

CFR The Commercial Flooring Report

For the Commercial Floor Covering Industry

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A Look at Flooring Claims and How They are Handled

We talk a lot about flooring problems, but no one has ever defined what a flooring complaint or claim is, how it is handled, and what is the role of the so-called “independent” inspector the manufacturer hires and sends out to look at their product.

FIRST, LET’S LOOK AT WHAT A FLOORING PROBLEM IS:

A flooring problem is the difference between what the end user has and what the end user wants. This can be the case with any product but we’re talking about flooring. You start with the original expectations, then move to what it looked like when it was installed, without any problems. Then it goes to what it changes into after a period of time, whatever that may be – days, weeks, months or even years. The problems can be one, or more, of many things. For example, it can be the product shrinking, lifting at the ends or edges, doming, the seams on sheet goods lifting, distortions beneath the flooring such as bubbles or wrinkles, loss of appearance or color, you name it, but anything that wasn’t there initially and appeared sometime after installation. The question is always what’s going on, why, and who or what caused this to happen? And if it is a renovation, something that wasn’t a problem with the old flooring but is with the new flooring. Unfortunately, the installation contractor and installers always get blamed because things looked good when the job was finished, and now they don’t. So, you guys must have done something wrong to have caused this. No matter, the finger points to you until the knots get straightened out. Unfortunately, even when that happens, you’re still blessed with the bulk of the blame. This is not to say that you are not actually at fault.

HOW MANUFACTURERS ARE HANDLING CLAIMS:

The first response is to deny the claim and next to find any reason to blame the flooring concern, condition, or failure on anything or anyone, other than what it really is. Only after a long protracted argument will there be a concession. The hope is that you will go away or settle for something less than you should, just to get the issue resolved – not unlike a claim for any product.

Many flooring manufacturers are involved in training the inspectors, especially larger ones, and let no one tell you otherwise, the information provided is going to lean in their favor. Just like the committees for ASTM flooring testing are populated by those having a special interest. You’re behind the eight ball all the way.

NOW THE FLOORING INSPECTOR:

You must know the exact cause of a flooring failure before it can be properly corrected. And you must have experience in dealing with flooring issues, from the substrate and all that is associated with it, to the finished product, whatever it is, and everything in between. And you don't learn this in five days with a certificate or from being an installer for however many years or just thinking you know. In the commercial sector of the industry you MUST know, not think, guess, assume, or use some standard cookie cutter language. A piece of paper doesn't give you the credibility required. It may if you work for manufacturers who influence what is being taught, but it doesn't work in the big leagues of the commercial flooring world.

THE ROLE OF THE INDEPENDENT FLOORING INSPECTOR:

Their role should be to determine what went wrong and why. And if the problem is the flooring, what is it and why? If not, what is it and why? To do that you have to know all there is about the cause of the flooring failure. This cannot be a Dunning – Kruger Effect – a type of cognitive bias where people with little expertise or ability assume they have superior expertise or ability. This overestimation occurs as a result of the fact that they don't have enough knowledge to know they don't have enough knowledge.

Manufacturers put the fate of the flooring contractor and installer in the hands of the inspector because they have a certificate of expertise after five days of training. Most of us here have decades of experience, and we still don't know all there is to know in an industry where the products and how they're made change daily, and most of the team came from working for manufacturers. If by some chance we don't have the answer, we do know where to get the answers, and there is always an answer.

WHY THE INDEPENDENT INSPECTOR ISN'T INDEPENDENT:

Simply because what they are being taught favors the manufacturer with a bias, as the manufacturers have input into the training. You can't fault the inspector, because they can only relate to what they are being taught. Additionally, you must know the products. Many of these folks come out as certified inspectors and consultants. Consultants!? On what? A couple of days in a classroom and because of a certificate? You must have years of field experience and be



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Lewis G. Migliore—President

P: 706.370.5888 or Email: lgmtcs@optilink.us

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immersed in anything and everything relative to flooring to practice in this trade as a professional. In the commercial sector, where you are dealing with millions of dollars of liability, you better know what you're doing.

Do they know what they're looking at and know why it is they're seeing what they're seeing? Most inspectors don't. They may know what they've been taught, but in the field of battle things may be very different. You must know the product in order to make a definitive and accurate determination as to why there is a problem or failure. Based on the independent, certified inspection reports we've seen from jobs we've worked on; the inspector was clueless and only guessing, speculating, or cutting and pasting information on what they think the problem might be. They often say it could be one of these things or appears to be this... What the hell is that!?

