

SPECIAL Report



NATIONAL ROOFING CONTRACTORS ASSOCIATION

Manville and Beazer Agree to Class Action Settlement of Phenolic Foam Claims With Building Owners

A settlement has been reached in a nationwide class action lawsuit on behalf of building owners against Johns Manville Corp. and Beazer East Inc. (formerly known as Koppers Co.) as a result of their sales of phenolic foam roof insulation. The class action settlement applies to all owners of buildings that had phenolic foam roof insulation on metal roof decks as of June 30, 2000.

Beazer, when conducting business as Koppers Co., manufactured phenolic foam roof insulation under the brand names Koppers Exeltherm Xtra and Rx, Genstar, Pittsburgh-Corning and Loadmaster from 1980 through Jan. 17, 1989, before selling the manufacturing process and facilities to Manville. Manville manufactured phenolic foam roof insulation from Jan. 18, 1989, through approximately March 31, 1992, under the brand names UltraGard Premier, Insul-Base Premier and Fesco-Foam board.

The class action suit was filed in federal district court in Massachusetts in 1996 to recover damages on behalf of building owners who had phenolic foam roof insulation installed on metal roof decks. Phenolic foam roof insulation can lead to corrosion of steel roof decks because of an acidic reaction that takes place when the phenolic foam roof insulation contacts moisture. For many years, Manville and Beazer have been seeking to identify roof systems that had metal decks with their phenolic foam roof insulation because of the corrosion potential.

There are separate settlements applicable to Manville and Beazer/Koppers.

Manville Settlement Terms

The settlement with Manville provides that owners whose buildings have either single-ply membrane roof systems or shingled roof systems will be paid \$100 per square (1 square equals 100 square feet) of metal roof deck in direct or indirect contact (e.g., a vapor retarder is installed on top of the deck) with Manville phenolic foam roof insulation. Building owners whose buildings have built-up roof systems will be paid \$45 per square of metal roof deck in direct or indirect contact with Manville phenolic foam roof insulation. For example, if a building had 500 squares of metal roof deck with phenolic foam roof insulation and a single-ply roof system, the owner would recover \$50,000. If a building had 500 squares of metal roof deck with phenolic foam roof insulation and a built-up roof system, the owner would recover \$22,500.

For purposes of the settlement with Manville, single-ply roof systems include roof systems with a single ply of SBS- or APP-polymer-modified bitumen roof membrane and built-up roof systems include roof systems with two or more plies of roofing felt or modified bitumen roof membrane. No inspections are required to obtain compensation. Eligible class members are to submit an executed claim form with proof of ownership to be entitled to receive payment. Manville estimates that approximately 2,800 buildings in the United States have or had phenolic foam roof insulation installed on top of metal roof decks and Manville has identified approximately 2,200 of those buildings. Approximately 1,500 of the identified roof systems have been inspected by Manville.

Building owners with Manville phenolic foam roof insulation on metal roof decks who have not yet experienced problems are still eligible to participate in the settlement in the same manner as owners of buildings where corrosion has been observed. The settlement compensation

is to be used to either inspect, maintain, repair or remediate a roof system as may be required during the life of the roof system and at the time of roof system replacement. If an owner does not remediate a roof deck or remove phenolic foam roof insulation, the owner must advise any subsequent building purchaser that the roof system has Manville phenolic foam roof insulation and the owner has already received compensation and released claims as a result of the phenolic foam roof insulation.

Beazer/Koppers Settlement Terms

For building owners who have Beazer/Koppers phenolic foam roof insulation in direct or indirect contact with metal roof decks, the settlement is more complex and based upon expenses incurred by owners. Owners will be required to obtain three bids from roofing contractors for the required remediation work; at least one of these contractors must be among those listed on a list approved by Beazer. An owner will be compensated for the actual costs of remediating a metal roof deck and a prorated portion of the actual cost of removing and replacing the roof system. The costs will be prorated to reflect the remaining useful life of the existing roof system based upon stipulated life expectancies of different roof systems, which range from 14 to 20 years. The settlement will also cover reimbursement of design fees of an architect or roof consultant of up to \$2,500 for roof systems up to 250 squares and up to \$5,000 for roof systems more than 250 squares. In addition, eligible claimants may recover interior protection compensation of 25 cents per square foot of roof deck where metal decks must be replaced. This compensation is not prorated and will not be paid on properties that have interior ceilings or are vacant.

The prorating will apply to the replacement costs of a "Like Kind Roofing System" to reflect the remaining useful life of an existing roof system. For ballasted and mechanically attached EPDM roof membranes, depreciation or prorating would be based upon a "standard

useful life" of 14 years. Reimbursement to owners of fully adhered EPDM membranes and three-ply built-up roof membranes would be prorated based upon a standard useful life of 15 years, and four- and five-ply built-up roof membrane roof systems would be prorated based upon standard lives of 18 and 20 years, respectively. Reimbursement to owners with phenolic foam roof insulation on shingled roof systems would also be based upon an 18-year standard useful life. The stipulated standard useful life may be reduced or increased depending upon job-specific conditions.

