

The RISE in EIFS LITIGATION

BY T. J. PARSELL, JR.

Over the past few years, there has been an increasing amount of litigation, particularly in the Southeastern U.S., concerning EIFS (pronounced "eefs"). EIFS is an acronym for Exterior Insulation and Finish System, an exterior cladding system for buildings of all types. However, unlike stucco, EIFS consists of a layer of expanded polystyrene baseboard often placed on gypsum sheathing and covered in multiple layers, including a base coat, a layer of reinforcing mesh, and topped with a stucco-like finish coat. EIFS was originally utilized because its cost to install was less than that of traditional stucco, and it is more versatile, which allows the architect and contractor more flexibility for aesthetic detail.

Typical EIFS Problems

Unfortunately, EIFS has not been a panacea. Over the years, many EIFS-clad buildings have exhibited a tendency to leak. In others, the EIFS has become structurally unsound, resulting in the surface cracking and water intrusion. Although such problems are not isolated to EIFS, as many buildings clad in other materials (such as wood, brick, and traditional stucco), also leak, the recent exposure of EIFS-related deficiencies has made it a target for construction lawyers representing building owners whose buildings have begun to leak or who may be suspicious of the structural integrity of their EIFS cladding.

To understand the litigation surrounding EIFS, one must understand how the industry originally intended EIFS to function as an exterior cladding. Because traditional claddings such as wood, brick, or traditional stucco actually contemplate water penetration behind the face of the cladding, those systems address the problem by incorporating secondary or redundant water barriers, such as building paper. Traditional cladding systems also provide a means for water that does get behind the face to be diverted out from behind the wall. Traditional flashing or "weep holes" allow the water to exit the system without damaging the wall.

EIFS, however, was originally intended as a "barrier" system. As such, EIFS systems were intended to prevent water from getting past the exterior surface. Because water was not intended to penetrate behind the face of the EIFS, no provisions were made for a secondary water barrier, and no manner for the water to escape the wall (if it did penetrate), was provided.

Thus, once water has penetrated EIFS cladding, it causes damage to unprotected wall members such as the sheathing, underlying wood, or metal studs. Problems have compounded as the wall elements deteriorate, sometimes resulting in the EIFS itself weakening and breaking away from the structural members.

EIFS Litigation in a Nutshell

Typically, the major players among the defendants in EIFS litigation are the general contractor, the applicator, the EIFS manufacturer, the architect, and often both the window manu-

facturer and window installer. Increasingly, building envelope consultants are called in to offer expert opinions.

Often, the owner is able to establish at least technical deficiencies in the application because EIFS is a very "applicator-sensitive" system requiring great attention to detail in order to comply with the manufacturer's installation specifications and requirements. In particular, installation of the mesh at openings such as doors and windows is critical, as are base and finish coats of proper thickness. The applicator must also make correct allowances for a sealant joint at the window and door terminations. Often, this juncture is the source of water intrusion into the EIFS system.

As to the manufacturer and architect/designer, owners allege that EIFS is an inherently defective system and is incapable of reliably acting as a water barrier as intended. Manufacturers, it is alleged, knew or should have known that even properly-applied EIFS leak to some extent. As a result, the owners contend that the manufacturer and architect/engineer should have contemplated such leaks and protected the wall with a secondary water barrier and should have provided a method of diverting the water out of the wall.

Contractors typically defend these cases in three ways. First, often technical deficiencies in EIFS installation have not resulted in damage to the owner's system. For example, forensic experts (often building envelope consultants) observe numerous technical deficiencies, such as inadequate thickness of finish coat where there is only a slight deviation from the manufacturer's specification, that have not resulted in any problems.

Second, contractors assert that EIFS requires regular owner maintenance, particularly at the sealant joints. While opinions vary, some experts require re-applying sealants around windows and doors every three to five years, which often is not done.

Finally, when appropriate, contractors concur with the owners regarding the inherently defective nature of EIFS. Simply stated, contractors agree that the system they applied would have leaked no matter how it had been applied, and thus, since its failure was inevitable, a failure to install perfectly is of no consequence.

The manufacturer typically joins with the contractor in asserting the first two defenses noted above. If those fail, the manufacturer typically joins with the owner, asserting that its system was improperly installed by the contractor. Furthermore, the industry standard for applicators allows for deviations from the specifications set forth by the manufacturer.

The result is that the defendants in these lawsuits often find themselves at odds, pointing fingers at each other, about the causes of the owners' difficulties.

Needless to say, the litigation surrounding EIFS is rather complicated and involves extensive discovery, which requires extensive destructive testing and analysis by all parties. Unfortunately, given the widespread use of the product over two decades, EIFS litigation is here to stay for the foreseeable future. ■

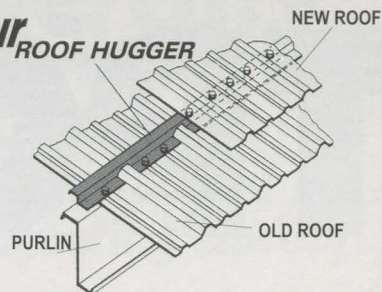
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