 2000 manufacturer, which assured that neither chromium nor arsenic were present in PolyClear 2000.

23. The PolyClear 2000 product data also notes that it "provides protection for wood intended to be used in interior applications, or weather-protected, exterior above-ground applications" and that "If this product is specified to be used for exterior applications, it must be protected from the weather with a water resistant coating."

24. Although reassured that PolyClear 2000 posed little threat of toxicity, SmithGroup spoke directly with representatives of Weyerhaeuser regarding the suitability of Polyclear 2000 given that certain of the Parallams contemplated in the Project design would be exposed to the elements as shown in the design documents for the Project.

25. It was SmithGroup's understanding, based on representations made by Weyerhaeuser, that PolyClear 2000 treated Parallams would be suitable for the exposed applications at the Project so long as the members were treated with Cetol subsequent to installation.

26. Several months later, Weyerhaeuser submitted detailed shop drawings for the Parallams it intended to manufacture and supply for the Project. Weyerhaeuser's shop drawings were prepared from the design shown on the Contract Documents, which clearly represented that certain Parallams would be completely weather-exposed.

27. After review, on or about February 4, 2000, SmithGroup returned the shop drawings to Clark and, in turn, Weyerhaeuser. A SmithGroup note on the second page of the shop drawings requested the submission of the wood preservative product data for approval.

28. Upon information and belief, although Weyerhaeuser had supplied product data in the fall of 1999, it never submitted product data for approval in response to SmithGroup's comment on the returned shop drawings. Indeed, Weyerhaeuser never obtained approval from SmithGroup (or CBF or Clark) to deviate from the Contract Documents to use PolyClear 2000 in lieu of the specified water-based preservative.

29. Weyerhaeuser delivered the Parallams to the Project between May and December 2000.

30. The construction of the Project was substantially complete by December 7, 2000, at the time of the final fire inspection.

31. After completion of the Project, CBF followed the maintenance program called for by the PolyClear 2000 manufacturer, which required the application of Cetol 1 and Cetol 23.

32. Shortly after substantial completion, water intrusion was identified at various portions of the Project.

33. A May 2001 initial report prepared by a consultant hired by Clark (Wiss, Janney, Elstner Associates, Inc. ("WJE")), discussed the likely cause of the observed leaks and offered solutions. The report includes a brief discussion of the structural Parallams and the consultant's suggestion that irregularities in the exposed Parallam surfaces make them inherently difficult to seal and that some Parallam members did not appear to have been pressure-treated. It was noted that these concerns could result in an "accelerated rate of deterioration of the exposed wood elements at the building facades."

34. Any concerns regarding the observations of WJE in May 2001 were allayed by Weyerhaeuser's delivery in September 2001 of certifications assuring Clark, SmithGroup and CBF that all of the Parallam members had been treated. These treatment certificates state that the Parallam members were treated with PolyClear 2000.

35. The various building envelope water leak issues continued and both Clark and SmithGroup remained engaged to resolve the problems.

36. In May 2002, Clark engaged another consultant, Vaughn Woodwork Consultants ("Vaughn"), to assess the water leakage conditions at locations where Parallam members penetrated the building envelope.

37. Vaughn issued a preliminary assessment that noted that the pressure-treatment and subsequent 3-coat finish preservative “has failed to keep the wood protected.” The Vaughn report, to remedy the problem, offered solutions to arrest the Parallam movement and thereby abate the water intrusion problem.

38. Beginning in 2002 and continuing on into 2003, representatives of CBF, Clark, SmithGroup, and Weyerhaeuser attended meetings at the Project site and participated in discussions to prevent the cracking, splitting, and movement of the Parallam members. In May 2003, Weyerhaeuser agreed to provide a product that was not commercially available to seal the exposed Parallams, prevent future water or moisture intrusion into the Parallams, and halt the checking, splitting, and Parallam movement that had allowed water to penetrate the building envelope.

39. During 2003, various modifications were made to prevent the intrusion of water through the building envelope, including sealing certain Parallam members with the product provided by Weyerhaeuser. These remedial measures resolved the leakage through the building envelope. From 2003 forward, CBF inspected the Project at regular intervals to assess its condition and also performed the required application of Cetol to the Parallams.

40. On July 10, 2009, CBF performed an annual inspection of the Project. It observed deterioration of weather-exposed Parallams at the Project. Indeed, CBF noted: “rot was too widespread to pinpoint in upper (top Sunshades) extensive repair or replacement may be required.”

41. Prior to this date, CBF had never identified rot or deterioration in the Parallam beams in any of the previous annual inspections it conducted. Upon discovery of the deterioration, CBF immediately notified Clark, SmithGroup, and Weyerhaeuser of the problem.

