

Long-term warranties help single-plys get ahead



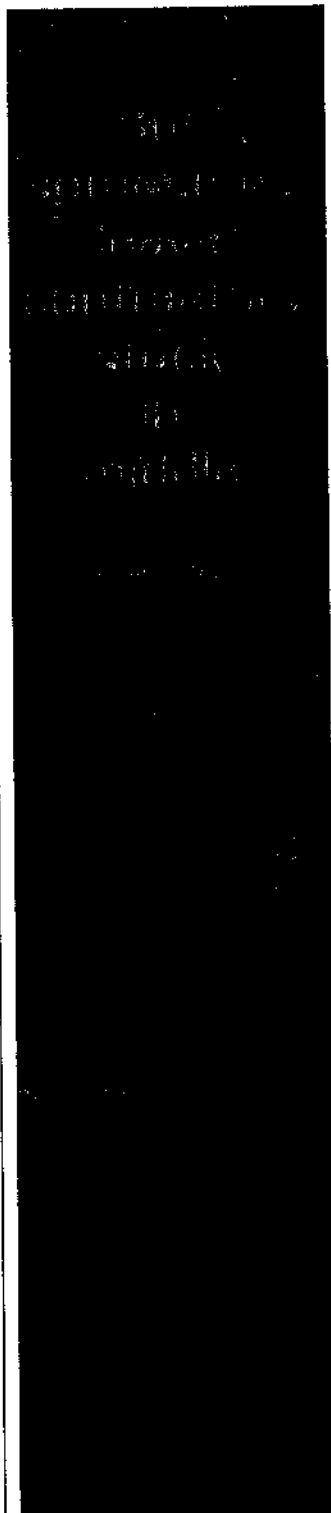
Contractors are caught in a vice."

That's Chicago-area contractor Jay Reficuna expressing the frustration many roofing contractors feel over single-ply manufacturers' long-term warranties. They believe that they are called upon all too often to fulfill the unrealistic expectations the manufacturers' 10- or 20-year agreements create in the minds of building owners. Yet the contractors' objections to long-term warranties haven't caused a significant reduction in their use. Single-ply manufacturers continue to warrant roofs for longer and longer periods and roofing contractors continue to sell and install systems covered by these agreements.

For the last 20 years, single-ply manufacturers and installers have found the use of long-term warranties to be both a blessing and a curse. While warranties have helped single-plys gain a foothold in the roofing market, they have also placed greater burdens on the manufacturers and contractors who must fulfill their obligations. As the roofing industry continues to examine and debate the wisdom of long-term warranties, it must decide if the benefits that may be gained from their use outweigh the dangers that lurk behind the legalese and fine print.

Warranty wars

Long-term warranties are the products of fierce competition. There are 23 companies selling rubber roofing in the United States, and 20 to 30 manufacturers offering PVC, Hypalon and modified bitumen single-ply systems. For several years, manufacturers have been vying with each other and the BUR industry for more or less the same piece of the U.S. commercial roofing market. Early on in this struggle, Carlisle, one of EPDM roofing's pioneers, saw that a long-term warranty would give its products a definite marketing advantage over BUR. Manufacturers who followed Carlisle



into the market copied many of its tactics and used the warranty as a way to build business.

Some believe that manufacturers no longer develop warranty programs to compete with other companies' agreements. Dave Bailie, marketing manager of Firestone's Building Products Division, said, "As far as Firestone's concerned, there's no war on. Of course, we revise our warranties from time to time, and note with interest how our competitors revise theirs, but we're not inclined to match or extend our warranties at the moment because we've already acquired considerable long-term liability. You can only offer so much."

Stephen Phillips, partner in the Atlanta law firm of Hendricks, Spannos and Phillips, and author of the warranty section of NRCA's *Commercial, Industrial and Institutional Roofing Materials Guide*, disagrees with Bailie. "I certainly think they used warranties as a principal marketing device," he noted. "In that sense, I think it's true that it is a warranty war."

The one point that almost everyone agrees on is that warranties covering materials and workmanship are being used to build sales. Bailie encourages contractors to use warranties to convince customers to buy single-ply rather than BUR. "One of the most powerful things contractors can mention is that Firestone, Carlisle, Goodyear or whoever offers a full replacement warranty for 10 years covering materials and workmanship, which you won't get from a BUR manufacturer," he said.

Because many credit single-ply's success to its aggressive warranty practices, there's little doubt that the industry will continue to use long-term warranties as a marketing tool. As Davenport, Iowa, contractor Jim Dietz says, "We have to use them to stay competitive."

