The Texas Costco Injury Litigation Handbook

Advanced Evidence Discovery Motion Mediation and Trial Strategies for Plaintiff Lawyers

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How to use this handbook

This practitioner manuscript is organized by theory, preservation, discovery, dispositive motions, damages and trial. The expanded chapters on notice, warehouse mechanisms, native video and inspection systems, Rule 166a, and trial proof contain fictional hypotheticals, proof charts, targeted requests, defense positions, evidence issues and applications. Forms A through R are editable drafting models with bracketed case fields. Apply each request to the actual warehouse, incident, court order, source and time window. Costco's operational systems are case-specific questions, not established companywide facts. Check controlling law, subsequent history, licensed citations and all facts before filing or publishing.

Part I Liability Architecture

Chapter 1 Identify the entity the place and the legal theory

Begin with the receipt, location, incident report, lease or public property records, signage, membership records, and service-area identity. Costco Wholesale Corporation may be an obvious investigative lead, but do not assume it owned the land, controlled every service area, employed every worker, or conducted a contractor's activity. Separate the warehouse interior, parking lot, gasoline station, food court, pharmacy, tire center, sample station, and loading zone. Obtain the actual lease and service contracts when control is genuinely contested. Name and serve entities only on a legally supported basis; evaluate limitations and relation-back questions before naming an affiliate late.

Classify conduct by timing. A condition left on the floor generally invokes premises liability. An employee's contemporaneous negligent handling of a powered pallet jack may be negligent activity if injury arises from the ongoing act. The mere existence of employee involvement in creating an earlier condition does not automatically turn a later fall into negligent activity. Compare *United Scaffolding, Inc. v. Levine*, 537 S.W.3d 463 (Tex. 2017), and *Austin v. Kroger Texas, L.P.*, 465 S.W.3d 193 (Tex. 2015), for theory and duty. Falling merchandise may involve display design, stocking, customer interference, and control; a defective cart may implicate products issues or premises duties depending on evidence. Chart each theory's elements before sending discovery.

Proof ledger: Theory; condition or active act; person with control; knowledge requirement; breach; factual and legal causation; medical injury; source exhibit; witness; defense response. Revisit the chart when a deposition changes the mechanism. Do not plead a product defect solely because a product fell. Conversely, do not let a generic "slip-and-fall" label obscure an equipment collision.

Chapter 2 Notice After Peterson

The controlling problem in a liquid-on-floor claim is to connect a particular condition, at a particular place, to knowledge before injury. The Supreme Court of Texas states the premises elements as knowledge of a condition over which the owner or occupier exercises control, an unreasonable risk, failure to use reasonable care to reduce or eliminate the risk, and proximate cause. *H-E-B, L.P. v. Peterson*, 732 S.W.3d 541 (Tex. 2026) (No. 24-0310, slip op. at 5–6). A lawyer who can prove liquid and injury but cannot prove prior knowledge or a reasonable discovery opportunity may still lose on summary judgment. This chapter separates three routes to knowledge and shows what each demands.

The three routes and their limits

Actual notice. Identify a preinjury observation or report to someone acting for the occupier, the exact area and condition communicated, the time it was received, and the available response interval. An employee's recollection that someone mentioned "water by produce" must be matched to the incident aisle and time. A later incident report can authenticate a contemporaneous report but cannot itself move the report backward in time. Test whether a call, radio message, customer-service entry, warning placement, or manager communication exists and whether a person with authority acted on it.

Employee creation. Investigate whether an employee or agent created the hazardous condition. Video of a worker moving a leaking container into the aisle may support this route; a worker walking through the aisle does not. Establish the actor, act, timing, agency, causal connection, and whether the condition was already present. Classification may change if the injury resulted directly from contemporaneous equipment operation rather than a condition left behind. Avoid treating creation as a shortcut around the need to prove who caused what.

Constructive notice. Build a minimum duration grounded in evidence, not merely a maximum interval since the last inspection. *Wal-Mart Stores, Inc. v. Reece*, 81 S.W.3d 812, 816 (Tex. 2002), asks how long the condition existed in view of proximity and conspicuity. *Wal-Mart Stores, Inc. v. Spates*, 186 S.W.3d 566 (Tex. 2006), rejects proximity by itself. *Wal-Mart Stores, Inc. v. Gonzalez*, 968 S.W.2d 934, 936–38 (Tex. 1998), warns against speculative age estimates from dirt and tracks. *Peterson* held that prior roof leaks elsewhere, an aisle not inspected for two hours, puddle size, and general protocols did not establish duration of the particular puddle in the toy aisle. Its holding leaves room for competent evidence that actually brackets the condition's existence at the injury site; it does not create a universal minimum number of minutes. Counsel must also consider conspicuity and reasonable discovery opportunity, not count elapsed time mechanically.

Timeline discipline

Record **first proved existence**, **last proved absence**, **fall time**, **first report**, and **first response** as different events. If a camera depicts clear liquid at 10:12 and the fall is independently verified at 10:29, the minimum interval may be 17 minutes if the image genuinely depicts the same condition and the times are reliable. A clean floor at 10:00 and a fall at 10:29 proves only an origin sometime in the interval. An entry saying "zone complete" at 10:10 may not prove the precise patch of floor was observed; determine the record's operational meaning and reliability. Exclude a plausible recent customer spill only with evidence, not with counsel's intuition. Under *Peterson*, even testimony about a suspected dripping source did not rescue the case when it did not establish the puddle's duration.

Worked hypothetical one

Assumed facts, not a Costco case. In a warehouse's chilled-food aisle, a member falls at 2:18 p.m. An original camera file appears to show a dark patch at 2:04 p.m., but the surface reflects overhead light and the patch cannot be identified as liquid from that view. A second camera shows a worker with a cart crossing an adjacent aisle at 2:11 p.m.; it does not show the floor at the injury spot. An inspection application displays "complete" at 2:08 p.m. A customer later says she told "someone in a red vest" about water "near the coolers" before the fall, but initially cannot give the time or exact cooler. A service ticket from the previous week describes condensation at a different unit.

