

TWO MULTI-MILLION-DOLLAR LAWSUITS IN ONE DAY

PART 3

Lessons From the Lawsuits

12 Key Questions to Ask Yourself

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A multi-million-dollar lawsuit is a powerful wake-up call to any door dealer. It reveals the stunning potential liability that can result from a garage door accident.

What can you do to minimize your chances of experiencing such a calamity?

The following list of questions does not cover all possible safety or liability issues related to servicing garage doors and openers. However, it does relate to specific lessons gleaned from our investigation of the two lawsuits in Indiana and New Jersey. We encourage you to use such a list in your next meeting with your technicians.

1. When attaching (bell) wire to a wall, are you using insulated staples that won't cut through wire?

We don't know who attached the bell wire in the Indianapolis case, but photographic evidence shows that the installer used bare metal staples. A properly installed insulated staple might have prevented the accident from happening.

Your manufacturer's installation instructions likely call for insulated staples. Saving pennies by using bare metal staples could end up costing you millions.

2. When servicing any opener, do you check the clutch adjustment (commercial) or force settings (residential)?

Making an appropriate clutch or force adjustment is a primary safety measure for

all openers. It's relatively simple and quick, and it could help keep your customer safe. For your own liability protection, document that this check and adjustment, if necessary, were made.

3. When adjusting the clutch or the force sensitivity on openers, are you aware that upward force can be just as dangerous as downward force?

Technicians may think that all accidents happen with downward force and that upward force is not as important. The Indiana and the New Jersey accidents both prove this is not the case.

4. When fixing a door balance problem, do you focus on the door and spring system (in addition to the opener's force/clutch adjustments)?

We don't know if this was a problem in the Indianapolis case. But when a door is badly out of balance, don't attempt to fix the problem solely by making adjustments to the opener. (See #3 above.)

5. When a door has an opener and a manual lock, do you always install an interlock safety switch?

This seemed to be a critical issue in the New Jersey case. An interlock safety switch can prevent damage to the lock and to the door.

Don't assume that the customer can't afford a vital component such as an interlock safety switch. If the customer refuses such a component, make sure they sign a statement

that documents their awareness of the safety issues and their refusal.

6. Are you aware that inadequate training of your technicians exposes you to potential liability?

Inadequate technician training was a major contention of the plaintiff's case in the Indianapolis lawsuit. The technician serviced the opener only six weeks after being hired. The plaintiff argued that 12 to 18 months was appropriate training.

In a nationwide poll* of door dealers, we asked, "What is the typical length of training you provide before you send a technician out on his own to perform repairs on commercial sectional doors or openers?"

Forty percent of the 236 respondents said, "More than six months." About one in four (26 percent) responded with a period of two months or less.

The industry now provides standardized training for a wide range of industry products. Getting IDEA certification (www.dooreducation.com) for your technicians is an excellent way to increase your professionalism and provide additional liability protection for your company.

7. Do you keep documentation that proves your training of technicians?

Training is critical. But so is having documentation that proves you provided that training.

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Before and after the Indianapolis accident, Pro Door had an extensive and well-documented safety program that all employees must follow. But Mike Biddle told us that the company's current install and service training process involves more documentation than it did before the accident.

"We are currently evaluating our training process in order to make improvements wherever we see a need," he added. You should too.

8. When recommending products to solve a customer's problem, do you include components/products that enhance safety?

As the plaintiff's attorney argued in the New Jersey case, "None of the service calls, or the accident itself, would have occurred if the interlock safety switch had been installed."

Safety should be the paramount consideration whenever you're called to make product or service recommendations to a customer. Failure to do so may come back to haunt you. When you recommend a safety component or product, be sure to have documentation of that recommendation.

9. When customers reject any component that is related to safe operation, do you have them sign a document that proves their rejection?

You want all your customers to be as safe as possible when using the products you install and service. If an accident occurs, customers bear some responsibility if they chose to ignore or refuse your recommendations. But you need proof of their rejection. (See #5 on page 45.)

In the New Jersey case, the door dealer said that he had faxed the customer a proposal for an interlock safety switch. But no evidence of the fax existed.

"You must have a way to confirm that the customer received your communication," said Naomi Angel, DASMA's legal counsel. "When recommending something as important as a safety device, the best option is for the dealer to send the proposal in a way that requires a signature."

Additionally, if a customer refuses to allow you to make an application safe, you can opt to walk away from the job. If you do, document that you did so.

10. When called to service an older door or opener that is not up to the current

safety standards, do you recommend replacing the door or opener with a newer product with today's safety features?

