

Special Issue - the Omega Sprinkler Settlement

The controversy surrounding the Omega sprinkler has attracted more attention than any other issue in the history of the fire sprinkler industry. The recent settlement between Central Sprinkler Corporation and the U.S. Consumer Product Safety Commission (CPSC) contains important information for sprinkler contractors, building owners, and authorities having jurisdiction. To a large extent, the wording of the Consent Agreement and Order parallels that of the proposed settlement in the California state class action suit filed against Central. This class action suit, the Hart case, has tentatively been settled, but will not be finalized until February of 1999.

A second suit, a Federal civil class action suit filed in Pennsylvania, is essentially being merged into the Hart case. This second class action suit was filed on behalf of commercial building owners, and supported by the Building Owners and Managers Association (BOMA). BOMA has officially endorsed the proposed settlement, and a joint letter from BOMA and Central Sprinkler was sent to BOMA members in early November, advising that a resolution has been reached and suggesting that building owners participate in the remediation program.

Background

From 1982 to July of 1998, Central manufactured and sold or distributed between 8 and 10 million Omega brand sprinklers of various models. These sprinklers represent less than 2 percent of an estimated 600 million sprinklers in service nationwide.

In May of 1995, two fires took place in which an Omega sprinkler failed to release water despite activation of its fusible element by the heat of a fire. One was at a Marriott Courtyard in Michigan, and the other at a Veterans Administration Medical Center in New York. In April of 1996, Central notified its customers of these two incidents of non-activation, advising that it had determined both were caused by the improper use of stop leak products. In that same notification, however, Central revealed that pooling of hydrocarbons from cutting oils in steel pipe systems had been found to result in high required activation pressures due to swelling of the EPDM o-ring, and began asking for notification of locations with Omega sprinklers in steel pipe systems.

In June of 1996, with the permission of Underwriters Laboratories (UL), Central replaced the EPDM o-ring in new Omega sprinklers with a silicone o-ring. In August, UL issued a press release confirming field reports of high operating pressures, and suggesting that representative samples of Omega sprinklers from all existing sprinkler systems be tested, not just those utilizing steel pipes.

In January of 1997, the U.S. Consumer Product Safety Commission (CPSC) confirmed that the Omega sprinkler situation was under federal investigation. In February, Central issued a 5-page letter to sprinkler contractors and owners, denying a product defect but outlining a sample test protocol and replacement strategy.

In March of 1998, the CPSC officially filed an administrative Complaint seeking recall and replacement of all Omega sprinklers. At the time of filing, CPSC reported six fires in which Omega sprinklers did not properly activate. Central contested the jurisdiction of CPSC, claiming that fire sprinklers were not a consumer product. In June, an administrative law judge ruled in favor of the CPSC on this issue, denying Central's motion to dismiss.

In October of 1998, Central Sprinkler and CPSC signed a Consent Agreement and Order. The wording of the agreement includes the statement that CPSC staff has received reports of 20 fires since 1990 in which Omega sprinklers did not function. The agreement results in a total recall of Omega sprinklers, including those manufactured after May of 1996 with the silicone o-ring.

Provisions of the Consent Agreement

Under the terms of the Consent Agreement, Central has agreed to not contest the allegations that Omega sprinklers contain a defect creating a substantial product hazard, so as to avoid the expense, inconvenience and risks associated with further litigation, and has agreed to fulfill all requirements of the Order. The Order is a separate document that officially accepts the Consent Agreement and obligates Central Sprinkler to:

- ◆ Remove from service and replace all Omega sprinklers with replacement glass bulb sprinklers containing a Belleville washer-type seal
- ◆ Immediately cease manufacturing, selling, distributing, marketing, exporting, and importing any Omega sprinkler, either directly or through subsidiaries or affiliates
- ◆ Provide notice to the public, its customers, and Omega owners of the alleged hazard and the remedy to which owners are entitled
- ◆ Provide replacement sprinklers at no cost to all Omega owners
- ◆ Provide replacement escutcheons, extensions, and any and all other fittings, fixtures, and appurtenances needed for replacement at no cost to owners
- ◆ Beginning in November of 1998 and for a period of four years, undertake an effort to manufacture and distribute at least 100,000 replacement sprinklers per month
- ◆ Develop a plan for priority replacement if demand for replacement sprinklers exceeds the production rate
- ◆ Pay a fee of \$5 per Omega sprinkler to owners who do not want or cannot use replacement sprinklers, provided there is reasonable proof of replacement
- ◆ Pay monies into a trust fund to be used as a contribution toward reimbursing owners for the labor costs of replacing Omega sprinklers
- ◆ Destroy all finished goods inventory and returned Omega sprinklers
- ◆ Refrain from the manufacture and sale of sprinklers with internal components similar to the Omega

Owners Obligations

To obtain replacement sprinklers and parts and to be eligible for monetary reimbursement of labor costs, an owner of Omega sprinklers must follow specific procedures under the remediation plan. These include submission to Central of a Proof of Claim form and a Waiver and Release of Claims form. Both of these must be postmarked by August 1, 1999. This will result in the receipt of replacement sprinklers and parts from Central. The wording of the Waiver and Release of Claims is intended to release not only Central, but also all those in the chain of distribution of the Omega sprinklers, including the installing contractor. To complete their qualification for payment from the trust, owners must also send Central a Verification, under penalty of perjury, that the Omega sprinklers in the building have actually been replaced. The Verification must be submitted within one year of the receipt of replacement sprinklers and parts, and must be accompanied by a work order, bill, receipt or other documentation from the person or company doing the replacement.