Proposition	Evidence to establish	Gap or competing inference
Same liquid existed by 2:04	Native video, original frames, scene mapping, qualified image testimony	Patch may be reflection; camera clock may differ
Actual report preceded 2:18	Customer testimony, recipient identity, message or response record	Location and timing uncertain
Worker had discoverable view	Path, distance, orientation, lighting, floor visibility	Adjacent aisle footage may not show sight line
Inspection was meaningful	System audit, zone map, employee testimony	"Complete" may cover a broad zone or be entered later
Recurring source caused this water	Same-unit maintenance and contemporaneous evidence	Prior ticket identifies another unit

Targeted discovery. Request native files and camera map for relevant approaches and the floor area, clock settings, export logs, inspection entries with original and edited timestamps, route and zone definitions, identity of the vest wearer, contemporaneous incident communications, and maintenance records for the exact refrigerated asset. Seek the customer's first account and the employee's actual assignment. Narrow time and location first; expand only if the records reveal a connected recurring condition.

Likely defense. Costco may contend that the image is a reflection, the customer made a postinjury report, the worker could not see the spot, the sweep was completed, and an unknown shopper created liquid moments before 2:18. The defense may seek no-evidence summary judgment on notice. Prepare to meet each point with admissible evidence; the mere possibility of older liquid is insufficient.

Admissibility. Authenticate the native files and show how each timestamp was validated under Texas Rule of Evidence 901. Establish any inspection record's regular practice, system meaning, and embedded statements under Rules 803(6) and 805 where applicable. The customer's testimony that she warned a worker is not offered solely for the truth of "water" if used to prove notice, but foundation must establish recipient, content, and timing; separate that purpose from using the statement to prove the condition itself. Avoid presenting a brightened image without preserving and disclosing the original and the enhancement process. A service ticket for another unit raises Rules 401 and 403 issues unless tied to the specific mechanism.

Motion application. If the patch can be reliably identified as the same liquid at 2:04, cite that minimum duration and the competent testimony that establishes it, then analyze proximity and conspicuity. If the image cannot be identified, shift to actual report only if the customer can fix a prefall time and precise

location; otherwise investigate further rather than claiming the alternatives collectively amount to time evidence. The response should cite the exact file, frame, transcript page, and supporting foundation. A defense motion should identify the route allegedly unsupported and address any direct evidence of report or employee creation; it cannot simply assert that “no one knows when the liquid arrived” if a reliable report is in the record.

Deposition and hearing sequence

Ask the reporting witness to place the warning relative to a verifiable event, identify the worker without suggestion, describe the exact words, and state what the witness could see. Ask the employee whether a report arrived, what route the worker took, whether the condition was visible, and what the worker understood “complete” to mean. Ask a system custodian whether edits retain original timestamps. At hearing, start with the earliest competent evidence of the condition and work forward. State clearly where the record supports only possibility. Courts decide summary judgment on evidence, not an advocate’s composite story.

Drafting rule

For each asserted route use this sentence structure: “At [validated time], [identified source] shows or reports [specific condition] at [specific place]; [foundation] makes the source competent; [time until injury] and [visibility or opportunity] support [actual or constructive notice].” If a blank cannot be filled, mark the gap for discovery or explain why another route controls. See Chapters 6, 7, and 12 and Forms B, C, N, and P.

Chapter 3 Costco Warehouse Injury Mechanisms

A Costco case requires a mechanism analysis, not a generic “big-box” paragraph. Bulk stocking, stacked goods, pallets, carts, refrigerated equipment, demonstrations, entrances, and ancillary service areas create different paths to injury and different potential actors. The existence of a feature at a warehouse is not proof of a dangerous condition, and not every warehouse has each service. Start with the actual event and work outward to control, creation, notice, warning, and causation. Identify relevant product or equipment manufacturers and independent contractors without assuming a claim against them.

Mechanism map

Floor contamination. Identify substance, source, travel path, rate of accumulation, and first proved time. A crushed food item may come from a shopper or stocking activity. Water near a chilled case may come from equipment, cleaning, tracked rain, or a carried drink. Obtain incident photos before cleanup, original footage, cleanup materials where preserved, employee accounts, and same-location service records. Do not infer age from surface color or dirt without a reliable basis.

Pallets and product displays. Distinguish a stationary obstruction from equipment in motion. Measure aisle width, protrusion, display height, cart clearance, approach sight line, and lighting. Document whether the scene was restacked. For falling merchandise, determine product mass, packaging, shelf or pallet configuration, access, last restock, customer handling, and whether a worker was actively moving the load. Planograms, training, and placement standards may inform practice or credibility, but an internal standard is not automatically the legal duty.

Carts, pallet jacks, forklifts, and loading. Identify operator, equipment ID, direction, speed, horn or warning, load, pedestrian route, and whether the injury was caused by ongoing conduct. Preserve maintenance records of the actual unit when defect is alleged. An employee may be responsible for active

movement; a loose cart left unattended can raise a different condition and notice question. A claim against the property occupier does not subsume an independent driver's or manufacturer's role.

Entrance and parking hazards. Identify ownership and control of pavement, mats, drainage, lighting, barriers, and traffic design. For rainwater or a curled mat, establish the exact location and warning view before injury. For a vehicle impact, reconstruct driver conduct and sight lines separately from alleged property design. A prior pothole complaint elsewhere in the lot has limited value unless it illuminates the actual defect or a sufficiently related recurring practice.

Samples, food court, tire center, fuel, and pharmacy. Locate the service, employee or vendor, agreement, supervision, and physical boundary. A demonstration near a spill is a lead, not source proof. A tire service injury may involve active repair, equipment, premises, or professional-service issues. A pharmacy claim may be fundamentally different from premises liability. Counsel should not force unlike events into a spill template.

Worked hypothetical two

Assumed facts, not a Costco case. At 6:42 p.m., a member turning a cart into a seasonal aisle strikes a low pallet corner and falls. A phone photograph taken six minutes later shows the pallet extending approximately 14 inches beyond a display, but does not show whether it moved after the fall. Video from across the aisle shows an employee using a powered pallet jack at 6:28, leaving the aisle at 6:31; the pallet itself is partly obscured by products. A customer passes through at 6:38 without apparent difficulty. A supervisor says the pallet was "being staged," while a floor employee says it was "ready for sale."

