

# WHEN YOU'RE FACED WITH LITIGATION

What is Litigation? Litigation is the term used to describe legal proceedings initiated between two opposing parties to enforce or defend a legal right. Litigation is typically settled by agreement between the parties, but may also be heard and decided by a jury or judge in court or by arbitration or mediation. There are two parties in litigation, the plaintiff and the defendant. The plaintiff, the party filing the complaint, has the burden of proof.



You should try to avoid a flooring dispute that results in litigation at all costs and strive to work out a reasonable resolution to the problem and complaint. The illusive word here is reasonable because when an end user feels they have been damaged to a point that they want a pound of flesh there may be no reasoning. If this is the case and the parties involved become principled then filing a law suit serves to free up the log jam.

Before you jeopardize any relationships it is best to bring in a knowledgeable, reputable, independent and unbiased third party such as LGM to provide alternatives to litigation for disputing parties. This step involves definitively determining what is wrong, what went wrong and why and who is at fault. We work directly with you or your attorney for onsite physical inspection, evaluation and analysis of the condition and then have the capability to conduct product evaluation and testing. We will also review documents and information relative to the situation. Thereafter a determination will be made as to the cause of the failure. Part of this process also involves an inquisition as to the history of the project and how you arrived at where all the parties are today.

For years I have used this saying, “the flooring never lies; it will always tell you what’s wrong if you know how to interpret what its saying.” The physical condition of the flooring and the components of the installation as well as the substrate will yield a plethora of answers. Just like investigating a crime scene by CSI the evidence exhibited and exposed will lead you to the perpetrator.

This will give you a better understanding where you stand with the situation.

The typical argument in a flooring dispute concerns a complaint and a response. But first it requires a physical inspection to determine what the evidence exhibits – that is what’s wrong and causing the complaint as it exists at the installation site. Just like investigating a crime, all the evidence and facts must be gathered to determine the cause of the flooring failure regardless of what you might think is the obvious. In the case of a flooring litigation the evidence gathered is then corroborated by the documents, responses, information and answers provided in interrogatories, discovery and depositions which will determine the facts of the case. Remember that the complaint as it exists may be interpreted by the parties involved in one way and it may seem obvious but by the law in another way and the jurisdiction of the complaint may differ in different parts of the country. So each case is going to vary.

Litigation then, in the context of a flooring matter, is a lawsuit or legal action arising out of a dispute between two parties for example the flooring contractor and the general contractor or end user. This action will very often claim that a failure of a flooring material was the result of an action by the flooring contractor who is being held responsible for the flooring failure. It can also be an end user filing an action against a flooring manufacturer claiming the product purchased and installed is defective and resulted in the flooring failure. Who can sue who - in most instances a plaintiff can only sue an entity that he is in contract with. In addition an action can be filed for personal injury by an individual who for example has fallen on a flooring material claiming that it was defective or in an unsafe condition which caused bodily harm. There are a multitude of reasons a lawsuit can be filed for a flooring failure and not all of the reasons or causes are clear cut. The flooring failure may be visible in the flooring material and therefore deemed to be a defect in the material or a compromise in the installation of the material when in fact the flooring failure was caused by an unnamed third party by something they did which may not be considered by the party or parties involved in the case. And who’s to know what, when, who, where or why this occurred without knowledge of how the results of a cause instigated the failure and thus the lawsuit.

In a flooring case most often everything looked fine after the installation and at some point down the road the flooring began to look different in some way either visibly or physically. Most often the flooring contractor is called back in to examine the floor to try and determine what the problem is and hopefully find a fix for it. It may be a defect in the material or in the installation or some other condition causing the problem being seen. The fight begins when all parties claim no responsibility to the problem and the stalemate can only be resolved by filing a lawsuit which often goes after anyone having anything to do with the flooring but normally the most obvious parties.



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Unlike what you may see on TV flooring cases are not exciting; no lives have been lost. This is not criminal litigation but civil litigation between two parties in which one party is claimed to have injured another and it's the kind of litigation most businesses will be involved in. In a flooring case you'll want a litigation lawyer who is familiar with construction and the laws involving it as commercial flooring work is a construction process. You hire a litigation lawyer because it's the litigation lawyer's job to know how the courts work and what is the best way to argue your case before a judge. The lawyer on the corner is not who you'll want to hire in these cases. And it's important that you listen to your attorney and follow their advice if you want to try and win the case. The right attorney will know the law governing your case but they most often don't know flooring and have to rely on an expert to help them. You should also plan for a long haul as litigation and the processes involved can take up to three years in many cases. These cases don't normally wind up in an actual trial and will generally be resolved at the last minute with some type of settlement suggested by the court. Most judges don't want to clutter their calendars hearing a flooring dispute. This goes back to the earlier statement about resolving the matter reasonably as it may be less costly and painful.

You may also get to the point of making a decision to litigate or arbitrate or mediate.

Litigation and arbitration are similar processes. Litigation is a legal process that goes through the court system with a judge or jury; arbitration is a private process that involves an arbitrator who hears the two sides and makes a decision. The decision in litigation can be appealed, but the decision of an arbitrator cannot. You may also decide to mediate.



