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Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court, D. South Carolina, Greenville Division.
Stephen SIZEMORE and Matsushita Electric Corp. of America, Plaintiffs,
v.
GEORGIA-PACIFIC CORPORATION and Hardwood Plywood and Veneer Association, Defendants.
Paula SIZEMORE and Matsushita Electric Corp. of America, Plaintiffs,
v.
GEORGIA-PACIFIC CORPORATION and Hardwood Plywood and Veneer Association, Defendants.
Paula SIZEMORE, as Guardian ad litem for Kamuel Sizemore, a minor, and
Matsushita Electric Corp. of America, Plaintiffs,
v.
GEORGIA-PACIFIC CORPORATION and Hardwood Plywood and Veneer Association, Defendants.
Civ. A. Nos. 6:94-2894 3, 6:94-2895 3 and 6:94-2896 3.

March 8, 1996.
Order Clarifying Decision March 22, 1996.

Robert P. Foster, Greenville, SC, Robert Frank Plaxco, Gilchrist Law Firm, Greenville, SC, Bradford Neal Martin, Greenville, SC, for Stephen Sizemore.

Bradford Neal Martin, Greenville, SC, for Matsushita Electric Corporation of America.

J. Theodore Gentry, William W. Kehl, Wyche, Burgess, Freeman & Parham, P.A., Greenville, SC,Robert Monroe Erwin, Jr., Nelson, Mullins, Riley & Scarborough, Greenville, SC, Winston E. Miller, Brown, Todd and Heyburn, Louisville, KY, for Georgia-Pacific Corporation.

J. Theodore Gentry, William W. Kehl, Wyche, Burgess, Freeman & Parham, P.A., William Marvin Grant, Jr., Grant & Leatherwood, Greenville, SC, Brock R. Landry, D. Scott Barash, Jenner and Block, Washington, DC, for Hardwood Plywood and Veneer Association.

ORDER

GEORGE ROSS ANDERSON, Jr., District Judge.

***1** These matters are before the Court on the motion of defendant Hardwood Plywood & Veneer Association ("HPVA") for summary judgment. The questions presented are: (1) whether HPVA, a non-profit trade association, owed a duty of care to the general public or assumed a duty not otherwise owed with respect to a product allegedly manufactured by one of HPVA's members; (2) whether HPVA's research and regulatory advocacy activities were the proximate cause of injuries suffered by the plaintiffs in a 1991 fire; (3) whether HPVA can be subject to strict liability as a result of its activities; and, (4) whether HPVA's activities constitute an actionable civil conspiracy between HPVA and its members. For the reasons set forth below, this Court grants HPVA's motion for summary judgment.

Facts

The facts material to HPVA's motion are not in dispute. Plaintiffs Stephen, Paula and Kamuel Sizemore seek to recover damages from HPVA and Georgia-Pacific Corporation for personal injuries resulting from a fire that occurred in their home on December 1, 1991. [FN1] Plaintiffs allege that 1/4-inch thick hardwood plywood paneling manufactured by Georgia-Pacific and installed in their home when it was constructed in 1970, some twenty years before the plaintiffs moved in, was defective and unreasonably dangerous because it was highly flammable and susceptible to rapid flame spread.

FN1. Pursuant to this Court's order of March 20, 1995, Matsushita Electric Corporation of America ("MECA") is also a party plaintiff in these cases. MECA manufactured a microwave oven allegedly involved in the fire.

HPVA is a non-profit trade association located in Reston, Virginia. HPVA's membership consists of manufacturers, suppliers and distributors of hardwood plywood and veneer products throughout the United States. HPVA provides a range of services to its members, including promoting the acceptance and use of industry products; monitoring and commenting on legislative and regulatory issues affecting the industry; and engaging in testing and research of industry products. HPVA does not design, manufacture, distribute, or sell any building products and did not participate in the manufacture, design, sale, or installation of the paneling in plaintiffs' home. HPVA has no control or authority over the design, manufacturing, distribution or sales activities of its member companies or other entities. [FN2] Georgia-Pacific has been a member of HPVA at all times relevant to these actions.

> FN2. The uncontested declaration of E.T. Altman, HPVA's President, describes HPVA's activities.

Plaintiffs do not contend that HPVA had any connection with the particular hardwood plywood paneling actually in their home. Rather, plaintiffs focus on HPVA's general research and advocacy activities on behalf of the hardwood plywood paneling industry. Their case is based on the premise that, over the past thirty years, HPVA misrepresented and concealed information regarding the flammability properties of hardwood plywood paneling from various professional organizations that write and amend model building codes and from public officials who adopt and enforce those codes in jurisdictions across the country.

HPVA presented substantial and uncontested evidence regarding the relevant model building code provisions and the procedures by which the model codes are created and amended, in the form of declarations by experienced model code officials James E. Bihr and William J. Tangye. [FN3] South Carolina, like many other states, has authorized local governing bodies within the state to adopt one or more of the national, regional, or model building codes which are referenced by statute. *See* S.C.Code Ann. § 6-9-10 *et seq.* It is undisputed that the hardwood plywood paneling in plaintiffs' home has at all times complied with the flamespread requirements of all model building codes for one-and two-family dwellings throughout the United States, including all the codes that applied in South Carolina generally and Greenville County in particular. Bihr Dec. ¶ 2; Tangye Dec. ¶ 3.

> FN3. *See* Declaration of James E. Bihr (Dec. 22, 1995) ("Bihr Dec.") (submitted as Exhibit 6 to Memorandum of Defendant Hardwood Plywood & Veneer Association in Support of Motion for Summary Judgment (Jan. 2, 1996) ("HPVA S.J.Mem."). Mr. Bihr is the former President of the International Conference of Building Officials ("ICBO"), the organization responsible for the publication of the Uniform Building Code, which is prevalent in the Western United States. He has more than 35 years of experience related to building codes and fire testing. *See also* Declaration of William J. Tangye (Dec. 28, 1995) (submitted as Exhibit 7 to HPVA S.J.Mem.) ("Tangye Dec."). Mr. Tangye is the Chief Executive Officer of the Southern Building Code Congress International ("SBCCI"), the organization responsible for the publication of the Standard Building Code, which is the dominant model code in the Southeastern United States. Greenville County, South Carolina, has recognized and adopted the Standard Code. *Id.* ¶ 10.