Proposition	Proof source and measurement	Competing explanation
Pallet was in path at 6:42	Original video, scene geometry, witness, photo provenance	Pallet may have moved after impact
Employee placed it at 6:31	Video, employee testimony, work assignment	Video may show another load or final position unclear
Condition was unreasonably risky	Aisle width, protrusion, sight line, cart path, qualified opinion	Pallet visible and route remained usable
Injury arose from pallet corner	Fall sequence, shoe or cart contact, medical mechanism	Member cut corner or caught cart wheel elsewhere
Operator had relevant knowledge	Placement and direction by employee, supervisor account	Staging statement may describe a different pallet

Targeted discovery. Seek native video from loading and aisle cameras for a narrow interval; stocking assignment, equipment operator identity, any move or restack after the event, relevant layout or display instructions, incident photos, cart details, pallet dimensions, and the contract if a vendor set the display. Inspect the site promptly with a protocol specifying measurements, photographs, permissible manipulation, and presence of representatives. Request subsequent scene photographs primarily to understand changes, mindful of Rule 407 limitations on using subsequent remedial measures to prove negligence.

Likely defense. Costco may argue the pallet was obvious, within an ordinary display footprint, and encountered because the member steered too tightly. It may dispute whether the photo depicts the accident

condition, whether active equipment operation had ended, and whether the impact caused the claimed injury. If employee placement is established, counsel still must prove an unreasonable risk and causation; "Costco put it there" is not the entire case.

Admissibility. Authenticate photograph timing and location under Rule 901, preferably through original file data and testimony. A measuring expert should document whether measurements describe the accident configuration or a later reconstruction. Apply Rule 702 to any visibility or human-factors model, including cart obstruction and ordinary walking speed. An employee's statement about "staging" may be a party-opponent statement only if employment, subject matter, and timing satisfy Rule 801(e)(2); a witness repeating it requires a separate hearsay analysis. Use of later changes to prove earlier negligence raises Rule 407, with possible other purposes requiring a court ruling.

Motion or trial application. A motion may dispute claim classification. If the employee finished placement 11 minutes before the fall, the principal injury-producing circumstance may be a condition rather than ongoing negligent activity. Compare *United Scaffolding, Inc. v. Levine*, 537 S.W.3d 463 (Tex. 2017). At trial, use a scaled map and true-to-source video, first proving pallet location and then the member's approach. Ask the jury to evaluate the risk in context rather than treating a close-up photograph as the member's real-world view. Request charge submissions that track the supported theory and preserve alternative requests where evidence genuinely supports them.

Additional mechanism mini-cases

Condensation. A work order for the same freezer three days earlier could support source and notice, but ask whether the repair succeeded, whether leakage recurred at the same floor spot, and whether the particular puddle predated the fall. *Peterson* forecloses treating unrelated prior leaks as an adequate substitute for duration. Consider an equipment expert only if the mechanical source cannot be established through records and witnesses.

Food sample. A demonstrator drops a cup on camera and wipes only part of the area. Obtain the demonstrator's employer and control agreement, the whole clip, residue path, response time, and cleaning testimony. Consider both the active creation and resulting condition theories, with proper timing. Avoid asserting Costco vicarious liability solely from the person's clothing or booth location.

Parking defect. A visitor trips on an uneven transition between lot and walkway. Survey grade, lighting and line of sight at the relevant hour, contractor repairs, and control of the boundary. A safety expert should explain whether measurement method and threshold are reliable; no universal height automatically proves liability. Analyze open-and-obvious and comparative-fault issues under *Austin v. Kroger*, 465 S.W.3d 193 (Tex. 2015), and Chapter 33, with the correct condition and invitee status.

Development rule

For each mechanism produce one diagram of actors and control, one validated chronology, one alternative-source chart, and one causation chain from contact to diagnosed injury. Preserve the possibility of more than one defendant without making unsupported allegations. Forms B, H, I, and P supply the corresponding records.

Chapter 4 Warnings open hazards and comparative responsibility

Warnings require a spatial and temporal record. Photograph the sign where the claimant would have seen it before the injury, not only after staff moved it. Establish who placed it, when, what it warned of, whether the

danger lay within the warning's apparent scope, and whether a reasonably available route existed. *Austin v. Kroger* treats open and obvious conditions as relevant to the premises duty, with a limited necessary-use analysis. Analyze the particular theory and evidence rather than offering a general rule that every sign defeats liability or that any distraction excuses failure to see it.

Texas Chapter 33 allocates responsibility in covered actions. A claimant percentage above 50 percent bars recovery under § 33.001; lesser percentages affect judgment. Investigate footwear, route, phone use, cart sight line, and lighting without presuming fault. Build a defense exhibit that depicts what the member saw at walking speed and a plaintiff exhibit that accurately shows any obstruction. Evaluate designated responsible third parties and contribution separately under the statute. Preserve objections to unsupported allocation questions.

Part II Preservation and Digital Systems

Chapter 5 First seventy two hours

The initial assignment sheet should record warehouse and exact site, incident time and time zone, condition description, medical triage, witness contacts, photographs in original form, footwear and clothing, receipt or entry time, staff spoken to, camera locations, and cleanup sequence. Confirm whether the incident report exists, but do not have the client guess at unknowable duration. Send narrowly drafted preservation letters to the operator and relevant property manager or vendor where facts justify them. Identify native footage, overlapping cameras, camera mapping, video-management export logs, inspection and incident systems, communication channels, work orders, and original photographs. Ask for time ranges before and after the event adequate to test origin and response, with a reasoned extension if recurring conditions matter.

A preservation letter should identify the incident accurately, requested sources, custodians and date range, anticipated routine deletion, method to acknowledge the hold, and a contact to resolve technical issues. It does not establish a legal duty in every circumstance merely because it was sent. Follow up with a system-informed request once location and architecture are known. Keep every demand, response, and native file with a receipt log.

Chapter 6 Native Surveillance and Time Reconstruction

Video should be treated as a collection of digital evidence sources, not a movie that explains itself. A clip of a fall may prove the claimant's movement and postevent response but reveal nothing about the origin, duration, or visibility of a condition. Counsel must identify every relevant camera, confirm what each could record, preserve the original data, and explain any transformation shown to the jury. Ask what the recording actually depicts before using it to argue what must have happened outside the frame.

