

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
Attorney General,

Petitioner,

v.

CIVIL ACTION NO. 18-C-994
JUDGE Bloom

NEW RIVER FIREWOOD, LLC;
POWER TRUST EQUIPMENT, LLC;
JAMES L. SOWDER, Individually and as
member/manager of New River Firewood, LLC
and as member/manager of Power Trust Equipment, LLC;
CYNTHIA M. SOWDER, as member of New River Firewood, LLC;
and JERRY W. ZIMMERMAN, as member/manager
of Power Trust Equipment, LLC

Defendants/Respondents.

**COMPLAINT AND PETITION FOR PERMANENT INJUNCTION, CONSUMER
RESTITUTION, CIVIL PENALTIES AND OTHER APPROPRIATE RELIEF**

This action is brought pursuant to the West Virginia Consumer Credit and Protection Act, West Virginia Code §§ 46A-1-101 *et seq.* (hereinafter “WVCCPA”). Plaintiff/Petitioner, the State of West Virginia ex rel. Patrick Morrissey, Attorney General (hereinafter “the State”) has reason to believe the above-named Defendants/Respondents, New River Firewood, LLC, James L. Sowder, individually and member/manager of New River Firewood, LLC, and Cynthia M. Sowder, member of New River Firewood, LLC (hereinafter collectively referred to as “NRF”), and Power Trust Equipment, LLC, and Jerry W. Zimmerman, member/manager of Power Trust Equipment, LLC (hereinafter collectively referred to as “Power Trust Equipment”) have violated the WVCCPA. The State brings this action to enjoin and restrain NRF and Power Trust Equipment

from engaging in unfair or deceptive acts or practices in regard to the sale of log splitters, and to secure redress for consumers who were harmed by NRF's business practices. The State seeks permanent injunctive relief and other equitable relief including, but not limited to, restitution for consumers who were harmed by NRF's business practices, court costs, investigative costs and attorneys' fees, and penalties of \$5,000.00 for each violation of the WVCCPA.

I.
PARTIES

The Plaintiff

1. The Plaintiff, the State of West Virginia, brings this action by and through Patrick Morrissey, Attorney General for the State of West Virginia. The Attorney General is authorized to bring this action pursuant to W. Va. Code §§ 46A-7-108, -110, and -111.

The Defendants

2. New River Firewood, LLC, is a member-managed West Virginia limited liability company.

3. New River Firewood, LLC's, principal place of business is located in Fayette County, West Virginia, specifically, 397 Ames Heights Road, Lansing, West Virginia.

4. James L. Sowder is a resident of Fayette County, West Virginia, specifically, 397 Ames Heights Road, Lansing, West Virginia 25862.

5. James L. Sowder is, and has been, a member and manager of New River Firewood, LLC, at all times pertinent hereto. He runs the day-to-day operations of the company, conducting all sales and services, collecting payments from consumers, negotiating contracts with consumers, resolving consumer complaints, ordering supplies, and all other activities of the company.

6. James L. Sowder managed and controlled the day-to-day business operations of New River Firewood, LLC, during the relevant time period.

7. Cynthia M. Sowder, member of New River Firewood, LLC, is a resident of Fayette County, West Virginia, specifically, 397 Ames Heights Road, Lansing, West Virginia 25862.

8. Power Trust Equipment, LLC, is a manager-managed West Virginia limited liability company, with its principal place of business located in Fayette County, West Virginia, specifically, 397 Ames Heights Road, Lansing, West Virginia.

9. Upon information and belief, James L. Sowder organized Power Trust Equipment, LLC, and, initially, listed Jerry W. Zimmerman as manager until at least 2015.

10. Upon information and belief, Jerry W. Zimmerman, manager of Power Trust Equipment, LLC, is a resident of Fayette County, West Virginia, specifically, HC 82 Box 34B, Rainelle, West Virginia.

11. Upon information and belief, James L. Sowder became the sole manager of Power Trust Equipment, LLC from 2015 and thereafter.

II. JURISDICTION AND VENUE

12. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution and W. Va. Code § 51-2-2.

13. Venue is proper in this Court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1.

III. PROCEDURAL FACTS

14. NRF sold firewood and log splitters.

15. The log splitters were gas powered splitters intended to be used to cut large quantities of firewood.

16. NRF represented that Power Trust Equipment manufactured the log splitters.

17. NRF and Power Trust Equipment were both operated by James L. Sowder.

18. Between 2014 and 2016, the West Virginia Attorney General's office received complaints from eight (8) consumers regarding NRF log splitters they had purchased online.

19. Consumers complained that the log splitters malfunctioned shortly after the consumers began using them and NRF failed to repair the log splitters and/or refused to refund consumers' payments.

20. Specifically, consumers complained that the wood splitter curled, wedges broke due to defective materials or welds, and that hydraulic hose fittings blew off due to inadequate clamps.

21. By the very nature of a gas powered log splitter, there exists a high risk of physical injury associated with the use of a defective log splitter.

22. Two (2) consumers successfully disputed the charges of the log splitters with their credit card company.

23. Three (3) consumers did not provide the State with requested additional information.

24. Three (3) consumer complaints remain unresolved and each seeks restitution for their purchases of the defective log splitters.

25. The Attorney General issued a subpoena for documents to NRF and Power Trust Equipment in 2015. Neither business responded to the Attorney General's subpoena.

26. NRF and Power Trust Equipment products may now be unavailable for purchase.

Background and Applicable Law

27. NRF engaged in the business of selling firewood and gas powered log splitters from its principal office in the State of West Virginia. As such, NRF business practices are subject to

28. The WVCCPA provides: “[u]nfair methods of competition and unfair or deceptive act or practices in the conduct of any trade or commerce are hereby declared unlawful.” See W. Va. Code § 46A-6-104.

29. Repeated and willful violations of the WVCCPA may subject the violator to civil penalties of up to \$5,000.00 for each violation, in accordance with W. Va. Code § 46A-7-111(2).

IV. RELEVANT PERIOD OF TIME

30. The relevant period of time for the events complained of in this complaint was between the years 2014 through 2016.

V. STATEMENT OF FACTS

The Attorney General’s Investigation

30. The Attorney General received complaints from consumers reporting that they paid for and received defective equipment (log splitters) from NRF.

