

# Roofers beware: condominiums are risky business

**A**lex Cost will never roof a condominium again. Nearly 10 years of litigation and \$56,000 in legal fees have soured Cost on condos. And the CEO of the Ohio-based Warren Roofing and Insulating Co. won the case that cost him so much time and money!

The scenario has become practically cliché. A condominium owner detects a water leak somewhere in the unit and contacts the developer/owner who, often without an inspection, automatically blames the roof. A long and costly lawsuit ensues from which nobody emerges victorious.

## Keeping the lawyers busy

While there are no statistics available to determine just how many condo cases are filed annually, roofing contractors appear to be hit often enough to make it a common problem. Many contractors have at least one condo horror story to tell that involves an owner all too ready to blame everything on the contractor and a team of lawyers eager to exploit the owner's dissatisfaction. Not surprisingly, the lawyers emerge as the bad guys most often in these anecdotes.

"They're vicious," says Miami roofer John Carruth Jr. of Carruth Roofing Co., Inc., of one law firm he's faced in court. "They do nothing else but prosecute contractors. They retain a team of specialized consultants who can be called upon to testify in any case at any time."

Robert Crane is one such consultant. His Coral Springs firm, Crane Engineering, employs dozens of designers, architects and engineers who are often called upon to testify as expert witnesses. I spoke to Crane on a day when he had spent the entire morning testifying for the plaintiffs in a suit against a roofing contractor, and he expected to spend most of the following week in court as well.

"It seems I spend most of my time in court these days," Crane says. "And if I'm not available, someone on my staff usually is."

**Pros  
scared  
by  
threats  
of  
lawsuits**

by David Impey,  
associate editor

Why do Crane and his staff spend so much time in court? Because they're good and they win cases, he says.

## The real problem

Many in the roofing industry, however, believe that roofing contractors are being singled out as litigation targets. They say that hasty construction and poor design are really the major obstacles to quality condo construction; because developers want to build and fill units as quickly as possible, proper design and building techniques are often sacrificed.

"The problem definitely lies in the overall construction," says Stephen Phillips of the Atlanta-based law firm of Hendrick, Spanos and Phillips. "However," he adds, "this is to be expected in today's development wars, where the name of the game is turnover—build 'em and fill 'em as quickly as possible."

"Obviously, there are a lot of shady developers and contractors in the business, and they deserve to be prosecuted, but far too often, the roofing contractor is used as a convenient scapegoat. More often than not, waterleaks come from any number of sources other than the roof, like windows or masonry."

Cost agrees. "It's ridiculous," he says. "And it's usually not the roofing contractor's fault. It's invariably a design problem. Architects need to become better educated in roofing."

In Cost's case, which involved the Fairmont Condominiums in Cleveland, Ohio, "the leak was a structural flaw," he says. According to Cost, the Fairmont units were quickly slapped together using 1/2-inch plywood over bad insulation. "The joints were never stripped or flushed," he added, "so there was a lot of ponding on the roof."

Test cuts later revealed that Cost's company had installed the three-ply BUR over polyurethane insulation and precast concrete deck in accordance with the designer's specifications. While Cost won the case, the time and money involved made it hard to savor the victory.

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Pete Lancaster, president and general manager of Metalcrafts, Inc., in Savannah, Ga., has also been the victim of poor design. On a Hilton Head, N.C., project, his crews followed the designer's specifications and used staples to install wood shingles to the condominium's roof. Within a few years, the staples had rusted through. Consequently, the shingles began to fall and the roof began to leak. The case was settled out of court.

"The designer was aware of rust-proof nails, but he still specified the staples," maintains Lancaster. "I guess he thought staples were more efficient than nails. They're definitely easier and less time-consuming to install, but obviously, they failed."

Sometimes, the problems are caused by what the designer puts on top of the roof. Cost claims that the roof of the Fairmont project was cluttered with HVAC units and service lines, making it almost impossible to waterproof. And the garage unit's roof had to support tennis courts and some heavy landscaping while keeping the cars out of the weather. "It looked nice," he said, "but of course, it leaked."

Jeff Lowinski, NRCA's technical services manager, calls the tendency to load down a roof "a simple answer to a complex problem. An architect decides he wants 'x' amount of space in each unit, so he puts the HVAC on the roof. The electrical contractor slices a hole in the roof, drops in the HVAC and does nothing to prevent water leakage."

