

ASCC Concrete Executive Leadership

Forum

July 15-18, 2021

Fairmont Orchid, Waimea, Hawaii

ASCC Annual Conference

September 23-26, 2021

St. Louis, MO

Message from the Executive Committee

ACI 301 New Tilt Specs

Anthony DeCarlo, Jr., Vice President

I wanted to take this opportunity to highlight the release of the latest version of American Concrete Institute's 301-20 Specifications for Structural Concrete which was released to the public this past December. This document covers all facets of our concrete work except for pavement, sidewalks and a few other very specific areas of concrete construction. Please take the time to grab a copy of this new document to familiarize yourselves with this latest concrete specification. It's certainly not exciting to read, but it does govern a lot of the work we perform every day, so it's important to have knowledge of the expectations it places on us.

Furthermore, as the current subcommittee chair of the architectural and tilt-up sections of the ACI 301-20 specifications, I wanted to highlight the new tilt-up panel surface finish specs that are now part of this document. If you are a contractor who works in the tilt-up field, please take the time to read through the tilt section of 301-20 to understand the expectations for the exposed panel surface finish SF-3, SF-2 and SF-1.

These new specifications are not perfect but I believe they are a good start for all of us tilt contractors who often end up in disagreements with GCs and/or owners on rubbing and sacking requirements prior to painting the panels. The intent of these new specifications is to set a reasonable expectation that a concrete contractor can achieve, and to set expectations on how the exterior panel surface will be left upon completion of the concrete contractor's work. I hope these new tilt specifications will help the ASCC contractors minimize labor expenses for panel finish work and get retainage released sooner. Take care and have a safe and prosperous 2021.

Executive Director's Message

More Contractors Needed at ACI

Bev Garnant

When I first started work at ASCC, one thing I heard a lot from contractor members were complaints about ACI construction-related documents. Whether it was that tolerances were ridiculous or the responsibility for testing was way off or welded-wire reinforcement would never stay where 302 said it should, contractors had a litany of grievances against ACI.

Many of you remember Bill Tolley who was ACI executive VP at the time. I decided I would take this up with Bill so he could whip his members into shape and cut the contractors some slack. Bill, as always, was friendly and receptive, but not going to let me or our members get away with anything. Essentially what Bill said was "Stop whining and take a seat at the table." If our members didn't like the language in the documents that affected their everyday lives, they were welcome to attend conventions, sit in on meetings, become voting members, and make their voices heard.

Of course, there were a handful of contractors who were active ACI members, but only a handful. Drs. Malisch and Suprenant were there, couldn't they handle it?

It became almost an obsession of mine to get contractors to ACI, find a committee or two that

were critical to their company's wellbeing and, once they got in the room, actually say something!

We have made marvelous progress since Bill and I had "the talk." Every convention I attend I find a new ASCC member who's decided to be a part of the process and make a difference. Instead of Bruce and one contractor on 117 we have 11 contractor voting members in the room. 117 Tolerances and 310 Decorative Concrete have become joint ACI-ASCC committees. Contractors have become technical committee chairs. There's rarely, if ever, an ACI awards ceremony without at least one contractor being honored.

But my point - we need more of you. There are still construction-related committees, education and certification committees that need our input. Documents need to be reviewed by more of you before they're published. Your fellow members are doing a great job of showing up and speaking up, but they could use your help.

The Spring 2021 convention is again virtual, March 28-April 1. It's a great opportunity for you to get your feet wet by sitting in on a few meetings and sessions. (They have great educational content as well).

And it doesn't have to be you. Find someone else in your company who is better suited to the ACI culture and process and ask them to attend. We need you. The concrete contracting needs you. And because I said so.

Concrete Construction Specialist

Spearin Doctrine Jim Klinger

In his suspense novel "*Skyscraper*", author Robert Byrne employs lead character Brian Mitchell, an intrepid Colorado-based consulting engineer, as a foil to introduce and explain a massive construction failure and its aftermath to a non-technical audience. To oversimplify enormously, *Google Books* advertises the novel's plot line as follows: "An engineer discovers that the 66-story Zalian Building is flawed throughout and is in danger of collapsing and that some people will do anything to suppress the facts".

Published in 1984, the novel identifies an inconvenient construction industry shortcoming that persists to this day. After the tower collapses and the dust settles, engineer Mitchell's post-mortem forensic report explains that construction failures can yield information of great educational value- that in an ideal world, technical data and details regarding failures would be disseminated across all industry platforms so lessons can be learned.