RELYING ON THE TEST RESULTS:

They can argue that the test shows the product is within the parameters of the test; whatever they may be. The test parameters and numbers are determined by a consensus of members of the ASTM committee, which is made up of manufacturers and other interested parties. So, to say it is a bit biased would be a correct statement. Further, there is no empirical test data to substantiate the numbers they arrived at, since it is a consensus opinion. But it is what it is. In one example, a product shrinking almost uniformly on the floor after installation. When tested, it may not exceed the maximum allowed in the test, which is 0.020 inch. This doesn't change the fact that the test results may show the product

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moving at 0.019 inch or even less. We qualify this by saying that testing is conducted according to ASTM or specific test protocols, in a limited time frame and does not replicate job site conditions or time. Let it suffice to say that the actual evidence does not lie, and that would be whatever the flooring is doing on the floor. Here again, you must understand the products and what they do on the floor and why they do it. There is a lot you don't obviously see that you must know about and understand, to know what's happening and why.

In our line of work, we are involved in numerous legal proceedings that unmask the inner workings of the flooring industry. There is so much that goes on that an outsider wouldn't believe how your issues are handled and why, and, in many cases, how little the people selling you the product know. You are at the mercy of them and the inspectors they send out, who are commissioned by them. Many of the larger manufacturers also provide the inspection form, determine what is to be included, a lot of which has no bearing on the flooring problem, and they make the decision. The inspection therefore is not independent, objective, or unbiased, because the manufacturer controls the process. If this were disputed, it would smack of clear bias, which is always going to be in favor of the manufacturer, and it would discredit the inspector. This is not unusual for any industry, but it does mean you'll have to work for the truth. The questions should always be, what went wrong and why, who's at fault and why, and how do you fix it? Remember, the evidence never lies, neither does the flooring. But you must know how to interpret it. People lie, but never the flooring.

At LGM we always have or can get the answers to those questions – always.

Here's some bonus information for you along legal lines:

CHAIN OF CAUSATION—The chain of causation is the sequence of events that link a cause to its effect. It's a legal concept that's used to establish liability. For example, the old flooring is removed, the old adhesive is not. The slab on grade is decades old but it tested below the limits of the products applied to it. The flooring installation fails. What is the cause? First, the slab, regardless of what the RH readings were, should have been moisture mitigated. It's old and has no moisture vapor barrier. That's a glaring red flag. The old adhesive should have been removed. This is an industry mandate and is in every installation guideline for all flooring products of any kind – clean, dry and free of bond breaking materials. The old floor was down for years with no issues. Why? The adhesive used was resistant to moisture, so the flooring and installation was immune to moisture – such as VCT installed with cut back adhesive. The building would collapse before this installation would fail. But the new flooring failed. Each link of the chain leads back to the original error of not mitigating the slab.

UNINTENTIONAL CONSEQUENCE—Unintended consequences are results of an action that is not the expected outcome. They can be positive, negative, or neutral. Such as changing the formulation or components of a product, like adding more recycled content or more fillers to the core of vinyl flooring. The results may be an unstable product which may not be known until it gets out to the market and reacts on the floor. An example would be stain resistant carpet when it first came out, turning yellow on the floor, and on the racks, due to phenolic yellowing. It was easy enough to fix but it was a nightmare for the carpet industry.

The **“BUT FOR”** rule—The but-for test is a legal test used to determine if something caused something else to happen. The "but for" rule asks, "but for the defendant's actions, would the harm have occurred?" A test commonly used to determine actual causation in law. For example: But for the vinyl plank shrinking, there would be no complaint or need for replacement. The manufacturer of the flooring, or provider, may offer to replace the material, but not help with labor. But for their actions of providing a defective product, you, the flooring contractor, would not have been put in a position of having to foot the bill for labor. You did not cause the problem, they did. Understand that with the law, nothing is ever absolute or cut and dry, and the law sees issues differently than you may expect in different jurisdictions. You know you did nothing wrong and wouldn't be in the position but for their defective product, but you'll have to argue your case, which is why you'll need us, and an excellent construction attorney, who we can refer you to.

If you need help, have a question, aren't sure of a situation you're in, want to avoid a problem, or need guidance on a project or product, contact us. We always have the answers, always. It's what we do, from the substrate to what goes on it.

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