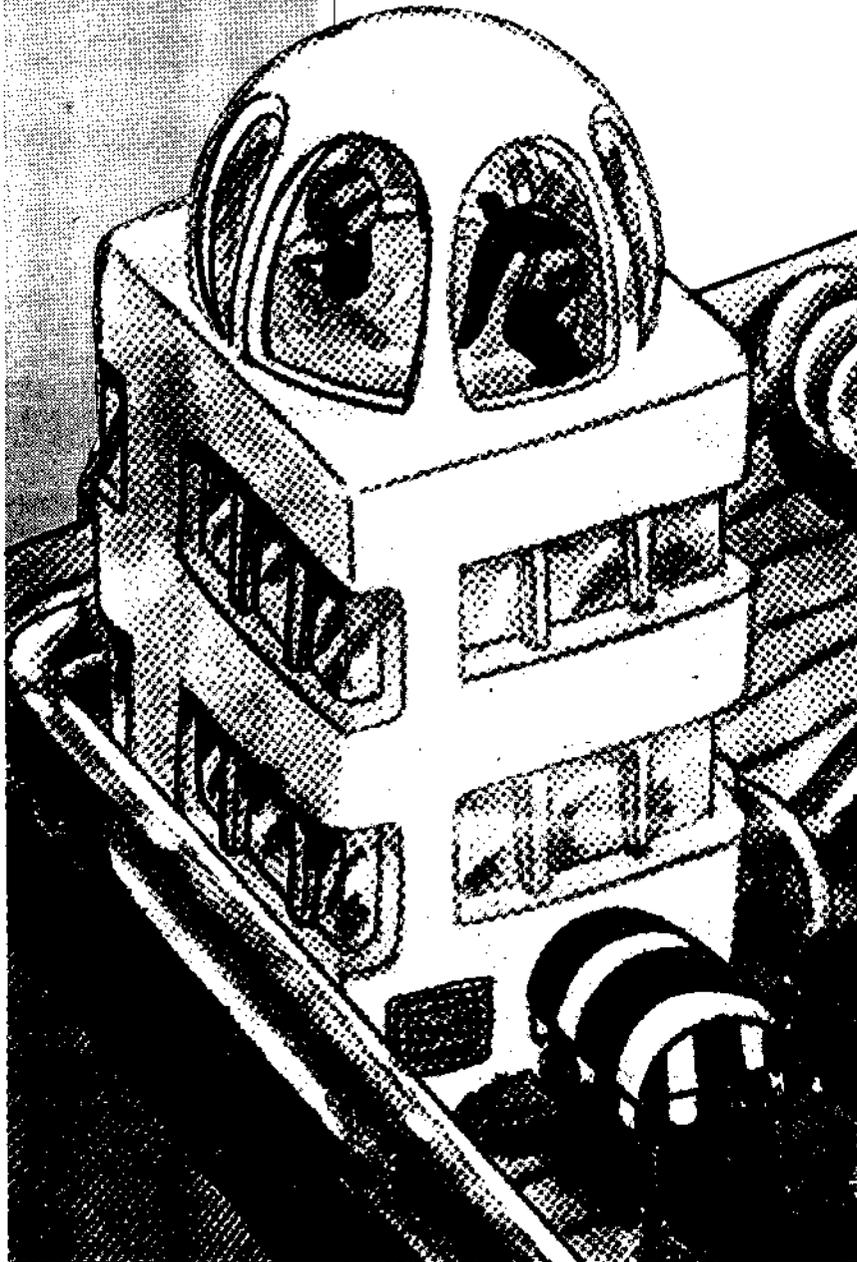
Unfortunately, contractors may still be liable for failures even if the roofs are poorly designed. States such as South Carolina have enacted laws that hold contractors liable who knowingly follow improper specifications, according to Charles Mays, an attorney with Hendrick, Spanos and Phillips.

"A roofing contractor should sign an affidavit stating that, even though he knew the specifications to be faulty, he was under an obligation to follow them," explains Mays. "This ought to relieve the roofer of any liability should the roof fail prematurely."