31. The consumers either requested NRF to repair the defective log splitters or refund their payments.

32. NRF refused to repair the defective equipment or provide the consumers refunds.

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION (Breach of the implied warranty of merchantability in violation of W. Va. Code §§ 46-2-314 and 46A-6-104)

33. The State repeats and alleges the allegations set forth in paragraphs 1 through 32 and, in addition thereto, alleges the following:

34. West Virginia Code § 46-2-314 provides, in pertinent part that:

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description;

* * * *

(c) are fit for the ordinary purposes for which such goods are used

W. Va. Code § § 46-2-314(2)(a), (c).

35. West Virginia Code § 46A-6-102 provides that:

“Merchantable” means, in addition to the qualities prescribed in [§ 46-2-314] of this code, that the goods conform in all material respects to applicable state and federal statutes and regulations establishing standards of quality and safety of goods and, in the case of goods with mechanical, electrical or thermal components, that the goods are in good working order and will operate properly in normal usage for a reasonable period of time.

W. Va. Code § 46A-6-102(c).

36. NRF sold consumers log splitters that failed to conform to state and federal safety standards.

37. NRF sold consumers gas powered log splitters that would not pass without objection in the trade under the contract description. See Exhibits 1, 2, and 3.

38. NRF sold consumers gas powered log splitters that were not fit for the ordinary purposes for which such goods are used. See Exhibits 1, 2, and 3.

39. NRF sold consumers gas powered log splitters that failed to operate properly in normal usage for a reasonable period of time. See Exhibits 1, 2, and 3.

40. NRF breached the implied warranty of merchantability when it failed and/or refused to perform repairs to bring the gas powered log splitters to the standards of the merchantability requirements.

41. NRF’s breach of the implied warranties of merchantability constitutes unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-104.

SECOND CAUSE OF ACTION
**(Limiting or refusing to provide a remedy arising
by operation of law for breach of warranty in
violation of W. Va. Code § 46A-6-107(2).)**

42. The State repeats and alleges the allegations set forth in paragraphs numbered 1 through 41 and, in addition thereto, alleges the following:

43. West Virginia Code § 46A-6-107 provides that no merchant shall “exclude, modify or attempt to limit any remedy provided by law . . . for a breach of warranty, express or implied.” W. Va. Code § 46A-6-107(2).

44. West Virginia Code § 46-2-711 provides that “where . . . a buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved . . . the buyer may cancel . . .” the contract.

45. Upon discovery of NRF’s breach of the implied warranty of merchantability, consumers rightfully and justifiably revoked their acceptances of the gas powered log splitters and advised NRF of their desire to return the defective product and have their payments refunded. See Exhibits 1, 2, and 3.

46. NRF’s conduct violates W. Va. Code § 46A-6-107.

47. NRF’s conduct constitutes unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-104.

THIRD CAUSE OF ACTION
**(Personal Liability of James L. Sowder for the Unlawful Actions and
Unfair or Deceptive Acts or Practices Committed in the Names of
New River Firewood, LLC and Power Trust Equipment, LLC)**

48. The State repeats and alleges the allegations set forth in paragraphs numbered 1 through 47 and, in addition thereto, alleges the following:

49. James L. Sowder personally organized and ran both New River Firewood, LLC and Power Trust Equipment, LLC; therefore, he was personally involved with the manufacturing, advertising and selling of the defective gas powered log splitters.

50. James L. Sowder personally accepted payment from consumers for the defective equipment he provided.

51. New River Firewood, LLC and Power Trust Equipment, LLC are merely the alter egos of James L. Sowder.

52. The business scheme created by James L. Sowder and promoted under the names of New River Firewood, LLC and Power Trust Equipment, LLC was for the purpose of inducing consumers to pay for the defective equipment that he provided.

53. James L. Sowder was the sole beneficiary of the money obtained through the unlawful and unfair or deceptive acts or practices he committed in the name of New River Firewood, LLC and Power Trust Equipment, LLC.

54. It is in the public interest to disregard the legal fiction that New River Firewood, LLC and Power Trust Equipment, LLC are separate entities from its owner, James L. Sowder.

55. To provide James L. Sowder a corporate shield would result in inequitable consequences.

VII. **INJUNCTIVE RELIEF**

56. The State repeats and alleges the allegations set forth in paragraphs numbered 1 through 55 and, in addition thereto, alleges the following:

57. Pursuant to the West Virginia Consumer Credit and Protection Act, including notably W. Va. Code §§ 46A-7-108 through -110, the State seeks to temporarily and permanently enjoin the Defendants/Respondents from any ongoing current violations as well as prohibit similar unlawful conduct in the future.

58. The State also seeks an immediate temporary injunction restraining the Defendants/Respondents from soliciting, marketing, manufacturing or selling gas powered log splitters until such time as this Court may make a final determination in this matter.

VIII.
PRAYER FOR RELIEF

WHEREFORE, the State requests that the Court grant the following relief against the Defendants/Respondents, jointly and severally:

Temporary Relief

That this Court schedule a hearing on this petition for preliminary injunction and enter an order that:

1. Temporarily restrains the Defendants/Respondents from engaging in the sale of consumer goods in the State of West Virginia until such time as this matter is resolved.

Permanent Relief

The State further requests that, upon a final hearing, this Court grant the following permanent relief:

1. An Order declaring the conduct of New River Firewood, LLC, Power Trust Equipment, LLC and James L. Sowder, as described herein, to be in violation of the WVCCPA;
2. An Order declaring James L. Sowder, as sole member and manager of New River Firewood, LLC and Power Trust Equipment, LLC to be personally liable for all actions done in the name of New River Firewood, LLC and Power Trust Equipment, LLC, for the payment of all money awarded to the State by this Court, and subject to all injunctive relief order by this Court;

3. An Order requiring that the Defendants/Respondents, jointly and severally, be required to provide full refunds to all consumers who complained to the Attorney General that they paid New River Firewood, LLC for the defective equipment;

4. An Order requiring the Defendants/Respondents, jointly and severally, to pay the State of West Virginia a civil penalty of Five Thousand Dollars (\$5,000.00) for each and every violation of the Act, pursuant to W. Va. Code § 46A-7-111(2), and further requiring that said sum shall be used at the discretion of the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement or litigation costs and services incurred for consumer protection purposes; to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers;

5. An Order requiring that the funds for refunds and civil penalties be paid to the State within ten (10) days of the entry of the order;


6. An Order requiring that the Defendants/Respondents, jointly and severally, pay the cost of investigation, litigation, and administration of this matter and the State's attorney fees; and

7. An Order granting other further relief as this Court may deem just and proper.

Respectfully submitted,

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
Attorney General

By counsel



MICHAEL M. MORRISON (WVSB #9822)
ASSISTANT ATTORNEY GENERAL

Consumer Protection Division
West Virginia Attorney General's Office
Post Office Box 1789
Charleston, West Virginia 25326-1789
Telephone: 304-558-8986
Facsimile: 304-558-0184