Preservation and source inventory

Within the case-specific retention window, seek recordings of the incident location, approaches, adjacent stocking or cleaning activity, first employee contact, and response. Specify a reasoned period before and after, with willingness to refine after learning the camera map. Request native files as stored, available player or codec, source identifiers, export logs, overlay origin, frame rate or variable-rate behavior, motion-trigger settings, server or camera time source, time zone, daylight-saving handling, retention rules, access history, and copies of every prior export. Ask whether the system overwrites continuously, by capacity, or by fixed period. Do not assume Costco has a standard camera architecture across warehouses.

For each received file make an evidence register: original name and size; source device and camera ID; custodian and transfer date; date range; format and codec; cryptographic hash if generated by the receiving party; whether audio exists; player needed; time overlay source; transformations; and storage location of the untouched master. A hash after receipt establishes that the copy has not changed since hashing, not that earlier exports are complete. Preserve metadata and the production transmittal. Avoid converting the only copy to a convenient MP4 and discarding the native version.

Camera and clock validation

Construct a coverage map with direction of view, occlusions, field boundary, and blind spots. Validate timestamps against an independently timed event visible in more than one source, such as the same shopper crossing two views, a verified transaction, or a documented response call. Record the source of the independent time. Estimate offset and uncertainty for each camera separately; clocks can drift and exports can substitute display time. Do not infer a 12-minute hazard duration from two clips synchronized only by their printed overlays.

Calculate the interval that the record proves. “At or before” timestamps, “at or after” timestamps, and “unknown between” must remain different. A frame that apparently shows a spill needs scene mapping and visual reliability. Liquid can be transparent; a reflective tile or shadow can mimic it. A worker walking close by may not be able to see the condition. Keep a chart of source frames, validated time, observation, and alternative interpretation. Preserve all frames used to create a still or composite.

Worked hypothetical three

Assumed facts, not a Costco case. A member falls at a warehouse entrance at 4:20 p.m. A front-door export shows dark flooring from 4:05 onward but is motion triggered; one-minute gaps occur. A customer-service camera shows an employee moving a cone at its displayed 4:18. The customer receipt reads 4:16; a separate incident call log reads 4:23. During deposition the custodian says the door camera runs three minutes fast, while the service camera clock was reset that morning. Counsel has only compressed exports, not the native recordings.

Proposition	Foundation needed	Present uncertainty
Water was present at 4:05	Native frame, witness or expert interpretation	Dark area may be mat shadow; motion gaps
Cone preceded the fall	Clock validation and cone location	Second camera reset and different view
Employee knew of the hazard	Identity, purpose and exact placement of cone	Cone may mark a separate cleaning task
Fall happened at 4:20	First report, source frame and independent clock	Export overlay may be offset

Targeted discovery. Seek originals from both cameras, recording settings and gaps, camera map, morning reset or time-sync log, export audit, incident call source, receipt-system time basis, cleaning and cone placement records, and testimony from the worker. Request system documentation sufficient to interpret motion triggering and whether omitted intervals are stored elsewhere. Limit requests to the entrance and relevant window first, then broaden only if system evidence warrants.

Likely defense. The dark area is a mat or shadow; the cone marked an unrelated task; the clip gaps contain the spill's possible recent creation; and there is no validated duration. If counsel has emphasized "15 minutes of water," the defendant can use uncertainty to impeach the entire timeline. The plaintiff's safer route may be a precise prefall cone explanation or a different validated frame, if one exists.

Admissibility. Authenticate source files and reproductions under Rule 901(a) and, where applicable, the process-or-system method in Rule 901(b)(9). Establish duplicate reliability under Rules 1001–1003, address Rules 401–403 for an edited montage, and disclose the method and assumptions of any synchronization expert under Rule 702. A chronology built from records may be demonstrative rather than substantive evidence; consider Rule 1006 only when its conditions are met. A witness can authenticate a video without personally operating the camera if sufficiently familiar with the system and recording; develop that foundation rather than relying on a conclusory "fair and accurate" statement.

Motion or trial application. File a focused request for native production if compressed exports obscure decisive frames or metadata, explaining relevance and proportionality. Seek an evidentiary ruling on synchronized and annotated presentations before opening. Show the original segment at normal speed first, then an accurately labeled enlargement. Tell the jury which parts are observation and which are expert or advocate inference. If the footage does not prove the condition at 4:05, do not use the first frame time as the start of a constructive-notice interval.

Courtroom presentation protocol

Maintain three files: untouched native master, disclosed working copy, and courtroom exhibit. The exhibit register should state source and file hash, start and end, whether frames are omitted, crop, enhancement, playback speed, annotation author, and witness foundation. Test the courtroom's player, resolution and color on the actual screen; provide an offline backup and accurate still-frame alternative. A synchronized split screen should carry each camera's clock correction and uncertainty. Save rulings on the edited exhibit and any limiting instruction. Cross-examination of a defense video expert should examine what the camera cannot show, whether a compression artifact was mistaken for liquid, and whether a timeline survives reasonable clock variation.

Chapter 7 Inspection ESI Audit Trails and Source Comparison

An "inspection complete" screen is an output, not a complete account of a worker's conduct. Discover the system's meaning at the warehouse and on the incident date before assigning legal significance. It may be a paper log, a mobile task tool, a spreadsheet, or a proprietary service. Counsel should ask which one exists rather than presuppose features. The purpose is to test whether an actual inspection of the relevant area occurred, when it occurred, what the employee could see, and how the record was made or altered.

Data model and witness separation

Request a zone map and definitions, task schedule, records for the relevant zone and reasonable interval, user and device identifiers, event timestamps, original and later values, edit or exception history, export format, retention, and the data dictionary. Ask whether completion can be delayed, applied to multiple zones, entered by a supervisor, automatically populated, or changed after initial save. Avoid accusing anyone of falsification based on an apparent mismatch until clocks, routes, user identity and software behavior are validated. Seek a custodian or administrator for system fields and the worker for actual observations; a manager may know policy but not software implementation.