### **Owners guilty of roof neglect**

Architects aren't the only ones who create roof problems, however. The owners themselves also share some of the blame. "The condo owners themselves are often guilty of neglect in maintaining their units," says Phillips. "But they'll sue anyway."

One maintenance problem common throughout the South and especially in Florida is the occurrence of green mildew in an apartment or condominium. Joe Rutkoski, president of Tampa's Roofing Southeast, Inc., (who refers to condominium projects as "a thorn in every roofing contractor's side") says, "People go back up North for the summer without taking proper precautions to prevent mildew growth. They don't realize that if they seal their doors and close the drapes for the three hottest months of the year without allowing for proper ventilation, mold will grow. They blame the roofer, of course, thinking there must be water leaking in somewhere."



## "You'll be hearing from my lawyer!"

Sometimes pointing out a condo's design and maintenance problems can help a contractor avoid a long and costly court battle. But when the owner's emotions are involved, reasoned arguments do little good.

"We spent good money for this condo, and when the roof started to leak, you're damn right we're gonna sue," said a condo owner on Hilton Head Island who asked not to be identified because his case has not yet been filed. "We've only lived here three years, the roof is practically brand new. So, why do we need an army of buckets each time it rains? Because the construction was done poorly."

"These units are expensive and people expect quality," says Phillips. "When it's not there, when the construction is marginal, the roofer is easy to blame."

Condo owners tend to become very impatient when their investments spring a leak. Their concern is a legitimate one, but far too often, in their haste to sue the roofer, owners overlook other causes and solutions to their problems.

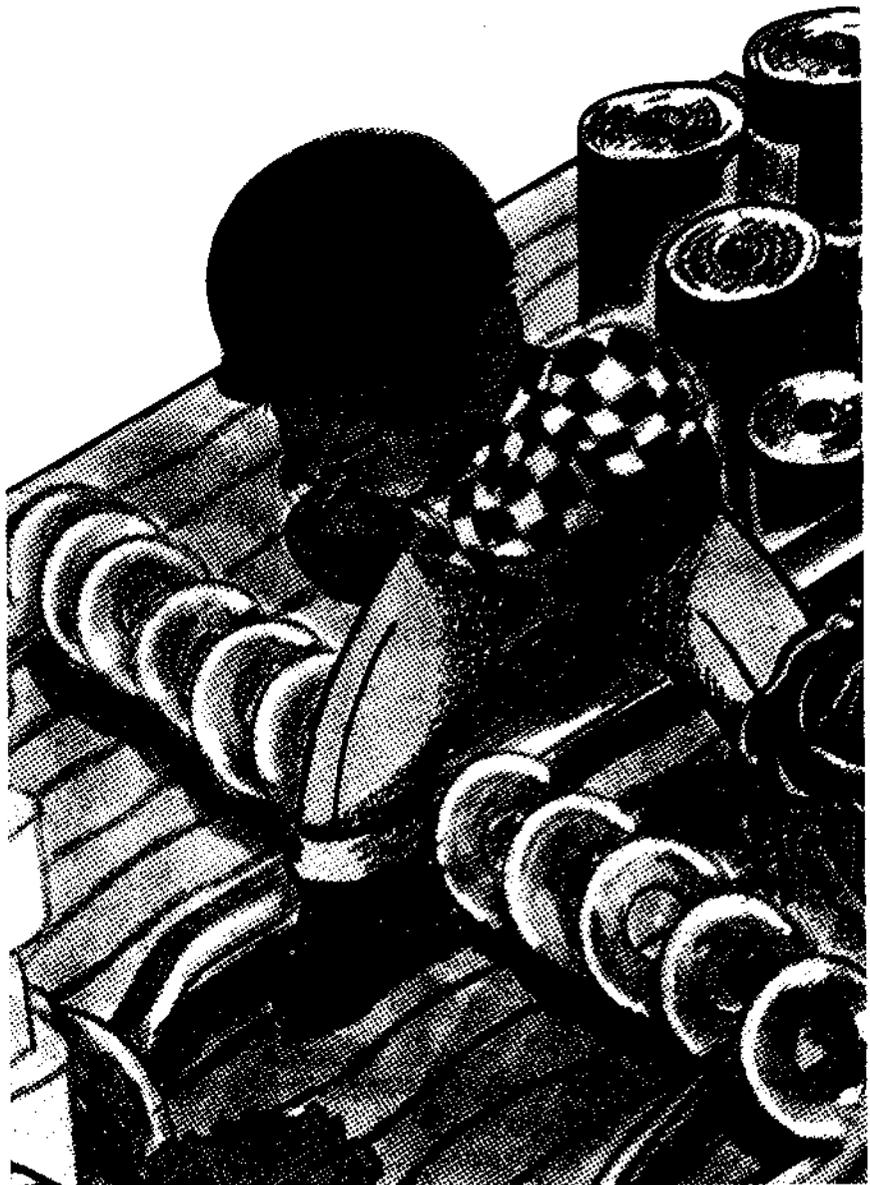
"We were taken to court without ever having been called to examine the roof," says Lancaster of a case entering its third year of litigation.