AFFIDAVIT OF RUSSELL MILLER

STATE OF NEW YORK,
COUNTY OF SULLIVAN, TO-WIT:

I, Russell Miller, being over the age of eighteen (18) years, after first being duly sworn under oath, do hereby depose and aver as follows:

1. I am a resident of Livingston Manor, New York.
2. On or about June 29, 2014 I ordered an upgraded 45 ton log splitter, horizontal with hydraulic log lift, from New River Firewood, LLC. I paid \$3,795.00 for the log splitter plus \$25.00 for lift gate delivery. A copy of the order confirmation is attached hereto and incorporated by reference herein as Exhibit A.
3. On July 15, 2014 I contacted New River Firewood because the log stand was folding up during the setup of the splitter. New River Firewood informed me that it was a manufacturer's issue. I requested New River Firewood send me a replacement part, but New River Firewood advised me to have a welder fix it and New River Firewood would reimburse me.
4. I paid E & B Construction \$150.00 on July 20, 2014 to repair the log stand. Although I submitted the receipt for payment to New River Firewood, it never reimbursed me for the repair. A copy of this receipt is attached hereto and incorporated by reference herein as Exhibit B.
5. On August 7, 2014 I used the splitter for the first time. Within ten (10) minutes of use, the vertical wedge, 4-way wedge and 4-way cylinder mangled. Two hydraulic fluid hoses also blew off the splitter. Copies of photographs of the log splitter are attached hereto and incorporated by reference herein collectively as Exhibit C.
6. I contacted New River Firewood and was told to return the 4-way wedge and the hydraulic hoses. New River Firewood promised to send me replacement hoses, a new 4-way wedge, and a vertical wedge made of hardened steel.

EXHIBIT
1

7. I returned the damaged parts on August 11, 2014.
8. On or about August 26, 2014 I received a box of parts from New River Firewood. The box contained the same 4-way wedge I had returned, a vertical wedge that was not made of hardened steel as promised, and a cylinder. New River Firewood did not send the hydraulic hoses as promised.
9. I called New River Firewood the same day I received the box of parts. New River Firewood said that it would send the hoses and 4-way wedge after I returned it, again. I followed up my telephone call with an email on August 27, 2014 requesting that New River Firewood go ahead and send out the new parts and I would mail the defective ones back. I did not want any further delays waiting for parts for my new log splitter.
10. Although I returned the parts, as requested, I never received the replacement hoses or the new 4-way wedge. I never received a vertical wedge made of hardened steel.
11. After my attempts to resolve the problems with the splitter on my own were unsuccessful, I filed a complaint with the West Virginia Attorney General's Consumer Protection Division.
12. I also took the log splitter to D.C. Fabrication & Welding, Inc. The owner, Daniel Coutermash, wrote two (2) letters regarding his evaluation of the log splitter. Copies of these letters are attached hereto and incorporated by reference herein as Exhibits D and E.
13. Mr. Coutermash stated that the log splitter I purchased from New River Firewood was sure to fail because the wedges were not made of hardened or alloy steel and were undersized for the amount of pressure exerted by the 45-ton ram.
14. Mr. Coutermash estimated that it would cost \$1,160.00 to make the log splitter safely operable.
15. I believe I am entitled to a full refund of \$3,820.00 insofar as I have never been able to use the log splitter for the purpose it was intended.

15. I believe I am entitled to a full refund of \$3,820.00 insofar as I have never been able to use the log splitter for the purpose it was intended.

16. The documents attached hereto as exhibits are true and accurate copies of documents I provided to the West Virginia Attorney General's Consumer Protection Division.

17. This is my complete statement.

Dated this 1st day of June, 2018.

Russell Miller
RUSSELL MILLER

Taken, subscribed and sworn to before me this 1st day of June, 2018 in the county and state aforesaid.

My commission expires 10/15/2021.

Laura J. Pasquale
NOTARY PUBLIC

LAURA J PASQUALE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01PA6290884
Qualified in Sullivan County
My Commission Expires Oct. 15, 2021

Dec 04 14:02:24p

Russell Miller

845-439-4984

p.4

Order Confirmation Notice

Page 1 of 1

From: service <service@newriverfirewood.com>
To: josh44 <josh44@aol.com>
Subject: Order Confirmation Notice
Date: Sun Jun 29, 2014 8:16 am

Russell Miller,

Thank you for shopping with New River Firewood LLC at <http://www.newriverfirewood.com>.

This automated e-mail serves as your receipt. Please do not reply to this e-mail.

Order Summary

Invoice #: 0000002092

Order Date: Sun, Jun 29, 2014 05:18:45

Payment:
\$3,820.00 has been charged to your Visa card numbered XXXX-XXXX-XXXX-4678.

Order Contents:

Qty	Item #	Description	Price Each
Total Price			
1	W18-45HFCLE	Upgraded 45 Ton Log Splitter, Horizontal	\$3,795.00
\$3,820.00			
		With Hydraulic Log Lift	
		Lift Gate Delivery Option: lift gate	+\$25.00
		needed at time of delivery	
			Subtotal
\$3,820.00			Tax
\$0.00			Shipping
\$0.00			Balance Due
\$3,820.00			

Shipping Information:

Russell Miller
33 Eastmore Road
Livingston Manor, NY 12753
View your order invoice online by visiting <http://www.newriverfirewood.com/printinvoice.cfm?orderID=0000002092&InvoicePrint=1>
or check the status of your order by phone by calling 1-888-600-1049.

Thank you for shopping with us.

- New River Firewood LLC



(7)