***2** Prior to 1978, no building code applicable to Greenville County imposed any flamespread rating limitation on interior finish material in one- and two-family dwellings. Since 1978, all of the model codes authorized under South Carolina law and adopted by Greenville County provide that interior finish materials in one- and two-family dwellings must achieve a "Class C" flamespread rating. Tangye Dec. ¶¶ 7-10. In order to achieve a Class C rating, a building material such as hardwood plywood paneling must achieve a flamespread rating between 75 and 200, and a smoke developed rating of 450 or less, as measured by the E-84 tunnel test specified by the American Society of Testing Materials ("ASTM"). If a product has been designated as Class C that means

that building code officials have determined that the product is reasonably safe for use as an interior finish material in one- and two-family dwellings. Bihr Dec. ¶¶ 21-22; Tangye Dec. ¶¶ 4, 11. [FN4] Although there were no flamespread requirements in effect in South Carolina when the paneling was installed in plaintiffs' home, it is uncontested that the paneling in question met the Class C requirement. Bihr Dec. ¶ 2; Tangye Dec. ¶ 3. There have been no proposals to modify the Class C requirement in any of the model building codes applicable to Greenville for interior finish materials in one-and two-family dwellings since 1978. Tangye Dec. ¶ 7.

> FN4. The ASTM E-84 test, entitled "Standard Test Method for Surface Burning Characteristics of Building Materials," commonly referred to as the "tunnel test," is the primary method for comparing the relative rate of flamespread of interior finish materials. All the model building codes rely on standard tests such as E-84 developed by ASTM to define the physical properties of materials and to establish performance test standards upon which many code regulations are based. Bihr Dec. ¶¶ 30-32.

Plaintiffs contend that HPVA's continued advocacy of this Class C requirement caused their injuries. As specific evidence of HPVA's alleged wrongdoing, plaintiffs point to HPVA activities in the late 1960's in response to proposals to amend various building codes, including the Uniform Building Code, a model building code promulgated by the International Conference of Building Officials ("ICBO") and used in many Western states. The specific proposal in question would have required combustible interior wall finish materials such as 1/4-inch thick prefinished hardwood plywood paneling to be solidly backed with non-combustible material such as gypsum board. In order to address this proposal, HPVA, then known as the Hardwood Plywood Manufacturers Association, [FN5] commissioned the Southwest Research Institute ("SwRI") to conduct a series of full-scale fire tests in late 1967 and early 1968 to evaluate the performance of several different types of interior wall finishes in a building intended to represent a typically furnished small home. SwRI is an independent research and testing laboratory, and is not affiliated with any industry.

> FN5. For convenience, the association will be referred to as "HPVA" throughout this Order.

SwRI built a full-size three room home and conducted three fire tests of the following interior wall finish materials: (1) gypsum board; (2) hardwood plywood paneling solidly backed with gypsum board; and (3) hardwood plywood paneling nailed directly to wall studs. A fourth test on hardwood plywood paneling that had been treated with a flame retardant coating was conducted later in 1968. SwRI prepared detailed reports on these tests for HPVA. [FN6] The reports indicate that the SwRI tests supported HPVA's position, i.e., that requiring hardwood plywood paneling to be backed with non-combustible material such as gypsum board would have little appreciable effect on life safety in a typically furnished single-family home when all life-threatening conditions were considered. Plaintiffs criticize the SwRI tests, claiming that the protocol misleadingly masked the flammability properties of hardwood plywood paneling due to the placement of the ignition source and by including furnishings in the test homes.

> FN6. HPVA submitted copies of the SwRI reports with its summary judgment motion.

***3** In addition to the reports prepared by SwRI, one of SwRI's lead researchers, Andrew J. Pryor, published an article in the March 1969 issue of the *Fire Journal*, a publication of the National Fire Protection Association. [FN7] Mr. Pryor's article, the publication of which was approved by HPVA, reported on and compared the test results of the plywood paneling backed with gypsum board to the paneling nailed directly to wall studs, but did not discuss the gypsum test or the test conducted on fire-retardant treated plywood.

> FN7. HPVA submitted Mr. Pryor's article with its summary judgment motion. The article was also reprinted in its entirety in the June 1969 issue of *Plywood & Panel* magazine, a trade journal.

HPVA circulated the *Fire Journal* article and some of the underlying SwRI test reports in the late 1960's and early 1970's to various interested parties in the fire protection community. Plaintiffs point to internal HPVA documents from this time expressing a desire to keep various aspects of the SwRI testing confidential and to a decision by the HPVA board of directors requiring board consideration of any request for the reports as evidence of HPVA's attempts to conceal the flammability properties of hardwood plywood paneling. The record is not clear for how long and to what extent those restrictions were in force. It is undisputed, however, that as early as 1974, HPVA submitted copies of all the SwRI test reports to the National Bureau of Standards ("NBS"), a federal agency which was conducting tests concerning interior finish materials in mobile homes. [FN8] In 1977, HPVA went back to SwRI and asked them to print 500 additional copies of all the test reports so that HPVA could more widely disseminate them. [FN9]

FN8. HPVA provided one of plaintiffs' experts with copies of all the SwRI test reports 20 years ago when that expert was undertaking fire testing for NBS. *See* Deposition of Edward K. Budnick, Jr. (Vol. 2) at 429 (September 29, 1995) (relevant excerpts submitted with HPVA S.J.Mem. as Exhibit 5).

FN9. *See* Exhibit 9 submitted with HPVA S.J.Mem.

Plaintiffs contend that these HPVA activities over the last 25 years constitute tortious behavior. Plaintiffs contend that HPVA acted negligently and recklessly by manipulating the SwRI test protocol and concealing results of the SwRI tests that supposedly demonstrated the flammability of hardwood plywood paneling and the increased safety of alternatives, and by failing to warn local, state and federal regulatory bodies and the general public about the alleged flammability of hardwood plywood paneling. Plaintiffs further contend that HPVA conspired with Georgia-Pacific and others to commit these torts. HPVA has moved for summary judgment.

Analysis

To be entitled to summary judgment, HPVA must demonstrate that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. F.R.Civ.P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322- 23, 106 S.Ct. 2548, 2552 (1986). "The Federal Rules of Civil Procedure encourage the entry of summary judgment where both parties have had ample opportunity to explore the merits of their cases and ... one party has failed to establish the existence of an essential element in the case, on which that party will bear the burden of proof at trial." *Woods v. Evatt*, 876 F.Supp. 756, 772 (D.S.C.1995). "A mere scintilla of evidence supporting the case is insufficient" to survive a motion for summary judgment under Rule 56. *Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir.1994), *cert. denied*, 115 S.Ct. 67 (1994), *citing* *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

***4** Plaintiffs are entitled to have inferences from the facts drawn in their favor at the summary judgment stage. "Permissible inferences must still be within the range of reasonable probability, however, and it is the duty of the court to withdraw the case from the jury when the necessary inference is so tenuous that it rests merely upon speculation and conjecture." *Sylvia Development Corp. v. Calvert County, MD*, 48 F.3d 810, 818 (4th Cir.1995), *quoting* *Ford Motor Co. v. McDavid*, 259 F.2d 261, 266 (4th Cir.), *cert. denied*, 358 U.S. 908 (1958).