42. CBF's observations prompted a meeting attended by all parties, including Weyerhaeuser, on September 11, 2009. Among other things the parties agreed that a structural analysis was necessary to evaluate the condition of the Parallams and to determine if the deteriorating Parallams jeopardized the structural integrity of the building. The Structures Group, Inc. ("TSG") was engaged by CBF to evaluate the situation.

43. An initial report by TSG, dated September 30, 2009, assessed the status of the Parallam roof trusses and concluded that the design was adequate to support the current building load, assuming the Parallams had not been weakened by deterioration. However, TSG noted one observation of a deteriorating Parallam roof truss member that required immediate replacement.

44. TSG issued a second and more comprehensive report on November 14, 2009, which noted widespread Parallam deterioration. TSG recommended replacement of all exposed Parallams in the Project. Significantly, TSG provided the results of laboratory testing of Parallam samples that demonstrated that the Parallams had not been treated to the levels prescribed by the Contract Documents or else the preservative had deteriorated because it was unsuitable for the application. Indeed, the testing revealed that the retention of wood preservative was either "below detection levels" or "significantly below the intended retention level." TSG concluded that the "distress exhibited in the exposed exterior [Parallam] members of the structure is the result of the deficiencies in the means and methods of the manufacture and construction of the elements." As well, TSG noted that since 2001 the parties had only been concerned with the failure of the building envelope to prevent water intrusion; no evidence could be found that any party observed or understood "the potential harmful effect of elevated moisture content within the Parallam[s]...."

45. In August 2010, Weyerhaeuser retained the services of Timber Products Inspection ("TPI") to perform an analysis to determine the presence of the pressure-treatment chemical (IPBC) present in the Parallam members at the Project. The tested samples indicated retention levels between 5% and 74% of what was required, suggesting the Parallams were not uniformly treated by Weyerhaeuser or else had been treated with an inappropriate preservative, thereby providing an explanation for the rot and deterioration being experienced by the members throughout the structure.

46. Separately, a consultant to CBF's insurance carrier determined in August 2010, that the Parallams had not been adequately treated with wood preservative or else had been treated with an unsuitable preservative for the application. The Consultant, EFI Global, concluded that the retention level of wood preservative was lower than that prescribed, suggesting that Weyerhaeuser provided Parallams that had not been adequately treated prior to delivery and installation at the Project.

47. The rot or deterioration of the Parallams is understood by all parties as compromising the structural integrity of the building.

48. CBF made demand on Clark and SmithGroup to resolve the problem, including removal and replacement of all exposed Parallam members and reimbursement for all of CBF's lost revenue during the repair period when the Project will be unable to be used to host revenue-producing functions. Clark, in turn, made a demand that Weyerhaeuser honor its Purchase Order and indemnify Clark from all costs and damages associated with the deteriorating Parallams.

49. CBF, SmithGroup, Clark and Weyerhaeuser participated in negotiations in the summer and fall of 2010, aimed at finding an amicable resolution. Eventually, CBF, SmithGroup, and Clark reached an agreement to remediate the Project and to pursue through

litigation against Weyerhaeuser the costs of doing so (the "Remediation Agreement"). Although Weyerhaeuser participated in the discussions, it did not participate in the resolution reached.

50. Under the Remediation Agreement, Clark and SmithGroup will provide the architectural and general contracting services required for the Parallam remedial work and will share the cost of performing the remediation work. The direct remedial construction costs are estimated to be \$3,396,000, exclusive of any fees customarily charged for performing architectural and general contracting services. The remedial work is expected to take 6 to 8 months.

51. To date, Clark has incurred at least \$1,150,000, SmithGroup has incurred at least \$360,000, and CBF has incurred at least \$70,000 to investigate the Parallam deterioration, implement emergency repairs, and determine the best plan to remediate the deteriorating Parallams.

52. CBF has incurred and will continue to incur damages of at least \$369,000 due to the loss of use of the Phillip Merrill Center during the remedial work already performed and to be performed.

**COUNT I
BREACH OF CONTRACT
(Clark v. Weyerhaeuser)**

53. Clark hereby incorporates and alleges as if set forth herein the foregoing Paragraphs 1 through 52.

54. The Clark/Weyerhaeuser Purchase Order is a valid and binding agreement.

55. Under the Purchase Order, Weyerhaeuser agreed that it would be responsible for any deviations from the Contract Documents unless the architect granted approval for any deviation therefrom. Weyerhaeuser also agreed under the Purchase Order to indemnify Clark

against any claims, damages, losses, and expenses (including attorney's fees) arising from injury or damage (including loss of use) to tangible property caused by Weyerhaeuser's (or its lower tier subcontractors' or vendors') negligent acts or omissions.