E&B Construction
25 Amber Lake Rd Livingston Manor, NY 12758
(845)-439-3772

7/20/14 Russel Miller

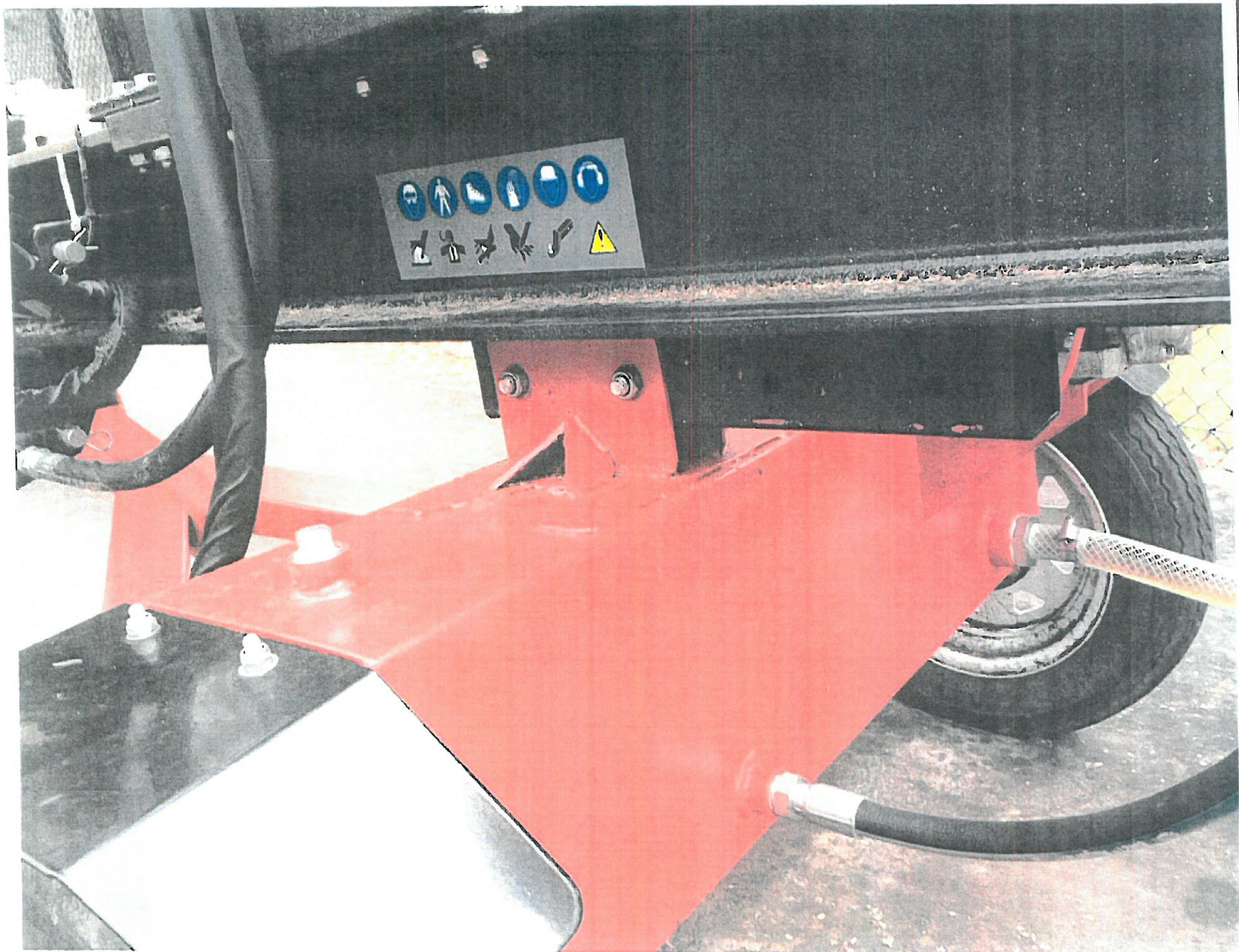
Repaired wood splitter jack at the
Miller residence.

Travel Time
metal — \$150.00
Labor













(6)

D.C. FABRICATION & WELDING. INC.

17 Radcliff ROAD

Ferndale, NY 12734

(845) 292-0215

dcfabweld@gmail.com

To Whom It May Concern,

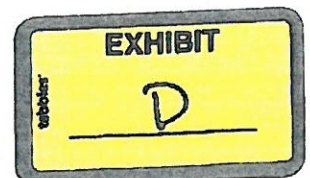
I have been an owner/operator of a metal fabrication business since 1979. I am very familiar with log splitters and have built a dozen or so over the years.

Mr. Miller's New River Firewood log splitter has been in my shop for several weeks. I have had ample time to examine this splitter. I can assure you that this machine has not been abused. Any scratches and missing paint is all superficial and is just a normal appearance from using a log splitter.

As in my prior letter, the only cause for all the damage to this machine is the poor design and construction of the vertical and 4-way wedge. They are both too flimsy for the force generated by a 45 ton ram.

Dan Coutermash, President

12/3/14

*Dan Coutermash - Pres.**RE: RUSSELL MILLER
ARN 1491724840*

(5)

D.C. FABRICATION & WELDING, INC.

17 Radcliff ROAD

Ferndale, NY 12734

(845) 292-0215

dcfabweld@gmail.com

To Whom It May Concern,

I have been an owner/operator of a metal fabrication business since 1979. I am very familiar with log splitters and have built a dozen or so over the years.

Upon careful examination of the New River Firewood splitter sold to Mr. Miller, I observed structural problems with the vertical wedge and 4-way wedge. Both of these wedges are undersized for the amount of pressure exerted by the 45 ton ram.

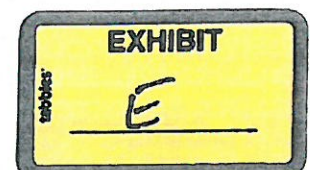
The vertical wedge is hollow and made out of 3/8 inch steel with 1/4 inch back plate. Most of the weld was ground off to allow the 4-way wedge to move up and down, but it also weakened the integrity of the vertical wedge. I can weld the new replacement wedge in the same manner but it would also fail as it appears identical to the original wedge. It too is hollow and seems to be made out of structural steel (not alloy or hardened). This is not a question of if it will fail, but when it will fail.

The current vertical wedge is heavily welded to the top of the I-Beam. This was done to help compensate for the tremendous pressure of the ram. Over time, this too would fail. The vertical wedge I recommend would be made of solid steel and notched into the end of the beam and welded along the full vertical web of the I-beam. This would transfer the stress to the I-beam. My estimate for this work would be \$800.

The wings on the 4-way wedge are 5/8 inch steel. However, the triangle portion is made from 3/8 inch steel and a 1/4 inch steel back plate. Once again, this is not a question of if it will fail, but when it will fail. This needs to be replaced with 5/8 inch steel and a 1/4 inch back plate. The cost is \$360.

Lastly, Mr. Miller indicated that he was charged \$150 for the stand modification. This was a fair price.