Claim forms for owners with Beazer/Koppers phenolic foam roof insulation should be sent to:

Beazer PFRI Claim Program
Mr. Jack D. Gallie
Claims Administrator
One Oxford Centre
Suite 3000
Pittsburgh, PA 15219

For both manufacturers, there will be no dollar limits or caps on the money available to pay eligible building owners. Every eligible class member is to be paid for each building with phenolic foam roof insulation on a metal roof deck. An owner must own the building or be obligated to maintain the roof system as of June 30, 2000. A former owner can receive compensation only if the former owner holds a written assignment of the right to seek damages against Manville or Beazer from the current building owners. Claims are expected to be paid within a few months of submission of the proper documentation to the class action settlement administrator.

Exclusions From the Class Action Settlement

The following parties are not eligible class members and cannot recover any money from

the settlement:

- any person or entity whose roof deck is *not* metal
- any person or entity whose roof system is entirely a standing-seam metal roof system
- any person or entity whose roof deck has already been fully remediated by Manville or Beazer, or who has already settled a claim with Manville or Beazer for damage to his or its roof deck
- class action members who file a **Request for Exclusion**

Building owners who are eligible to be members of the class but choose not to be can exclude themselves, or opt out. Any member of the class who has opted out may pursue their own claims against Manville or Beazer at their own risk and must pay their own attorneys' fees. Building owners who desire to be excluded from the class to be able to pursue their own claims must notify the claims administrator, Standish Legal Processing, and complete a Request for Exclusion form that must be postmarked on or before **Nov. 22, 2000**.

Procedure

The settlement applies to all class members who choose not to exclude themselves from the settlement. A class member is defined as any person or corporation who owns (or has owned and retains the right to seek damages) a structure (commercial building, school, condominium, house, garage, etc.) in the United States that contains phenolic foam roof insulation, manufactured by Manville or Beazer. The phenolic foam roof insulation must be installed, in whole or in part, in direct or indirect contact with a metal roof deck.

For the past several months, efforts have been made to notify eligible class members through newspapers, magazines, trade journals and television, as well as direct mailings to

building owners. A final approval hearing in the U. S. District Court for the District of Massachusetts is scheduled for Dec. 13, 2000. At this hearing, the court will determine whether the proposed settlement is fair, reasonable, adequate and in the best interests of the class members. Any class member may appear at the hearing in person or through an attorney to show cause why the proposed settlement is not fair, reasonable or adequate. Any class member who wishes to appear at the hearing should file a written notice of objection with the court. Supporting documentation must include the name and address of the class member, the address of the property subject to the settlement, evidence of membership in the class (i.e., proof that the property has a metal roof deck with Manville or Beazer phenolic foam roof insulation), and any memoranda and other documentation setting forth the basis for the objection. Any documents filed with the court must also be served to Manville and Beazer's counsel.

If the settlement is approved by the court, which is expected, Manville and Beazer will deposit money into a settlement fund, and an Independent Claims Administrator will be appointed. This administrator will process claims, issue payments out of the fund and adjudicate disputes regarding the claims process. To participate in the settlement, claim forms must be filed no later than **Dec. 14, 2001** for the Manville settlement and no later than **Dec. 14, 2001** for the Beazer settlement.

Consequences

Class members who do not opt out will be bound by the final court-approved settlement. This means that the compensation from the settlement will be the full amount they can recover from Manville or Beazer for damage caused by Manville or Beazer/Koppers phenolic foam roof insulation. They will have given up any right to sue Manville or Beazer for any damages to their buildings resulting from phenolic foam roof insulation.

Building owners who opt out of the class action settlement do not participate in the settlement and are not limited by its terms. They may pursue their own claims and seek their own recoveries; in these situations, Manville and Beazer will be able to assert any defenses they may have to the claim, including expiration of the applicable statutes of limitation. Prior to deciding to exclude themselves from the class, building owners should examine their roof systems and consult their attorneys.

Individuals or companies who believe they are eligible to participate in the phenolic foam roof insulation class action settlement or need additional information can contact the claims administrator or the attorneys for the class:

Claims administrator: Standish Legal Processing
Stonehill Corporate Center
999 Broadway
Suite 500
Saugus, MA 01906

1-877-917-PFRI
www.pfriclaims.com

Attorneys for the class: Kenneth G. Gilman, Esq
Douglas M. Brooks, Esq.
Gilman & Pastor, LLP
999 Broadway
Suite 500
Saugus, MA 01906
(781) 231-7850
(781) 231-7840