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Roadblocks to the Operation of Your Business

We want to share with you infuriating issues that have been sent to us by flooring contractors/dealers. Certainly, the way things operate today regarding flooring issues, claims, complaints and failures, you've dealt with something like these yourselves.

Here we go.

First is a project where the architect specified the floating vinyl flooring material, the manufactures rep sold the product, and the product failed. It was the wrong product in the wrong place. The rep's defense was that they didn't know where it was going. You sold the specified flooring to a commercial flooring contractor for cripes sakes and knew it would be installed in a commercial environment. The Architect wanted this color and this product and nothing else. The flooring got installed in a medical facility that does exams, so the doctors are rolling around on chairs over this flooring. The flooring failed – no surprise there. The installer gets blamed. Everyone pleads ignorance. The manufacturer tells the flooring contractor that they will sell them new flooring, but it needs to be glued down. What!? Are you kidding me! So, you admit that it was the wrong product your rep sold, but you blame it on installation when you sold the wrong product and it failed to perform in the first place? How is that an installation problem and the flooring contractors' fault!? And the architect, who you would hope would know better than to specify the wrong product, gets off Scot free*. This type of scenario is enough to piss off the Good Humor man.

And then there's this.

In one of our newsletters, we speak of protecting yourself and/or your company by proper site documentation. The dealer who references this wrote: "Excellent idea! The protection of your interests should start even sooner. I am attaching a document that includes the indemnification clause from a manufacturer's revised credit application that I was asked to sign to re-activate a stale account. I balked at the terms as the dealer puts his balls on the chopping block and the manufacturer had the axe. I declined to sign the application and told the rep why. This indemnification clause absolved the manufacturer of any liability – even a product defect! The rep contacted the national sales director. They suggested that I draft a more acceptable, to me, clause which I did. My document was reviewed by my lawyer and was approved to send without revision. He stated the clause was equally fair to both parties. This was the manufacturers response" "We have received your "Indemnification clause" reword request and

submitted it thru the proper channels for legal review. In their review, the proposed change is unacceptable because it opens us up to exposure of liability that many aspects are out of our control. Therefore, our original "Indemnification clause" will stand."

You cannot pre-emptively reject liability on a new product if it is found to be defective, unless you buy the product "as is." You cannot offer a product knowing that it has a defect - and we've seen this often - that you know will fail. That's fraud.

The dealer's response was to toss out all the manufacturers' samples and told them to cease all contact with their business.

This dealer further states, "The reason that I am sending this to you is that I am sure that many thousands of dealers accepted this or similar unbalanced clauses without understanding the potential legal ramifications to their businesses. Due to your stature in the industry as a no BS guy you have the platform to alert owners to the buried clauses in both vendor and contractors' contracts.

I have refused to do work for or to have a business relationship with Banks, Vendors, Businesses and Contractors that have unbalanced inequitable contracts. Possibly I am Don Quixote jousting at windmills, but I am tired of other companies dumping the potential liability at my feet while limiting their exposure. Perhaps you may choose to alert other subcontractors to the pitfalls of not reading all contracts prior to signature. Also, subcontractors can red line and initial contracts clauses that are not acceptable prior to returning to contractors."

We know that indemnification clauses work and have been proven by Ron Ciotti, one of the country's leading construction attorneys that we work with.

Here's some information from new installation guidelines recently implemented by a manufacturer:

The leading causes of objectionable gaps in LVT are improper adhesive selection, poor acclimation, and lack of a stable temperature before, during, and 72 hours after installation.

Our recommended adhesives have been developed and tested to provide exceptional shear strength. After the adhesive cures, this high shear strength will minimize product gapping caused by temperature

THE COMMERCIAL FLOORING REPORT

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changes. We do not cover damage or gapping resulting from the use of pressure sensitive adhesives due to their typically low shear strength.

What they're saying here is that if their product is dimensionally unstable, the use of pressure sensitive adhesive will not prevent it from moving, and it won't. So, they're trying to get around the potential for one of their products shrinking or expanding by telling you that you caused the problem by using pressure sensitive adhesive, which almost all vinyl plank flooring is installed with. I guess you're going to have to install carpet tile with wet set adhesive as well for the same reason. Does that make sense to you?

NOTE: DO NOT use adhesive as a pressure sensitive adhesive. Installation of plank and tiles requires a semi-wet to wet installation. This will require determining the amount of adhesive spread and product installed to achieve adequate transfer and bond of adhesive to product and substrate.