Daniel C. Cushman PRES.
Daniel Cushman



AFFIDAVIT OF KENNETH KJEP

STATE OF CONNECTICUT,
COUNTY OF FAIRFIELD, TO-WIT:

I, Kenneth Kjep, being over the age of eighteen, after first being duly sworn under oath, do hereby depose and aver as follows:

1. I am a resident of Sherman, Connecticut.
2. On June 29, 2015, I purchased a 37-ton log splitter with hydraulic lift and adjustable 4-way wedge ("log splitter") from New River Firewood LLC, located in Lansing, West Virginia. A copy of the order confirmation is attached hereto and incorporated by reference herein as Exhibit A.
3. New River Firewood charged a total of \$4,320.00, the price of the log splitter, \$4,295.00, plus lift gate delivery, \$25.00, to my wife's Discover Card on June 29, 2015. A copy of the credit card statement is attached hereto and incorporated by reference here as Exhibit B.
4. The log splitter was delivered on or about July 11, 2015.
5. I used the log splitter twice between July 11, 2015 and March 19, 2016. While splitting wood on March 19, 2016, the weld on the horizontal cross bar on the splitting head broke.
6. I attempted to contact New River Firewood several times between March 19, 2016 and March 23, 2016, but no one answered the phone and, although I left voicemails, no one returned my calls.
7. On March 23, 2016, I emailed New River Firewood, explained my problem, and requested a response. New River Firewood did not respond. A copy of the email is attached hereto and incorporated by reference herein as Exhibit C.
8. I emailed New River Firewood again on March 29, 2016 and attached photographs of the broken part. A copy of the email is attached hereto and incorporated by reference herein as Exhibit D.

**EXHIBIT
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9. I also contacted New River Firewood by certified mail return receipt requested on April 24, 2016. A copy of the letter and return receipt are attached hereto and collectively incorporated by reference herein as Exhibit E.

10. In addition to my email and other correspondence, I called New River Firewood countless times.

11. I never received any response from New River Firewood.

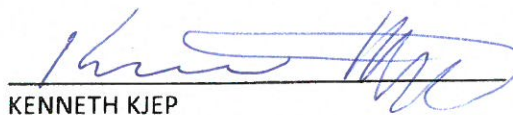
12. On June 1, 2016, I filed a complaint with the West Virginia Attorney General's Consumer Protection Division. I attached a photograph of the log splitter before the weld broke and a photograph of head after the weld broke. Copies of these photographs are attached hereto and collectively incorporated by reference herein as Exhibit F.

13. I would like to return this defective product and receive a full refund of \$4,295.00.

14. All exhibits attached hereto are true and accurate copies of documents I provided to the West Virginia Attorney General's Consumer Protection Division.

15. This is my complete statement.

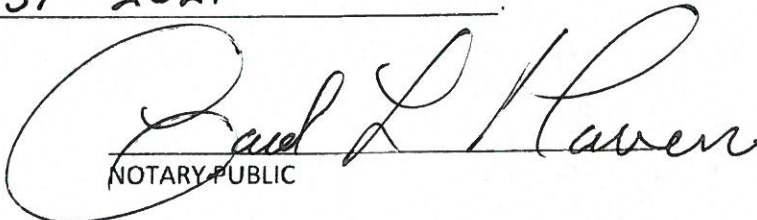
Dated this 6 day of June, 2018.


KENNETH KJEP

Taken, subscribed and sworn to before me in the county and state aforesaid this 6th day of June, 2018.

My commission expires 8-31-2021.




NOTARY PUBLIC

Order Confirmation Notice

Yahoo

Jun 29, 2015 10:22:13 AM

Subject: Order Confirmation Notice

Date: Mon Jun 29 09:56:20 EDT 2015

From: service@newriverfirewood.com

To: jokjep@yahoo.com

kenneth kjep,

Thank you for shopping with New River Firewood LLC at <http://www.newriverfirewood.com>.

This automated e-mail serves as your receipt. Please do not reply to this e-mail.

Order Summary

Invoice #: 0000002557

Order Date: Mon, Jun 29, 2015 06:56:18

Payment:

\$4,320.00 will be charged to your Discover Card card numbered xxxx-xxxx-xxxx-5645.

Order Contents:

Qty	Item #	Description	Price Each	Total Price
1	PTE-37LLHW11502	37 Ton Log Splitter Hydraulic Lift, Adjustable 4 Way Wedge Lift Gate Delivery Option: Lift gate needed at time of delivery	\$4,295.00 +\$25.00	\$4,320.00
Subtotal			\$4,320.00	
Tax			\$0.00	
Shipping			\$0.00	
Balance Due			\$4,320.00	

Shipping Information:

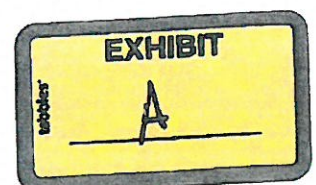
kenneth kjep

87 rte 39 south

sherman, CT 06784

View your order invoice online by visiting

<http://www.newriverfirewood.com/printinvoice.sc?>





Discover® More® Card

Account number ending in 5645

Open Date: Jun 10, 2015 - Close Date: Jul 9, 2015

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CONTACT US



Web
Access your
account securely
at Discover.com



Mobile
Manage your
account anytime,
anywhere at
m.Discover.com



Phone
1-800-DISCOVER
(1-800-347-2683)
TDD 1-800-347-7449



Inquiry
Discover
PO Box 30943
Salt Lake City
UT 84130



Mail Payments
Discover
PO Box 6103
Carol Stream
IL 60197-6103

Transactions

	Trans. Date	Post Date			
Payments and Credits	Jun 25	Jun 25	PAYMENT - THANK YOU	\$	-91.05
Gasoline	Jun 17	Jun 17	SHELL 57545707606 GRANTVILLE PA	\$	29.70
	Jun 18	Jun 18	SHELL 57544201304 SHENANDOAH CAVA		25.38
	Jun 19	Jun 19	AS-N-GO #669 BLOUNTville TN		36.52
	Jun 21	Jun 21	AS-N-GO #669 BLOUNTville TN		17.78
	Jun 22	Jun 22	SHELL 57544708903 MT CRAWFORD VA		29.32
	Jun 23	Jun 23	TURLEY HILL #0249 Q69 HAZLETON PA		34.59
	Jul 2	Jul 2	CT GO 20524030 FRIEN NEW MILFORD CT		97.51
			70524030		
Automotive	Jun 10	Jun 10	NEW FAIRFIELD AUTOMOTIVE NEW FAIRFIELD CT	\$	28.08
	Jun 25	Jun 25	NEW FAIRFIELD AUTOMOTIVE NEW FAIRFIELD CT		27.00
Services	Jun 29	Jun 29	IN *NEW RIVER FIREWOOD 888-6001049 WV	\$	4,320.00
			AIEHTKIJ		
Fees			TOTAL FEES FOR THIS PERIOD	\$	0.00
Interest Charged			TOTAL INTEREST FOR THIS PERIOD	\$	0.00

2015 Totals Year-to-Date

TOTAL FEES CHARGED IN 2015	\$	0.00
TOTAL INTEREST CHARGED IN 2015	\$	0.00

Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Current Billing Period: 30 days

TYPE OF BALANCE	ANNUAL PERCENTAGE RATE (APR)	BALANCE SUBJECT TO INTEREST RATE	INTEREST CHARGE
Purchases	11.99% V	\$0.00	\$0.00
Cash Advances	23.99%	\$0.00	\$0.00
V=Variable Rate			

Information For You

For more information about how interest charges are calculated see your Cardmember Agreement or go to www.discover.com/interestcharges



NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

7
Subject: Broken Horizontal Cross Bar on Splitting Head

From: JoAnn Kjep (jokjep@yahoo.com)

To: service@newriverfirewood.com;

Date: Wednesday, March 23, 2016 3:55 PM

I purchased Item #PTE-27LLHW11502, a 37 ton log splitter hydraulic lift with adjustable 4-way wedge, on June 29, 2015 at a cost of \$4,295.00 + \$25 for lift gate delivery. (Inv. #0000002557)

While splitting wood on Saturday, 3/19/16, the weld on the horizontal cross bar on the splitting head broke. I have attached 2 photos of the broken wedge.