Owners who miss the August 1, 1999 deadline but submit the Proof of Claim and Waiver and Release forms by November 1, 2001 will receive free replacement sprinklers and parts, but are ineligible for contributions from the trust.

By October 15, 1999, Central will provide the CPSC with a plan of distribution of the trust to owners who have submitted the required documentation for the remediation plan. A supplemental distribution plan is due December 31, 2001, and a second supplemental due November 30, 2002.

The Proof of Claim form, the Waiver and Release of Claims form, and the Verification form are all available on the special Omega recall website at www.omegarecall.com. Information can also be obtained by calling Central at the following interactive telephone number: 800-896-5685. As a convenience, the forms will be faxed to NFSA members upon request: call Tina Weick at 914-878-4200 ext. 33.

In addition to the forms, the Omega recall website provides information on identification of Omega sprinklers, and notes that sprinklers should be installed by licensed trained sprinkler contractors.

Replacement Sprinklers

Under the terms of the Consent Agreement, all proposed replacement sprinklers are to be listed by UL, and all non-residential replacement sprinklers listed or approved by Factory Mutual Research Corporation and UL by November 1, 1998. All replacement sprinklers are to be glass bulb types containing a Belleville washer seal. An appendix to the Order contains a specific listing of proposed replacement sprinklers for each type of Omega sprinkler being replaced:

Commercial Sprinkler Replacements (UL listing and FM approval required):

Omega Model Replacement Model

| | |
|-----------------|---|
| 3/8" C-1 & C-1A | 7/16" GB-QR Pendent |
| 1/2" C-1 & C-1A | 1/2" GB-QR Pendent |
| EC20 & EC-20A | 1/2" GB EC Pendent |
| AC 1/2" | GB-QR Pendent |
| HEC-12 | 1/2" GB-QR S/W |
| HEC-12EC | 1/2" GB EC S/W |
| M Pendent | 1/2" GB-QR Pendent |
| M Upright | 1/2" GB-QR Upright |
| M Sidewall | 1/2" GB-QR S/W |
| M-EC Sidewall | 1/2" GB-EC S/W |
| HEC-20 | 1/2" GB-EC S/W |
| FC Flush | 1/2" GB4-FR |
| FC Pendent | 1/2" GB-QR Pendent |
| Prohibitor | No replacement (Model GB-QR can be used, but is not listed for institutional use) |

Footnotes within the appendix point out that Factory Mutual does not currently approve 7/16-inch orifice sprinklers, that the GB-EC sprinkler is currently being tested at FM, that FM's minimum pressure requirements for EC sprinklers do not allow approvals for direct replacement of UL-listed sprinklers in all applications, and that FM does not approve mounting heights for sidewall sprinklers more than 12 inches below the ceiling.

Residential Sprinkler Replacements (UL listing required):

Omega Model Replacement Model

1/2" C-1 & C-1A LF Pendent

EC20 & EC-20A LF Pendent

HEC-12 RES & HEC-12 LF S/W

R-1, R-1A & R-1M LF Pendent

Since suitable replacement sprinklers are not available for all Omega models, Central is obligated to pay a fee of \$5 per sprinkler to any owner who cannot use the replacement sprinklers. Omega owners who replaced their sprinklers between May of 1996 and the date of the Order are entitled to the difference between the \$5 per sprinkler and any value already received from Central.

Establishing the Fund

An appendix to the Order also spells out the obligations of Central in helping to defray the owners' costs of removing and replacing the Omega sprinklers. The following sums are mentioned:

- An initial deposit of \$2.2 million per year into an interest bearing irrevocable trust account, and anniversary deposits of like amounts for three years, for a total of \$8.8 million.
- An additional deposit to the trust of half (50%) of all proceeds to Central from claims against its insurers or other third parties relating to Omega issues, less reasonable costs and attorneys fees expended in defending itself against civil lawsuits (but not personal injury, property damage or death suits), up to the amounts of Central's other contributions, and 70% of proceeds in excess of those amounts.
- By November 30, 2001, an additional deposit to the trust based on the total number of sprinklers included in Proofs of Claim submitted by November 1, 2001, ranging from \$15 million if fewer than 1 million sprinklers have been included to \$0 if more than 4.75 million sprinklers have been included.

◆ By November 30, 2002, an additional contribution to the trust representing the difference between \$37.3 million and the sum of various expenses incurred by Central between now and then, provided that such expenses do not exceed \$37.3 million. The allowed expenses include the cost of manufacturing and supplying replacement sprinklers and parts, the sum of the \$5 payouts per sprinkler to owners who do not or cannot use the replacement sprinklers, the prior contributions to the trust, the costs of providing public notice of the CPSC and class action settlement (but no more than \$1.6 million), the cost of administering the remediation program (but no more than \$3 million), and the cost of defending any actions and paying any judgments for those who opt out of the remediation program and the class action settlement.

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