We asked Mike Biddle what other door dealers can learn from his lawsuit. He replied, "Dealers should seriously consider each and every repair before they proceed. There is still a lot of antiquated equipment in use that should not be considered for repairs. As much as a customer may want you to repair old equipment, your company will have to defend that decision if the product fails."

And again, when they refuse your recommendations, get it in writing.

11. Do your technicians routinely attach all the necessary warning labels on all installations and service calls?

In these two lawsuits, warning labels didn't prevent the accidents or the lawsuits. But they can.

About 23 years ago, Randy Oliver of Hollywood-Crawford Door in San Antonio was involved in a lawsuit over the death of 3-year-old girl who was somehow killed by a garage door. "We didn't install the doors or the opener," he said, "but we were found negligent for not installing any warning labels

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How Much Coverage Is Enough?

How much total insurance coverage do you have for a severe liability claim (i.e., your general liability coverage plus any umbrella coverage)?

Answer Choices	Responses
I don't know	2%
\$500,000 or less	1%
\$500,001 - \$1,000,000	7%
\$1,000,001 - \$2,000,000	41%
\$2,000,001 - \$5,000,000	34%
\$5,000,001 - \$10,000,000	11%
\$10,000,001 - \$20,000,000	2%
More than \$20,000,000	2%

*Survey details: The 2014 online survey was conducted Nov. 5-12, 2014. Email invitations were sent to 1,924 garage door dealers throughout the United States and Canada. A total of 236 dealers (12%) responded, which is typical for our surveys.

What is the largest fine/payout you've ever had to pay as a result of a lawsuit? (Asked of dealers who had to pay monetary damages)

Answer Choices	Responses
\$0	3%
Under \$5,000	18%
\$5,000 - \$9,000	9%
\$10,000 - \$24,000	31%
\$25,000 - \$49,000	6%
\$50,000 - \$99,000	16%
\$100,000 - \$249,000	6%
\$250,000 - \$499,000	0%
\$500,000 - \$999,000	6%
\$1,000,000 - \$2,499,000	3%
\$2,500,000 - \$4,999,000	0%
\$5,000,000 or more	0%

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when we were at this home nine months previously to set up two remote controls.”

Today, besides being diligent in installing warning labels (e.g., on the springs, bottom corner brackets, the door panel, and the wall control button), he also mails the industry’s “Automatic Garage Door Opener and Garage Door Safety and Maintenance Guide” to each customer.

In our recent nationwide dealer poll,* we asked, “How often do you affix warning labels for residential garage doors and openers you install/service?” Only 53 percent said, “Always.” One dealer out of 10 said, “Never.”

In response to the same question about commercial doors or openers, only 49 percent said, “Always,” while 14 percent said, “Never.”

Some survey respondents noted that certain customers do not want labels pasted on walls. When a customer refuses a label, Naomi Angel advised, “Have the owner sign on the work order that warning labels

were refused. Keep a paper trail that will document that you tried and were unsuccessful.”

She added that some dealers take photos of the affixed label to prove that it was placed, whether on garage doors or gate equipment.

12. Do you have enough liability insurance?

In both lawsuits, it appears that the two dealers will pay none of the multi-million-dollar judgments, and the entire damage awards will be paid by insurance. Without adequate insurance, these businesses could have been crippled or ruined by the lawsuits.

While researching both of these lawsuits, it seemed clear that the amount of insurance coverage was a key factor in determining the final damage award.

“Evaluate all aspects of your insurance coverage annually,” was the sound advice of Mike Biddle. “Make sure that you are adequately covered.”

But how much coverage is enough?

In our nationwide dealer poll,* we asked, “How much total insurance coverage do you have for a severe liability claim (i.e., your general liability coverage plus any umbrella coverage)?” More than 90 percent of dealers had more than \$1 million in coverage. (See chart on page 46.)

We also asked dealers, “Have you ever been sued by a customer for any door or opener work?” Thirty percent had been sued, and 10 percent had been sued more than once.

Of those who had been sued, 51 percent had to pay monetary damages. Of those who had to pay monetary damages, we asked, “What is the largest fine/payout you’ve ever had to pay as a result of a lawsuit?” The most common answer, checked by 31 percent of these respondents, was “\$10,000 - \$24,000.”

Only three percent had paid more than \$1 million, and no one paid \$2.5 million or more. The damages in the Indiana and New Jersey lawsuits were greater than those in any suit for any dealer in our survey. ■



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