

# CFR The Commercial Flooring Report

For the Commercial Floor Covering Industry

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*We are all trying to manage our lives during a time most of us have never seen before. LGM is proud to live in a country that pulls together and lends a helping hand to our neighbors. Let's all give a special thanks to the Healthcare Angels and special prayers to the Decision Makers.*



*While this menacing thing we cannot see but are at war with is affecting us all, we want you to know that we're here to help you in any way we can. If you have questions, an issue you need to discuss, a project you need guidance on, or just someone to talk to, we're here for you.*



## **Don't Litigate – Mediate! A Discussion of Why Mediation— is a Better Alternative Than Going to Court**

**By: James L. Nulman, a Florida Certified  
Circuit Civil and Appellate Mediator**

*This month's issue of The Commercial Flooring Report is written Jim Nulman. I had the pleasure of working with Jim on a recent mediation case. I was so impressed with how Jim explained to the participants how the mediation process was going to proceed, and that he felt the dispute could be resolved within the day, that I asked him to write an article about it. He also explained what the process would be if the mediation did not work, the additional time and expense it would take and that it would behoove everyone to work towards a settlement and resolution. The matter was indeed settled that day. Flooring cases rarely see the light of a courtroom and all the posturing is often for naught. When reasonable minds prevail a resolution can be agreed upon. As Jim said, everyone may walk away unhappy, but the matter will be resolved. His handling of this matter was exemplary, impressive, calm, respectful and conclusive. Lew*

*Mediation is a process designed to resolve disputes. It can be utilized in connection with a pending lawsuit or before a suit has been filed. The benefits of resolving a dispute through mediation are immeasurable. This article is intended to describe the advantages of mediation, how the mediation process works, and why parties are, in my opinion, always better off to settle through mediation rather than pursuing litigation.*

*Civil lawsuits, meaning disputes between parties (as opposed to criminal cases in which the government is trying to penalize someone for a wrongful act) take an enormous amount of time and energy, are very expensive, drain resources and energy, and are often unsatisfying.*

*The civil litigation system exists for only one purpose: to keep us living in an orderly society by not letting us take matters in our own hands when we have a disagreement. Thus, if you have a dispute with someone (for breach of contract, negligence, etc.) and you can't work it out, your only alternative is to file*

a lawsuit and seek damages from the other party. If the case does not settle, then you will ultimately have a trial in court. But remember, the court is a court of law, not a court of justice.

I sometimes hear litigants say, "If we can't settle it, we'll go to court and the judge (or the jury) will do the right thing," or that "the truth will come out," and they will find "justice" at the courthouse. My response to that is: nonsense. There is nothing magical about a courthouse. It is just a building. And judges are people, as are juries. A trial is simply a staged play. It is a re-creation of past events in which the lawyers are the producers, directors, authors of the script, and actors on a stage with their clients trying to convince a judge or jury of the righteousness of their positions. In my almost 40 years in the legal profession I have heard a number of people come out of courtrooms having won talking about "justice." I have never heard anyone who has lost talk about justice. What you get at the end of a trial is a result. Whether or not it is a fair and just result depends upon how you did.

Going to court takes a lot of time - a minimum of a year, and often several years. It is very expensive. Unless your lawyer is going to be paid a percentage of whatever you settle for or if you win at trial (what is known as a "contingency fee"), you will have to pay them by the hour - anywhere from \$150 an hour to \$500 an hour or more depending upon the marketplace you are in and who your lawyer is. And there is always uncertainty, because no matter how strongly you or your lawyer feel about your case (as a plaintiff or a defendant), there are so many variables that can affect the proceeding there is simply no way to predict with certainty what the final outcome will be.

By way of contrast, mediation is generally completed in one day. It is a consensual process where the parties work with the mediator to find their own solution - a mediated settlement. Mediation works remarkably well. While it varies, in my experience, approximately 80% of all disputes submitted to mediation will settle at mediation or, with follow up, as a result of the process.