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A roofing partnership

Contractors shouldn't become unnecessarily alarmed by the prevalence of long-term warranties. As long as manufacturers back up their agreements, contractors and building owners both come out ahead when 10- or 20-year warranties are issued. By accepting the financial responsibility for solving warranted roof problems, the manufacturer is shielding the contractor from demands for potentially costly repairs. The owner benefits from this arrangement because it increases the likelihood that the repairs will be made. Refienna said, "The building owner is better off with a manufacturer warranty because of the liabilities involved. If you get a \$1 million lawsuit against a small contractor, he'll go down the tubes, leaving the owner with nothing. But if you sue a large company, you have a much better chance of getting something."

Of course, for anyone to benefit from long-term warranties, the manufacturer must be financially secure enough to cover its liabilities. Dietz believes companies like Firestone, Goodyear and Carlisle can back up their warranties. "But some of the others may not be big enough to cover those things," he warned. "If I put on a roof and the manufacturer can't cover the warranty, I become the stuckee, and I don't care for that."

To avoid becoming responsible for the manufacturer's financial obligations, Dietz and others try to discover whether manufacturers can actually assume the liability of the warranties they issue. Bailie said that even companies as large and as well known as Firestone are sometimes checked out. "We've actually had owners write us to confirm that we are a division of the Firestone Tire and Rubber Co., and not just someone using that name," he said.

Bailie thinks this concern is justified and can help keep marginal companies out of the marketplace. "That's why a lot of smaller manufacturers back away from new business because architects are smart enough to check them out on behalf of their clients," he said.

A.L. "Pete" Simmons of Roofing Consultants, Inc., doesn't think owners check a manufacturer's ability to cover its warranties as carefully as they should. "Sometimes owners just go on the word of a fast-talking salesman and the manufacturer's slick product literature," he said.

Financial backing isn't the only thing the warranty represents. It also indicates the manufacturers' willingness to offer technical support. The warranty, in effect, makes the manufacturer and the contractor partners in the roofing process. Bailie said that because Firestone believes "we're in this thing together," the company has formed a contractor advisory council, and has responded to the council's recommendations. "For example, we revised our applicator agreement, trying to make it less troublesome for contractors," he said.

Dietz believes having a large corporation as a partner is helpful in other ways as well. "Carlisle's distributor tries very hard to give me good service, even to the point of getting on the phone to make things happen," he said. "I look to them for help and support, and they look to me for quality work so they can recommend the product to someone else."

Inspections part of the deal

Like any partner, however, the manufacturer will want to keep tabs on the work being performed. To do this, single-ply manufacturers have developed inspection programs that make sure the contractor follows the manufacturer's specifications and details. Most single-ply manufacturers inspect the job at completion, and some will even place inspectors at the jobsite during the installation. Under these inspection programs, the roof must pass the manufacturer's evaluation before a warranty will be issued.

While it's true that some contractors find inspections annoying, many appreciate having an extra pair of eyes examining the workmanship. Dietz said he preferred to have his work evaluated by Carlisle's inspectors, who, he says, are the toughest he's seen. "They really pick your job apart," he said. "But I think that's good. It's like anything else with quality control, they have to make sure we followed their specs. I'm all for that."

Firestone inspects jobs shortly after completion. Bailie said, "We try to do it within two weeks because contractors can't get their final payment on the job until they give our warranty to the owner, and we don't issue warranties until after

we inspect and approve the roof installation." To promptly handle all the requests for inspections, Firestone recently tripled its inspection staff.

Simmons doesn't believe one inspection at the end of the job is enough. He thinks contractors should ask manufacturers to make periodic inspections as the job progresses. He says this will increase the likelihood that problems will be spotted and corrected before it's too late. "If the manufacturer is going to give a system a warranty, but won't decide whether to issue it until after the roof is complete, I wouldn't even consider buying his guaranty," said Simmons. "I believe manufacturers will have to conduct a sufficient number of inspections during installation so they can accept or reject then, not after the fact."

Under the terms of most warranties it is possible for a manufacturer to reject a roof and refuse to issue a warranty even after the work has been completed. This is less likely to occur, however, when the manufacturer has had a chance to review the plans. "I always tell contractors how important the project documentation process is, even though it's a pain in the neck for them," Bailie said. "But they can help us simply playing by those rules. We hope that we'll catch anything that may be inconsistent with our specs before the contractor begins."

Bailie claims that about one-third of all preinstallation notices Firestone receives come in with a request for an inspection, indicating that the work has already been performed. According to Bailie, it would have been better if those contractors had sent the notices in at the proper time. This would have allowed Firestone to look at the job first, saving the contractors time and money in the long run.

Warranties have limited appeal

While there are some advantages to long-term warranties, their use hasn't made life any easier for most contractors. One disadvantage of long-term warranties is that even though they offer 10 or 20 years of coverage, they also limit the dollar amount building owners can recover from the manufacturer. The limiting language excludes a whole range of remedies ordinarily provided by the law. For example, no warranty covers damage to a building's contents caused by a leaky roof. When the owner discovers these limits, he's likely to file a claim against the contractor to recover his damages.