(In the case of the Zalian Building, the "failures" include reckless design flaws, chronic wet load deliveries of readymix, substandard workmanship, active concrete crack fields and general monkey-business among the various project participants. In the real world, "failures" can describe other miscues: bid errors, conflicting or exculpatory contract language, inadequate site condition surveys and so on. If technical data and details were revealed and distributed after a failure, Mitchell argues, the industry as a whole would benefit).

Well, that doesn't always happen, of course. Construction projects sometimes have an unfortunate tendency to become directional. In other words, they can either "go south" or "get western". In such cases, technical data and other valuable information may be suppressed by one or more of the parties. Who is there among us that can say how many failure records remain sealed today in the archives of owners, designers, contractors, consultants, insurance companies, attorneys or other compensated advocates? How many of us have had to sign non-disclosure agreements (NDA) before we are qualified to bid on a repair project? Just how big is this iceberg?

On the other hand, the well of information is not completely dry. Here at the ASCC technical division, failure information gleaned from various sources routinely finds its way across our desks. Such sources include media and internet accounts, industry and trade publications, ASCC member hotline calls and email forum threads, all of which in turn become the basis for what ASCC members see reflected in our Position Statements, hotline call responses, webinars, articles we write for ACI, and other industry publications and so on.

As one might expect, most of the failure scenarios we consider focus on concrete-related technical problems that require solutions provided by engineers and concrete specialists. But sometimes we run across lessons learned from our colleagues in the legal profession that- at first glance, anyway-don't have anything at all to do with concrete, but upon further review actually are of value to members. One such lesson is described below.

When it comes to construction law, the "patron saint" of contractors is the so-called "*Spearin* Doctrine", an implied warranty from the owner to the contractor which is named for a construction defect case decided in favor of the contractor by the U.S. Supreme Court in 1918.

The case is summarized in the ACI/ASCC Manual titled "The Contractor's Guide to Quality Concrete Construction" as follows:

"The *Spearin* Doctrine states "it is well established that a contractor who performs according to detailed plans and specifications is not responsible for defects in the result". Thus, a contractor who can demonstrate that they have strictly complied with all aspects of the plans and specifications can successfully argue that their work was not defective, and that their work was not the cause of the defects. Most importantly, if compliance is established, the owner/designer is responsible and not the contractor. However, the contractor must be prepared to present evidence in court that it fully complied with all aspects of the owner's plans and specifications. If the contractor is unable to demonstrate that it complied with all requirements, it will not prevail. In one case, a contractor established compliance with all requirements except for curing; because inadequate curing could have caused the lack of strength, the court ruled the *Spearin* Doctrine did not apply".

Since 1918, unsealed accounts of *Spearin* disputes available in the public domain tell an ongoing tale of legal gamesmanship where the players constantly attempt to shift risk solely between owners and contractors. But a recent appellate court decision described in ASCE's Civil Engineering magazine (Jan/Feb 2021) features a new legal approach; an example of creative lawyering used to prove that the general contractor (GC) actually owes *Spearin* warranty coverage to a subcontractor, leaving the owner totally out of the dispute.

This landmark case involved a subcontractor who proposed a product during a pre-bid meeting among the owner, the GC and the design team. After the meeting, all parties agreed the product met the intent of the owner's performance specification requirements and so was deemed appropriate for use on the project. To seal the deal, the GC prepared a buyout subcontract for the agreed-upon product.

In the subcontract language, the GC included a clause that limited the subcontractor to using only the proposed product. There were no "or equal" provisions. In addition, the GC added a so-called "integration" carve-out clause into the contract as follows:

"This Agreement is complete and shall not be interpreted by any reference to any previous bid, letter, proposal, document or understanding, written or oral, or other document or agreement except as specifically provided in this Agreement."

In other words, whatever was said in the pre-bid meeting doesn't count and anything else that may have been discussed and agreed to by all parties before the subcontract was executed never happened. And that is when the project went "directional".

At some point during the subsequent submittal process, reviewers of the proposed (now mandatory) product technical data discovered the product actually did not meet the owner's performance specification and could not be used on the project.

Upon discovery, the subcontractor insisted that a change order be cut to cover costs associated with providing an alternate product. After all, the sub argued, they had simply provided the exclusive, sole-source product as dictated in their subcontract. Ultimately, the GC refused and terminated the subcontractor for default. The case escalated to both trial and appellate courts, where the subcontractor prevailed in each decision and was awarded damages.

As it turns out, the GC made at least two fatal errors. One miscue was dictating an exclusive, sole-source product with no "or equal" option. This constituted a shift of risk exposure from the owner to the GC. Since the owner's performance specification was changed to the GC's prescriptive specification, the GC became liable to provide *Spearin* warranty coverage to the subcontractor. The second error was to ban any reference to any previous meeting agreements, conversations, understandings, anything committed to writing that discussed the suitability of the

product for use. After all, the court held, both the GC and the design team were sophisticated enough and quite able to understand early on that the product was actually unsuitable. Whatever the subcontractor may have represented during the pre-bid process was not fair game for consideration per the “integration” carve-out clause placed by the GC into the subcontract.