The Court has carefully considered the submissions of the parties, the evidence in the record, and the arguments of counsel with the appropriate summary judgment standard in mind. As set forth below, the Court concludes that plaintiffs have failed to show the existence of genuine issues of material fact with respect to any of their causes of action against HPVA and that HPVA is entitled to judgment as a matter of law on all counts.

I. Negligence

It is axiomatic that "[t]he elements of a cause of action in negligence are duty, breach, proximate cause and injury." *Bullard v. Ehrhardt*, 283 S.C. 557, 324 S.E.2d 61, 62 (1984). The essence of plaintiffs' claims is that HPVA breached a duty allegedly owed to them in conducting and reporting the results of the

SwRI tests, in failing to provide adequate information regarding the flammability properties of hardwood plywood paneling to the public, and in advocating the interests of the hardwood plywood industry before legislative, regulatory and model code bodies. Plaintiffs contend that HPVA's activities were the proximate cause of their injuries.

1. *General Legal Duty to Plaintiffs*

The first question presented is whether HPVA, a not-for-profit trade association, owed a duty of care or assumed a duty not otherwise owed to end users of a product allegedly manufactured by one of HPVA's members. This is a question of law. *Miller v. City of Camden*, 451 S.E.2d 401, 404 (S.C.App.1994). "An affirmative legal duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Id.* "It is essential to liability for negligence to attach that the parties shall have sustained a relationship recognized by law as the foundation of a duty of care. Where this relationship is 'too attenuated,' a duty will not arise." *Ravan v. Greenville County*, 434 S.E.2d 296, 308 (S.C.App.1993) (citations omitted).

Plaintiffs have adduced no facts sufficient to support a conclusion that HPVA owed any legal duty to plaintiffs as members of the general public. It is undisputed that HPVA does not design, manufacture, distribute, or sell any building products and did not participate in the manufacture, design, sale, or installation of the paneling in plaintiffs' home. HPVA has no control or authority over the design, manufacturing, distribution or sales activities of its member companies or other entities. Altman Dec. ¶¶ 4-6; *see Beasock v. Dioguardi Enterprises, Inc.*, 130 Misc.2d 25, 494 N.Y.S.2d 974, 979 (1985) (summary judgment granted in favor of tire trade association where "it is clear that [the association] had neither the duty nor the authority to control what the manufacturers produced"). Thus, there is nothing in the record to suggest that any sort of legally cognizable relationship between HPVA and the plaintiffs exists.

***5** Plaintiffs point to no factual or legal basis for suggesting that HPVA owed a general legal duty to the public at large. A duty to warn "is generally imposed because of some special relationship between the parties, frequently involving some existing or potential economic benefit to the defendant.... Although there is an economic relationship between the manufacturer and the product alleged to have caused [plaintiff's] injury which imposes a duty to warn, there is no such economic relationship in this case between the decedent and a trade association of those manufacturers." *Beasock*, 494 N.Y.S.2d at 979 (citations omitted). *See Evenson v. Osmose Wood Preserving, Inc.*, 760 F.Supp. 1345, 1349 (S.D.Ind.1990) (trade association owed no duty to plaintiff to communicate the dangers of working with allegedly defective product because "there is no relationship upon which plaintiff may base a claim for negligence against" the trade association); *Howard v. Poseidon Pools, Inc.*, 133 Misc.2d 50, 506 N.Y.S.2d 523, 527 (Sup.Ct.1986), *aff'd in part and rev'd in part on other grounds*, 134 A.D.2d 926, 522 N.Y.S.2d 388 (1987) (swimming pool trade association owed no duty to the general public because it had neither the duty nor the authority to control the manufacturers of the pools).

Plaintiffs' contention that HPVA selectively disseminated the SwRI test reports, even if accepted as true, provides no basis for imposing a legal duty on the part of HPVA to the general public. In *Meyers v. Donnatacci*, 220 N.J.Super 73, 531 A.2d 398, 405-06 (1987), for example, the plaintiffs contended that a trade association of swimming pool manufacturers should be held liable because, *inter alia*, the association did not immediately disseminate the results of a study commissioned by the association and conducted by an independent third party. 531 A.2d at 404. The report was "disseminated among committee members who decided not to make the report available since in their opinion it raised more questions than it answered." *Id.* The court rejected all bases for liability, finding that the trade association did not owe a duty of care to the general public.

Similarly, in this case, plaintiffs contend that HPVA's decision to submit the results of two of the four SwRI tests to the ICBO officials considering the proposed amendments to the Uniform Building Code (and HPVA's involvement in the publication of the *Fire Journal* that discussed those same two tests) some-

how created a legal duty to them. Even if HPVA could be seen as "withholding" the results of the gypsum test and the fire-retardant test from building code officials (although it is undisputed that HPVA disseminated all four SwRI reports to government officials as early as 1974), this provides no basis for creating a legal duty to plaintiffs on the part of HPVA. There is no evidence of a legally cognizable relationship between HPVA and the plaintiffs as members of the general public. Thus, as a matter of law, HPVA owed no direct legal duty to the plaintiffs.

***6** Plaintiffs suggest that HPVA acted as the agent of Georgia-Pacific "such that GP's obligations are imputed to the agent." [FN10] Even if it could be demonstrated that HPVA acted as an agent for its members for some limited purposes, such as governmental advocacy, there is nothing in the record to suggest that HPVA therefore assumed the duties of its members, if any, to warn the general public with respect to products manufactured by its members. In this case, information gathered and research conducted by HPVA, including the SwRI tests, was supplied to Georgia-Pacific and other members of the association. Those members are "learned intermediaries" which were aware of the characteristics of their product and the results of HPVA's research and testing, and which could and did make their own informed decisions about the need, or lack thereof, to warn the general public. These sophisticated learned intermediaries obviated any purported duty on the part of HPVA to warn the public concerning the flammability properties of hardwood plywood paneling. *See* *Odom v. G.D. Searle Co.*, 979 F.2d 1001 (4th Cir.1992); *Brooks v. Medtronic*, 750 F.2d 1227 (4th Cir.1984); *Bragg v. Hi-Ranger, Inc.*, 462 S.E.2d 321 (S.C.App.1995).

