

# THE COMMERCIAL FLOORING REPORT

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TOTALLY GREEN PUBLICATION

February 2012

## *Congrats to a Colleague*

It is with great pride that LGM and Associates congratulates our concrete expert associate, Mr. Peter Craig. Peter is without question the preeminent expert on concrete surface and slab issues that compromise millions of yards of flooring materials and finishes yearly. He has devoted his life's work to testing, teaching and sharing his knowledge of this subject with both the concrete and flooring industries. Peter conducts the LGM Concrete and Moisture seminar and travels the country, nearly non – stop, testing and working on concrete and flooring issues. He is another reason why LGM and Associates are the flooring experts with the answers.

### 2012 Most Influential People Peter Craig - Concrete Constructives

By: [William D. Palmer](#)

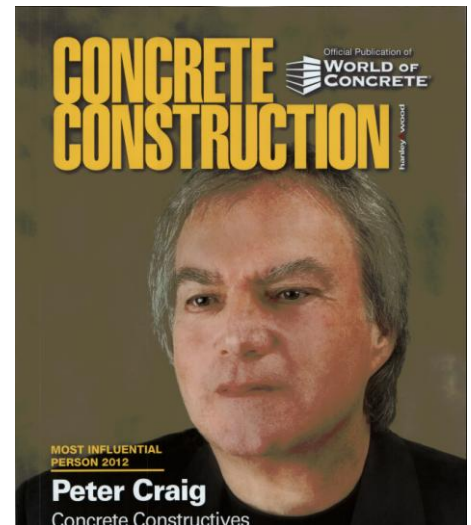
From: [Concrete Construction January 2012](#)

Posted on: December 21, 2011

In 2008 the International Concrete Repair Institute (ICRI) started to develop a certification program for repair technicians with a focus on surface prep and cleaning rebar. But when Peter Craig addressed the first certification committee meeting, he insisted that within two years they develop a program to certify slab moisture testing technicians and that this was critical to the concrete and flooring industry. He maintained that too often there were inconsistencies in the way the standard moisture tests were performed in the field. He was persuasive and for that he is one of CC's Most Influential People in 2012.

“When I was invited to be on the ICRI certification committee, I soon saw that there was a need to split the committee into moisture testing and other types of testing and evaluation,” he says. “The industry needed to have this certification program and the only way to have it accepted was to bring together all of the most knowledgeable people—the premier people in the business—and get them all to agree on the approach.”

And that's what he did, involving not just the concrete moisture testing community but the leaders in concrete slabs and in the flooring and carpeting industry, including ASTM Committee F6, Resilient Floor Coverings. This inclusive approach resulted in the ICRI committee's ability to conduct a series of review courses and certification programs across the country within the promised two-year window to where there



are now more than 200 ICRI-certified concrete moisture testing technicians in the U.S. and ICRI certification is finding its way into a growing number of project specifications.

Craig has been involved with specialty aspects of concrete floor construction, maintenance, and repair for more than 38 years. He began his career on the materials side and moved full-time into consulting in 1999. Although originally recognized for his work developing solutions for curled and cracked slabs, today he is best known for his work with moisture-related flooring and coating problems over concrete slabs. This developed from his background study of below-slab vapor retarders and their effect on moisture and slab curling.

When asked if he isn't putting himself out of business by spending all of his time teaching others how to avoid moisture problems, his philosophy of life comes out. "I never hesitate to share what I know or what I have. I have seen what moisture issues can cost and the effect it can have on people and their businesses. If there is anything I can do to help end this issue, I am happy to do it regardless of how it may affect my present business structure. I believe in sowing and reaping and that only good can come from helping and giving to those you work with or serve."



**Give someone you love a hug; they're free.**

The following article has been provided by Martin Silver, attorney at law. Marty has written about flooring related cases for over 30 years, is a practicing attorney in New York, has handled flooring related cases around the country and has a particular expertise in this area. He put himself through law school as a flooring installer. He has been a close friend and associate of LGM for over 25 years.

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## DEFECTS, NOTICE AND PAYMENT

Over the years I have repeatedly stressed how important it is that a buyer, who believes that the goods that have been delivered are defective in one way or another, gives immediate, written notice to the seller or manufacturer of those goods. A buyer, who fails to give this notice, may very well be stuck with those goods, defect and all.

