

## CASES INVOLVING DEFECTIVE FRT PLYWOOD LINGER

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By Marianne Kyriakos

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It is a manufacturer's worst nightmare: a new product -- and its reputation -- both crumbling like a cracker.

Six years after the last plank of a defective form of fire-retardant-treated (FRT) plywood was hammered into the roof of a new home, claims against the wood's manufacturers are still clogging the courts, homeowners are still ripping it off their roofs, and firefighters are still afraid to walk on it.

The concept of fire-resistant wood wasn't new. The ancient Romans salted their wood to slow the spread of flames. But in the 1970s, the suburban town house development was a relatively fresh idea. And FRT plywood ended up on the roofs of thousands of condominiums and town houses built between 1976 and 1988, mostly east of the Mississippi. The Washington-Baltimore area, where the product was heavily used, has been one of the regions most affected by its deterioration. Parts of New Jersey and Florida where many town homes were built also have been affected.

James and Ann Blunt bought their Springfield area town house 12 years ago. They first learned about their FRT plywood in 1989, when roofers began showing up begging to fix it.

A home inspection turned up signs of roof deterioration, with the promise of more to come. The Blunts and their similarly affected neighbors were not happy.

"We thought, I guess mistakenly, that if there was to be any help, it would come voluntarily from the builder," said James Blunt, a retired Air Force officer who does security work for a contractor for the National Aeronautics and Space Administration. "We didn't know, but we waited. It turns out {the builder} would not help, could not help, and he did not help."

The Blunts now are moving from their Daventry subdivision home. Last week, they agreed to split the cost of roof replacement with the buyers.

"There was no bickering at all, really," Blunt said. "For half of \$1,900, I don't need a lawyer, thank you. It is unpleasant, but one of those things."

Some housing industry officials said the FRT issue has been traumatic.

"It just has been a very long and wretched process dealing with this," said William Young, director of consumer affairs for the National Association of Home Builders. "I wish I could be more encouraging. We are just now accepting the reality that there is not going to be a whole lot that is going to change."

Young said many homeowners found that filing a lawsuit to recover FRT damages "is very long and expensive and messy litigation, with lots of expert witnesses on who-knew-what-when. It ends up costing a lot more than what it would cost to fix the roof."

Total legal costs for some FRT plywood trials have cost three times as much as the award, Young said. For many frustrated homeowners, the question remains: Who pays?

A new Virginia statute gives homeowners the right to sue directly the manufacturer of their plywood. Before July 1, many judges ruled that homeowners had no warranty claims against the plywood's manufacturers.

"I view it as recognition by the Virginia legislature that liability should be imposed upon those who are responsible for the problem, namely the FRT plywood producers," said attorney Warren Lutz. He represents Winchester Homes Inc., which has replaced 2,800 roofs at its own expense and now is seeking recompense from manufacturers.

"It removes a huge barrier that existed in the past," Lutz said. "The Virginia lawmakers said, 'We are going to make this very clear: Homeowners {now} can sue manufacturers.' "

Lawmakers in Maryland are moving along the same lines.

This month, the Maryland Court of Appeals agreed to hear a class- action case that invokes the state's Consumer Protection Act.

"If we prevail in this case, or if we settle it, there should be a fund set up to replace these roofs," said Charles A. Schneider, one of the attorney for the suit's four named plaintiffs.

This week Winchester Homes formally asked the court for permission to participate in the case.

Maryland Attorney General J. Joseph Curran Jr. said the marketplace has changed a lot in the last century.

"If I can be philosophical about this, we are not dealing with the neighborhood merchant anymore," Curran said. "We feel the plain reading of the act is that it protects any consumer - not just the last seller in the chain of distribution. If a manufacturer or other indirect seller says something that isn't true, or doesn't say something that is important about a product that the consumer should know, and the consumer gets hurt, then we believe Maryland's Consumer Protection Act should help that consumer."

But for now, Young said, "It boils down to this: If you can't work out some sort of arrangement with one of the other parties involved, you are basically stuck."

And that can be expensive.

Jimmie Walker, president of Franconia Roofing Co. of Newington, said the average cost for an FRT roof replacement is \$2,000 to \$3,000." He said that in most cases, the wood is not being replaced.

"Most people couldn't afford to go out and beat this thing," he said. "Some of the builders made good and fixed the roofs. But most of the smaller builders couldn't afford it. They've had a couple of bad years, too, you know."

There were probably 20 producers of the plywood, according to Lutz. Primary manufacturers included Georgia-based Hoover Treated Wood Products Inc., Osmose Wood Preserving Inc. and Hoover Universal Inc.

Some major builders, such as the Ryland Group Inc. in Columbia and NVR Inc. of McLean, have settled their claims with the plywood's producers. The terms of those settlements are secret, so very few people know what they received.

Winchester Homes still is litigating in Maryland, Virginia and elsewhere, and Pulte Homes Corp. is appealing a decision against it in Florida.

Not surprisingly, some entrepreneurs saw a silver lining in the FRT cloud.

John O'Neill and Bill Clayborne, owners of New Century Enterprises Inc. in Reston, said they will have replaced more than 7,000 FRT roofs by the end of the year, using an improved, reformulated version of fire-retardant plywood.

The partners -- both former senior executives at NVR's Ryan Homes division -- predicted in 1990 that the FRT replacement market niche east of the Mississippi was a \$2 billion business.

After working 20 years for Ryan, O'Neill retired in 1990 as vice president of marketing and communications services.

"I had already decided that it wasn't a good time to be building houses," he said. "So I called up my old friend Bill Clayborne, and said, 'Let's have lunch.' "

Clayborne agreed that the business has been very good to them. "We started out just two guys {eating} at Chili's," he said.

And the two estimate that more than half of the defective roofs have yet to be replaced.

"How many FRT roofs are still out there? Thousands," Clayborne said. "We will be doing FRT for years to come for individual homeowners."