

# ROOF WARRANTIES

## MOVING PAST CLICHÉS

By Chuck Marvin, RRC

*Roof warranties are not worth the paper on which they are written.*

*If there are problems with a roof, they most likely will occur in the first few years.*

*An owner is better off spending the warranty fee on a maintenance program.*

*Warranties are written by manufacturers for their own protection.*

*I have never seen a piece of paper keep water out of a building.*

**T**he statements above list some of the more common clichés about roof warranties. Three years ago I attended an RCI meeting with two Registered Roof Observers who, at the time, had been with my company a little over two years. They heard multiple speakers espouse the above clichés to laughter and acceptance by the 80 or so attendees. They were confused because they work for me, where the value of a properly deployed warranty is stressed.

Our firm has collected over two million dollars from roof warranties since 1994 and has half a million dollars currently in the works. Almost without exception, every

major manufacturer has participated in five-figure claims multiple times. We have found it has never been a contentious issue if handled correctly. I did write “almost without exception,” and there is one major manufacturer and a handful of smaller players who almost single-handedly give credence to the clichés.

With 80% of construction lawsuits reportedly involving the roof system, it is worthwhile to understand how warranties work. This article lays out what must be done. Warranty deployment requires significant work and follow-up in order to be successful. Developing a design or contractor proposal resulting in a valid warranty is in itself a worthwhile process. This article

demonstrates how owners can obtain a proper roof warranty allowing them to be in a position to benefit.

### **THE IMPLIED WARRANTY: TO VOID OR NOT TO VOID**

The Federal Trade Commission (FTC) informs us that implied warranties are created by state law, and all states have them. The most common type is the “warranty of merchantability,” which means a purchased product will do what it is supposed to do. A toaster must toast. A refrigerator must refrigerate. A roof must keep the water out.

Another type is “the warranty of fitness for a particular purpose.” If a watch intended for use under water is purchased, then it must work under water. If a product does not come with a written warranty, it is still covered by the implied warranty. Implied warranties are often valid up to four years, but the state involved determines the actual term applicable to the product. Contact a lawyer or the applicable state’s consumer protection office for more information.

If you accept a written warranty from a manufacturer or contractor, it likely contains language along the lines of this actual example:

The foregoing warranty is exclusive and in lieu of all other warranties, conditions and representations,

whether express or implied, oral or written, statutory or otherwise, including, but not limited to, any implied warranties or conditions of merchantability or fitness for a particular purpose or durability. All other warranties, conditions, and representations are hereby canceled.

Situations where the above example was issued may mean an owner accepted the voidance of the state-granted implied warranty. Of course, further exclusions such as not being responsible for “consequential damages” are normally contained in the written warranty. The first action an owner should make is to deliberately weigh the pros and cons of accepting a written warranty, potentially voiding the state’s implied warranty. This is where lawyers earn their money.

Overwhelmingly, the market demands a written warranty from the manufacturer, contractor, or both. This holds true for my clients as well, although there are exceptions. The point is to initiate the evaluation of the benefits each approach offers to the situation at hand. Owners often accept a poorly written warranty for their particular purpose that also voids their coverage from implied warranties. Assuming the decision to accept a written warranty is made, another evaluation process is then set in motion.

A brief summation of written roof warranty categories is necessary to establish a

basic understanding: Material Only, Labor and Material, Full System, and Single Source are the most typical. These descriptions are limited and general in scope.

#### **MATERIAL-ONLY WARRANTY**

Material-only warranties do not cover labor. Often, they cover only the membrane and flashing material and not other components, such as insulation. They are often provided at no cost. These warranties can be beneficial to the owner. Recently, we collected \$12,000 on a 16-year-old ballasted roof with a 20-year material warranty. The designer called for this in addition to a 15-year labor-and-material warranty, which had just expired. The designer plays a key role.

#### **LABOR-AND-MATERIAL WARRANTY**

These warranties will also cover the labor to install the roof. Often, the coverage is extended to the roof membrane and flashing only. Through exclusions in the warranty language, insulation, fasteners, termination bars, and sheet metal are often not covered. Owners will need a designer knowledgeable about warranty language to make it effective.

