

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
EASTERN DIVISION**

**ISAIAH EVANS, et al.,**

**Plaintiffs,**

**v.**

**WALTER INDUSTRIES, INC., et al.,**

**Defendants.**

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**CV-05-BE-1017-E**

**ORDER**

This case comes before the court on the following motions: “Defendant U.S. Pipe and Foundry Company, LLC’s Motion to Dismiss Plaintiffs’ Third Amended Complaint” (doc. 162); “Motion of Defendant Phelps Dodge Industries, Inc. to Dismiss the Third Amended Complaint for Failure to State a Claim Upon Which Relief Can Be Granted” (doc. 165); “FMC’s and United Defense’s Motion to Dismiss the Third Amended Complaint With Prejudice” (doc. 166); “MW Custom Papers, LLC’s Motion to Dismiss Plaintiffs’ Third Amended Complaint” (doc. 168); “Plaintiffs’ Request for Oral Argument” (doc. 175); and another “Plaintiffs’ Request for Oral Argument” (doc. 181). The parties have fully briefed these motions.

For the reasons stated in the memorandum opinion entered contemporaneously, U.S. Pipe’s motion (doc. 162), Phelps Dodge’s motion (doc. 165), FMC’s and United Defense’s motion (doc. 166), and MW Custom’s motion (doc. 168) are hereby GRANTED IN PART and DENIED IN PART.

Specifically, the court concludes that the Class 4 claims asserted against MW Custom and Phelps Dodge are barred by the Alabama rule of repose and will be DISMISSED.

The court concludes that other claims may also be barred by the rule of repose or by the relevant statutes of limitations, but the court cannot determine which ones without evidence unavailable at this stage of the proceedings. Accordingly, the Defendants' motions to dismiss these other claims on the basis of the statutes of limitations and rule of repose will be DENIED WITHOUT PREJUDICE.

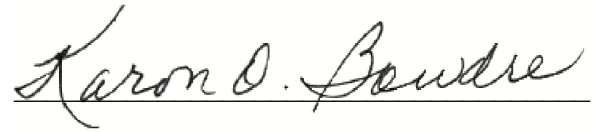
Further, the court finds that the Class 4 Plaintiffs failed to state a claim for trespass against all Defendants. The Class 4 claim for trespass will be DISMISSED.

The court also finds that the Class 4 Plaintiffs lack standing to assert the claims against FMC, United Defense, and Phelps Dodge for damage to their properties resulting from the migration of contaminated foundry sand from deposited sand on neighboring property. These Class 4 claims will be DISMISSED.

To the extent Count Five requests an injunction directing Defendants to cease the conduct described in the Third Amended Complaint, it will be DISMISSED as moot. The court cannot determine the extent to which it lacks subject matter jurisdiction over the remainder of Count Five. Thus, the court RESERVES RULING on the motions to dismiss the property clean-up portion of the injunctive relief request. The parties are ORDERED to meet and confer and, within thirty days from the entry of this order, present to the court a joint proposal for addressing this issue.

The following additional claims survive the motions to dismiss and will proceed: the Class 1, 2, and 3 trespass claims against FMC, United Defense, Phelps Dodge, and MW Custom; the Class 2 nuisance claim against U.S. Pipe; and the wantonness, negligence, and nuisance claims against all of the Defendants.

DATED this 23rd day of September, 2008.

A handwritten signature in cursive script, reading "Karon O. Bowdre", is written above a horizontal line.

KARON OWEN BOWDRE  
UNITED STATES DISTRICT JUDGE