I have attempted to reach you by phone several times daily for the last 3 days, but although your recording indicates someone will return my call, no one has.

Please contact me ASAP by return email at jokjep@yahoo.com.

Sincerely,
Kenneth Kjep
860-354-1941

Attachments

- Break-2.JPG (3.72MB)
- Break-4.JPG (4.56MB)



9

Subject: Log Splitter

From: JoAnn Kjep (jokjep@yahoo.com)

To: jchancey@newriverfirewood.com;

Date: Tuesday, March 29, 2016 2:44 PM

Dear Mr. Chancey,

New River Firewood's website states that "Customer service is something we strive to make a good experience. We are a small, family owned company but we try daily, even on weekends, to check our messages."

I have left 7 phone messages since March 21, 2016 as well as completing your Contact Information form "for faster service" on March 23rd, and as requested was sure "to tell us if you prefer to be contacted by e-mail or telephone." I indicated that either method was satisfactory. March 23rd was also the date that I sent an email to "service@newriverfirewood.com", also as suggested in the "Contact Us" section of your website.

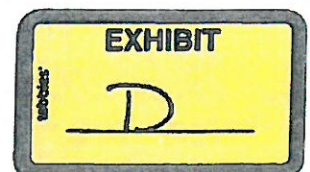
I have a problem with the PTE-27LLHW15502 37-ton log splitter hydraulic lift with adjustable 4-way wedge that I ordered on June 29, 2015. As you can from the attached photo, the horizontal splitting head came apart.

Once again, I ask that you call me, or at least email me and let me know how I can reach you or someone else at New River Firewood who will talk to me to discuss the issue with this very expensive piece of equipment.

Sincerely,
Kenneth Kjep
87 Route 39 S.
Sherman, CT 06784
860-354-1941

Attachments

- Break-5.JPG (4.58MB)



10

Kenneth Kjep
87 Route 39 S.
Sherman, CT 06784
(860) 354-1941

April 24, 2016

Mr. James Sowder
Ms. Cynthia M. Sowder
New River Firewood, LLC
397 Ames Heights Rd.
Lansing, WV 25862

RE: PTE-27LLHW11502

Dear Mr. and Ms. Sowder:

On June 29, 2015 I ordered the above referenced, new, 37 ton log splitter hydraulic lift with adjustable 4-way wedge at a cost of \$4,295 + \$25 for lift gate delivery (Inv. #0000002557).

I used this log splitter twice between the date it was delivered, 7/11/15, and 3/19/16. While splitting wood on Saturday, 3/19, the weld on the horizontal cross bar on the splitting head broke, making it impossible to get a 4-way cut on the wood.

Between my wife and me, we called your company three times on 3/21, and once on 3/22, 3/23, 3/25, 3/28, 3/31, 4/4 and 4/19 – a total of ten phone calls. Each time we heard a phone recording instructing the caller to wait while the call was connected, followed by a recording saying to leave a message.

Additionally, I contacted New River Firewood via your website's Customer Service form on 3/23, as well as by my personal email (from "jokjep@yahoo.com") that same date. I followed up on 3/29/16 with another email addressed to Jeremy Chancey of your company, the person who had notified me when the log splitter shipped in July.

As of this date, no one from your company has contacted me, despite the statement on your company website asserting, "Customer Service is something that we strive to make a good experience. We are a small, family owned company but we try daily, even on weekends, to check our messages."

Although your website shows your current supply of log splitters are all 2016 models, on 4/19/16 I saw that you listed a "2015 Newly Upgraded Horizontal 37 Ton Honda Log Splitter" at a sale price of \$4,595 (the website also stated it is Out-of-Stock.) The description of this splitter included the statement "One Year Manufacturer's Warranty – PTE warranties all their log splitters for at least a period of one year, free of defect. They also support their products after the warranty period and have parts available for purchase."



Page 2

While attempting to research PTE (Power Trust Equipment, LLC) to contact them directly, I discovered that the State of West Virginia lists Mr. James Sowder at 397 Ames Heights Rd., Lansing WV 25862. So apparently you are the one who warranties PTE equipment.

Additionally, I was disturbed at the number of complaints I found on the internet about others experiencing the same lack of customer service, and that your company has an F rating by the Better Business Bureau.

I am requesting one last time that you contact me to discuss my broken log splitter. If I do not hear from you, my next step will be to contact Consumer Protection of the Office of the Attorney General of the State of West Virginia, the BBB, and the Federal Trade Commission Bureau of Consumer Protection. Your lack of response is certainly suggestive of improper business practices and may be considered, as stated on the FTC's website, one of the "businesses that don't make good on their promises or cheat people out of money."

Sincerely,

Kenneth Kjep

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

LANSTING, WV 25862

Certified Mail Fee	\$3.30
Extra Postage & Fees (see instructions)	\$0.00
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Signature Required (hardcopy)	\$0.00
<input type="checkbox"/> Signature Required (electronic)	\$0.00

0784
04

Postmark
Date

Postage \$0.47

Total Postage and Fees \$3.77

04/25/2016

Sent To

Shaw and Son, Inc. PO Box 121

10000 State St

PS Form 3800, April 2015 PSN 7530-02-000-9042

See Reverse for Instructions

7015 3010 0001 8630 2942



USPS Tracking®

[Customer Service ›](#)

Have questions? We're here to help.