#### **FULL-SYSTEM WARRANTY**

While not perfect, a full-system warranty covers more and is clearer. This category will usually cover all labor and material installed on the project. The manufacturer issuing the warranty may or may not have manufactured the insulation or fasteners,

for example, but includes them in the warranty as part of the full-system coverage. There are blanket warranties stating that all materials manufactured by them are covered. Typically, an owner relies on the designer in these instances, as the latter will understand the specific language in a warranty and what it means to the owner.

#### **SINGLE-SOURCE WARRANTY**

Contractors typically private-label material by manufacturers and install it under their company name. The roles of the manufacturer and installer are provided by the same company, resulting in elimination of potential finger-pointing because of single sourcing—or so goes the sales pitch. Competition, along with checks and balances, are reduced or eliminated. This often drives the cost up for the quality received. Major manufacturers do not offer these, and A&E or consulting firms seldom call for them. Some medium- and small-sized niche manufacturers play a similar angle.

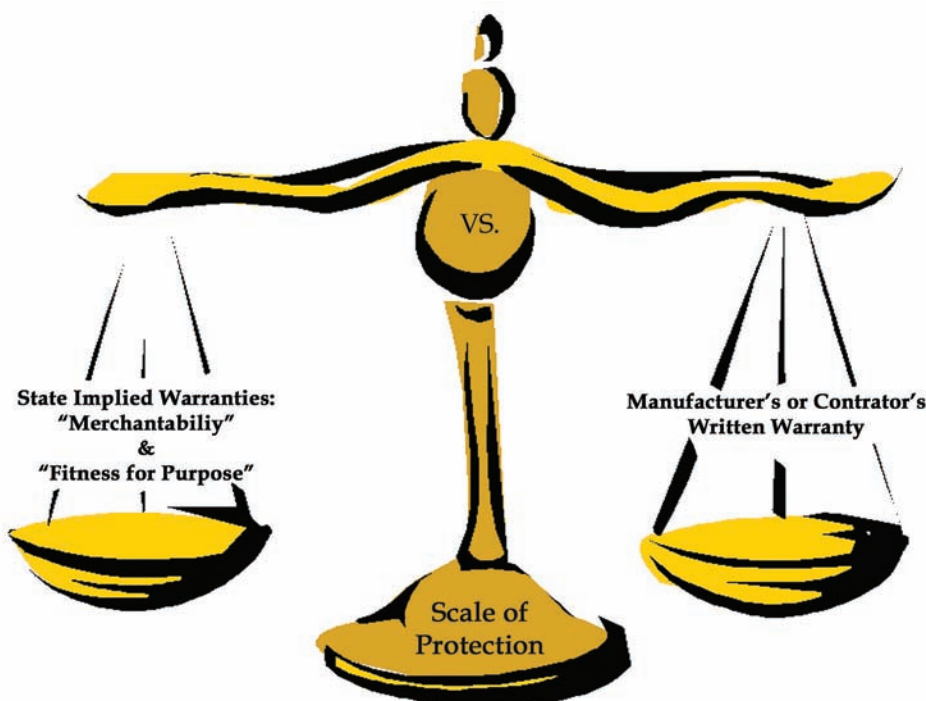
A major challenge often arises through the single-source warranty. If the contractor goes out of business or fails to perform, how may another contractor be used? When a major manufacturer’s warranty is backing the roof, an owner simply qualifies another quality local roofer to replace the old. If either happens with a single-source warranty, a real challenge may present itself. This requires negotiation and clear language.

Regardless of the warranty type, each contains exclusions and limitations. The language must be carefully reviewed. It is still common to see language calling for the warranty to be prorated or worth a maximum amount per square foot in the fine print. This needs to be reviewed and edited. If this grooming and the other steps here are followed, reputable companies on sound financial ground will normally honor their obligations.

#### **UNIVERSAL LIMITATIONS**

##### **NO ROOF WARRANTY COVERS EXISTING COMPONENTS**

Stress from the deck creating leaks is excluded. Water entry from condensation, walls, windows, HVAC, or any source outside of the roof membrane and flashing is not covered. This can mean more than who pays to fix the leaks. Every source just cited has been found to be the source for saturated roof insulation, mold growth, and premature roof failure. In every case, the warranty was not worth the paper on which it





## UNBIASED OVERSIGHT



was written. If a knowledgeable designer were utilized to address and divorce these challenges, in every case, the warranty would have been worth a new roof or prevention of failure.

