

## Faux Stucco Class Action Won't Be Lucrative

By: Jerome Obermark

The Commercial Appeal, Real Estate section, Sunday, August 18, 2002

Owners of homes with a synthetic stucco exterior finish by Dryvit Systems, Inc. may be affected by a class-action settlement case pending in a Tennessee court.

The class action could affect thousands of Mid-South area owners and hundreds of thousands nationwide.

However, most owners probably aren't aware of it, said Mona Pittman, an attorney with the Kelly Law Firm in Batesville, MS.

Notice of the pending class action has been limited to a few legal advertisements in a few national publications, she said.

If owners don't opt out of the class by filling an exclusionary form by Sept. 3, 2002, they may be restricted from filing future independent claims to recover costs to correct problems.

If owners do nothing and the class action is approved, they will be limited to terms in the case, if it is approved.

Terms for owners to recover within the class action are inadequate to correct serious problems that can occur with such homes, Pittman and other attorneys said.

The class-action settlement, known as Bobby R. Posey et al. vs. Dryvit Systems, Inc., is pending in the Circuit Court of Jefferson County at Dandridge, TN.

Dryvit is one of many types of synthetic finishes that have been involved in lawsuits in recent years.

Officials with the company were contacted but did not respond to questions about the lawsuit.

Details on the class-action suit can be found on the Internet at <http://www.stuccosettlement.com>. Owners also may call (800) 320-9415 to request information, or instructions on how to file an exclusionary form to opt out.

Some owners of homes with Dryvit or other types of synthetic stucco have had widely reported major problems attributed to the synthetic stucco, or its application-including wall deterioration, mold, mildew and termite damage.

The lawsuit encompasses all homes with Dryvit built January 1, 1989, through June 5, 2002, in all states except North Carolina.

Building permits issued in Shelby County do not specify whether the homes have synthetic stucco exteriors, so no local estimate is available, said Allen Medlock, chief building inspector for the Memphis and Shelby County Construction Code Enforcement office.

Because of statutes of limitations in some states, there is some uncertainty about who may pursue independent suits against Dryvit outside the class action.

"If it has been five years (or more) since your house was built, or Dryvit was applied, the only remedy you may have may be within the class action," said Warren McWhirter, a Memphis attorney with Glassman Edwards Wade & Wyatt, PC.

Stephen Leffler, another Memphis attorney, disagrees.

There is a four-year statute of limitations after completion of construction in Tennessee; however, owners have up to 10 years to go against the manufacturer for product liability, Leffler said.

Leffler is working with a North Carolina law firm and represents about seven clients in the Memphis area against Dryvit of a few other exterior insulation finish systems (EIFS) manufacturers.

EIFS manufacturers want to repair the homes, Leffler said.

“We take the position, it has to be clad,” he said.

Typically, defendants named in independent suits include the synthetic stucco manufacturer, the builder, the subcontractor who applied it, and the window installer, McWhirter said.

Terms within the pending class action case are not lucrative to owners, he said.

The most cash an owner can recover within the class action toward repairs is \$7,500, if his estimate of repairs exceeds \$15,000, said Brent L. Crumpton, an attorney with offices of Birmingham and Dallas.

If owners stay in the class action and have repairs made at their expense, the maximum reimbursement is \$6 per square foot, Crumpton said.

At best, the class action can provide a temporary fix to a problem that requires a long-term solution, he said.

In the past 30 months, Crumpton said his firm has settled more than 200 Dryvit cases and about 70 other lawsuits involving other forms of synthetic stucco.

His firm also has about 200 other cases pending, most against Dryvit.

Dryvit has settled rather than go to trial in all the cases his firm has handled, Crumpton said.

“Typically, we have recovered enough for them (owners) to remove it and replace it with brick,” Crumpton said.

His firm works with other attorneys in cases against Dryvit in other states including Tennessee, Arkansas, Mississippi, Louisiana, Texas and Florida.

Problems with Dryvit-clad homes aren’t always apparent.

“It’s like an eggshell. It can look good outside, but be rotten inside,” he said.

Said Leffler: “If moisture gets behind the wall, it doesn’t get out, and it rots the wood.”

The pending case is not a typical class action suit, Crumpton said.

“This is a settlement class action. It’s really a legal maneuver by them (Dryvit) to head off (future) lawsuits,” he said.

Dryvit is attempting to settle in the class action with homeowners for a maximum of about \$7,500 per home, when actual costs to replace the material could be closer to about \$100,000, Crumpton said.

Terms of the suit also call for a three-year moisture warranty, but it excludes damages caused by water. A warranty sounds good, but it has no value to it, Crumpton said.

Nick Berretta, Chief executive officer of Stucco Retro West Tennessee, Inc. in Bartlett, does home inspections of synthetic stucco homes in the Memphis area.

He has been a certified inspector for eight years. He does not perform repair work, but will oversee the work on behalf of the owners.

Berretta expressed concerns about the protocol of the moisture warranty within the proposed class action.

“They (the warranty writers) don’t address problems in the areas under the windows,” Berretta said.

The biggest complaint with synthetic stucco is rotted windows, which essentially arte excluded, he said.

Unlike some of the attorneys, Berretta does not advocate removing all synthetic stucco. Circumstances vary, he said, but it can be fixed and maintained.

Techniques of repair have improved, and costs have come down considerably from what they were a few years ago, he said.

Carson Looney, an architect with Looney Ricks Kiss, Inc. in Memphis, said he has been discouraging clients for years from using EIFS products on homes his firm designs, because of problems with the product he first saw in 1984.

“I’ve steered clients away from it,” Looney said.

If clients insist on using an EIFS product, Looney said he tells them they do so at their own risk.

Mark Billingsley, executive director of the Memphis Area Home Builders Association, said most builders in the Memphis area stopped building homes with synthetic stucco in the 1990’s.

John Criswell, president of the 3,500 member Memphis Area Association of Realtors, said some Realtors won’t list homes with synthetic stucco.

He takes a more practical approach. He will list homes with synthetic stucco, by he insists owners have them inspected by Berretta’s firm. If there are problems, they have them fixed before the sign goes in the yard, Criswell said.

So many lawsuits and claims for damage have been made since 1995, some relocation companies and corporations advise transferees not to buy homes with synthetic stucco, said Jan Harbor, director of relocation for Crye-Leike, Inc.

Some owners have lost value when they have sold homes with synthetic stucco.

“A few years ago, a lot of people took hits when they sold. Their values actually declined,” said Garner Chandler, owner of Chandler Reports, a firm that tracks housing sales data.

John Jordan, owner of The Appraisal Network, LLC, said in his opinion synthetic stucco clad homes have a perception problem, which, in some instances, has even carried over to 85 year old homes in Midtown finished with real stucco.

Some insurance companies and termite insurers won’t cover homes with synthetic stucco, Jordan said.

However, Jordan said some of the highest-priced homes in Shelby County have synthetic stucco, and people who like it will buy them. He has not seen adjustments to value on any quantifiable basis attributed to homes with synthetic stucco.

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