> FN10. Plaintiffs' Memorandum in Opposition to Defendants' Motions for Summary Judgment at 20 (Jan. 22, 1996) ("Pls.S.J.Opp.").

2. *Duty Under Restatement Section 324A*

In an effort to find a source of a legal duty to them, plaintiffs point to Section 324A of the Second Restatement of Torts, the "good samaritan" provision. Section 324A states that:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if
>
> (a) his failure to exercise reasonable care increases the risk of such harm, or
>
> (b) he has undertaken to perform a duty owed by the other to the third person; or
>
> (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

Salvo v. Hewitt, Coleman & Assocs., Inc., 274 S.C. 34, 260 S.E.2d 708 (1979); *Miller v. City of Camden*, 451 S.E.2d 401 (S.C.App.1994). Section 324A addresses only the duty element of a negligence action--a plaintiff proceeding under § 324A must establish all the other underlying elements of an action in negligence--breach of duty, causation, and damages. Plaintiffs have raised no genuine issues of material fact with respect to any of the three requirements set forth in § 324A.

First, plaintiffs have put forth no evidence that would tend to show that HPVA's alleged activities increased the risk of harm to them within the meaning of § 324A. The comment to § 324A makes clear that "increased risk" means some physical change to the environment or some other material alteration. *Patentas v. United States*, 687 F.2d 707, 717 (3d Cir.1982); *Deines v. Vermeer Mfg. Co.*, 752 F.Supp. 989, 994 (D.Kan.1990), *citing* *Canipe v. Nat'l Loss Control Serv. Corp.*, 736 F.2d 1055, 1062 (5th Cir.1984) (requiring "some change in conditions that increases the risk of harm to the plaintiff over the level of risk that existed before the defendant became involved"), *cert. denied*, 469 U.S. 1191 (1985). The undisputed facts as set forth above make it clear that no HPVA activity had a material effect on the nature of the hardwood plywood paneling installed in the plaintiffs' home. There was nothing that HPVA did or failed to do with respect to the paneling in plaintiffs' home that resulted in an increased risk of harm.

***7** Moreover, HPVA's research, testing, and advocacy related to proposed building code changes before ICBO in the 1960's had no material effect on any building code in any way related to South Carolina. There were no flamespread rating requirements for hardwood plywood paneling in South Carolina at all until 1978, long after the paneling was installed in the Sizemore home. And in any event, the paneling in the Sizemore home complied with those requirements. Tangye Dec. ¶¶ 4-11. At the most, HPVA's alleged conduct "merely 'permitted the continuation of an existing risk,' an inadequate basis upon which to impose liability under section 324(a)[sic]." *Ricci v. Quality Bakers of America Coop, Inc.*, 556 F.Supp. 716, 720 (D.Del.1983) (citations omitted), *quoted in Meyers v. Donnatacci*, 220 N.J.Super. 73, 531 A.2d 398, 406 (1987). The risk of harm *before* any of HPVA's allegedly wrongful activity was that the use of hardwood plywood paneling as an interior finish in one- and two-family dwellings was either unregulated or subject to the Class C flamespread rating requirement. The risk of harm *after* HPVA's allegedly wrongful activity was exactly the same: either no flamespread requirement or a Class C rating. Even assuming that there was some risk of harm embodied in the Class C regulatory framework, HPVA did nothing to increase it within the meaning of § 324A.

Second, HPVA's activities do not satisfy the second alternative requirement of § 324A (defendant must have "undertaken to perform a duty owed by the other to the third person"). Because "the scope of a good samaritan's duty is measured by the scope of his or her undertaking," *Patentas v. United States*, 687 F.2d 707, 716 (3d Cir.1982), plaintiffs must prove that HPVA affirmatively assumed the manufacturers' duties to warn the public of the alleged dangers of hardwood plywood paneling. "The foundation of the good samaritan rule is that the defendant specifically has undertaken to perform the task that he or she is charged with having performed negligently." *Id.*

Plaintiffs contend that HPVA undertook the duties and obligations of Georgia-Pacific and other manufacturers in connection with the design, testing, and marketing of hardwood plywood paneling. But they point to only two pieces of evidence in support of their claim that HPVA assumed this duty: (1) unspecified statements in HPVA's charter and bylaws, and (2) a statement by HPVA's technical director that HPVA was the primary entity dealing with regulatory bodies on behalf of the manufacturers of hardwood plywood paneling. From this, plaintiffs conclude that the manufacturers of hardwood plywood paneling "delegated seemingly all of the responsibility for the testing, marketing, and safety aspects of its product" to the association. Pls.S.J.Opp. at 39.

Plaintiffs' evidence is insufficient to create a material issue of fact. They have not disputed the fact that HPVA does not design, manufacture, distribute, or sell any building products and did not participate in the manufacture, design, sale, or installation of the paneling allegedly manufactured by Georgia-Pacific that was in the Sizemore home. It is also undisputed that HPVA has no control or authority over its member companies. *Howard v. Poseidon Pools, Inc.*, 133 Misc.2d 50, 506 N.Y.S.2d 523 (Sup.Ct.1986), *aff'd in part and rev'd in part on other grounds*, 134 A.D.2d 926, 522 N.Y.S.2d 388 (1987) (tort claims against swimming pool trade association dismissed because no evidence that association had any duty or authority to control manufacturers of product). Furthermore, there is nothing in the record to suggest that HPVA undertook to assume any duty to warn or any other duty owed by Georgia-Pacific or any other manufacturer of hardwood plywood paneling to the plaintiffs or the public at large. The unspecified HPVA charter and bylaw provisions invoked by plaintiffs are for the benefit of HPVA's members, not the general public.