There are a number of distinct advantages to mediation over litigation. First, the parties get to decide how to handle their situation themselves, rather than having a result imposed upon them by a stranger (a judge) or group of strangers (a jury). Second, they get to achieve certainty and finality which the court system doesn't give them. Going to court always has elements of uncertainty, such as how the judge will rule on the interpretation of documents, apply the law to your particular facts, and rule on questions of evidence (i.e., the admissibility of documents



**THE COMMERCIAL FLOORING REPORT**  
*Lew Migliore - President*  
P (706) 370-5888 or Email: [lgmtcs@optilink.us](mailto:lgmtcs@optilink.us)  
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or pieces of testimony that are objected to), and, if there is a jury, who will be your jurors and what baggage will they bring with them into the courtroom that may not be ferreted out during the jury selection process, to name just a few. Because each party has an automatic right of appeal to challenge legal rulings the judge has made during the entire process, there is also little finality. And, third, mediation allows the parties to be creative – to make a deal that may involve elements that wouldn't be available in court (such as to consider a payment plan; some form of continued working relationship; non-monetary relief that may be important to one side or the other, etc.).

The way mediation works is that the parties get together with their lawyers and a neutral third-party mediator. Mediators do not decide anything. Rather, they work with the parties to discuss positions; strengths and weaknesses; potential outcomes; time and resources that will be involved; and they will explore with both parties all of the aspects of litigation versus achieving a settlement that day.

Initially, everyone meets together. After the mediator describes the process, he or she will usually give each side the opportunity to make an opening statement to describe their respective positions. After the opening statements, the mediator will separate the parties and start to meet with each of them privately. During those private meetings, mediators often probe each parties' position by asking questions and pointing out the time, expense, risks and other pitfalls of litigation. Ultimately, the mediator will look to the plaintiff (or claimant, if suit has not yet been filed) to make a demand by spelling out how much they want and whether they want anything in addition to money. The mediator will then visit privately with the defendant to do the same thing and, ultimately, elicit an offer from the defendant. The mediator then goes back and forth seeking to narrow the gap between the parties' positions.

Mediation is a confidential process. What is discussed is not to be disseminated to third parties. Although the written settlement agreement achieved at the end of a mediation is not automatically confidential, it can be made so. But the parties' discussions and negotiations remain confidential. Subject to some very limited exceptions, what is discussed at mediation cannot be brought up in court (to encourage people to speak openly and hopefully offer compromise in the interests of getting their dispute settled). And when the parties meet privately with the mediator, those meetings are confidential to whatever extent each party wants. In that

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U.S. Patent 7,231,815, 8,047,056, 9,032,791 & 9,588,092. Additional patents pending.

See Page 5 for Press Release:  
Wagner Meters Product Integrates  
with MeasureSquare

way, the parties can confer confidentially in private with the mediator. Thus, despite the typically polar opposite positions the parties may announce during the opening statements, they can be more candid with the mediator about where they are truly coming from. It is by being armed with that candid information that the mediator can see where common ground may exist and work with the parties to bridge the gaps between them.

There is an old and, admittedly, obnoxious joke that a good settlement is one in which both parties are mutually unhappy. It stands for the simple proposition that settlement involves compromise. The question that ends up being faced by each party is whether in the interests of resolving the dispute themselves, rather than leaving it to a stranger (a judge) or group of strangers (a jury); whether in the interests of achieving certainty and finality that day – maybe not a result that either party is thrilled with, but a result they can both live with; and whether in the interests of flexibility to be able to make a deal that will help the parties achieve an amicable resolution – the question that each party will face during the course of the mediation is whether in the interests of those things they will consider compromising, perhaps more than they thought they would when they arrived for the mediation that day. The vast majority of the time, most parties see the wisdom of considering a compromise and ending the dispute and the litigation in which they are embroiled.

The attorneys who conduct most mediations are litigators: lawyers with experience conducting litigation and, when necessary, trials. They are therefore skilled in the world of civil litigation and how to present their clients' cases.

If you are in need of an attorney to pursue a claim for you, the first resource to pursue are referrals from friends, fellow businesspeople, or from within a trade or other commercial business association. I would not rely upon advertising or Google reviews.

If you have been sued and need an attorney, the first thing to do is to notify your insurance agent to determine if the claim may be covered by your personal, homeowners or business liability insurance. Even if the claim is ultimately not covered by your policy, an insurance company's duty to hire a lawyer and defend its insured is far broader than its duty to indemnify the insured (i.e., to have to pay off the claim). Because of the expense of litigation, if you have been sued it always pays to see if one or more of your insurance policies will require the carrier to hire an attorney to defend you.