56. Weyerhaeuser breached the Purchase Order because it failed and refused to take responsibility for its deviation from the Contract Documents, including providing Parallam members that were not treated to the retention level specified by the Contract Documents and to which Weyerhaeuser provided certifications.

57. Weyerhaeuser also breached the Purchase Order because it failed and refused to indemnify Clark from the claims, losses or damages that arose from Weyerhaeuser's negligent acts or omissions. Weyerhaeuser's negligent acts or omissions include its failure to exercise reasonable care in: (a) offering and delivering products that it knew would not be suitable for the intended application; and (b) representing that Parallams treated with PolyClear 2000 would be suitable for the intended application and (c) failing to inform Clark of the limitations of Weyerhaeuser's products.

58. As a direct and proximate result of Weyerhaeuser's breaches of contract, Clark has and will suffer damages, losses and expenses in an actual and estimated amount in excess of \$3,000,000.

WHEREFORE, Clark Construction Group, LLC f/k/a The Clark Construction Group, Inc. respectfully requests that the Court enter judgment against Weyerhaeuser in the amount of at least \$3,000,000 or such greater amount as may be shown at trial, including costs associated with investigating the deterioration of the Parallam members and determining the appropriate remedial measures, the cost to implement the remedial measures, plus Clark's attorney's fees and costs and such other and further relief as the Court deems just and appropriate.

COUNT II
COMMON LAW INDEMNITY
(Clark and SmithGroup v. Weyerhaeuser)

59. Plaintiffs Clark and SmithGroup hereby incorporate and allege as if set forth herein the foregoing Paragraphs 1 through 58.

60. Clark and SmithGroup faced potential liability to CBF as a result of the wrongful or negligent acts or omissions of Weyerhaeuser.

61. Clark and SmithGroup addressed their potential liability to CBF by agreeing to incur costs to investigate the problem, determine the appropriate remedial measures, and implement the necessary remedial measures.

62. Weyerhaeuser is responsible for the potential liability faced by Clark and SmithGroup because Weyerhaeuser supplied the defective or unsuitable Parallams, it had superior knowledge that its PolyClear 2000 treated Parallams were not appropriate for exposed exterior applications, it failed to advise that PolyClear 2000 treated Parallams would not be appropriate for the intended application, and it sold its Parallams for use at the Project disregarding the consequences of using PolyClear 2000 treated Parallams in exterior exposed applications even though it was aware that the Parallams would be installed at exterior locations exposed to the weather. Further, contrary to its certifications, Weyerhaeuser delivered Parallam members that had not been treated with Polyclear 2000 as represented resulting in deterioration of the Parallam members and exposing Clark and SmithGroup to claims against them by CBF.

63. Due to all of these reasons, Clark and SmithGroup are entitled to common law indemnity from Weyerhaeuser.

64. Neither Clark nor SmithGroup were actively negligent with respect to any act or omission concerning the Parallams supplied and installed at the Project.

65. As a direct and proximate result of Weyerhaeuser's acts and omissions, Clark and SmithGroup have each suffered and will suffer damages, losses, and expenses in an actual and estimated amount in excess of \$3,000,000.

WHEREFORE, Clark Construction Group, LLC f/k/a The Clark Construction Group, Inc. and SmithGroup, Inc. d/b/a KCF-SHG Incorporated respectfully request that the Court enter judgment against Weyerhaeuser in the amount of at least \$3,000,000 or such greater amount as may be shown at trial, including costs associated with investigating the deterioration of the Parallam members and determining the appropriate remedial measures, the cost to implement the remedial measures, plus attorney's fees and costs and such other and further relief as the Court deems just and appropriate.

COUNT III
CONTRIBUTION
(Clark and SmithGroup v. Weyerhaeuser)

66. Plaintiffs Clark and SmithGroup hereby incorporate and allege as if set forth herein the foregoing Paragraphs 1 through 65.

67. Clark and SmithGroup settled with CBF regarding its claims arising from the defective and or unsuitable Parallams provided by Weyerhaeuser for the Project.

68. Weyerhaeuser is liable to CBF for the damages presented by the deteriorating Parallams, including costs associated with investigating the deterioration of the Parallam members and determining the appropriate remedial measures, and the cost to implement the remedial measures.

69. The settlement between CBF, Clark, and SmithGroup is reasonable because it contemplates the removal and replacement of Parallams that, due to deterioration caused by

Weyerhaeuser's improper selection of the preservative and its failure to properly apply the preservative, are jeopardizing the structural integrity of the building.