***8** The third alternative requirement of § 324A is reliance. Plaintiffs must show that they actually relied to their detriment upon HPVA's alleged undertaking. It is undisputed that plaintiffs did not rely upon any publication or other activity on the part of HPVA, nor were they even aware that HPVA existed prior to suffering their injuries. *See Collins v. American Optometric Ass'n*, 693 F.2d 636, 641-42 (7th Cir.1982) (summary judgment entered in favor of trade association of optometrists based on lack of causation where plaintiff who suffered from glaucoma did not rely on any actions or publications of association); *Salvo v. Hewitt, Coleman & Associates, Inc.*, 274 S.C. 34, 260 S.E.2d 708, 710-11 (1979)

(court refused to hold a company hired to manage a builder's workers' compensation program liable for negligent inspection pursuant to § 324A because of lack of reliance). Plaintiffs have pointed to nothing in the record to suggest that Georgia-Pacific or any other third party relied to their detriment on any HPVA activity in connection with the design, testing, or promotion of hardwood plywood paneling within the meaning of § 324A. Because there is nothing in this record to indicate that these plaintiffs were "affected by anything said or done by" defendant HPVA, *Ryan v. Eli Lilly & Co.*, 514 F.Supp. 1004, 1013 (D.S.C.1981), plaintiffs cannot invoke this prong of § 324A.

The weight of authority has rejected product injury claims such as these against trade associations based on negligence. [FN11] The Court is aware of only one reported decision denying summary judgment to a trade association charged with negligence in connection with a product manufactured by its members. In *King v. National Spa and Pool Institute, Inc.*, 570 So.2d 612, 615 (Ala.1990), the court found that a legal duty existed where a trade association promulgated extensive and detailed swimming pools standards that expressly stated, *inter alia*, that they were intended to meet the "needs of the consumer" and were promulgated "[f]or the benefit of the consumer." *King* is a minority view, even in the specific swimming pool trade association setting in which it arose. [FN12] It is also factually distinguishable from this case. Here, plaintiffs have not even alleged--let alone submitted any evidence tending to prove--that HPVA sought to promulgate the type of extensive design and construction standards at issue in *King*. There is also no evidence here to suggest that any manufacturer relied on any HPVA activity in designing its product. In *King*, the detailed design standards were distributed to manufacturers "for the purpose of influencing their design and construction practices." *Id.* at 615.

FN11. *See, e.g., Collins v. American Optometric Ass'n*, 693 F.2d 636 (7th Cir.1982); *Evenson v. Osmose Wood Preserving, Inc.*, 760 F.Supp. 1345 (S.D.Ind.1990); *Swartzbauer v. Lead Indus. Ass'n, Inc.*, 794 F.Supp. 142 (E.D.Pa.1992); *Harmon v. National Automotive Parts Ass'n*, 720 F.Supp. 79 (N.D.Miss.1989); *Gunsalus v. Celotex Corp.*, 674 F.Supp. 1149 (E.D.Pa.1987); *Klein v. Council of Chemical Associations*, 587 F.Supp. 213 (E.D.Pa.1984); *Ryan v. Eli Lilly & Co.*, 514 F.Supp. 1004 (D.S.C.1981); *Meyers v. Donnatacci*, 220 N.J.Super 73, 531 A.2d 398 (1987); *Howard v. Poseidon Pools, Inc.*, 133 Misc.2d 50, 506 N.Y.S.2d 523 (Sup.Ct.1986), *aff'd in part and rev'd in part on other grounds*, 134 A.D.2d 926, 522 N.Y.S.2d 388 (1987); *Beasock v. Dioguardi Enterprises, Inc.*, 130 Misc.2d 25, 494 N.Y.S.2d 974, 979 (1985).

FN12. *See Meyers v. Donnatacci*, 220 N.J.Super 73, 531 A.2d 398, 405-06 (1987); *Howard v. Poseidon Pools, Inc.*, 133 Misc.2d 50, 506 N.Y.S.2d 523, 527 (Sup.Ct.1986), *aff'd in part and rev'd in part on other grounds*, 134 A.D.2d 926, 522 N.Y.S.2d 388 (1987).

This Court, exercising its diversity jurisdiction, must apply South Carolina law. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817 (1938). Where, as here, there is no case law directly on point, the Court must attempt to do as the South Carolina courts would if confronted with the same issues. *Roe v. Doe*, 28 F.3d 404, 407 (4th Cir.1994). The authority cited by HPVA and discussed herein demonstrates that there is no basis for this Court to expand the reach of South Carolina tort law to a trade association such as HPVA. Relevant South Carolina authority indicates otherwise. *See South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 346 S.E.2d 324, 325-26 (S.C.1986) (consulting group owed no duty to individual members of the public who may have read and relied on a report prepared by the consulting firm: "[t]he relationship, if any, flowing between a consultant and someone distantly affected by his work is far too attenuated to rise to the level of a duty flowing between them. The concept of duty in tort liability must not be extended beyond reasonable limits."). The Court therefore finds that HPVA owed no duty of care to the plaintiffs with respect to hardwood plywood paneling manufactured by one of its members.

3. *Proximate Cause*

***9** In a tort action, "the burden of proof of proximate cause [is] squarely on the plaintiff." *Ryan v. Eli Lilly & Co.*, 514 F.Supp. 1004, 1018 (D.S.C.1981). Summary judgment is appropriate where plaintiffs have shown "no evidence which would tend to prove a causal connection" between HPVA's alleged conduct and plaintiffs' injuries. *Fleming v. Borden, Inc.*, 829 F.Supp. 160, 163 (D.S.C.1992), *aff'd*, 996 F.2d 1210 (4th Cir.1993). Plaintiffs have failed to demonstrate the requisite causal connection between HPVA's activities and the injuries they suffered in the 1991 fire.

Plaintiffs purported chain of causation is based solely on speculation; it is not supported by any evidence in the record and is in fact contradicted by unrefuted evidence submitted by HPVA. According to plaintiffs, if the government building officials considering the proposed changes to the Uniform Building Code discussed above had been presented with all of the results of the tests conducted by SwRI (or, presumably, had HPVA not commissioned the tests at all), then those code officials would have approved the proposal that would have changed the Uniform Building Code requirements for one- and two-family dwellings. These requirements would then have been adopted by model code organizations and building regulators throughout the United States, including those codes applicable to South Carolina in general and Greenville County in particular. Thus, plaintiffs contend, the fact that building officials rejected the proposed Uniform Building Code change described above in the late 1960's caused the plaintiffs' 1991 injuries in South Carolina by allowing hardwood plywood paneling with a Class C flamespread rating to be installed in 1970 and/or to remain in the home which they purchased in 1989.