Let's look at this. First, adhesive does not cause physical changes in a flooring product such as expansion, contraction, lifting, cupping or doming. If you've seen this, let me know since it would be a first.

The use of a wet set adhesive makes me think that they're trying to preempt any claims they get on shrinking vinyl planks. Wet set adhesives cost more, take more time, and slows down the installation. So, now you've caused the flooring contractor and installer to incur more expense when installing your product. It puts them in a position where their production rate is affected and slowed the installation, which is often accelerated on a project since the flooring is the last thing installed and often in an abbreviated time frame to play catch up. On top of that, wet set adhesive is not going to prevent any flooring product that suffers from inherent dimensional or planar stability, from reacting. You can bolt an unstable flooring product to the substrate and if it's going to move, it's going to move. The stress in the product will always overcome the strength of the adhesive. Again, a nice try at defying the laws of physics.

Here's another one I love from a manufacturer's installation guidelines and instructions.

Acclimation of material prior to installation is not required however the floor covering should be installed in a climate controlled environment with an ambient temperature range between 55° - 85°F (13°-29°C) or average temp. of 70 degrees (21.1°C).

So, if the flooring material is not acclimated prior to installation, regardless of where it's going to be installed, the environmental conditions and temperatures where it's kept prior to installation don't matter? But if the environment in the space where it is ultimately installed is not controlled and the product reacts, then that's on the flooring guys? How does that work exactly? Well, I'll tell you this is a rather ingenious concept by these guys to preemptively exonerate themselves from a product defect, since it puts any issues with the flooring reacting to anything after its installed on you. So, you're telling us that you don't have to acclimate the material, but coyly telling us that it actually does have to be acclimated after its installed. This is marketing bullshit extraordinaire.

The following is from ACI Smart Brief—*How to mitigate "unknown unknowns" in a project. This is appropriate for all commercial flooring contractors and installers.*

An unfamiliar project requires additional risk management to avoid "soft errors" and "unknown unknowns," This was relevant to an example of a correctly designed and built concrete floor that cracked because no one had addressed equipment that would be used on the floor.

Tips—If you see a problem with the product, stop the job. Notify the manufacturer, have someone get to the site, and let them know that if there are penalties for lack of progress, they'll be responsible. If the installation continues, still with problems, the manufacturer is put on notice that they are implicated in any liabilities.

My response to a client where the manufacturer has agreed to replace the flooring—"Glad that they are being reasonable. Keep pressing for the labor. If they're willing to replace the material, which constitutes acceptance of liability, then they should pay for their mistake, not you. You wouldn't be in this position if not for their product failure."

How about this—A moisture mitigation provider has a concrete sealer that boasts a warranty of 50 pounds MVER!

At around 20 pounds the dish of calcium chloride pellets liquefies, rendering the test unquantifiable. The flooring dealer who brought this to our attention called the manufacturer of the product and spoke to the tech guy, and the tech guy said, "that came from marketing!"You can't makes this stuff up.

The "No Fault" world we're living in these days is permeating the flooring industry where nothing is the manufacturers' fault and everything else, primarily installation is to blame for any flooring product failure. We're not against manufacturers, most of them today don't make the vinyl flooring products they're selling but source them, so they have little control over quality, and they may not know that much about the product itself. And, on any given day anyone can produce a defective product, of anything, not just flooring.

We must also tell you, again, to get ready for the poop to hit the fan with all the hybrid products coming to market. No one knows what this stuff will do and there aren't any ASTM tests for them – the industry's words in the trade press, not ours.

I want to state that we, at LGM, are not inspectors. We are a small, elite group of vastly experienced, industry seasoned consultants and troubleshooters, operating with a very high level of expertise. We are based in Dalton, Georgia, the flooring capital of the world, where we have access to the smartest product experts and best testing facilities in the industry. We have, or can find, answers to every flooring issue. These range from concrete to carpet and everything in between. We provide answers based on science and irrefutable facts. We are independent, objective, unbiased, and unaffiliated. We are not in this to make friends. Our service is to provide answers to what went wrong, why, who's at fault, and how to fix it. **In medieval England, there was a tax called a "scot," and if someone was able to avoid paying it, they would be getting off "scot free." And over 800 years later, we still use the expression when someone gets away with something without being punished or penalized.

FCEF exists to bring awareness to the opportunities in a flooring installation career, recruit new talent, aid in the funding of the their education, and facilitate job placement into flooring industry careers.

Here is a link to ALL of the FCEF Digital Marketing assets. We provide all of this to retailers for free so that can promote the career and the scholarships in their neighborhood and with their network.

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