The theory behind this is contained in the Uniform Commercial Code. Simply put the code provides:

1. Goods with easily ascertainable defects (such as the wrong color or size) must be immediately rejected by a buyer or they will be deemed to have been accepted.
2. Such an acceptance may be later revoked upon a finding by a court but only if immediate notice of that hidden defect is given to the seller when the buyer actually, or in the ordinary course of business, should have discovered such defect.
3. Goods that are deemed accepted must be paid for at the contract price.

Although this is the general rule, many courts will not allow a seller of defective goods off the hook merely because the buyer did not give proper, timely notice of those defects. In fact, in a recently decided case, New York's second highest Appeals Court did just that. In the decision in that case the court determined that the seller of the defective goods must retain some responsibility for those defects despite the buyer's failure to give timely notice of same.

This case got to the Appellate Court after the buyer appealed a lower court's decision which gave a judgment to his seller for the full purchase price of goods which the buyer claimed contained various defects. In its decision overturning that judgment the court said the following.

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“Here, plaintiff (seller) put forth admissible evidence that defendant (buyer) used all the goods delivered to the job site and paid for three of four shipments. Significantly, defendant admitted that it never rejected any of the goods and indeed did use them at the job site. In fact, defendant does not seriously dispute that acceptance of the goods occurred. This apparent acceptance would normally obligate defendant to pay the contract price for the goods.”

So far, the Court has followed the reasoning of the trial judge. But now comes the interesting part;

“Nevertheless”, the Appeals Court continued, “as the Court of Appeals (New York’s highest court) has noted, a buyer may defeat or diminish a sellers action for goods sold and delivered by interposing a valid counterclaim for breach of the underlying sales agreement”.

The court is apparently saying here that the law, or at least that of New York State, as interpreted by its highest court, entitles a buyer to damage against a seller of defective goods even though notice of these defects was not timely given by the buyer to the seller.

In fact, just to clarify its meaning, the court concludes its reasoning by stating:

“Further, even though a buyer has accepted non-conforming goods, damages equal to the difference between the value of the goods accepted and the value of the goods as warranted is an appropriate remedy under the Uniform Commercial Code.

It appears then, that under the law of the sale of goods as found in the Uniform Commercial Code, a buyer who “forgets” to give notice of a defect may still be able to hold the seller or manufacturer responsible for such defect. Assuming the buyer has refused to pay, either in whole or in part, for the defective goods, this can be done by the buyer, in the lawsuit brought by his seller for the full purchase price of the goods delivered and accepted without objection, his asserting of a counterclaim stating, in substance, that the goods delivered were defective and, accordingly, had little, or no value to him.

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U.S. Patent 7,231,815. Additional patents pending

If he can provide proof, acceptable to the Court, of the value, if any, of the defective goods delivered he should be able to have his obligation to pay the full purchase price reduced accordingly. This strategy will probably not work as well if the buyer has paid the seller in full for the goods and sues to try to get his money back.

If you have a legal matter, or a case that involves impending or potential litigation, LGM can help guide you, answer questions or consult with you. We have the answers.

## Install News

### U.S. Construction Spending Rising Faster Than Expected

According to a report from Bloomberg, December construction spending in America increased at its fastest pace in four months. Bloomberg experts say the statistic is signal that the construction industry is stabilizing. Building outlays increased 1.5 percent, the biggest gain since August, according to the U.S. Commerce Department. The median estimate of 51 economists in a Bloomberg survey called for a 0.5 percent rise.

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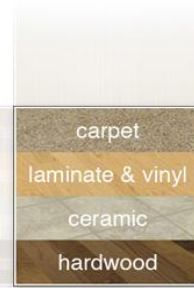
Systems like EnviroSTIX for hard surface and hard backed flooring materials and Bentley Prince Street Contact Release for carpet are systems that will help prevent the failure of flooring installations. There is more technology coming, most of which we are involved with. We'll keep you informed to help you. In the meantime understand that moisture, temperature and humidity have a profound effect on flooring materials and the integrity of their installation.

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