[Get Easy Tracking Updates ›](#)[Sign up for My USPS.](#)Tracking Number: **70153010000186302942**

Product & Tracking Information

Postal Product:

First-Class Mail®

Features:

Certified Mail™

May 4, 2016 , 11:37 am

Delivered, Individual Picked
Up at Post Office

LANSING, WV 25862

April 28, 2016 , 8:53 am

Available for Pickup

LANSING, WV 25862

April 28, 2016 , 8:21 am

Arrived at Unit

LANSING, WV 25862

April 27, 2016 , 8:09 pm

Departed USPS Destination
Facility

CHARLESTON, WV 25350

April 27, 2016 , 11:19 am

Arrived at USPS Destination
Facility

CHARLESTON, WV 25350

April 26, 2016 , 1:06 am

Departed USPS Origin
Facility

HARTFORD, CT 06101

April 25, 2016 , 10:18 pm

Arrived at USPS Origin
Facility

HARTFORD, CT 06101

April 25, 2016 , 5:04 pm

Departed Post Office

SHERMAN, CT 06784

April 25, 2016 , 1:39 pm

Acceptance

SHERMAN, CT 06784

Available Actions

[Text Updates](#)[Email Updates](#)

Track Another Package

Tracking (or receipt) number

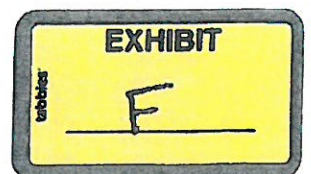
[Track It](#)

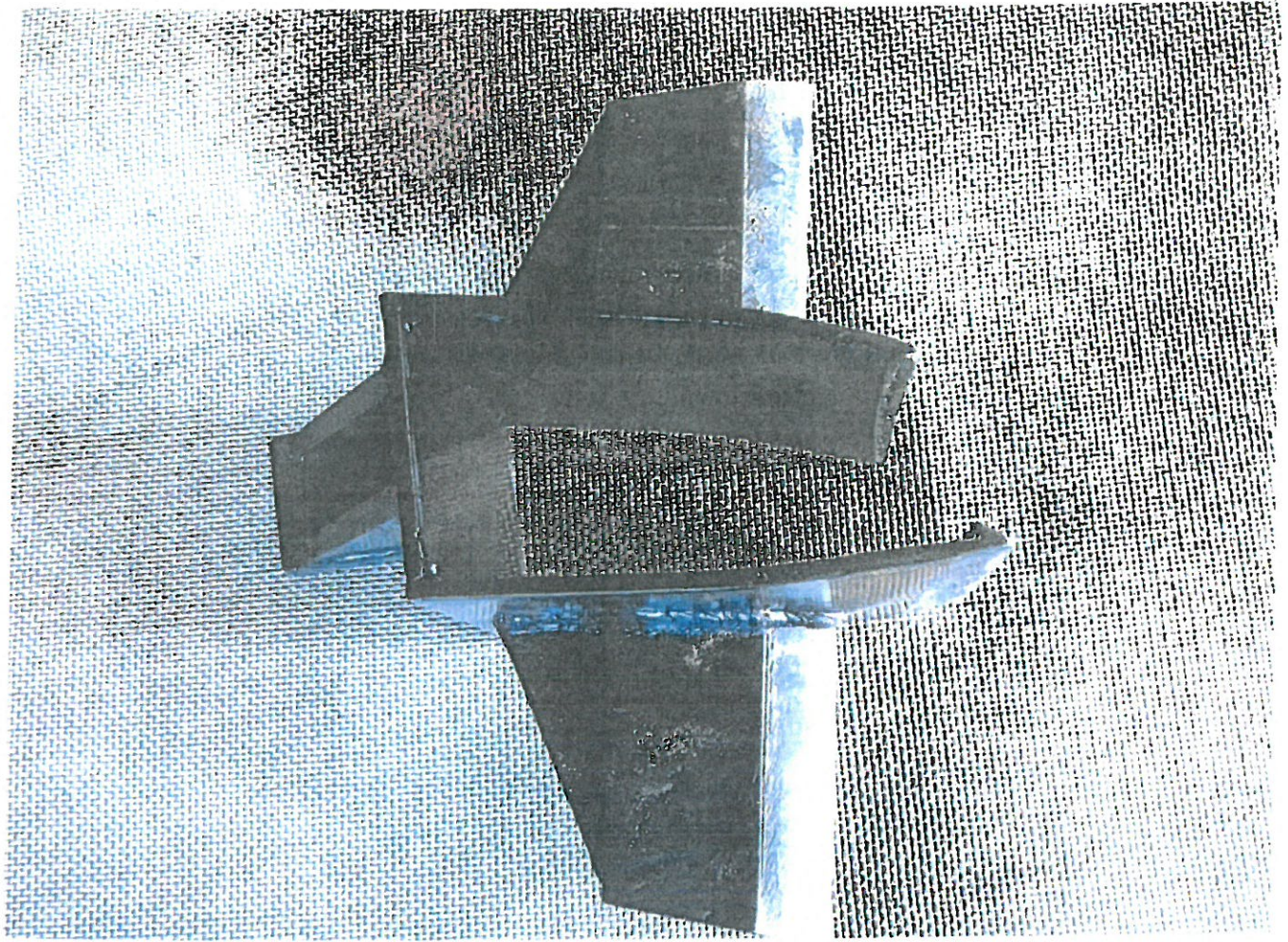
Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.[Sign up for My USPS ›](#)



My new PTE-37LLHW11502 37-ton log splitter
hydraulic lift - Adjustable 4 way Wedge





Broken weld on horizontal cross bar splitting head

AFFIDAVIT OF HEATHER J. HARRIS

STATE OF MICHIGAN,
COUNTY OF GENESEE, TO-WIT:

I, Heather J. Harris, being over the age of eighteen (18) years, after first being duly sworn under oath, do hereby depose and aver as follows:

1. I am a resident of Mt. Morris, Michigan.
2. On or about April 18, 2015 I ordered an upgraded 37 ton log splitter with log lift and Honda engine from New River Firewood, LLC. I paid \$4,620.00 for the log splitter. A copy of invoice is attached hereto and incorporated by reference herein as Exhibit A.
3. The email I received from New River Firewood advising me the log splitter had been shipped states that I purchased a 45 ton horizontal log splitter. A copy of this email is attached hereto and incorporated by reference herein as Exhibit B.
4. The battery was not shipped with the log splitter and New River Firewood had to send me a check for the battery.
5. I cut three (3) pieces of maple when the edge on the four-way splitter curled. I contacted New River Firewood, who initially said nothing could be done. After repeated phone calls, New River Firewood said I would have to send the defective part back and wait for it to send a new part. I wanted to continue to use the splitter, so I opted to not return the part.
6. After two hours of cutting, the wedge on the splitter broke at a 90° angle. I immediately contacted New River Firewood and emailed photographs of the broken wedge. After many telephone calls and no resolution, I wrote to the owner of New River Firewood. I requested a new wedge and money with which to pay to have the new wedge welded to the splitter.
7. An employee of New River Firewood said the wedge had a material defect and would have to be redesigned.

