

**FOR THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Bankers Standard Insurance)
Company,)
)
Plaintiff,)
)
v.)
)
Earthcore Industries, LLC; Icerock,)
Inc.; Icerock, LLC; and West Cobb)
Construction & Consulting, Inc.,)
)
Defendants.)

CIVIL ACTION
FILE NO.: _____

COMPLAINT FOR PROPERTY DAMAGE

Plaintiff Bankers Standard Insurance Company sues Defendants Earthcore Industries, LLC, Icerock, Inc., Icerock, LLC and West Cobb Construction & Consulting, Inc., as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff Bankers Standard Insurance Company is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania.
2. Defendant Earthcore Industries, LLC is a Delaware limited liability company with its principal place of business at 6899 Phillips Industrial Boulevard, Jacksonville, Florida 32256. Defendant Earthcore Industries, LLC may be served

with process by service upon its registered agent: Corpdirect Agents, Inc., 900 Old Roswell Lakes Parkway, Suite 310, Roswell, Georgia 30076.

3. Defendant Icerock, Inc. is a Florida corporation with its principal place of business at 6899 Phillips Industrial Boulevard, Jacksonville, Florida 32256. Defendant Icerock, Inc. may be served with process by service upon its registered agent: Gresham R. Stoneburner, at Stoneburner Berry & Simmons, P.A., 841 Prudential Drive, Suite 1400, Jacksonville, Florida 32207.

4. Defendant Icerock, LLC is a Florida limited liability company with a principal place of business at 6899 Phillips Industrial Boulevard, Jacksonville, Florida 32256. Defendant Icerock, LLC may be served with process by service upon its registered agent: Gresham R. Stoneburner, at Stoneburner Berry & Simmons, P.A., 841 Prudential Drive, Suite 1400, Jacksonville, Florida 32207.

5. Defendant West Cobb Construction & Consulting, Inc. is a Georgia corporation with its principal place of business at 1795 Benningfield Drive, Marietta, Georgia 30064. Defendant may be served with process by service upon its CEO, CFO, and Secretary: Billy Murdock, 1795 Benningfield Drive, Marietta, Georgia 30064.

6. This court has jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and

costs, and there is complete diversity of citizenship between Plaintiff and Defendants.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district and the property at issue is situated in this judicial district.

ALLEGATIONS OF FACTS COMMON TO ALL COUNTS

8. This claim arises from the November 26, 2012, fire at the home of Marshall Hunt in Atlanta, Georgia.

9. At the time of the fire, and at all other times material to this action, the Hunt home was insured by Plaintiff Bankers Standard Insurance Company.

10. As a consequence of the fire, and in accordance with the terms and conditions of its policy of insurance issued to Hunt, Plaintiff Bankers Standard has indemnified Hunt for his losses arising from the fire, and will continue to indemnify Hunt for his losses until adjustment of this loss is complete.

11. Pursuant to its indemnification of Hunt as required by its insurance policy, Plaintiff Bankers Standard is subrogated to all of Hunt's rights, claims, and causes of action against those parties responsible for the November 26, 2012, fire to the extent of its indemnification.

12. Plaintiff's investigation has revealed that the home was built for Hunt by Delany and Rossetti Construction.

13. Construction of the home included the installation of an "Isokern" brand fireplace.

14. Defendant Earthcore Industries, LLC is the exclusive manufacturer and distributor of Isokern fireplaces in North America. It is in the business of manufacturing, distributing, selling, installing, and servicing Isokern fireplaces.

15. Upon information and belief, Defendants Icerock, Inc. and Icerock, LLC are also involved in the manufacturing, distributing, selling, installing, and servicing of Isokern fireplaces. Hereinafter, Defendants Earthcore Industries, LLC, Icerock, Inc. and Icerock, LLC will be referred to collectively as "Earthcore."

16. The Isokern fireplace is a manufactured fireplace made up of prefabricated pumice blocks. The blocks are assembled on site and mortared together to create a fireplace.

17. Delany and Rossetti Construction purchased the Isokern fireplace from Earthcore and hired Earthcore to install the Isokern fireplace in the Hunt home.

18. Upon information and belief, Earthcore subcontracted with Defendant West Cobb Construction & Consulting, Inc. to perform the installation.

19. Sometime after occupying the home, Hunt noticed a crack in the back wall of the firebox of the fireplace.

20. Hunt contacted his builder, Delany and Rossetti, to have the crack repaired.

21. Delany and Rossetti contacted Earthcore to repair the crack. Upon information and belief, Earthcore sent West Cobb to repair the crack.

22. Earthcore and/or West Cobb attempted to repair the crack by making surface repairs inside the firebox where the crack was visible.