The speculative chain of events set forth by plaintiffs is too tenuous as a matter of law to support the imposition of liability on HPVA. The government building officials at ICBO in the 1960's and in South Carolina and all other jurisdictions thereafter, all made independent decisions to allow Class C paneling to be used in one- and two- family structures such as plaintiffs' home. [FN13] These decisions by building code officials to allow hardwood plywood paneling with a Class C flamespread rating to be used over the last 30 years are, as a matter of law, intervening causes. The decisions of code officials and regulatory organizations, which necessarily involve a complex mix of inputs and judgments by those public building officials, break any purported causal link between submissions to those officials and alleged results flowing from the adoption of a particular code or regulatory provision. The Court may not "deconstruct[ ] the decision-making process to ascertain what factors prompted the various governmental bodies" to enact the various building codes, regulations and legislation of which plaintiffs complain. *Sessions Tank Liners, Inc. v. Joor Mfg., Inc.*, 17 F.3d 295, 300 (9th Cir.1994), *cert. denied*, 115 S.Ct. 66 (1994). It is not legally appropriate to hypothesize what a legislative or regulatory body would have done with "accurate" information allegedly withheld or manipulated by HPVA; plaintiffs' musings about a "slippery slope" or a "domino effect" had the Uniform Building Code proposal been adopted are far too speculative to create a triable issue of fact.

> FN13. To the extent that plaintiffs' allegations against HPVA are based on HPVA's alleged activities in advocating the interests of the hardwood plywood and veneer industries before governmental bodies, such allegations raise serious First Amendment concerns. *See, e.g.*, *In re Asbestos School Litigation*, 46 F.3d 1284, 1289-94 (3d Cir.1994); *Oregon Natural Resources Council v. Mohla*, 944 F.2d 531, 533-34 (9th Cir.1991); *Associated Bodywork and Massage Professionals v. American Massage Therapy Ass'n*, 897 F.Supp. 1116 (N.D.Ill.1995); *Sims v. Tinney*, 482 F.Supp. 794, 800 (D.S.C.1977). The Court need not address those concerns in light of its other findings.

***10** *Sessions*, for example, involved a claim that a company's activities before the Western Fire Chiefs, a group that administers the Uniform Fire Code, were tortious and violated the antitrust laws. In rejecting plaintiff's claim, the court in *Sessions* focused on the fact that plaintiffs had submitted no evidence that would tend to show that the information submitted by

the defendant to a standard-setting organization which led to decisions by municipal officials caused the competitive injury of which plaintiff complained. 17 F.3d at 299-300. Similarly, plaintiffs here have put forth no evidence that would tend to show that the continued acceptance in all applicable building codes of the use of Class C rated hardwood plywood paneling was caused by any activity on the part of HPVA.

This Court's analysis in *Ryan* is also applicable to this case. In *Ryan*, plaintiff claimed that a number of manufacturers of the drug DES were involved in a conspiracy involving the licensing, manufacture, promotion and sale of DES. One of the key allegations in support of plaintiff's conspiracy claim was the fact that several manufacturers submitted clinical studies and other scientific data to the federal Food and Drug Administration in support of their application for approval to market the drug. 514 F.Supp. at 1008- 10. One basis for the entry of summary judgment for the defendants in *Ryan* was the fact that any alleged concerted activity could not have caused the plaintiff's injuries. The court in *Ryan* stated that "the FDA was not a passive receptor of information." The FDA undertook an "independent" review in order to address concerns that some doctors had raised about the drug. *Ryan*, 514 F.Supp. at 1010.

The building code officials who considered the proposed code change in 1967 and 1968 (as well as the building code officials who have refused to limit the use of hardwood plywood paneling in buildings like the Sizemore home before and since) were not "passive receptors" of information submitted by HPVA or any other organization. *See* Bihr Dec. ¶ 27; Tangye Dec. ¶ 18. The building codes reflect the sound and independent judgment of the government officials who comprise the code bodies and who evaluate proposed code changes. Bihr Dec. ¶ 15; Tangye Dec. ¶¶ 17-18.

Even assuming, *arguendo*, that the actions of the code officials in adopting and maintaining the Class C requirement were not intervening causes, the undisputed evidence indicates that HPVA's activities did not have any material effect on any building code related in any way to South Carolina.

First, HPVA submitted undisputed evidence that the specific proposal to modify the Uniform Building Code to require combustible interior finishes to be backed with non-combustible materials was fully debated by building officials and interested parties in 1967 and 1968 and received complete consideration on its merits. The proposal was voted down once in 1967, before the SwRI tests were even completed, but was held for further study before it was again disapproved. Bihr Dec. ¶¶ 12-18, 23-29. The reasons stated for the rejection of the proposal were that the relevant Code Change Committee did not believe that it would make any significant contribution to life safety. The Code Change Committee noted that loss of life in dwellings is usually associated with the failure of the occupants to awaken, and stated that adoption of the proposal did not appear reasonable in light of the fact that dwellings generally contain a large amount of combustible material over and above any interior finish. The Committee suggested that requiring smoke detectors in dwellings offered a more reasonable approach. There have been no similar proposals to amend the Uniform Building Code since that proposal was rejected in 1968. Bihr Dec. ¶¶ 23-29.

***11** It is also undisputed that trade associations like HPVA have a limited role in the process by which model building codes are created and amended. HPVA's building code experts made it clear that the process by which amendments to the model building codes are evaluated is extensive, thorough, and open to any interested party. All code change proposals are fully debated in a public forum. Any interested party can submit information either supporting or opposing a code change provision at any time during the process. The only persons who are eligible to vote on proposed amendments to the model building codes, however, are the public officials who are responsible for all aspects of building safety within their jurisdictions and who have no connection to any industry or other special interest. Therefore, the building codes reflect the judgment of the code officials who vote on them, not the views of any non-voting participant in the process. Because of the open nature of the code change process, no submission or activity by an industry group could, in itself,

result in either the enactment or defeat of a proposed code change. Bihr Dec. ¶¶ 14-17, 29; Tangye Dec. ¶¶ 12-18. Plaintiffs' unsupported suggestion that HPVA somehow dominated or subverted these open processes over a period of decades does not create a triable issue of fact and, in any event, is flatly contradicted by the undisputed declarations of HPVA's two expert witnesses.

