

Don't Make That Accident Worse

How to Preserve Evidence After a Claim

Presented by:



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Agenda

- ▶ Should You Fix That Mistake?
- ▶ What Can Go Wrong?
- ▶ 6 Steps to Protect Yourself?
- ▶ Questions







Who's Fault is it Anyways?

- ▶ Is the accident really your fault?
- ▶ Types of defects that may cause accidents:
 - ▶ Design Defects
 - ▶ Material Defects
 - ▶ Workmanship Defects
 - ▶ Human Error (who's human?)



What Can Go Wrong?

- ▶ If you ignore the problem you risk future liability
- ▶ If you fix the issue you risk destroying evidence
 - ▶ Evidence must be preserved or you could be at risk of “Spoliation of Evidence”



What Can Go Wrong?

- ▶ What is Spoliation?
- ▶ Spoliation occurs when a person or company, either intentionally or negligently, withholds, alters, hides, or destroys evidence that's relevant to a court case.
- ▶ Spoliation can arise even when good-faith efforts are made.

What Can Go Wrong?

- ▶ Intent: The court's primary concern is the contractor's intent.
- ▶ Did the contractor act specifically to destroy evidence?
- ▶ Or was the spoliation necessary to prevent harm and address safety concerns on the jobsite?

What Can Go Wrong?

- ▶ Notice: Contractors who properly notify owners, potentially responsible parties, and other involved persons before acting generally fare better than those who don't.



What Can Go Wrong?

- ▶ Injury to the Case: Courts try to determine just how much the spoliation may have hurt the case.
- ▶ If other evidence exists that provides insight regarding the defect, it lessens the effect of the spoliation.



How to Protect Yourself

- ▶ 1. Gather Information: When a defect is discovered, gather as much information as possible.
 - ▶ Identify all parties involved, both responsible parties and witnesses.
 - ▶ Gather correspondence (emails, texts, ...).
 - ▶ Gather and continue to take lots of pictures and videos.
 - ▶ Pull copies of agreements with responsible parties (check indemnity provisions, ...).
 - ▶ Pull copies of all relevant bonds/insurance policies (are you an additional insured?).



How to Protect Yourself

- ▶ 2. Notify Responsible Parties: Prior to repair, notify all who may be responsible and give each an opportunity to inspect the defect and assemble evidence.
 - ▶ The earlier the notice the better.
 - ▶ Notice should be in writing, ideally via certified mail and email.
 - ▶ Include notice to insurance carriers and bonding companies (including yours).
 - ▶ Ask all responsible parties to preserve evidence.

How to Protect Yourself

- ▶ 3. Ask an Expert: Contractors well-versed in litigation retain experts early regarding the defect or claim.
 - ▶ Subject-matter experts can assist in crafting repair protocols.
 - ▶ Experts are familiar with documentation standards.
 - ▶ Consider retaining an expert through legal counsel to protect the expert's work product and report.

How to Protect Yourself

- ▶ 4. Announce the Repair: Notify all parties involved that the repair will take place.
 - ▶ Notice should be certified mail and email.
 - ▶ Indicate the location, date and time of the repair.



How to Protect Yourself

- ▶ 5. Allow Monitoring: Every potentially responsible party should have a chance to monitor the repair.
 - ▶ Request waivers from people visiting the site to monitor the work.
 - ▶ Be prepared to allow parties to take reasonable photos, videos and samples.
 - ▶ Be very careful on what is said during any meetings.





How to Protect Yourself

- ▶ 6. Document The Repair: Document your repairs and the costs involved.
 - ▶ If you can submit the claim for reimbursement, documenting the cost is critical.
 - ▶ Include your supervision time.
 - ▶ Track schedule delays. How did this impact the rest of the project (or not)?

You Dropped What?







Safe?







Questions?

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