The project involved a condominium project on Fripp Island, N.C. The plans called for coated felts, which have since been taken off the market because they tend to crack and split easier than heavier felts. The first inclination Lancaster had that the roof was failing was when he learned of the suit.

"We never heard anything about it," says Lancaster. "The manufacturer would have been glad to help out with the situation, but he was never contacted either."

### Resolutions don't come quickly

A typical condo lawsuit can keep nearly everyone on the building team tied up in legal proceeding for years. "We'll start out by suing the developer," says Crane. "He usually brings a countersuit against his subcontractors—the roofers, electricians, plumbers—whoever it takes to get the money.



"Usually, though, the problem lies with the roof," Crane continues. "Most of our success has been against flat roofs where ponding, flashings and other tiny flaws can be used as evidence."

Crane estimates that the average suit involves roofs between five and 15 years old. If the problem was discovered relatively soon after construction, Crane tends to blame the contractors. If the problem takes several years to surface, he points the finger at the designers.

Contractors can be blamed for problems detected years after construction, however. In many states, the statute of limitations depends on when the defect was discovered and whether it is a latent (hidden) problem, or a patent (detected) problem.

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In South Carolina and Florida, for instance, the statute of limitations begins when a defect is discovered. In South Carolina, subsequent purchasers of a unit can sue the original designer if flaws have been determined to originate with construction.

Once a case goes to trial, it can take years to sort out the facts and render a verdict. It took 10 years from the time the work was completed for Cost's case to be resolved. His company installed the roof on the Fairmont Condominiums in 1974. The leaks were discovered shortly thereafter. A suit was brought against the developer and Cost, but it was 1981 before the case reached a courtroom. The appeals dragged on until 1984.

Because a court case can be such a drain on a contractor's resources, Phillips advises contractors to attempt a settlement out of court. If a trial is unavoidable, he suggests contractors ask for a bench trial.

"Condo owners make very sympathetic plaintiffs," Phillips says. "Nice, little white-haired couples who've sunk their life savings into a condominium can easily convince a jury that they were the victims negligent construction."

Phillips says that the construction industry's reputation does not help in a jury trial. To the jury, the stereotypical contractor is a fly-by-night operator out to make a quick buck, Phillips believes. That's why Phillips prefers a knowledgeable judge over a jury.

## Staying out of court

For many contractors, avoiding condo lawsuits means avoiding condos altogether. "This is a high-risk industry," says Cost. "As far as condominium construction is concerned, the risks do not outweigh the benefits."

But if the seasoned professionals drop out of the condo business, who will be left to roof the units that continue to sprout up throughout the country? "Young, rookie roofers who need the work and perhaps aren't aware of the dangers involved," answers Lancaster. "As far as I'm concerned, I try to stay away from condos."

This is a sentiment echoed by roofing contractors in every corner of the country. Joe Rutkoski has been offered a job on Marcos Island, but he won't touch it. John Carruth would rather turn down a condominium job, unless it involves reroofing, and even then he's wary of the legal risks involved.

Litigation has become a way of life in America. Condominium construction seems to have been hit hard by the litigation explosion that is crippling America's judiciary system. It is clear that until Americans learn to live without litigation, roofing contractors will continue to spend almost as much time in court as they spend on the roof. Not until tort reform becomes an even bigger issue for politicians throughout the country will it be safe for roofers to accept condominium jobs.

HVAC units, when clustered on a condo's roof, present roofing contractors with obstacles that are often the source of water leaks.