Distinguish four times: scheduled inspection, physical observation, data entry, and server acceptance. A user action at 10:15 does not prove a 10:15 observation if offline synchronization or late entry occurs. Conversely, video that does not show a worker in one camera may not prove no inspection if the route enters from a blind side. Reconcile timestamps and coverage in a source-to-source table. Audit fields may disclose changes but might not preserve the reason; ask who can explain the business event.

Worked hypothetical four

Assumed facts, not a Costco case. An inspection export lists "Zone 14 complete" at 11:52 a.m. A member falls in that zone at 12:06. Video shows the assigned worker entering an adjacent aisle at 11:50 and leaving at 11:54, while the relevant floor patch is behind an endcap. The system's data dictionary calls 11:52 an "upload time," and a separate raw field shows the worker pressed "finish" at 11:44 while the device was offline. A supervisor edited the zone description the next day to reflect a seasonal layout change.

Question	Evidence needed	What the record may support
Was the accident patch viewed?	Route map, camera coverage, worker testimony	Entry to adjacent aisle alone is insufficient
What does 11:52 mean?	Data dictionary, device and server logs	Upload time may differ from observation
Did a later edit alter the original?	Audit record and version history	Zone name may change without editing completion
Did the inspection reveal liquid?	Worker account and original notation	Silence may or may not imply a clean floor

Targeted discovery. Request the raw and displayed record for the single zone, contemporaneous and later zone maps, software version and dictionary, event and sync logs, original and revised values, permissions and editing policy, worker device and assignment, and native video of access routes. A staged production or confidentiality arrangement may protect unrelated users or locations. Do not demand all statewide inspection data to understand one field.

Likely defense. The task was completed at 11:44, before any customer spill; the worker took a path outside the camera; the supervisor corrected a label without touching the event; and a 12:06 fall provides no proof of how long liquid existed. The plaintiff should test these points with logs and testimony rather than assume a suspicious edit supplies constructive notice.

Admissibility. Establish Rule 803(6) foundation for regularly maintained entries and Rule 901(b)(9) process reliability when appropriate. A system-generated timestamp and a user's typed assertion may raise distinct hearsay questions. A summary chart must accurately represent the underlying production and identify time fields; Rule 1006 may require access to originals. A technical witness should explain sync behavior rather than a lawyer asserting that upload and finish are interchangeable. If using a subsequent edit to imply consciousness of fault, analyze relevance, context and Rule 403; Rule 407 may be implicated depending on what changed and why.

Motion or trial application. Use a Rule 196 request to obtain reasonably usable ESI, with a defined source and form. If production consists only of a screenshot and the raw fields are genuinely needed to test notice, confer about a proportional export and seek an order specifying fields and protective terms. At trial, first establish the system's semantics, then ask the worker what was actually seen. The strongest conclusion

might be “the record does not establish observation of this patch,” which is narrower than “the inspection did not happen.” That distinction preserves credibility and better positions the case under *Peterson*.

Reliability checklist

Before using an inspection record in a motion or opening, answer: Who entered it? What was the assigned zone? Which clock generated each timestamp? Did the user have to visit the zone? Could the task be completed later or offline? Was the record edited? Was the condition visible at the time? Was the hazard even present by then? If the last question cannot be answered, an imperfect inspection does not alone establish constructive notice. Pair Forms C, F and K with the native video protocol in Chapter 6.

Chapter 8 Incident communications maintenance and third parties

Request incident report versions, original photographs, member or witness statements, radio or messaging communications if kept, security dispatch, cleanup notes, maintenance tickets, and contractor records for the exact site. Distinguish ordinary-course materials from privileged post-litigation communications; an incident report is not categorically privileged or unprivileged. Prepare a privilege-log dispute focused on creation purpose, recipients, and subject rather than demanding blanket disclosure.

For a refrigeration source, identify unit, asset number, drain or defrost records, repair calls, and whether prior work concerns the same spot. For a sample spill, identify the demonstrator’s employer and operational control. For a parking defect, seek relevant inspection and repair records from the property manager. Limit lookback by mechanism and proximity, then expand only on demonstrated relevance. Preserve third-party footage before retention expires.

Chapter 9 Lost evidence and spoliation

Under *Brookshire Bros., Ltd. v. Aldridge*, 438 S.W.3d 9 (Tex. 2014), the trial judge determines spoliation and sanctions. Develop a chronological record: anticipated litigation, knowledge of the evidence, hold instructions, who knew the camera map, original and remaining footage, deletion mechanism, alternative proof, prejudice, and less severe remedies. Request a focused hearing and specific findings. Do not ask jurors to infer wrongdoing solely because an export is incomplete. Distinguish intentional loss from negligence and avoid exaggerating the excluded interval’s relevance.

A sanction request should identify what the lost evidence likely could have proved and why remaining sources cannot reasonably substitute. An adverse inference is exceptional; lesser responses may include additional discovery, fee shifting, or exclusion in a suitable case. Preserve error with an offer of proof and ruling. The disappearance of a camera view cannot fill an independent gap in the notice record without satisfying the governing standard.

Part III Discovery Depositions and Motions

Chapter 10 Discovery by element

Draft a 30(b)-style topic plan adapted to Texas Rule 199.2(b)(1), with precise matters for a designated organizational witness: ownership and operation; incident location; inspection practice; video architecture and retention; incident response; maintenance and vendors; record search and preservation. A Texas entity must designate persons to testify on reasonably available information within the stated topics. Do not

assume the designee personally witnessed the accident. Follow up on sources consulted, preparers, missing systems, and the organization's knowledge.

Interrogatories should identify workers in the zone, first reports, inspections, hazard source, cleanup, relevant systems, and other entities with control. Requests for production should specify native video, camera map, logs, audit trail, reports and versions, maintenance records at the site, warnings, contractor records, and related photographs. Requests for admission can narrow authenticity, identity of a depicted worker, and ordinary retention practice, but avoid asking the opponent to admit ultimate liability. Match temporal and geographic scope to a defined proof proposition. Rule 192 proportionality and applicable discovery limits still control.