### ONLY WHAT IS WRITTEN COUNTS

The roof warranty will typically be clear in requiring written notice of any leak in a timely fashion. It will tell an owner where the written notice is to be submitted. Calling the contractor or the sales representative does not count with a manufacturer-issued warranty; the contractor may even tell an owner this is all that needs to be done and is how the contractor always does it. Never skip written notification, and always keep a log. Warranties will typically state that only changes authorized in writing by a corporate officer have validity. Some even go so far as to say the sales rep-

resentative does not have this authority.

### ALL MAJOR ROOF MANUFACTURERS EXCLUDE RESPONSIBILITY FOR ROOF DESIGN MANY RECOMMEND THE USE OF A DESIGN PROFESSIONAL

Designing vapor retarders, understanding convection, knowing code and design requirements addressed in ANSI/SPRI ES-1 or ASCE 7, as well as with interior and exterior ASTM fire classifications, are just a few of the hundreds of issues that must be met to meet code and provide a basic competency. This is determining fitness for the particular purpose, which was covered by the state-implied warranty and is now excluded by the written warranty.

Manufacturers typically state they are not responsible for design. One major contractor who issues a single-source warranty has bold language on its company literature

recommending owners hire designers. Owners often do not understand that they are responsible for the design. Manufacturers' and contractors' literature is usually clear that they are not to be held responsible.

Dozens of manufacturers and contractors may wish for input here regarding warranties' differences and advantages. It is simply not possible. There are hundreds of nuances in this arena, and most promote their own companies' agendas. The following steps will allow owners to achieve objectives when long-term performance is involved.

### STEP 1: ENSURE THE DESIGN IS CORRECT FOR THE APPLICATION.

An example of a simple design challenge may involve an EPDM rubber membrane, asphalt-based built-up, or modified mem-



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brane not tolerant of ponding water. The warranties for these products exclude ponding water in writing. Even today it is easy to find manufacturers and contractors who install these systems under such conditions. This roof is not fit for the particular purpose. An owner must be sure to have a knowledgeable independent design firm address both the technical and simple challenges. The designer should not be affiliated

with a manufacturer or contractor and should be free from bias or undue influence. After qualifying a designer's experience and references for applications similar to those to be addressed, we recommend asking the following questions:

**Qualifying Questions for Designer**

1. Are you providing a comprehensive design for this roof system?

2. If yes, is your design insured or warranted, and how? Do you have errors and omissions (E&O) insurance?
3. Are you affiliated with or are you compensated in any way by a manufacturer?
4. Are you affiliated with or are you compensated in any way by a contractor?

**STEP 2: HAVE AN INDEPENDENT FIRM MONITOR COMPLIANCE WITH THE DESIGN DURING CONSTRUCTION.**

This is also recommended by the National Roofing Contractors Association (NRCA) and FM Global (FMG).

**Qualifying Questions for Monitoring Firm**

1. Are you affiliated with or are you compensated in any way by a manufacturer?
2. Are you affiliated with or are you compensated in any way by a contractor?

Insist the manufacturer issuing the warranty have its technical representative inspect the installation while in progress and not just perform a final inspection. Do not allow the sales representative to fulfill this obligation, due to potential conflicts of interest.

**STEP 3: UPON COMPLETION OF THE PROJECT, IMMEDIATELY ESTABLISH A ROOF MANAGEMENT PROGRAM.**

Most, if not all, warranties require annual inspections at a minimum. They require notice if equipment is added or if the usage of the interior space changes. These and other requirements are in addition to the leak-reporting procedures. These are reasonable requirements.

If any of the above are not followed (and such is often the case), the chance of succeeding on a major claim is dramatically reduced. If the three steps are followed, there is still more to consider.