70. Clark and SmithGroup are entitled to contribution from Weyerhaeuser for the costs that each has incurred and will incur in the future with respect to the deteriorating Parallams as each has paid more and will continue to pay more than the appropriate share of its responsibility for the deteriorating Parallams.

71. As a direct and proximate result of Weyerhaeuser's acts and omissions, Clark and SmithGroup have each suffered and will suffer damages, losses, and expenses in an actual and estimated amount in excess of \$3,000,000.

WHEREFORE, Clark Construction Group, LLC f/k/a The Clark Construction Group, Inc. and SmithGroup, Inc. d/b/a KCF-SHG Incorporated respectfully request that the Court enter judgment against Weyerhaeuser in the amount of at least \$3,000,000 or an amount to be demonstrated at trial, including costs associated with investigating the deterioration of the Parallam members and determining the appropriate remedial measures, the cost to implement the remedial measures, plus the attorney's fees and costs incurred by Clark and SmithGroup as well as any other relief that the Court deems just and appropriate.

COUNT IV
NEGLIGENT MISREPRESENTATION
(CBF and SmithGroup v. Weyerhaeuser)

72. Plaintiffs CBF and SmithGroup hereby incorporate and allege as if set forth herein the foregoing Paragraphs 1 through 71.

73. An intimate nexus exists between Weyerhaeuser and Plaintiffs.

74. Weyerhaeuser supplied information regarding its PolyClear 2000 treated Parallams with the intention that its products would be used in the construction of the Project.

75. Weyerhaeuser had a duty to transmit accurate information regarding the materials to be used in construction of the Project. The statements that PolyClear 2000 was uniformly applied to all Parallam materials, was an adequate substitute for the preservative specified in the Contract Documents, or was otherwise adequate for use in exterior exposed applications were untrue and constituted material misrepresentations or omissions.

76. Weyerhaeuser, with its superior knowledge, was negligent in the assertion of these untrue statements.

77. Weyerhaeuser was provided with drawings for the Project and used them in preparing its own shop drawings outlining the work it planned on performing. Accordingly, Weyerhaeuser knew or should have known that it was providing structural members, some of which would be completely exposed to the weather without any shelter or overhanging roof.

78. Weyerhaeuser also knew that PolyClear 2000 was not a recommended wood preservative for exposed exterior applications.

79. Weyerhaeuser also represented that it was providing Parallams that were pre-treated with a preservative at a level required by the Project specifications. These representations were also untrue and were known by Weyerhaeuser to be untrue or were made by it with a reckless disregard for the truth or falsity of the statements.

80. Weyerhaeuser knew that Clark was going to use PolyClear 2000 as a preservative on exterior weather-exposed Parallam members at the Project. Weyerhaeuser also knew that PolyClear 2000 was not intended for exterior weather-exposed applications.

81. The statements or omissions made by Weyerhaeuser were made with the intention of having Plaintiffs act and rely upon them and Plaintiffs did in fact rely on Weyerhaeuser's statements or omissions.

82. Weyerhaeuser knew that Plaintiffs would rely upon and were, in fact, relying upon Weyerhaeuser's express and implied endorsement of the Parallam members treated with Polyclear 2000. Further, as a result of that reasonable reliance, Plaintiffs CBF and SmithGroup suffered, and will suffer, damages.

83. Weyerhaeuser held itself out as an expert in wood products with superior knowledge regarding the preservative treatment of such products. Weyerhaeuser marketed itself as having a "history of success" in providing Parallams in exterior structural applications. Plaintiffs CBF and SmithGroup justifiably relied upon the superior knowledge and assurances of Weyerhaeuser regarding the performance characteristics of Parallam members, in the designation of PolyClear 2000 as the chemical preservative that would be used to pressure-treat the Parallam to prevent deterioration and that the members had been treated to the requisite level of preservative concentration. The use of Parallams treated with PolyClear 2000 was a direct result of this reliance on Weyerhaeuser's statements.

84. As a result of Plaintiffs' reliance on Weyerhaeuser's assurances that Parallams pressure-treated with PolyClear 2000 was appropriate material for use in construction of the Project and that the preservative had been adequately applied – which statements were untrue – the structural integrity of the Project is in jeopardy and the building is now at risk of collapse. Thus, the defective condition of the PolyClear 2000 has created a clear risk of death or serious injury at the Project.

