When Jobs Go South

Procedures and Tips For Minimizing Problems From Customer Complaints and Application Defects
Hope for the Best
Prepare for the Worst

- Warped drywall: 2 Jobs - 1 mile apart;
- Same Contractor and Sprayfoam
  - First Job: Repaired $7,500
  - 2nd Job: Sued $375,000
Get Your House in Order

- Know The Rules
- Obtain Legal Help
- Document Review and Revision
- Procedures and Paperwork
- Insurance
- Supplier Relations
What are the Rules?

- Rights & Responsibilities of:
  - Your Company
  - Your Supplier
  - Your Customer
Uniform Commercial Code

- Similar to Building Codes
- Portions adopted voluntarily by states

- Addresses product liability
- Definitions of buyers and sellers
- Supplier, contractor & customer responsibilities
- Warranties
- Cures for insufficient performance
States Adopting (Sales) Uniform Commercial Code

- Arizona
- Arkansas
- California
- Kansas
- Kentucky
- Missouri
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- New York
- North Dakota
- Oklahoma
Types of Purchasers

- **Direct Buyer**: i.e. SPF contractor
  - Purchases directly from supplier
  - Typically is the contractor
  - Has specific responsibilities & rights

- **Indirect Buyer**: i.e. your customer
  - Obtains goods from a secondary source such as a contractor
  - Typically is the building owner or his representative
  - Has same legal recourse as the direct buyer of goods and service to the manufacturer
Warranties

- Expressed
- Implied
- Safety & Health
- Unintentional
Expressed Warranties

- Specific language used to clearly describe liability of product or service

- Used by supplier and contractor to set limits/boundaries of liability

- Includes all advertising claims made by supplier and contractor to remote buyer

- Includes samples or models of finished products

- Sales pitches become part of the expressed warranty
Expressed Warranties

- Exact language takes precedent over general language, samples or models

- Written warranties can reduce limits of implied warranties
  - Example: "The seller assumes no responsibility that the goods will be fit for any particular purpose for which you may be buying these goods, except as otherwise provided in the contract."
Implied Warranties

- Product is suitable for the purpose designated:
  - In printed literature
  - Advertising
  - Sales pitch
  - Warranty
  - Presentations
  - Contract
Safety and Health Product Liability

- Cannot be excluded from an expressed or implied warranty:

Persons who are in the family, household, guest that may use, consume or be affected by the product.
Unintended Warranties

- Guarantees expressed in articles or brochures by others provided to customer by your company
- Supplier advertising guarantees not specifically excluded in contract language
- Statements made in interviews to news media
- Statements on social media
Advertising Liabilities

- Anything communicated to the public such as ads, press releases, interviews, etc.

- Goods will conform to the affirmation of fact, promise, or description communicated to the public (*does not require the terms warranty or guarantee*)

- Contractor can hold supplier responsible if product does not measure up and he installed it in accordance with their instructions
Problem Advertising Claims

- Sprayfoam will reduce energy costs by 50%
- Sprayfoam will stop mold
- Sprayfoam will provide good indoor air quality
- Sprayfoam is a “Green” Material
According to studies by ... SPF installed in accordance with... can save 15-45% on energy usage

Sprayfoam along with proper design and ventilation can help with control condensation which leads to mold and poor indoor air quality

Sprayfoam has many “green” qualities that can be environmentally beneficial such as ...
Avoid Statements Such As:

- “We have had that problem before and we will fix it”
- “I was afraid that might happen”
- “That has never happened to us before”
- “The supplier will take care of it”
- “The warranty is no good until we get paid in full”
Obtain Legal Help Before Problem Arises

- Attorney who specializes in construction law on retainer in case of problems

Have attorney review

- Warranties
- Advertising
- Handouts to customers, technical data, articles, etc.
- Contracts & agreements
- Liability Insurance coverage
- Course of remedial action for customers
Communication and Paperwork