Even though this case did not involve concrete construction, there are lessons to be learned and take-aways that could apply to ASCC members as follows below.

The *Spearin* implied warranty can be enforced between GCs and subcontractors without involving the owner at all.

The burden of proof in *Spearin* warranty disputes is totally on the contractor.

Performance specifications for ready mix concrete effectively void the implied *Spearin* warranty, transferring risk from the owner to the contractor when the contractor becomes the designer.

The *Spearin* warranty can easily be voided with strategically worded exculpatory contract language and carve-outs. Be wary if AIA document AIA 201-2017 is part of the bid or contract documents.

Spearin disputes claiming design defects have been tossed out of court because “the contractor should have known better” or “why didn’t the contractor submit a pre-bid RFI?”

Contractors should perform thorough reviews comparing general condition clauses to specification requirements to flush out exculpatory clauses or carve-outs that shift risk to the contractor.

Concrete Polishing Council

Thanks for Your Trust
Scott Metzger, council director

First, let me say that I am humbled and honored to be the new council director of the Concrete Polishing Council. I truly appreciate all the support and trust shown by the CPC membership in allowing me to take on this role. I am excited about this new opportunity, and anxious to hear ideas from all members as to how we can continue to work to make the CPC better and increase the value to members.

Some ten years ago, one of our current CPC directors, Roy Bowman, asked me to get involved in what was then a group called the CPAA (Concrete Polishing Association of America). I was hesitant, as in speaking to others in the industry, I heard reports of too many egos and too much infighting. But then nothing new is ever born without some strife. About a year later, when Roy asked again, I warned him that if I got involved, I truly intended to get involved, not just join so I could say I was a part of some group. Roy said that was exactly what was needed. Now ten years and a few iterations later, I find myself as council director. So, all of you can either thank or blame Roy Bowman indirectly for that...

I will admit I was hesitant to take on this role. As with the original CPAA and with many other industry organizations, I have always believed that an organization intended to support and speak for the contracting community should be run by a contractor, and I am not one. Accordingly, I really do encourage and indeed need the guidance and help of all the CPC and ASCC membership to ensure that we speak with one voice. I have long admired our polishing contractor community for their willingness to partner, share knowledge, and support one another. It is only through collaboration that I believe all contractors can succeed individually and collectively. Concrete polishing is an amazing industry, filled with so much promise and incredible technological development occurring almost daily. I am excited to have the opportunity to play a small role in this continually developing story, and I look forward to sharing our collective knowledge and ideas in moving our industry and the ASCC/CPC forward.

Decorative Concrete Council

Meet the New DCC Board**Chris Sullivan, decorative concrete specialist**

During the January DCC board meeting the council welcomed Jeff Eiswerth as the new council director. Jeff represents H&C, a division of Sherwin Williams, and has been active on the DCC board for the last 10 years, managing various sub-committees along the way. Jeff replaces Karen Keyes, who finished her two-year term as council director. Stepping into the role of secretary is Tonia Primavera with Sundek. We also welcomed four new board members: Brian Farnsworth, Cement Colors; Jeff Wells, Arizona Polymer Flooring; Ryan Olson, Ligchine; and Danny Barrera, Concrete Marketing Crew. We are excited to have these new members on the board and look forward to their active participation. On behalf of the board we also want to extend a special thank you to Karen for her exceptional leadership over the last two years, especially during the pandemic. We look forward to having her involvement for years to come. Just a friendly remind that the DCC Awards submission window is open until March 31. Please submit your awards before the deadline.



2020 WOW! Winner: Brattleboro Bridge by Superior Gunite, Jersey City, NJ

2021 DCC Project Awards Submission

To view the awards brochure and see more information about submitting online, [please visit our website.](#)

Stick to Your Plan
Jeff Eiswerth, council director

This is my inaugural DCC presidential letter to the members and I'm happy to have the next two years to address members with my thoughts, ideas, best practices, industry accomplishments and improvements. Two years may seem like a long time, but as we all know, time is relative.

While I stress about coming up with 24 relevant topics to write about, my third grader stresses about a 60-second reading assignment. Reality is, time affects us all.

What affect does time have on you? Maybe you're close to retirement, have payroll, a deadline to meet, etc. My suggestion is to be organized, don't sweat the small stuff, but most importantly have a plan.

