



# A Roofer's Liability

by Michael C. Loulakis and Jeffrey G. Gilmore

Disputes between roofing contractors and home owners over the quality of work are not uncommon. Not only are roofing defects perhaps the most visible and aggravating of any construction defects, but they can cause substantial damages to the interior walls and furnishings. As a result, owners will not hesitate to sue a roofing contractor when potential problems appear.

Consider the case of *New Zion Baptist Church v. Mecco, Inc.*, 478 So.2d 1364 (La. 1985), in which a roofing contractor in Louisiana agreed to install a new roof on the church. The contractor specified a built-up type of roof marketed under the name "Ny-Clad"

Almost immediately after the contractor installed the system, the roof began to leak, and church officials sought repairs under the warranty provisions of the contract. When the roof still leaked two years later, the church consulted an architect, who inspected the roof and determined that the ongoing problems were caused by defective installation.

Acting on the architect's advice, the church had the roof removed and replaced with a conventional built-up roof, which eliminated the leaking problems.

The church sued the contractor for faulty workmanship and breach of warranty under the contract. The lower court ruled in the church's favor and awarded it not only the cost of replacing the roof, but also the cost of repairing interior damages caused by the leaks. This decision was upheld by the Louisiana Court of Appeals.

The contractor argued unsuccessfully that the leaks were caused by defects in the structure that were outside the scope of Mecco's responsibility. Instead, testimony at the trial showed that Mecco failed to provide a continuous membrane, to properly install it around the rooftop air-conditioning supports, or to properly flash and counterflash the interface between the structure and the membrane.

The contractor also attempted to argue that the contract limited its liability to the express conditions contained in the warranty, which stated:

Mecco, Inc. shall not be liable for faulty or improper application of Ny-Clad Roofing System if said system is not installed or applied in accordance with application instructions of Mecco, Inc. as supplied with said system.

The court recognized that this clause, taken literally, would exempt Mecco from its own negligent installation of the roof, but the court held that such an interpretation would be contrary to public policy and could not be used in this case. This clause might have applied if Mecco had merely supplied the Ny-Clad products to another roofer who did not actually install the product, the court maintained, but it did not apply here.

As already noted, the court found that the contractor was liable for interior damages as well as the replacement of the defective roof. But the appellate court did reverse the trial court's award of attorney's fees, on the grounds that the contract was silent on the issue and there was no express law permitting such recovery.

The most important aspect of the Mecco case is the court's discussion of the contractual limitation of liability. Many

roofing contracts contain such a limitation, and roofers use them in an effort to absolve themselves of any responsibility for defective workmanship. Like other courts, however, the Louisiana court ruled that a party cannot be absolved of liability for its own negligence. Therefore, roofers should keep in mind that they are still bound contractually to the owner if their workmanship is the ultimate cause of damage.

Another important aspect of the Mecco case is that the contractor's liability extended to the full replacement of the roofing system. It is worth noting that the owner did not use a Ny-Clad system for the replacement. An argument might have been raised by the contractor that it was responsible only for the cost of replacing the defective roof with the same system.

While the facts in this case are not clear, it's possible that the cost of the new system installed by the owner was comparable to the Ny-Clad system, therefore resulting in no additional damage to the contractor. ■

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