As for mediators, most often they are selected by the attorneys. Their criteria may vary, but generally they will choose someone they have worked with before successfully and, in any event, a mediator with a reputation for actively helping to settle cases, not just passing numbers back and forth.

In summary, as compared to protracted litigation, mediation provides the parties a means to resolve a dispute quickly, at far less cost of money, time and resources, and in a way that they, themselves, can fashion. It does take compromise, but the vast majority of the time it is well worth it. So, before you consider (or continue with) litigation, think about mediation. There are distinct advantages to it.

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I want to thank Jim Nulman for taking the time from his busy schedule to write this article and share his knowledge, experience and insight to help you understand the most viable option you may have to resolving flooring disputes.

At LGM we have years of experience working with attorneys on all types of legal matters concerning flooring. We also have the knowledge and experience to keep you out of trouble on a project or, when you're in trouble, help you determine what went wrong, why, who or what is at fault and, most importantly, how to fix it. We also have access to one of the best and brightest construction attorneys in the nation. So, if you need help call us. We always have the answers; always.



### **Rapid RH® L6 System Now Integrates with the MeasureSquare™ Takeoff Estimating Platform**

**Rogue River, OR (March 2020)** – Wagner Meters, a market leader in moisture measurement instrumentation for wood and concrete, proudly announces the integration of the Rapid RH® L6 system within the framework of the popular MeasureSquare™ takeoff estimating suite created by Measure Square Corp.

Key Rapid RH capabilities, such as mapping of installed Rapid RH L6 Smart Sensors and configuration of automated temperature and relative humidity (RH) readings collection accessories combine within the comprehensive mapping, planning, and estimating functions of the MeasureSquare platform to give the flooring professional unmatched data access at their fingertips. MeasureSquare provides quick and easy access to all floors within a building. With the new integration, users can track Rapid RH L6 concrete moisture test locations on every floor where Rapid RH L6 Smart Sensors are placed, integrating Rapid RH moisture testing into the MeasureSquare tracking system.

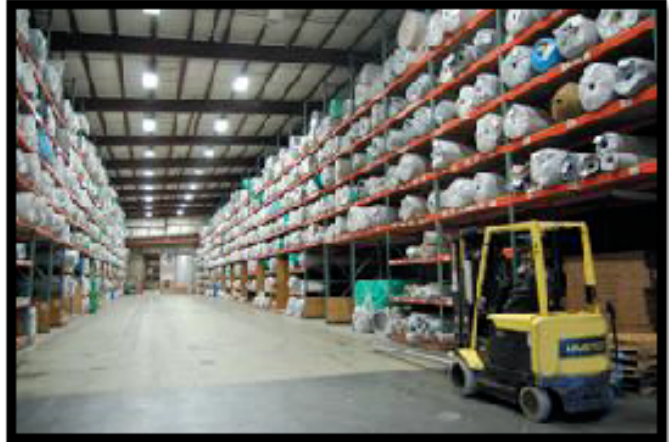
*“This Rapid RH integration is the perfect addition to MeasureSquare’s already diverse and comprehensive array of tools for the flooring professional,” said Jason Spangler, Flooring Division Manager for Wagner Meters. “Now it’s easier than ever to keep track of your concrete moisture test readings along with estimating, planning, and reporting work all within a single app.”*

For more information, visit <https://www.wagnermeters.com/>

## Excess Inventory Offer

Most of you have flooring material sitting around that's taking up space and costing you money.

Dispose of your excess inventory - remnants, hospitality carpet, carpet tile and any hard surface flooring materials. Avoid paying insurance or taxes on flooring materials taking up rack space and convert it into cash.



We have a contact in Calhoun, GA that will pay you for this material and arrange for shipping from your location. They'd need a complete inventory of what you have so they can make you an offer. This firm is well financed and established with a stellar reputation.

This is a great opportunity to get rid of merchandise taking up space and make some money in the process. Call or email Kolt or Cynthia with any questions so they can help you.

[surplus@overstockfloorzusa.com](mailto:surplus@overstockfloorzusa.com)

Kolt Privett - 770-530-4709  
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Thanks,  
Lew Migliore