

Lessons learned from testifying in court Two industry veterans offer sound advice

If your company installed software products, you would not likely ever be dragged into court because your product or installation caused serious physical injury.

But in the garage door and gate business, our products are large moving objects that operate near pedestrian traffic. Any product meeting that description can indeed be involved in an injury accident. And when an injury occurs, you might end up in a lawsuit that could threaten the survival of your business.

Of the hundreds of D+AS magazine stories that are posted online, the one story that has attracted the most clicks (61,363 to date) is our “Two Multi-Million-Dollar Lawsuits in

One Day” story from the winter issue of 2014. One of those lawsuits resulted in a \$21 million judgment against an Indiana door dealer, and the other brought a \$3.5 million judgment against a New Jersey dealer.

That story aptly demonstrates the hard reality of our business. Accidents can happen. Customers can get seriously hurt. Lawsuits can be devastating.

So, how do you avoid accidents, injuries, and lawsuits?

To answer this question, we turned to two DASMA members who have been called to testify in several court cases involving industry products.

active in DASMA since 2005 and has chaired operator-related committees. A retired U.S. Air Force lieutenant colonel, DeSilvia holds bachelor’s and master’s degrees in mechanical engineering and an MBA.

Rick Sedivy, DoorKing’s director of marketing and regulatory affairs, has served as DASMA president, chair of several operator-related committees, and a member of key industry groups such as the Automated Vehicular Gate Systems Coalition, the UL 325 Standards Technical Panel, and the IDEA board. Before entering the industry in 1975, he served in the U.S. Air Force and later earned a bachelor’s degree in business administration.



Sedivy

Our experts

Tom DeSilvia, LiftMaster’s director of engineering for regulatory, test services, and project management, serves as chair of the Automated Vehicular Gate Systems Coalition, which includes members from DASMA, AFA, IDA, and NOMMA. He has been



DeSilvia



When we asked both of them to identify the “top two practical lessons that a door/gate dealer should learn from your experience in court,” they both offered *the same two tips*.

1 Follow the manufacturer’s installation instructions.

This point may seem obvious, but technicians often assume that they are so technically savvy that they “don’t need the instructions.” When new technicians are trained to install the industry’s products, they may be trained by another installer who is only guessing at the proper instructions.

“In every site I have seen where an accident has happened, the product has NOT been installed per the installation manual and NOT by industry standards,” said DeSilvia. “On the flip side, I have not seen an accident on a site where the product was installed per the installation manual and the industry standards.”

He urges every installer to always follow the product’s installation manual and industry standards, such as UL 325 and ASTM F2200.

“Adding the appropriate safety devices is inexpensive compared to being involved in a lawsuit,” he added.

Sedivy noted that the installation instructions, specifically the safety and maintenance sections, will be closely examined in any court case against you. “If installation instructions, especially those regarding safety items, are not followed, it can be a long—and expensive—day in court,” he said.

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—Rick Sedivy

The DASMA Mock Trial, which has been presented over the last 20 years at the IDA and AFA annual conferences, also zeroes in on the importance of heeding manufacturers’ installation instructions as well as warnings found in owners’ manuals and safety labels and placards.

If your company’s training procedures have been skipping over the manufacturer’s instructions, it’s time to re-install those instructions into the heart of your training process.

2 Keep accurate records.

Both Sedivy and DeSilvia also cited recordkeeping as another critically important step that can help you substantiate your position in a court proceeding.

Sedivy urges dealers to keep good records of every installation and to document any issue that might result in later problems. Specifically, these documents include requests for proposals, quotes, invoices, work orders, service orders, etc.

“If any litigation were to occur, good records can help protect the dealer’s assets, provided that they followed industry guidelines and the manufacturer’s installation instructions,” he said.

DeSilvia also suggested keeping installation photos on file. This can help to establish whether a customer made any changes after the initial installation. Keeping digital photos on file doesn’t require physical space in filing cabinets, only computer memory. An organized filing system can make retrieval quick and easy.

The DASMA Mock Trial also highlights the importance of written documentation. At Fencetech 2018 in February, the mock trial focused on a gate operator that was involved in a severe, life-changing injury to a child. In that hypothetical case, the owner of the gate operator company kept records of the gate owner declining to add a monitored reversing edge and to close a gap between the gate and support post.

Such notes take only a few seconds to record, but they can be a priceless testimony of your efforts to install and service the product correctly.

“Your goal is to provide your customer with a safe and accurate installation,” said Naomi Angel, DASMA legal counsel. “That involves many other steps besides following the manufacturer’s instructions and keeping good records.”

“But these two simple steps should be at the top of your ‘to-do’ list for every installation,” she added. “They can help to eliminate accidents, protect your customer, and possibly, save your business.” ■

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