EXHIBIT
3

8. I eventually received the replacement wedge and it did not fit the log splitter I purchased. I had to pay a welder to refit and weld it to the I-beam.

9. I paid the welder \$300.00. A copy of the receipt for payment to the welder is attached hereto and incorporated by reference herein as Exhibit C.

10. I believe I am entitled to reimbursement for the \$300.00 I paid to have the log splitter re-engineered to have the redesigned wedge welded.

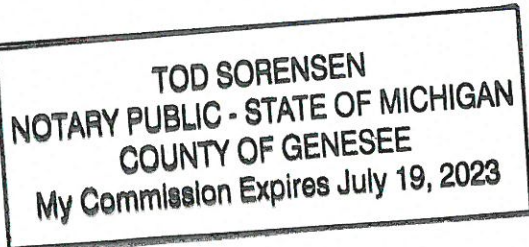
11. This is my complete statement.


Dated this 31 day of May, 2018.


HEATHER J. HARRIS

Taken, subscribed and sworn to before me this 31st day of May, 2018 in the county and state aforesaid.

My commission expires July 19th 2023.




NOTARY PUBLIC

NEW RIVER FIREWOOD

Come on let us light YOUR fire!!

FREE SHIPPING ON ALL ITEMS!

HOME

SHOPPING CART

SIGN IN

REGISTER

CONTACT US

OUR PRODUCTS

Fatwood
Kindling Fire
Starters

Other Fire
Starters

Generators

Log Splitters &
Parts

Firewood
Processing
Attachments

Packaged
Firewood

Firewood Tools
& Accessories

Swisher Zero

Turn Mowers

US Stoves

3 Point Tractor
Attachments

New River Firewood LLC

View site for fatwood & kindling!

Invoice# 0000002526

Invoice Date: 04/18/2015 08:00:42

Billing Information:

Daniel Harris
4140 E Frances Rd
Mount Morris, MI
48458
(810)240-7021
dharris06@yahoo.com

Shipping

Information:
Daniel Harris
4140 E Frances Rd
Mount Morris, MI
48458
(810)240-7021

Payment

Information:

Payment
Method: Credit
Card
Card Type: Visa
Name on
Account: Daniel
Harris

<https://newriverfirewood.com/checkoutpayment-submit.sc>



4/18/2015

Credit Card
 #1 XXXX-XXXX
 XXXX-3782
 Authorization
 Code: 004319

Items

Qty/Item #	Description	Price Each	Total
1	PTE- Upgraded 37 Ton 37BFCLL Horizontal log Splitter w/ Log Lift Honda Engine	\$4,620.00	\$4,620.00
	<i>Price Each:</i>	\$4,595.00	
	<i>Lift Gate Delivery:</i>		
	<i>Optional lift gate</i>		
	<i>needed at time of</i>		
	<i>delivery: \$75.00</i>		

Subtotal: \$4,620.00
 Tax : \$0.00
 Total: \$4,620.00
 Balance Due: \$0.00

Special Instructions:

Please call 810-240-7445 at lease 30 min before delivery to be sure someone is there to accept the shipment.

If you have any questions concerning this invoice, contact us immediately:
 Phone: 1-888-600-1049
 FAX: 1-888-604-4329
 E-mail: service@newriverfirewood.com
 Website: www.newriverfirewood.com
 Thank you for your business!
 Come on let us light YOUR fire!!

Print Invoice Continue Shopping

Home Mail Security News Sports Finance Weather Science Computers Health Kids Travel
 Search

Left Column Navigation

Inbox (1)
 Drafts
 Sent
 Spam (0)
 Trash
 Smart Views
 Archived
 Deleted
 Starred
 Flagged
 Snoozed
 Shared
 Subscribed
 Unsubscribed
 On the Go
 On the Go Orders (0)
 Order (0)
 Saved Mail
 Synced Messages
 My Mail
 My Calendar

My Games



Recent Deleted Photos



More Games

RE: [FWD: New River Firewood 45 Ton Update]

jchancey@newriverfirewood.com
 dharris06@yahoo.com

I apologize that this wasn't initially received. Please see below for the tracking number and the link to R&L Carriers to keep tabs on your shipment.

Thank you,

Jeremy Chancey
 New River Firewood, LLC
 397 Ames Heights Rd
 Lansing, WV 25862
www.newriverfirewood.com
 Phone: 888-600-1049
 Fax: 888-604-4329

----- Original Message -----

Subject: [FWD: New River Firewood 45 Ton Update]
 From: <jchancey@newriverfirewood.com>
 Date: Tue, May 19, 2015 10:18 am
 To: dharris06@yahoo.com

Your shipping is scheduled through R&L Carriers. Your tracking number is WU4557555. Please allow up to 24 hours for information to be generated on R&L Carriers website. You may track your package at <http://www.rlcarriers.com>.

Thank you,

Jeremy Chancey
 New River Firewood, LLC
 397 Ames Heights Rd
 Lansing, WV 25862
www.newriverfirewood.com
 Phone: 888-600-1049
 Fax: 888-604-4329

----- Original Message -----

Subject: New River Firewood 45 Ton Update
 From: <jchancey@newriverfirewood.com>
 Date: Mon, May 18, 2015 9:13 am
 To: dharris06@yahoo.com

Your 45 Ton Horizontal Log Splitter is about to ship. You will receive an email shortly with shipping information. Please be advised that the pictures for your upgraded system have been updated on our website to reflect the new machines. These have heavier I-Beams and larger 4-way wedges. Please see the link below to view the upgrades.

<http://newriverfirewood.com/upgraded-45-ton-log-splitter-to-wood-wedged-log-lb-4-way-wedges-engine-411-dh011.htm>

Thank you,

Jeremy Chancey
 New River Firewood, LLC
 397 Ames Heights Rd
 Lansing, WV 25862
www.newriverfirewood.com
 Phone: 888-600-1049
 Fax: 888-604-4329

Current Month: 2015
 By: Overall Update
 \$65.00 - \$75.00

Current Month: 2015
 By: Overall Update
 \$10.00 - \$15.00

Current Month: 2015
 By: Overall Update
 \$64.99 - \$70.99



Iron Mike's Welding & Fabricating

ACETYLENE and ARC WELDING

1535 NORTH DORT HIGHWAY
FLINT, MICHIGAN 48506
PHONE 234-2996

Don Harris

NO 21087

Date

Sept 8, 2015

Repair Facility #F144643

240 7021

*Weld repair log
Splitter*

Don Harris

Thank You!

Bill - Sales

All accounts are due and payable by the 10th of the month following date of invoice. Finance charge of 1.5% per month charged on all past due accounts.

