

PRESERVE THE PHYSICAL EVIDENCE!

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As soon as you believe a legal action might be initiated, take pains to preserve whatever physical evidence may be relevant. Send in an investigator, take many photographs, expedite the discovery process.

Any delay allows potential evidence to be altered or disguised, as in the following real-world examples.

(1) A 240-volt coffee brewing machine is alleged to have shocked an employee resulting in permanent neural damage, most likely because the original installation failed to connect an electrical frame ground. After many months passed while preparing the case and filing suit, an examination of the machine now reveals the presence of a grounding conductor. Was it mounted originally, or installed during routine maintenance, or added because of the shock incident, or not installed until after notice of lawsuit? Timely documentation might have resolved whether the machine was grounded at the time of the incident.

(2) A private telephone system was allegedly miswired allowing an electrical surge to create an ear-damaging screech. Ultimately an inspection of the system revealed a like-new professional installation with no evidence of defective materials or workmanship. Afterward it was learned that the system supplier had provided maintenance services many times post-incident, but with no record of diagrams or work orders to reconstruct what was done. Too bad the inspection wasn't conducted earlier.

(3) The electrical control system for a fast, heavy industrial overhead door included a safety photocell assembly which reversed the closing cycle when an object entered the doorway. Some time after the door closed on the head of a tractor operator, the position of the photocell assembly was relocated, and other changes to the control system were made. Only much later it was learned that the photocell assembly had been disconnected pre-incident, rendering the safety feature inoperative irrespective of its position. Reconstruction of who performed the relocation, who disconnected it or failed to initially connect it, and when these actions were taken, is under dispute.

(4) An audio tape recording intended as evidence at trial had magnetic signatures that were obvious edits. These would be exhibited to challenge the authenticity of the tape. However, further analysis going back to the original recording revealed the apparent edits to be only some artifacts introduced in the copying process. The original tape – the real physical evidence – was authentic and valid.

Alteration or disguise of potential physical evidence need not be on purpose. Damage gets repaired, defects are corrected during routine maintenance, new features and devices are incorporated in machinery, apparatus undergoes corrosion and decay. Copies are not always exact replicas. Computer records can be overwritten with no intent of spoliation.

The lesson is to promptly identify and preserve whatever evidence might later become useful for presentation in the forum: equipment, photographs, test results, written records, videotapes, lab samples. Physical evidence never improves its usefulness to litigation with the passage of time.

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