

Entran tubing battle ends with a whimper

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TRENTON, N.J. — In October 1998, CONTRACTOR published a front-page story with the headline, "Rubber hydronic tubing failing." Now, nearly six years later, the legal battles over Entran II tubing are apparently over.

The Goodyear-manufactured orange rubber Entran II tubing had been sold by Heatway Systems, Springfield, Mo., which went bankrupt and was purchased by Watts Industries. It is now known as Watts Radiant.

Goodyear reached a settlement in the class-action suit Donato Galanti et al. v. The Goodyear Tire & Rubber Co. (November 2003, pg. 1 and May 2004, pg.1). That settlement excluded plaintiffs suing in state courts in Colorado and New Mexico and federal court plaintiffs in New England. Now all plaintiffs nationwide are included in the Galanti settlement. The settlement was reached in the U. S District Court in New Jersey.

The initial settlement, advertised in notices to homeowners and plumbing contractors in March, including in CONTRACTOR's March issue (pg. 52). If a homeowner did not want to be included in the settlement, the notice gave a short "opt out" period deadline of May 7. After that date, homeowners with Entran II tubing were automatically members of the class. It is expected that homeowners will have until Oct. 19, 2009, to file claims.

The earlier settlement was for a minimum of \$196 million and a maximum of \$236 million, and it contained qualifiers such as Goodyear hitting certain EBITDA targets before it had to pay into the settlement kitty.

In June the settlement was modified and expanded to include present or former Entran II property owners in all 50 states and U.S. territories and possessions and in Canada. In addition, the settlement fund has been increased to \$300 million and some class members may receive 50% or more of the cost of remediation.



The nationwide expansion of the settlement is also felicitous for the plaintiffs' lead law firm Cuneo, Waldman and Gilbert in Washington and its several partner firms. Now their cut of the settlement has gone from \$58.8 million up to \$90 million. The lawyers are also asking for \$7 million in expenses. Homeowners would divvy up \$190 million. The claims administrator and special master would spend the rest of the money for expenses such as advertising and heating system inspections.



Goodyear's obligation to make payments is no longer conditional on any future financial performance.

It provides awards to property owners who may not have received an award under the prior settlement. Now all property owners who have or had Goodyear Entran II may get money.

The settlement now includes property owners in the states of Massachusetts, New Hampshire, Vermont, Maine, Connecticut and Rhode Island who were not included in the prior settlement. New England homeowners previously were part of Payne v. Goodyear that was filed in 2001 in U.S. District Court in Boston.

Payments into this fund will be made over a four-year period.

Assuming final approval by the court sometime this year, it is anticipated that the settlement fund will have \$210 million in 2004. This anticipates a total payment of \$60 million by Goodyear and \$150 million from insurance proceeds. In 2005, Goodyear will pay in \$40 million, followed by \$15 million per year in 2006 and 2007. In 2008, Goodyear will make a final payment of \$20 million.

For purposes of allocating payments, affected homeowners will be divided into Categories I, II and III.

Category I claimants are persons who have or had less severe property damage, such as leaks at connections, corrosion, damage to the boiler or other components of the heating system, or damage to the surrounding structure including resulting loss of use of their homes, heating systems or other tangible property.

Category II claimants are homeowners who have or had serious or catastrophic failures of their heating system, such as major water damage and inline breaks causing property damage, including resulting loss of use of their homes, heating systems or other tangible property. Category II also includes people who replaced their system, in whole or in part, before the notice date and who would have qualified as a Category I or II claimant before the replacement.

Category III claimants are homeowners with Entran II tubing in their homes who have not suffered any damage that would qualify them for Category I or II. Homeowners who initially file claims as Category III claimants may later file claims as a Category I or II claimants, if they qualify.

Awards to Category III claimants will total no more than \$10 million. Category II claimants will automatically get the most money. If a homeowner suffers additional damage later, he can re-file to try to get into a new category and get more money, minus the money he has already received.

All claimants may request that the claims administrator provide a free inspection of their heating system. The settlement lays out maximum dollar amount caps, per square foot, that homeowners can claim for damages for various types of systems. Homeowners who have tubing embedded in concrete can get the most money.

The lawyers have come up with the following cost figures in establishing the awards:

In-slab installations can claim \$75.10 per sq. ft., thinset \$56, staple-up \$38.40, baseboard connectors \$6.40, staple-up exposed \$17.50 and snow-melt applications \$38.40

But while homeowners can claim damages up to those amounts, that's not what they're going to get. The maximum payment would be 52.6% for Category II homeowners with catastrophic failures — \$52.60 per \$100.

While the numbers are not cast in thin-set quite yet, these are the estimates:

Category I claimants could receive a first payment of about 10.2% of their maximum claim and a final payment of 23.9% of their maximum claim, or a total of 34.1% of their maximum claim.

Category II claimants could receive a first payment of about 26.3% of their maximum claim and a final payment of 26.3% of their maximum claim, or 52.6%.

Category III claimants could receive a first payment of about 5.1% of their maximum claim and a final payment of 11.8% of their maximum claim for a total payment of a 16.9%.