Chapter 11 Deposition modules

Member and eyewitness: Establish route, pace, cart, sight line, first perception, precise point of contact, fall mechanics, spontaneous statements, medical symptoms, and what the witness actually saw before versus after. Avoid suggesting a timestamp where memory is uncertain.

Employee: Establish assignment, zone, visibility, last route, task interruptions, reports received, response capability, system login, and footage reviewed before testimony. Ask who moved or photographed the condition. If the worker passed nearby, use a scaled map and video to assess what was visible; proximity alone is not notice.

Manager: Separate information personally observed from incident-report sources. Address when notified, actions taken, warning placement, witness identification, camera requests, inspection and maintenance follow-up, and whether any location-specific prior problem existed. Pin down the report's original wording and later amendments.

Video custodian: Obtain camera coverage, time synchronization, source preservation, export workflow, overwritten segments, audit logs, and differences between native files and provided clips. Authenticate the system without forcing the custodian to speculate about a spill invisible to the camera.

System representative: Get manuals, data dictionaries, user roles, edit history, timestamps, and whether task completion corresponds to observation. When the designee cannot answer a noticed topic, establish preparation efforts and request a supplemental designation if warranted.

Chapter 12 Summary Judgment Under the Amended Rule 166a

A Texas Costco premises case should be developed with a possible no-evidence motion on notice in mind. The Supreme Court of Texas rewrote Rule 166a effective March 1, 2026, for motions filed on or after that date. The rewrite did not intend to change substantive law apart from deadlines. *H-E-B, L.P. v. Peterson*, 732 S.W.3d 541 (Tex. 2026) (No. 24-0310, slip op. at 5 n.8). The amended procedure changes counsel's calendar and filing discipline. Verify later amendments and the court's orders before reliance.

Motion classification and response clock

A motion may be traditional, no-evidence, or combined and must identify the category in its title; an incorrect title alone is not grounds for denial. A no-evidence motion must state the elements challenged and may be filed after adequate time for discovery. Unless the parties agree or the court grants leave, the response is due **21 days after the motion is filed**, not a set number of days before the hearing. A reply is due **7 days after the response**. Hearing or submission may not be set within **35 days after filing** and ordinarily must be set within

60 days, with a **90-day** alternative if the docket requires, good cause is shown, or the movant agrees. Each party submits a proposed order before the hearing or submission. No oral testimony is received at the hearing. The court must sign a written ruling within 90 days after hearing or submission. See Tex. R. Civ. P. 166a(b)–(i), effective Mar. 1, 2026.

A respondent needing essential evidence must file an affidavit or declaration specifying why it cannot present those facts. The court may extend response time, deny without prejudice for discovery, or make another appropriate order. A vague statement that "discovery continues" is inadequate practice. Specify the pending custodian, field or file, relevance to the challenged element, prior diligence, expected timing, and requested relief. Calendar both the default deadline and any court order; do not assume a pending discovery motion extends the response date. For pre-March 1, 2026 motions, check the earlier rule because the new deadlines do not govern them.

Response architecture

Open with the exact challenged elements and supported knowledge route. Then present a short statement of undisputed context and a proposition-to-proof chart. For each material inference, cite a specific record location and establish authenticity and admissibility. The amended rule permits deposition excerpts, discovery responses, affidavits, declarations, stipulations and other authenticated evidence. Discovery not already on file can be used with filed copies, appendices, or a notice giving the specific references and intent to use it; follow Rule 166a(j). A general reference to "all produced video" makes the judge do counsel's work.

Separate a fact from its inferential step. "Camera 4 frame 00:12:31 depicts liquid" needs a witness or qualified foundation if the image is ambiguous. "The spill existed 18 minutes" then requires a validated relationship between camera time and fall time and proof it is the same spill. "The worker should have discovered it" requires visibility, route and opportunity. Write the chain explicitly so the court can evaluate each link. Address actual notice and creation separately when supported. Do not make the response a stack of inconsistent guesses that merely adds volume.

Worked hypothetical five

Assumed facts, not a Costco case. A member falls on a clear liquid at 3:30 p.m. An aisle camera first shows the patch clearly at validated 3:18, although the defense says glare may explain it. A worker's radio transcript at 3:24 contains "wet spot at the chilled endcap," but the speaker and precise endcap are disputed. An inspection log records the area clean at 3:12, while the system custodian says this was a zone-wide completion entry made offline. The defendant files a combined traditional and no-evidence motion after adequate discovery, challenging knowledge and arguing the liquid appeared moments before the fall. The plaintiff still has a timely noticed deposition of the video custodian scheduled six days after filing.

Proposition	Summary judgment source	Challenge to resolve
Same liquid existed by 3:18	Native clip, scene witness, validated clock affidavit	Glare and image ambiguity
Actual report at 3:24	Original radio record, speaker and recipient testimony	Location and speaker uncertain
Opportunity to discover	Route, visibility, worker assignment, 12-minute interval	Conspicuity and recent customer spill

Proposition	Summary judgment source	Challenge to resolve
3:12 entry means clean	System dictionary and custodian deposition	Offline zone-wide task, not precise observation

Targeted discovery. Request a narrow native export, clock configuration, original radio recording and call metadata, assignment and route, raw inspection fields and data dictionary, and identification of the chilled endcap. Notice the custodian deposition promptly. If production or testimony cannot be obtained before the 21-day response deadline despite diligence, submit a fact-specific Rule 166a(d)(3) declaration with dates of requests, outstanding source and why it is essential; request a defined extension. Do not rely solely on an unsworn assertion in briefing.

Likely defense. The apparent patch is glare, a shopper spilled liquid at 3:29, "wet spot" refers to another endcap, and the system says the zone was clean at 3:12. A traditional motion may also seek to establish an affirmative fact with admissible evidence. Respond to each ground under the proper burden; a no-evidence response showing some fact issue is not necessarily sufficient to rebut a distinct traditional ground without examining the movant's proof.

Admissibility. Authenticate the original video and sync method; use an affidavit or deposition by a person with knowledge rather than counsel's unsworn timestamp. Identify whether the radio transcript is an accurate reproduction, who made the statement, whether offered to prove actual notice or truth of condition, and any hearsay within it. Explain inspection fields with a qualified custodian. Address any expert image opinion under Rule 702 and any report offered through an exception rather than attaching it as self-proving. Raise evidence objections specifically and obtain rulings.