Knowing some of the curve balls in how the roofing industry works can be helpful. The following demonstrate a few common situations where conflicts of interest have influence:

**HIDDEN CONFLICTS TO CONSIDER:**

1. Who do major manufacturers represent? They inspect the job because it is their warranty. The fact remains that contractors are also their

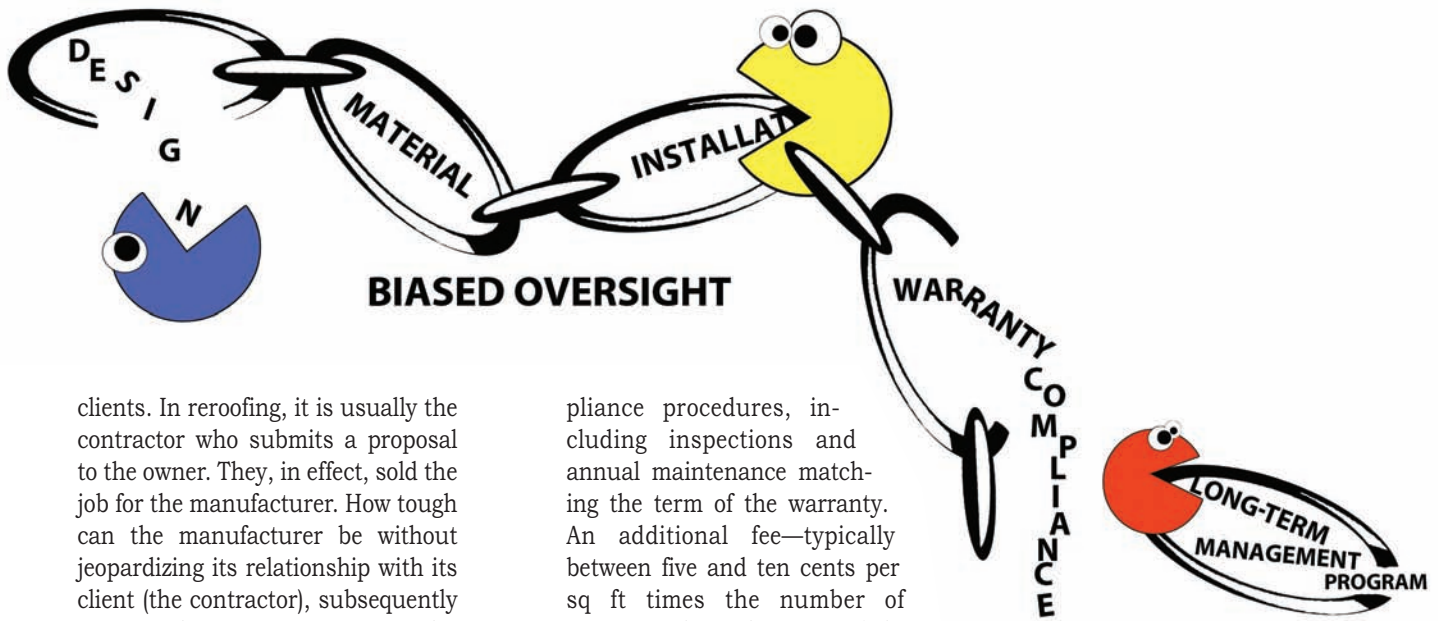
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clients. In reroofing, it is usually the contractor who submits a proposal to the owner. They, in effect, sold the job for the manufacturer. How tough can the manufacturer be without jeopardizing its relationship with its client (the contractor), subsequently causing the contractor to consider using another manufacturer on a subsequent project?

2. Want proof of the conflict noted in #1? Some major manufacturers issue the warranty before they have conducted a final inspection. They issue what is referred to as an “early bird” warranty. This is done because the technical representative may be weeks out from doing a final inspection, and the contractor needs cash flow. Why would the manufacturer endeavor to accommodate this practice? The contractor is the client often selling material on privately negotiated jobs. Make the client happy, or he may use others. This is a horrible practice. Require the manufacturer’s final inspection report prior to conducting the consultant’s final inspection for the owner.
3. Determine how a warranty claim is paid.
  - a. Many and perhaps most are paid for out of operating income. This is when a Dun & Bradstreet report would be valuable.
  - b. Some build war chests out of the warranty fees. One major manufacturer has an impressive war chest after putting about 30% of its warranty fees aside for decades.
  - c. Others have insurance policies backing their products. What if the insurance is canceled?
4. At least two manufacturers are now offering to include all warranty com-