Second, there is no evidence of any HPVA activity in any way related to building codes applicable to South Carolina or any contacts by HPVA with South Carolina building code officials concerning the Class C standard. There have been no proposals to modify the Class C requirement in the model building codes applicable to Greenville for interior finish materials in one- and two-family dwellings since 1978. Tangye Dec. ¶ 7. Plaintiffs presume that the proposed change to the Uniform Building Code, had it been adopted, would have had some effect in South Carolina. The undisputed record, however, indicates that the Uniform Building Code has no direct effect in the Southeast. Each building code organization considers proposed changes independently, and the fact that one model code may adopt a provision does not mean that the others necessarily will immediately follow. Bihr Dec. ¶ 18; Tangye Dec. ¶ 19. Had any proposal to modify the Class C requirement in the Standard Building Code been made, it would have received consideration completely independent of any other model building code organization. *Id.*

In summary, plaintiffs can point to nothing in the record which would tend to prove that HPVA's activities were the proximate cause of their injuries. Regardless of any complaint about HPVA's activities in the late 1960's or thereafter, it is apparent that those activities are simply not related in any factually or legally significant way to the injuries that plaintiffs suffered in 1991 and could not have been the proximate cause of, their injuries. Because plaintiffs' claims against HPVA are based on speculation, not facts, HPVA is entitled to judgment as a matter of law.

II. Strict Liability

***12** Plaintiffs arguably seek to state a claim for strict liability in tort against HPVA. In their complaints, they contend that HPVA was negligent "in assisting its members, including Georgia-Pacific in *placing into the stream of commerce* panelling which HPVA knew was *unreasonably dangerous* to the end user." *See* Complaint ¶ XIV(a) (emphasis added). As a matter of law, however, a trade association such as HPVA cannot be strictly liable for injuries allegedly caused by a product manufactured by one of its members.

Because HPVA was not involved in placing the hardwood plywood paneling at issue into the stream of commerce, it cannot be held accountable on a strict product liability theory. *See* *Baughman v. General Motors Corp.*, 627 F.Supp. 871, 874 (D.S.C.1985) (plaintiff must show that "the defendant either manufactured, sold or exercised control over the defective product"), *aff'd*, 780 F.2d 1131 (4th Cir.1986). South Carolina's strict liability law, S.C.Code § 15-73-10, which codified § 402A of the Second Restatement of Torts, applies only to "[o]ne who *sells* any product" (emphasis added). "Section 15-73-10 by its terms determines the liability of the *seller* of a defective product." *Scott by McClure v. Fruehauf Corp.*, 302 S.C. 364, 396 S.E.2d 354, 356 (1990) (emphasis in original). It is apparent that HPVA "was not so involved in the stream of commerce that it should be treated as a manufacturer" or seller of hardwood plywood paneling. *Harmon v. National Automotive Parts Ass'n*, 720 F.Supp. 79, 81 (N.D.Miss.1989).

Although the term "seller" is "merely descriptive" and may apply "even though no sale has occurred in the literal sense," *Henderson v. Gould, Inc.*, 288 S.C. 261, 341 S.E.2d 806, 810 (App.1986), plaintiffs must prove that the defendant somehow was in the stream of commerce in connection with the particular product alleged to have caused their injuries. *Madden v. Cox*, 284 S.C. 574, 328 S.E.2d 108, 112 (App.1985) (allegedly defective product must have been in the "hands of the defendant" at some point to impose strict liability), *appeal dismissed*, 286 S.C. 127, 332 S.E.2d 102 (1985). Plaintiffs have cited no case where a strict liability claim against a trade association was allowed to go forward. There is ample authority is to the contrary. [FN14]

FN14. *See, e.g.*, *Swartzbauer v. Lead Indus.*

Ass'n, Inc., 794 F.Supp. 142, 145 (E.D.Pa.1992); *Harmon v. National Automotive Parts Ass'n*, 720 F.Supp. 79, 81 (N.D.Miss.1989); *Klein v. Council of Chemical Assn's*, 587 F.Supp. 213, 223-224 (E.D.Pa.1984); *Ryan v. Eli Lilly & Co.*, 514 F.Supp. 1004, 1006 (D.S.C.1981); *Howard v. Poseidon Pools, Inc.*, 133 Misc.2d 50, 506 N.Y.S.2d 523, 526 (Sup.Ct.1986), *aff'd in part and rev'd in part on other grounds*, 134 A.D.2d 926, 522 N.Y.S.2d 388 (1987); *Beasock v. Dioguardi Enterprises, Inc.*, 130 Misc.2d 25, 494 N.Y.S.2d 974 (1985).

In any event, no strict liability action may be based on a product entering the stream of commerce prior to the July 9, 1974 effective date of South Carolina's strict liability law, S.C.Code § 15-73-10. *Schall v. Sturm, Ruger Co., Inc.*, 278 S.C. 646, 300 S.E.2d 735 (1983). It is undisputed that the hardwood plywood paneling in this case entered the stream of commerce in 1970, long before the South Carolina legislature recognized an action for strict liability in tort.

III. Civil Conspiracy

Plaintiffs allege that HPVA engaged in a civil conspiracy with Georgia-Pacific and other unnamed manufacturers of hardwood plywood paneling to conceal the flammability properties of hardwood plywood paneling from disclosure to federal and state agencies, building code officials, consumer groups, and the general public. Plaintiffs contend that HPVA's research and advocacy activity on behalf of the industry, particularly its conducting of the SwRI tests and the treatment of their results, evidence the conspiracy.

***13** The alleged acts by HPVA of which plaintiffs complain do not, as a matter of law, satisfy the requirements for a civil conspiracy claim. In South Carolina, "[a] civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes her special damage." *Bivens v. Watkins*, 437 S.E.2d 132, 136 (S.C.App.1993); *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711, 713 (1988).

Even assuming that plaintiffs have demonstrated a triable issue on whether there was an "agreement" between HPVA and Georgia-Pacific by virtue of Georgia-Pacific's membership in HPVA, plaintiffs point to nothing in the record to suggest that such agreement was "for the purpose of injuring" them. Civil conspiracy requires a specific intent to injure the plaintiff. *See, e.g.*, *Bivens*, 437 S.E.2d at 136. The focus of the inquiry is thus on the purpose of the agreement: "the essential consideration is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff." *Lee v. Chesterfield General Hospital, Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (S.C.App.1986). Some evidence that the alleged conspirators "acted with malice towards" the plaintiff is required. *Waldrep Brothers Beauty Supply, Inc. v. Wynn Beauty Supply Co., Inc.*, 992 F.2d 59, 63 (4th Cir.1993) (applying South Carolina law). Where, for example, alleged conspirators acted out of a general desire to make a profit rather than to harm the plaintiff, a claim for civil conspiracy cannot lie. *Bivens*, 437 S.E.2d at 136. Thus, a claim for civil conspiracy requires at least some degree of relationship between the plaintiff and the alleged conspirators.