Motion application. A response could argue constructive notice from a validated 3:18 sighting plus discoverability through 3:30 and actual notice from a verified 3:24 report. If neither source can be established, acknowledge that *Peterson* may make the case vulnerable. Present a proposed order addressing challenged elements and the result. In oral argument focus on the narrow contested inference; no new live testimony is permitted at the Rule 166a hearing. Preserve specific evidence objections, late-filing questions and any request for additional discovery in the record.

Peterson as an adverse authority workshop

In *Peterson*, the plaintiff conceded no actual knowledge. Earlier roof leaks outside the toy aisle, rain ending two hours before, an aisle without an employee visit for two hours, and descriptions of puddle size did not show how long that puddle existed. An expert drip experiment was excluded as unreliable; the Supreme Court did not decide whether other reinstated expert testimony was properly admitted because it did not supply duration. Slip op. at 2–10. The lesson is not "expert testimony never helps." An expert may help identify a source or video image, but a model must reliably connect the incident-day condition to a time interval and cannot assume its crucial inputs. A response should distinguish each adverse fact precisely, including what the video captures and what the maintenance record concerns.

Filing and hearing checklist

Confirm motion filing date and applicable version of Rule 166a; title and request for oral hearing; challenged elements and independent traditional grounds; adequate time for discovery; 21-day response and any extension; 7-day reply; 35-day minimum and 60- or 90-day setting; specific record citations and exhibits; Rule 166a(j) filing method; form and substance objections; proposed orders; and a documented ruling. The

chapter should be updated when procedural rules change. Form N supplies an editable response framework, not a prewritten response for every case.

Chapter 13 Evidence foundations and expert challenges

Prepare foundation for each class of exhibit. A witness familiar with the recording system can authenticate video; a custodian or qualified witness can explain business-record generation and reliability under Texas Rules of Evidence 803(6) and 902(10) where applicable. A screenshot of a log needs a route to the original record and its meaning. For edited video, document every crop and speed change; preserve native footage. Use Rule 1006 summaries only when their underlying voluminous materials are available as required and the summary is accurate. Address hearsay embedded in reports separately.

Under Rule 702, *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995), and *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713 (Tex. 1998), test reliable method and fit. A human-factors expert should identify viewing conditions, movement, lighting, and visual angle before opining that a warning was perceivable. A reconstruction expert must disclose measurements, lens correction, frame rate, source time uncertainty, and sensitivity analysis. A medical expert must distinguish diagnosis from causation, preexisting conditions, and future-care probability. Rule 705 permits exploration of underlying facts and a hearing outside the jury's presence where appropriate. Preserve exclusion objections and offers of proof.

Part IV Damages Resolution and Trial

Chapter 14 Medical causation and claim value

Create a chronology of baseline health, incident symptoms, first treatment, imaging, intervening events, recovery, restrictions, and projected care. Separate a treating clinician's contemporaneous observations from opinions prepared for litigation. Obtain employer records for lost earnings and a credible vocational or economic basis if earning capacity is contested. Do not double count impairment, pain, and earnings under different labels without distinct evidence.

Texas Civil Practice and Remedies Code § 41.0105 limits recoverable past medical expenses to amounts actually paid or incurred. Analyze *Haygood v. De Escabedo*, 356 S.W.3d 390 (Tex. 2011), and related law for adjustments and presentation. Audit each provider's gross bill, contractual write-off, amount paid, balance legally owed, and reasonable future-care cost. Test liens and conditional payments separately from jury admissibility. For non-economic harm, give the jury concrete testimony about function and duration, while avoiding a formula that has no anchor in record evidence. Evaluate current authority including *Gregory v. Chohan*, 670 S.W.3d 546 (Tex. 2023), before argument.

Chapter 15 Mediation and settlement strategy

Prepare a settlement brief with the strongest provable notice route, defense's best timeline, video exhibits, inspection credibility, causation disputes, recoverable medical expense calculations, and a range of verdict outcomes. Model summary-judgment risk separately from trial responsibility; a compelling injury does not cure a missing notice element. Show the client gross and estimated net recovery at three figures after fees, advanced expenses, liens, and unresolved reimbursement claims. Confirm who has settlement authority and which terms are essential to the client.

At mediation distinguish a disclosed brief from confidential analysis for the mediator. Exchange usable clips with accurate timestamps; do not present an enhanced reconstruction as native footage. When positions stall, identify the specific question that could change value: missing camera segment, system audit, source of liquid, treating causation, or future care. Document every offer, condition, and client instruction. A bracket should have an agreed meaning. Before ending, memorialize material terms, parties and claims released, payment timing, lien allocation, confidentiality if any, dismissal and costs, and any Texas Rule 11 requirements. No settlement is assured by attendance.

Chapter 16 Jury selection and opening

Voir dire should identify attitudes that obstruct application of the actual charge, not seek promises about facts. Ask about retail work, personal fall experiences, expectations that a large company can prevent every accident, assumptions that a shopper is always at fault, reactions to circumstantial proof, surveillance gaps, preexisting injuries, and compensation for pain. Ask open questions, invite examples, and preserve the precise answer and rehabilitation on a cause challenge. Follow the judge's rules on commitment questions and time.

Opening should present a short theory that connects a particular condition to a particular notice route. Show a map and one validated timeline, then explain what the jury will see and what remains disputed. Do not promise that a partial camera view shows creation if it shows only the fall. Address unfavorable evidence in proportion to its importance, including short duration or a prior medical condition. The opening is a forecast of admissible evidence, not argument that Costco's business model itself proves negligence.

Chapter 17 Corporate witness cross and impeachment

Use one proposition at a time. Establish role, preparation, documents, location and timestamp; obtain the witness's current account; then confront a genuine inconsistency with the exact prior statement. Rule 613 governs prior inconsistent statements and the opportunity to explain. A deposition line or incident report used for impeachment is not automatically substantive evidence. Analyze party admissions and hearsay separately. If a manager says the aisle was inspected at 1:00 p.m. and video shows the assigned worker elsewhere, first verify both clocks, the worker's identity, and the zone definition. Without these steps a dramatic impeachment can collapse under a simple explanation.