85. As a result of their reliance on Weyerhaeuser's assurances that Parallam pressure-treated with PolyClear 2000 was appropriate material for use in construction of the Project, and that the preservative had been adequately applied – which statements were untrue – Plaintiffs CBF and SmithGroup have incurred, and will incur, damages in excess of \$6,000,000 including

costs associated with investigating the deterioration of the Parallam members and determining the appropriate remedial measures, the cost to implement the remedial measures, and the cost and lost revenue associated with the loss of use of the Project while the remedial measures are being implemented.

WHEREFORE, The Chesapeake Bay Foundation, Inc. and SmithGroup, Inc. d/b/a KCF-SHG Incorporated respectfully request that the Court enter judgment against Weyerhaeuser in the amount of at least \$6,000,000 or such greater amount as may be shown at trial, including costs associated with investigating the deterioration of the Parallam members and determining the appropriate remedial measures, the cost to implement the remedial measures, the cost and lost revenue associated with the loss of use of the Project while the remedial measures are being implemented, and the loss in value of the Phillip Merrill Environment Center, plus the attorney's fees and costs incurred by CBF and SmithGroup as well as any other relief that the Court deems just and appropriate.

**COUNT V
NEGLIGENCE
(CBF and SmithGroup v. Weyerhaeuser)**

86. Plaintiffs CBF and SmithGroup hereby incorporate and allege as if set forth herein the foregoing Paragraphs 1 through 86.

87. An intimate nexus exists between Weyerhaeuser and Plaintiffs.

88. Weyerhaeuser had a duty to supply material for the Project that was appropriate for the design specifications.

89. Weyerhaeuser breached this duty by providing PolyClear 2000 treated Parallam members despite its knowledge that PolyClear 2000 was not a recommended wood preservative for exposed applications.

90. Weyerhaeuser also breached its duty by providing Parallam members that were not treated with a preservative at a level required by the Project specifications.

91. The use of PolyClear 2000 treated Parallam members and the failure of Weyerhaeuser to properly treat the members directly and proximately caused the deterioration of the structural integrity of the Project. The building is now at risk of collapse. Thus, the defective condition of the PolyClear 2000 has created a clear risk of death or serious injury at the Project.

92. As a result of Weyerhaeuser's breach of its duty, Plaintiffs CBF and SmithGroup have incurred damages in excess of \$6,000,000, including costs associated with investigating the deterioration of the Parallam members and determining the appropriate remedial measures, the cost to implement the remedial measures, and the cost and lost revenue associated with the loss of use of the Project while the remedial measures are being implemented.

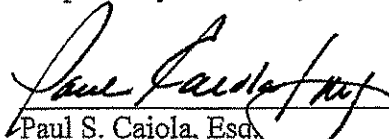
WHEREFORE, The Chesapeake Bay Foundation, Inc. and SmithGroup, Inc. d/b/a KCF-SHG Incorporated respectfully request that the Court enter judgment against Weyerhaeuser in the amount of at least \$6,000,000 or such greater amount as may be shown at trial, including costs associated with investigating the deterioration of the Parallam members and determining the appropriate remedial measures, the cost to implement the remedial measures, the cost and lost revenue associated with the loss of use of the Project while the remedial measures are being implemented, and the loss in value of the Phillip Merrill Environmental Center, plus the attorney's fees and costs incurred by CBF and SmithGroup as well as any other relief that the Court deems just and appropriate.

PRAYER FOR JURY TRIAL

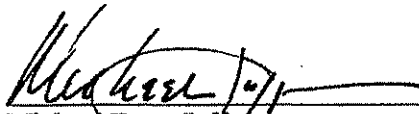
Plaintiffs demand a jury trial on all issues raised in the Complaint.

Dated: December 3, 2010

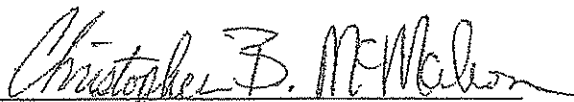
Respectfully submitted,



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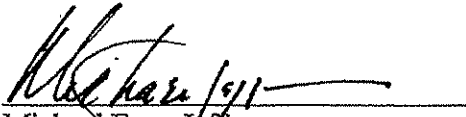
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The Clark Construction Group, Inc.*



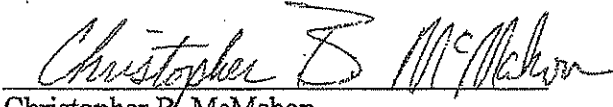
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RULE 1-313 CERTIFICATION

I, Michael Evan Jaffe, hereby certify that while I do not maintain an office for the practice of law in Maryland, I am admitted to practice law in the State of Maryland.


Michael Evan Jaffe

I, Christopher B. McMahon, hereby certify that while I do not maintain an office for the practice of law in Maryland, I am admitted to practice law in the State of Maryland.


Christopher B. McMahon