- Customer Communication
  - Before, during and after job

- Detailed Daily/Weekly Job Reports and Information

- Written Job Site Specific plan Communicated to Customer and other Trades
  - Schedule
  - Safety plan, review of MSDS, emergency info, PPE
  - Containment/ventilation/re-occupancy
  - Clean-up
  - Quality assurance inspections and ongoing quality control procedures
  - Procedures for handling complaints
Customer Relations and Support

- Online & telephone support for clients
- Troubleshoots issues in the field
- Prepares inspection procedure
- Communicates with client
- Provides repair/remediation proposal
- Conducts educational/training programs for sales staff and customers
- Obtains written buy-in from customer on steps forward
Customer Service Department

- Identify customer service technicians who can troubleshoot issues accurately and efficiently
  - Specific phone number and email dedicated primarily for customer concerns and input
- Identify list of potential problems that could occur
- Prepare a standard operating procedure for each potential problem or issue
- Develop a “script” for all employees for discussing concerns or complaints with customer
Identify potential problems

- Examples:
  - Code violations
  - Payment issues
  - Warranty issues
  - Shrinking/cracking foam
  - Lingering odors
  - Condensation
  - Voids, gaps
  - Insufficient thickness
  - Ventilation issues (accumulation of VOCs not SPF related)
  - Overspray
  - Damage to furniture or furnishings
  - Health issues (exposure to fumes and mists)
  - Structural damage
    - Drywall or sheathing warpage
    - Roof decks & framing
Sample SOP-Customer Complaints

- Identify complaint on list of SOPs
- Contact customer at earliest opportunity (2 hours or less)
- Obtain information and investigate the complaint
- Determine if the complaint is legitimate
- Determine how to remedy the situation
- Determine responsibility for the situation
  - Supplier, applicator, client
- Communicate to the Customer the remedy including schedule, additional costs if any
- Obtain agreement in writing before proceeding with remediation
Sample Complaint Procedure

- “hot line” and email “hotline” dedicated solely for customer complaints (can be manned by administrative person)
- Obtain detailed information of job and specific issue, record in permanent file
- Communicate to customer standard operating procedure to customer on how concerns/complaints are
- Provide range of time when technician will contact them (same day)
Obtain Information

- Record on standard form
  - Name of person calling
  - Date of application
  - Type of product
  - Name of crew chief and sales person
  - Specific complaint
  - Relative degree of annoyance
  - Best way, dates and times person can be reached
What to Tell Customer

- Name of person assigned to case including cell phone number and email.
- Another person to contact if assigned person is not available
- Anticipated time for response
- Procedure for that specific issue
Sprayfoam Application Lawsuits

- **Odor**
  - Small number of persons affected by persistent odor from tertiary amine catalysts
  - Persistent odors can be caused by off-ratio, poorly mixed foam or closed cell foam sprayed too thick in one lift
  - Claims and lawsuits against applicator typically spill over to supplier
  - Class action suit
  - Other individual suits against other suppliers
  - Claim health issues after application
  - Mixed bag, some claims legitimate other not
  - Remediation typically involves removal of foam that is causing the odor
Shrinking, Cracking Foam

- Some cases of foam shrinking and pulling away from studs in homes and buildings
- Typically caused by spraying closed cell foam too thick in one pass
- Claims and lawsuits against applicator typically spill over to supplier
- Partial removal and repair of foam is typical
- Can be expensive if home is already finished (drywall, cabinets, fixtures, etc.)
Comments on Lawsuits

- Lots of Internet Traffic
  - Blogs
  - Forums
  - Websites

- Misleading Information
  - Inapplicable research
  - Exaggerated claims

- Actual number of cases less than 1/10\textsuperscript{th} of 1 percent of sprayfoam jobs
Educate and Calm Your Client

- Articles and Research from Reputable Sources
- Quick Response with a Plan to Address Problem
- Assistance from Supplier
- Assistance from Independent Consultants as needed
  - SPF Experts
  - Indoor air quality
  - Health & Medical professionals
  - Builders & Structural engineers
Questions?