23. Earthcore and/or West Cobb's attempt to make surface repairs to the crack was improper because the crack was not a surface crack. Rather, the crack extended from the inside of the firebox to the back, exterior wall of the fireplace, which was adjacent to the wall of the master bedroom in the Hunt home.

24. At all times after its installation, Hunt used the fireplace in accordance with its intended purpose and in accordance with the Isokern's instructions and directions.

25. After its installation, Hunt made no changes or alterations, other than to request the repair after the crack was noticed.

26. At all times, Hunt used due care in the use of the fireplace, to include promptly requesting repair when he noticed the crack in the firebox.

27. On November 26, 2012, Hunt used the fireplace in accordance with its intended purpose and in its intended manner to burn wood logs.

28. Hunt's use of the fireplace on November 26, 2012, and at all other times, was in accordance with its intended use and in accordance with the manufacturer's instructions and directions.

29. At the time Hunt used the fireplace on November 26, 2012, it was in the same condition as when received from its manufacturer Earthcore, installed by Earthcore, and repaired by Earthcore.

30. On November 26, 2012, after a few hours of use, a fire began inside the wall that separated the master bedroom from the fireplace. The fire spread from this location and caused extensive damage to the Hunt home and its furnishings, and rendered the home unusable as a residence.

31. Plaintiff's investigation showed that the surface repair of the crack in the firebox had failed, and that the crack had reopened, creating a pathway from inside the firebox to the outside wall of the fireplace adjacent to the master bedroom.

32. Plaintiff's investigation revealed that this crack caused ignition of combustible materials inside the wall separating the fireplace from the master bedroom, resulting in the fire at issue.

COUNT I – EARTH CORE – NEGLIGENT INSTALLATION

33. Pursuant to its installation of the Isokern fireplace, Earthcore owed to Hunt the duty to ensure that the fireplace was installed properly and safely so as to avoid exposing Hunt to an unreasonable risk of injury to his person and property.

34. Earthcore breached the duty it owed to Hunt by:

- A. Failing to ensure that the fireplace was installed properly and safely;
- B. Improperly installing defective blocks in the fireplace that were cracked and/or unduly susceptible to cracking;
- C. Failing to ensure that the fireplace was installed in such a manner that it was not susceptible to cracking;
- D. Failing to properly supervise the installation of the fireplace to ensure that it was done properly and safely; and
- E. Other acts or omissions as discovery may reveal.

35. The damages complained of are the direct, proximate, and foreseeable result of Defendant Earthcore's breach of duty and negligence.

COUNT II – EARTHCORE – NEGLIGENT REPAIR

36. Pursuant to its repair of the fireplace after the crack was detected in the firebox, Earthcore owed to Hunt the duty to repair the crack in a proper and safe manner so as to avoid exposing Hunt to an unreasonable risk of injury to his person and property.

37. Earthcore breached the duty it owed to Hunt by:

- A. Failing to properly and safely repair the crack found in the Isokern fireplace;
- B. Failing to properly supervise the repair of the crack to ensure that repairs were performed properly and safely; and
- C. Other acts or omissions as discovery may reveal.

COUNT III – WEST COBB – NEGLIGENT INSTALLATION

38. Pursuant to its installation of the Isokern fireplace, West Cobb owed to Hunt the duty to ensure that the fireplace was installed properly and safely so as to avoid exposing Hunt to an unreasonable risk of injury to his person and property.

39. West Cobb breached the duty it owed to Hunt by:

- A. Failing to ensure that the fireplace was installed property and safely;

- B. Improperly installing defective blocks in the fireplace that were cracked and/or unduly susceptible to cracking;
- C. Failing to ensure that the fireplace was installed in such a manner that it was not susceptible to cracking;
- D. Failing to properly supervise the installation of the fireplace to ensure that it was done properly and safely; and
- E. Other acts or omissions as discovery may reveal.

40. The damages complained of are the direct, proximate, and foreseeable result of Defendant West Cobb's breach of duty and negligence.

COUNT IV – WEST COBB – NEGLIGENT REPAIR

41. Pursuant to its repair of the fireplace after the crack was detected, West Cobb owed to Hunt the duty to repair the crack in a proper and safe manner so as to avoid exposing Hunt to an unreasonable risk of injury to his person and property.

42. West Cobb breached the duty it owed to Hunt by:
- A. Failing to properly and safely repair the cracks found in the Isokern fireplace;
 - B. Failing to properly supervise the repair of the cracks to ensure that repairs were performed properly and safely; and

C. Other acts or omissions as discovery may reveal.

WHEREFORE, Plaintiff demands judgment in its favor against Defendants in an amount to be determined at trial, plus interest, costs, and any and all further relief at law or equity which this Court deems just and proper.

This 14th day of February, 2013.

s/ David M. Bessho

David M. Bessho

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