There is no evidence in the record to suggest that any type of relationship between plaintiffs and HPVA existed, let alone the type of relationship that could give rise to a claim that HPVA conspired with the specific intent to harm the plaintiffs. *See* *Swartzbauer v. Lead Indus. Ass'n, Inc.*, 794 F.Supp. 142, 145 (E.D.Pa.1992) (court dismissed a civil conspiracy claim against an industry trade association because plaintiffs did not allege "that the object of defendants' alleged agreement was to injure plaintiffs"). Plaintiffs' claim that HPVA possessed the necessary intent to injure them boils down to an assertion that HPVA was aware that its actions were injuring "members of the Plaintiffs' class, the users and consumers of plywood wall paneling products." Pls.S.J.Opp. at 28. This generalized statement is an insufficient factual predicate upon which to rest a finding that HPVA acted with the specific intent to harm the plaintiffs.

Further, plaintiffs cannot show that they incurred the

type of "special damage" required under South Carolina law. Any damage arising from the alleged civil conspiracy must be somehow greater or different than that arising from a related substantive tort. *Todd v. South Carolina Farm Bureau Mut. Insur. Co.*, 276 S.C. 284, 278 S.E.2d 607, 611 (1981) (conspiracy count dismissed where plaintiff could "recover no additional damages" on the conspiracy count); *Vaught v. Waites*, 300 S.C. 201, 387 S.E.2d 91, 95 (S.C.App.1989) (civil conspiracy claim dismissed where "[t]he damages sought in the conspiracy cause of action are the same as those sought in the breach of contract cause of action"); *Lee v. Chesterfield General Hospital, Inc.*, 289 S.C. 6, 344 S.E.2d 379, 381 (S.C.App.1986) ("The gravamen of the tort is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se.").

***14** Plaintiffs have shown no "special damage" due to any allegedly conspiratorial acts by HPVA. Their conspiracy count merely restates the damages they suffered allegedly due to defendants' tortious conduct. This is insufficient as a matter of law. In *Todd*, for example, the Supreme Court of South Carolina held that a civil conspiracy count must be dismissed where the claim "does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy." 278 S.E.2d at 611; *see Vaught v. Waites*, 300 S.C. 201, 387 S.E.2d 91, 95 (1989); *Brooks v. Fagan*, 1993 WL 153921, *4 (D.S.C. March 16, 1993) (summary judgment entered for defendants where "plaintiff has neither alleged in the Complaint nor offered into the record any facts to support her claim of civil conspiracy other than those facts used to support her other causes of action"). Plaintiffs assert that *Todd* and *Vaught* are irreconcilable with *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (S.C.App.1987). They suggest that *Todd* should be limited to the proposition that double recovery of damages is not permitted and that plaintiffs must elect their remedies. The Court does not read this controlling precedent to that effect. *Todd* involved review of a decision upholding a demurrer on four counts. The South Carolina Supreme Court remanded the case on three of the tort claims but upheld the demurrer on the conspiracy claim. 278 S.E.2d at 611-12. Plaintiffs' proposed reading of *Todd* is inconsistent with the facts of the case. In contrast, *Island Car Wash* involved a case which had been brought as a one count civil conspiracy action. The trial judge held that the case should have been styled as a fraud and deceit action, and dismissed the complaint because it did not adequately plead fraud and deceit. The appellate court merely held that the complaint did state a cause of action for civil conspiracy. 358 S.E.2d at 153.

South Carolina civil conspiracy law clearly requires plaintiffs to allege and prove that they suffered different damage from the conspiracy over and above the damages they allegedly incurred due to the fire in their home. Because plaintiffs have failed to put forth any evidence tending to prove that their tort and conspiracy damages differ, HPVA is entitled to summary judgment on plaintiffs' civil conspiracy claims.

Finally, plaintiffs have failed to show that any alleged conspiracy involving HPVA was a proximate cause of the harm they suffered. Under all of the legal theories asserted against HPVA, including civil conspiracy, plaintiffs must show that some action by HPVA was the proximate cause of their injuries. *Ryan v. Eli Lilly & Co.*, 514 F.Supp. 1004, 1006-07 (D.S.C.1981) ("Proof connecting the defendant with the instrumentality of the alleged defect is necessary regardless of the theory upon which plaintiff relies"). As discussed above, plaintiffs have raised no genuine issues of material fact regarding causation.

***15** In summary, the Court has reviewed all of the evidence in the record and considered all of the arguments raised by the parties. [FN15] For the reasons set forth above, plaintiffs have not demonstrated any genuine issues of material fact with respect to their claims against HPVA, and HPVA is entitled to judgment as a matter of law.

> FN15. Plaintiffs contended that HPVA violated the reporting provision of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2501 *et. seq. See,* Complaint ¶ XXXII. They have conceded that their claims under the CPSA do not state a cause of action against HPVA under controlling precedent.

> *See* Memorandum in Opposition to HPVA's Motion to Dismiss at 17-8 (Jan. 24, 1995). Therefore, HPVA is entitled to summary judgment on the CPSA claims. Finally, HPVA moved for summary judgment based on the South Carolina Statute of Repose, S.C.Code Ann. § 15-3-640 *et seq.*, which absolutely bars actions based on improvements to real property completed more than thirteen years before commencement of the action. Because of the Court's findings, the Court need not address HPVA's arguments under the Statute of Repose.

THEREFORE, this Court hereby grants HPVA's motion for summary judgment as to all counts of the complaints.

IT IS SO ORDERED.

CLARIFYING *ORDER*

These matters are before the Court on Plaintiffs' Motion to Clarify Order of March 6, 1996 and Reconsider this Court's grant of Summary Judgment to the Hardwood Plywood & Veneer Association ("HPVA").

To clarify, this Court's March 6, 1996 order enunciated that this case was dismissed as settled, with both parties granted leave to reopen the case within 60 days if the settlement was not consummated. HPVA is not a part of that settlement. Thus, this case has been settled as to Plaintiffs and Georgia Pacific and *not* as to Plaintiffs and HPVA.

As to Plaintiffs' Motion to Reconsider, Plaintiffs have failed to show sufficient reason for this Court to reconsider its Order granting HPVA summary judgment. Accordingly, Plaintiffs' Motion to Reconsider is denied.

Furthermore, the clerk is directed to enter judgment in favor of the HPVA based on this Court's grant of summary judgment to the HPVA if it has not already done so.

IT IS SO ORDERED.

Not Reported in F.Supp., 1996 WL 498410 (D.S.C.)

Motions, Pleadings and Filings **(Back to top)**

• 1994 WL 16188899 (Trial Pleading) Complaint (Oct. 14, 1994)

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