

The Mock Trial: What's in it for me?

/ BY JIM PROSZEK

A “mock trial” is a very effective training tool in our industry. Those who have participated in the past can attest that a mock trial (like the one I will be involved in presenting at the 2014 CGA 811 Excavation Safety Conference & Expo) provides valuable training that can be crucial if you ever have to participate in a damage investigation trial. It will show, with real-life examples, how being prepared, or not prepared, can impact a utility owner's chances of successfully pursuing, and a locating company or excavator's chances of defending, a utility damage claim. It will also show how failing to be prepared can make a witness look foolish in front of a jury, which can have a major impact on the outcome.

The Importance of Communication & Thorough Investigation and Documentation

Damages to underground facilities are usually preventable and most frequently occur due to a breakdown in the damage prevention process. At the heart of this process is information accuracy and consistency in communication between excavators and operators of underground facilities.

It is critically important to timely document communications between the locator and the excavator. If you fail to do so, you will face many unpleasant questions which will put you in a situation that will be difficult to explain.

If the conversation you claim you had with the excavator actually occurred before the damage, why did you wait until after the damage to document it, even though your company's procedures require you to enter the information into its positive response system when the conversations occur?

If you actually went out and marked the line before the damage, why did you wait until after the damage to enter that information into your company's positive response system? If the paint marks and flags were there before the damage as you claim, why can't I see them in the pictures?

Your company has a procedure for documenting damage incidents. I'm sure that you agree with me that performing a thorough and complete investigation is important. Then why didn't you complete all the information requested in the incident report? Did you do the rest of your job as carefully and thoroughly as you did with the incomplete incident report?

You say the incident report is something new and your company hasn't yet trained in its use. What other important parts of your job could your company not be bothered with providing you sufficient training?

You deny that you ever talked with the locator, either in person or on the phone. Did you look at the call detail on your cell phone bill? Doesn't it show two calls lasting from three to five minutes with the locator even though you just testified under oath that those calls never took place? How do you explain the locator's daily time sheets which show him at the site on the day you claim he was not there?

You claim no one ever warned you that the notice of excavation you provided to the One Call center didn't cover the area where you were working when you damaged the cable. Can you explain why a witness who is not connected with either you or the utility owner has just testified that he warned you of this circumstance on the morning before the damage and you ignored him?

These questions illustrate the importance of timely and properly docu-

You the Jury: Trial of an Underground Damage Utility Claim

At the upcoming CGA 811 Excavation Safety Conference & Expo there will be a mock trial session titled: “You the Jury: Trial of an Underground Damage Utility Claim.” This is a special 90-minute, audience participation session based on an actual underground utility damage incident. The panel will consist of three attorneys, Jim Proszek, Mark Pollick and Tony Jorgenson; Walt Kelly, an expert witness in numerous utility damage cases, including the one on which the mock trial is based; Ron Peterson, the executive director of the National Utility Locating Contractor's Association and expert witness in several utility damage cases; and Brian Tooley, who managed Verizon Business' damage prevention and recovery program,

and has testified as both a fact and expert witness in utility damage cases. The incident on which “You the Jury” is based will provide a textbook example of how the lack of communication on at least three levels: (1) between the excavator and the state One Call center, (2) between the excavator and the utility owner, and (3) between the two companies themselves, caused a utility damage incident. The questions at the mock trial will demonstrate the problems not doing a thorough and complete investigation and not being prepared can create.

Tying it All Together

Other sessions scheduled at the CGA 811 Excavation Safety Conference & Expo that will provide a foundation for the “You the Jury: Trial of an Underground Damage Util-

ity Claim” mock trial include:

- Damage Prevention Failed, Now What?
- Whole New (Mobile) World: Mobile Technology for One Call Centers, Utilities & Excavators
- Communication is Key: How Clearer Tickets Lead to Better Results
- Damage Prevention Partnering Process (D3P)
- The Marks Mean Something – How They are Interpreted Means Everything
- SUE's Role in Damage Prevention for the PHX Sky Train Project
- Risk Mitigation Practices for HDD Crews
- TransCanada Construction Safety Committee
- Using GIS to Improve Locate Accuracy
- What the VAULT can do for you!



menting all your activities at the work site, of performing and thoroughly documenting your investigation of the incident, finding all the witnesses and documents supporting your claims or defenses, and being aware of the documents and evidence before you testify in a deposition or at trial. All of this will be incorporated into the mock trial at the CGA Conference.

Audience Participation is the Key

The audience participation is what makes any mock trial unique. Everyone who attends a mock trial brings a wealth of knowledge and experience. The mock trial gives you the opportunity not just to ask questions of the presenters, but also to share your knowledge and experience with the other participants.

At each stage of the trial, you can participate directly by questioning the witnesses, asking questions of the judge and the lawyers as to why they did, or did not, ask certain questions or bring out certain evidence. Each participant has the opportunity to share with the judge, the witnesses, the attorneys and the other participants what information and evidence they found important or they should have seen. At the end of the trial, you will join the rest of the participants and reach a verdict based on the evidence, testimony and arguments you heard and saw.

Tips and Techniques for Testifying and Presenting Your Case at Trial

Trial is an unusual and often uncomfortable situation for witnesses. You may well be very good at your job, however that knowledge, no matter how extensive and complete, does not prepare you to explain it to a jury of 12 individuals who know nothing about the facts of your case and likely just as little about your business.

You only get one chance to make a good impression on the jury so you need to make the most of it. The mock trial will provide you with tips on how to do so and, hopefully, how to succeed at trial if you ever find yourself in that situation. **DP**

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