

Synthetic stucco maker must pay \$2.5 million to area homeowners by Jason Skog

The following article appeared in the Virginian-Pilot on Jan. 30, 2002. ASHI Member Kenny Hart forwarded the article.

NORFOLK – The nation’s largest synthetic-stucco manufacturer and one of its distributors must pay \$2.5 million to 61 local condominium owners whose home have been rotting because of the defective product, a Norfolk judge ruled Tuesday.

Norfolk Circuit Judge Joseph A. Leafe found that Dryvit, Inc., the nation’s largest manufacturer of the material, knew its product was defective but sold it anyway.

Leafe ordered the company and its distributor, Bishop Wall Systems, Inc., to share in the \$6.8 million repair costs identified in the suit.

“We hope that it’s a wake-up call for this industry,” said Auley M. Crouch III, one of three lawyers representing the condo owners.

“This is the first time in the United States that there has been a determination by a judge or jury that this product is defective.”

The plaintiffs argued that Dryvit and its distributor sold a product known to trap moisture inside wood-framed buildings, contributing to rot, mold, mildew and insect infestation.

The product – technically called Exterior Insulation and Finish Systems or “barrier” EIFS in this case – does not allow moisture to escape once it gets inside the

structure, usually through areas around windows, doors, roofs and other seams, said Joe R. Rhine, an attorney with the Lea, Clyburn and Rhine law firm in Wilmington, N.C. Thine represents the homeowners.

The manufacturer insists its product is sound. Instead, they blame builders, sub-contractors and homeowners for failing to install, seal and properly maintain the siding.

Attorneys for Dryvit, Inc., based in West Warwick, R.Ri., declined to comment Tuesday.

The money awarded will be used to offset repair costs to 61 units in the Spyglass section of the Bay Point Condominiums overlooking Little Creek Inlet in Norfolk. It’s not clear how the money will be divided, but it will fall short of the total costs, the lawyers said.

Court testimony revealed that the damage at the Spyglass units, which were built in 1995, included water intrusion, rotted studs and sheathing, ants, mold, mildew, slugs and termites behind some of the 16 samples taken.

P. Lee Starkey, a resident of the Spyglass section since April 1996, said the court victory was important financially, but just as important because the judge determined the EIFS was defective.

“We’re most pleased,” Starkey said Tuesday. “Of course, we recognize that it will go to appeal, but we have every confidence that it will hold up on appeal.”

In October, the condominium association settled with a builder of the East Ocean View complex for \$1.4 million and 2 1/2 years of litigation.

“From the evidence presented, it is clear to this Court that Dryvit’s Outsulation EIFS system was defective when purchased” by the builder, Leafe’s ruling said.

In Virginia Beach, more than two dozen lawsuits related to the material have been filed since 1998, including one by the Lesner Villa Condominium Association. The association sued 23 of its members who refused to each pay a \$15,000 assessment to remove water-damaged synthetic stucco from their building.

Rhine, who said he’s already working on similar cases in Virginia Beach, said he hopes the judge’s findings will persuade Dryvit and other manufacturers of synthetic stucco to reach agreements with other homeowners in similar situations.

“This product is defective,” Rhine said. “These homeowners have been damaged. They’re not trying to make money. They’re just trying to be reimbursed for the cost of the repair. All the money that has been spent fighting this battle could have fixed this problem. We hope that this is going to bring some rational settlement discussions.” ■

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