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Arbitration is a hearing process in which parties bring their dispute to someone for a decision. Mediation is a facilitation and negotiation process in which a trained mediator works to bring the parties to an agreement. Mediation is informal; arbitration is formal.

The goal of mediation is to resolve misunderstandings, while the goal of arbitration is to come to a decision in a dispute. The mediator has no power to force the parties to come to a decision; the arbitrator makes a mandatory and (usually) binding decision.

In mediation, either party can withdraw at any time; in arbitration, once it begins there is usually not a possibility of withdrawal.

Whatever route the case goes don't get hung up on the small stuff; it's not a "matter of principle," it's a matter of the facts of the case. It is a business decision to settle, no matter how right or wrong you are. That's how these matters get resolved. It may not seem logical to you but the law sees things differently than what you may think it should and you may wind up being wrong even though you think the evidence is most compelling to the strength of your case. You must be ready to accept that as fact; again, another reason for trying to resolve these matters rather than litigate. I've been doing this for many years and most flooring dispute cases are settled out of court and very often "on the court house steps." Litigation is expensive and risky so it's in all parties' interest to come to some sort of resolution you can all live with regardless of how unfair it may seem. Suck it up, get over it and move on is the best thing to do.



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In many cases an insurance company is footing the bill and behind the litigation and in insurance-related cases, in particular, the attorneys (one of whom probably works for an insurance company) often reach an agreement just before trial, when they have the most leverage. If you want to go to court to make your case heard, don't count on it happening.

How do we get involved in litigation and why and why would you want or need us in a situation like this?

I say this without reservation - there isn't another firm in the world that does what we do.

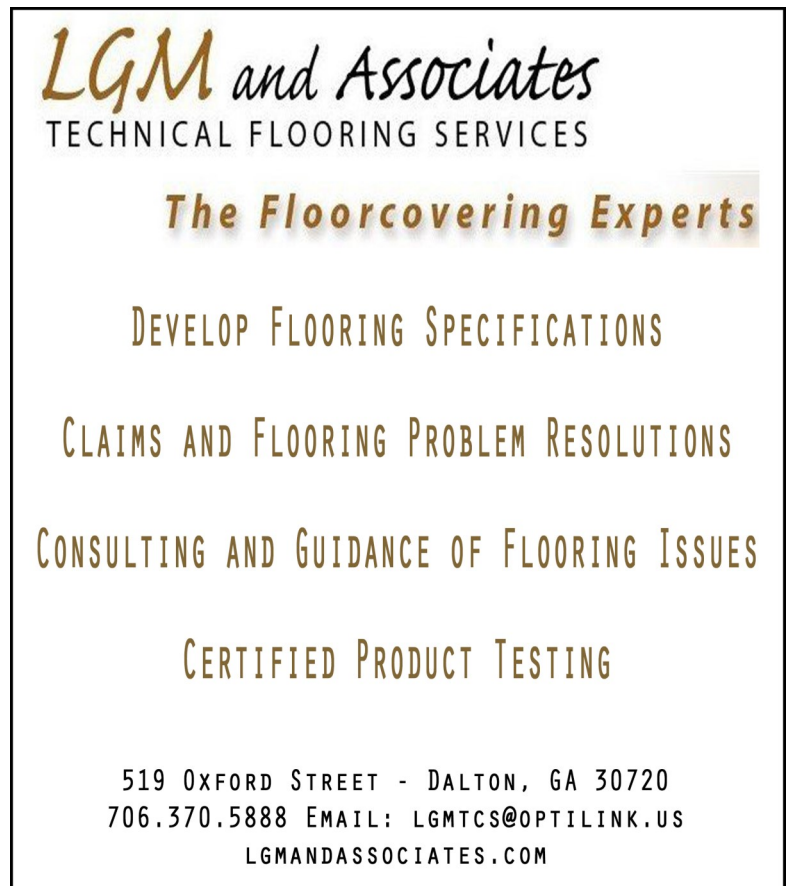
Better yet, we may very often keep you out of trouble. We work these cases with the attorney and with the ability to glean information out of documents like nobody else can. Our people have worked in all areas of the industry including manufacturing at management and technical levels.

No one knows flooring the way we do, has the intellectual flooring acumen we do, the industry and product knowledge we do, the experience and the ability to understand flooring issues and concerns and the understanding working in legal matters we do. We are involved as consultants in lawsuits continuously. We are the best there is at what we do and we're the ones you'll want involved in your case. We are scary good at this. So when you need help in litigation or your attorney is looking for a source to help guide them through the case, we're it. There is no other team like ours.

Going back to rule number one. If you are involved in a flooring dispute do your best to work with all parties involved to find a reasonable resolution regardless of how unhappy it may make you. But if you have no recourse other than litigation, get the best litigator you can find and then get us.

***"A fat lawsuit is never as smart as a lean compromise."***

*Excerpt from: If You Want the Rainbow... You Gotta Put up with the Rain.*



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