Other pitfalls may be found in the licensing agreements contractors must sign before the manufacturer will allow them to install warranted systems. Phillips said that tricky language in the license agreements is fairly common. "I'd say it's the exception rather than the rule for an agreement to make absolutely clear that the contractor's liability is just two years, and that after two years the manufacturer can't make any further claims against the contractor for workmanship or materials," he said. According to Phillips, most agreements give the impression that a contractor's liability is only for two years when in fact it may be for the entire warranty period.

Phillips warned contractors to examine the agreement carefully to avoid being burned. "We try to encourage individual contractors to read and understand the license-applicator agreement before signing it. If they lack the time or patience to read all the fine print, we've suggested that they get help," he said.

Phillips did offer some hope for contractors who discover unsatisfactory language in an agreement before they have signed it. "Once they know what they're signing and how the agreement can affect them, individual contractors may be able to negotiate with the manufacturer to change those particular parts of the agreement they don't like," he said.

However, some manufacturers may be unwilling to make changes. "While Firestone usually doesn't negotiate," Bailie noted, "I can't say we'd never change some words to make someone happy."

Worth the wait?

Some find the bureaucratic delays that seem to be a part of most warranty programs to be another disadvantage. "When the job's finished, we need to get the warranty to the owner," Refieuna said. "Some manufacturers will issue them to us based on our reputation, but others won't until after inspecting the roof. Sometimes that can take a couple of months." These delays

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mean the contractor must wait for the final payment, which is contingent on the owner receiving the warranty.

The time it takes to settle a claim can also cause headaches. Refieuna noted that most manufacturers have a procedure contractors must follow to collect for repairs made under warranty. "If we go right out and fix or repair the damage without waiting for the manufacturer's inspector, we won't be compensated by the manufacturer," he said.

This can put contractors in a no-win situation. "Contractors may jeopardize long-standing business relationships if they don't respond quickly to an owner's request to fix a leak," Simmons said. "When you're talking about a big company with many buildings that require some sort of roofing work, contractors really don't want to cut off their noses to spite their faces by being unresponsive in emergency situations."

Many contractors faced with this dilemma will put the customer's needs first. They will do whatever's necessary to fix the leak, and worry about the warranty's provisions and getting paid later. This is the procedure Refieuna's company usually follows. "If it's an emergency, we'll normally go right out and fix the leak at our expense because the owner's next step is probably to call his attorney. And even if he doesn't have a leg to stand on, it costs me more to hire my attorney to defend me than it does to hire one of my men to fix the leak."

When the manufacturer refuses to reimburse him for expenses, Refieuna's tactic is to attempt to reach an equitable settlement with the building owner to share repair costs.

Bailie justified the lengthy warranty process by saying that the manufacturers must protect themselves. "We just don't issue warranties helter-skelter and hope they don't become problems later on," he said. Most manufacturers have established rigid procedures for issuing warranties and fulfilling their obligations during the warranted period, Bailie explained.

Manufacturers like Firestone must be equally careful determining a course of action when roof problems occur. They must balance their desire to respond quickly with their need to assess the extent of their liability. The manufacturers must

first establish the cause of the problem and estimate the repair costs. Then, they must decide how much of the repair bill is covered by their warranty.

Bailie said, "If we find workmanship problems, the contractor is obligated to fix them whether he wants to or not. But we rarely have to call on the terms of the license agreement because our contractors will usually go out and correct a problem themselves." According to Bailie, the most frequent workmanship problem Firestone encounters among its licensed applicators is flashing details.

Manufacturers not always selective

The manufacturers have also tried to protect their liability by carefully screening the contractors who wish to become licensed applicators. When the single-ply companies first entered the roofing market, some sought out contractors known for their quality work and financial stability.

Other manufacturers, eager to enter the market, weren't quite so choosy. They would approach any contractor with a large job. According to Refieuna, "If I got a half-million dollar job, every manufacturer in town would be knocking on my door. Once you have the job, you can pretty much pick your manufacturer."

Refieuna hastened to add that not all manufacturers operated that way. "Some asked for our financial statements—which is good—and references," he said.

Dietz's experience closely paralleled Refieuna's. "Some [manufacturers] were selective in who they wanted to license, but some wanted to sell product and signed up just about anybody to do it," he said.

Dietz provided the best advice to contractors bewildered and frustrated by the aggressive warranty practices of the single-ply industry. Unswayed by extravagant claims, Dietz said he prefers to install quality manufacturers' products because he wants to avoid unnecessary problems.