Benjamin Franklin once said, "If you fail to plan, you are planning to fail." I think this is true. Another one of my favorite quotes is from Mike Tyson: "Everyone has a plan until they get punched in the face." We all have a lot of stuff coming at us every day. But if you have a plan, you're better prepared for that punch. While you may not have taken one in some time, they're coming. Some are bigger than others and often we don't see them coming.

One of the things I've found particularly helpful is a book by the famed author and speaker Zig Ziglar: *"Goals: How to Get the Most Out of Your Life"*. Why do many people not reach their goals? The bottom line is 1) lack of a plan and 2) sticking to the plan. One of the most eye-opening parts of the book was learning the difference between activity and accomplishment. It's an easy read and it's only 162 pages, so it doesn't require a lot of time.

I'll leave you with this. You may get knocked down every so often, you might 'take the punch.' If that happens, get up, brush yourself off, take a deep breath, and remember to stick to your plan the best you can. It's okay to adjust, but if you have a solid plan, you will save time in the long run and hopefully have greater success.

Safety & Risk Management Council

ASCC's New Monthly Safety Roundtables and Why You Should Participate **Joe Whiteman, director of safety services**

For those who have attended our COVID-19 Roundtables, you have seen the value in sharing your experiences and listening to others challenges or lessons learned. The Safety & Risk Management Council realized what a great tool and opportunity it provides members to discuss and share challenges, resources and lessons learned. I am pleased to announce we have expanded that idea, and will be hosting a safety roundtable via ZOOM on a different topic each month.

The safety roundtable will have 3-5 "starter" questions to help stoke the conversation. Beyond that, this is an opportunity for you and others in your company to learn from and share related experiences, work practices, resources, and challenges. Someone else on the call may have already found an answer and is willing to share with you.

I encourage everyone on the call to participate. In the age of videoconference, it's easy to turn your camera off, mute your microphone and just listen, but engaging in the conversation adds to the dynamics and quality of discussion. So please chime in, ask a question or share an experience related to the topic. I and others on the call will appreciate it.

The safety roundtable will be held on the third Wednesday of each month at 3-4pm, CST. The next topic, March 17, is Return to Work Programs. Should you have questions or recommendations for topics for future roundtables, please email me at jwhiteman@asconline.org, and keep an eye out for our schedule for the upcoming months.

ACI Winter Concrete Forum Webinars

The Winter Concrete Forums presented by the National Concrete Pavement Technology Center are now open for registration. These forums will take place during the lunch hour from noon to 1:00 p.m. Central and you must be registered to attend.

• **March 5** - Construction Inspection – Just in Time Inspection Refresher
Whether you will be building or inspecting, gear up for a new year of concrete pavement construction with a refresher course on best practices.

Attendance is FREE and 1 hour PDH certificates will be provided. To register, please email [Melisse Leopold](mailto:Melisse.Leopold@concreteindustry.org) with the following information: name, organization, email and dates you would like to attend.

Concrete Industry Management Program Seeks Donations for 2021 Auction at World of Concrete

The Concrete Industry Management (CIM) program – a business intensive program that awards students with a four-year Bachelor of Science degree in Concrete Industry Management – is seeking donations for their 2021 CIM Auction to be held at World of Concrete. The auction is scheduled for Wednesday, June 9, 2021 at the Las Vegas Convention Center. The silent auction will be held from 11 a.m. to 1 p.m. and the live auction begins at 1 p.m.

“The proceeds from the 2021 CIM Auction will benefit the CIM National Steering Committee (NSC) and support the current CIM programs at Middle Tennessee State University, New Jersey Institute of Technology, Texas State University and California State University – Chico, the Executive MBA program, as well as help fund scholarships,” said Ben Robuck, Chairman of the CIM Auction Committee. “Industry support is needed more than ever with the addition of South Dakota State University, who will be joining the CIM family of schools beginning fall 2021.”



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Save the Date!

CIM Auction at World of Concrete

Wednesday, June 9, 2021

cim CONCRETE INDUSTRY MANAGEMENT

— 2021 Auction —

ASCC Webinar Series

March 10, 2021
How to Win with Facebook Ads in 2021
Ryan Davis, Davis Construction Marketing

April 14, 2021
Concrete Podium Structures - Design & Construction
Stephan Voss, PE, SCA Consulting Engineers and Scott Anderson, Keystone Structural Concrete LLC

May 12, 2021
Portland Limestone Cement: The Evolution of Cement
Mike Collins, Lehigh Cement

Webinars begin at 3 pm CST. [Register Here](#)

HOTLINE QUESTIONS

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POLISHED CONCRETE

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DECORATIVE CONCRETE

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ASCC members have access to these toll-free numbers for assistance.

Support Our Associate Sustaining Members



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