pliance procedures, including inspections and annual maintenance matching the term of the warranty. An additional fee—typically between five and ten cents per sq ft times the number of years—is charged on top of the warranty fee. For a new 40,000-sq-ft roof receiving a ten-year warranty, a charge of \$20,000 over the warranty fee may result. A significant percentage of this is paid as a commission to the salesperson. We have already identified one roof failure where a vapor retarder was faulty and the roof was 80% wet. The roof was well under ten years old. The manufacturer failed to identify the challenge and has failed to respond to a written request for corrective action for six months. This practice of putting the fox in charge of the henhouse is discouraged.

5. Some manufacturers, typically smaller niche-oriented firms, compensate their representatives via generous commission rates. There are significant differences in business practices and compensation from those of the conventional inde-

pendent designer, major manufacturer, and approved installing contractor and may reflect the following.

- a. This type of manufacturer almost always develops the sale. The relationship with the contractor here is different. The manufacturer acts as an unpaid salesman for its contractor base. Obviously, the contractor will not be at liberty to suggest alternate products or solutions. Checks and balances are restricted.
- b. The recommendations may be based on what makes the most money and not what is the best design. Eliminating bias and undue influence whenever possible is a positive development.
- c. The sales representatives from these firms often generate com-

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missions two to five times the design firm's entire fee; this is an owner's decision. However, my experience is that the owner never realizes the disparity and has been angry the few times we witnessed this disclosure. The owner must ask the representative to break out what his direct fees are. Owners receive this with any A&E or consulting firm's quote, so why not for sales reps? Full disclosure is warranted and is a positive influence.

- d. Manufacturers have E&O insurance for the design and performance of products. Ask them to specifically acknowledge that they cover E&O for the design of the entire roof assembly for the sole and specific purpose of the building it is to be installed on. This is to include vapor retarders over paper mills and air barriers over freezers or pools. Ask for this in writing and that it be signed by an officer of the corporation.
- e. Ask how warranty claims are paid for, as previously recommended. A practice known as "charge back" may be revealed. The representative has his commission reduced by the equivalent of what the corrective action cost. This is just one more conflict putting undue pressure on the situation.

There are many other situations exhibiting undue influence to varying degrees – too many to list here. Conflicts of interest are bad business. This is why a knowledgeable, experienced roof designer is an owner's best bet for the highest-quality roof at the lowest price with a warranty that has real protection. It is a complicated document in a part of the construction industry filled with smoke and mirrors.

Now the question of who performs the annual roof management program and what the program should consist of must be answered to ensure the warranty remains in full force. In-house staff, the installing contractor, contractors in general, and some niche manufacturers are typically the sources used. With proper training and oversight, this can be effective. Failure to initiate a program early and with qualified people is a significant reason many warranties fail in later years. Early challenges not identified are often the cause of failure years later when it is too late for corrective action to be effective.

The firm performing the inspections must be knowledgeable in more than the roof assembly. Understanding vapor drive, condensation, air barriers, vapor retarders, walls, windows, HVAC equipment, and how they relate to the particular roof assembly is critical. This is why even the installing contractor likely needs training for people it assigns. This can be accomplished but takes a commitment. Sound, comprehensive record-keeping, complying with the written terms of the warranty for the entire term of the warranty, is the final act of commitment required.

This is a long, trying process that few in-house employees deal with regularly. This article is testimony to the difficulty of the process. However, if an owner commits to this approach, the rewards are tremendous. Leaks from all sources will be reduced, the life cycle of the roof will be extended, maintenance costs will be reduced, and the warranty will avoid becoming a cliché, instead providing real coverage. 

#### Chuck Marvin, RRC

Chuck Marvin is a Registered Roof Consultant who founded Roof Solutions Incorporated in 1994 to represent owners in an unbiased manner. From 1986 to 1990, he worked for Tremco, learning the manufacturing side of the business; and from 1990 to 1994, for Simon Roofing, learning the contracting side. Marvin's work has been published in several journals, and in 1998, he won the Horowitz Award for excellence in writing from RCI, Inc. for his contribution to *Interface*.