For an organizational designee, ask what people and records informed the answer and whether the answer is personal recollection or organization-supplied information. Do not assume every designee response is an irrebuttable judicial admission. Cross on retention and audit systems only after obtaining technical definitions. Stop once a useful admission is clear. Maintain an impeachment sheet with source, page and line, foundation, objection, anticipated explanation, and relation to an element.

Chapter 18 Trial Proof Expert Cross and Video Foundations

Trial preparation begins with the charge and admissible proof, not with a dramatic clip. Identify the condition, notice route, response failure, proximate cause, damages, and comparative fault. For every proposition list the witness, exhibit, foundation, likely objection, alternative proof and testimony limit. A trial lawyer should distinguish a business record's existence from the truth of a statement within it; an expert's reliable method from a factual assumption; and an illustrative reconstruction from actual video. Plan openings and witness order around what can be admitted.

Voir dire and theory

Ask jurors about experience in large retail, expectations of an accident-free warehouse, assumptions that shoppers always cause their falls, comfort with circumstantial time evidence, belief that video depicts everything, preexisting injuries, and non-economic damages. Use open questions and follow-ups about ability to follow the court's instructions. Do not seek commitment to a fact pattern, defendant identity or damages figure. Record exact responses and rehabilitation for cause challenges. Opening should identify the precise condition and supported notice route, explain what the video will and will not show, and avoid promising expert opinions whose admission remains disputed.

Foundation ladder for video

First establish camera location, operation, recording practice, relevant interval and source file through a knowledgeable custodian or other qualified witness. Second, explain the export and relationship to the native master, including time overlays, speed, crops and edits. Third, validate any clock used in a timeline. Fourth, identify the visual observation through a witness with scene knowledge or admissible expert analysis if needed. Fifth, seek an appropriate ruling under Rules 901 and 1001–1003 and the relevance and prejudice balance in Rule 403. A witness's "it looks right" may authenticate a scene depiction but may not prove a hidden digital process or 11-minute duration. A composite requires foundation for each component and the synchronization. A Rule 1006 summary is not a substitute for making underlying voluminous records available as the rule requires.

Expert proof and cross

A Rule 702 expert must use reliable principles and connect them to the specific event. *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995); *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713 (Tex. 1998). Prepare a Rule 705 hearing if the underlying data or methodology warrants it. A human-factors expert who calls a clear spill obvious should identify vantage, illumination, visual demands, cart obstruction, pace, contrast, and whether the opinion uses real-time video or an enhanced still. A reconstruction expert should disclose surveyed dimensions, camera calibration, lens distortion, frame rate, clock uncertainty, alternative paths and sensitivity analysis. An animation is an illustration of assumptions; it is not an eyewitness recording. A medical expert should separate mechanism, diagnosis, preexisting condition, aggravation, future probability and treatment cost.

Cross by isolating indispensable assumptions. "Your visibility opinion assumes this floor reflectance?" "You measured lighting at a different time of day?" "Your 18-minute interval begins when the dark area appears, though you cannot identify it as water?" "If the camera ran three minutes fast, does your sequence change?" "You did not examine whether the cart blocked the member's view?" Ask one limited question at a time, secure the answer, and stop after a meaningful concession. Do not demand an expert say the opposite ultimate conclusion when the useful admission is a narrower uncertainty. Prepare the same scrutiny for plaintiff experts before designation and trial.

Worked hypothetical six

Assumed facts, not a Costco case. The claimant says a transparent spill near a refrigerated endcap caused a knee injury. Plaintiff's video expert aligns two cameras and concludes liquid was visible for 14 minutes. Defense expert says it is glare and offers an animation showing the spill plainly visible to the claimant. One camera lacks a stable clock after a power event; the defense animation uses a higher camera vantage than the claimant's eye level. A manager says an inspection occurred five minutes before the fall, but only an

"upload complete" record exists. The treating physician relates the immediate knee sprain to the fall; a later surgery may also relate to preexisting degeneration.

Trial proposition	Witness and exhibit	Foundational or defense issue
Liquid existed before fall	Native video, scene witness, qualified image analysis	Glare, resolution and clock offset
Inspection missed the condition	Worker and system custodian, raw entry	Upload time is not observation time
Claimant could not see hazard	Human-factors testimony and real approach view	Defense animation's vantage and assumptions
Fall caused claimed treatment	Treating physician and records	Distinguish sprain from later surgery
Reasonable damages	Bills, paid-or-incurred proof, expert future care	Adjustment, causation and overlap

Targeted discovery and pretrial exchange. Obtain native files, player, clock logs, camera survey, both experts' source measurements and project files, animation settings, original inspection fields, and treatment chronology. Exchange edited video and demonstratives on the schedule ordered by the court. Depose each expert on uncertainty and alternative explanations. Seek a pretrial ruling on whether the synchronized composite and animation can be used in opening or only after foundation.

Likely defense. No competent evidence proves liquid existed long enough; the animation shows the member should have seen it; the inspection was timely; and later surgery arose from degeneration. The plaintiff must answer with admissible proof for each element and damages category, not a general assertion that Costco had "poor safety." The defense must likewise avoid presenting an animation as a literal reconstruction if key inputs are assumed.

Admissibility. Rule 901 governs video and system process; Rules 1001–1003 govern originals and duplicates; Rules 401–403 address potentially misleading composites; Rule 702 tests expert fit and reliability; Rule 705 may require a foundation hearing; Rules 803(6) and 805 govern medical and business records and statements within them. Consider Rule 107 completeness when a short clip creates a misleading context. A demonstrative should be labeled and limited as the court directs. Seek a clear record of excluded opinions and an offer of proof where needed.

Trial application. In opening use a map and promise only footage and testimony that the court permits. Establish an ordinary-speed source clip before any enlargement. Have the custodian explain clock offset, then the worker explain the actual inspection route. Cross the defense expert on vantage, adjusted contrast and alternatives, followed by the treating clinician on the precise injury distinction. In closing use the submitted jury charge, acknowledge what the footage cannot show, and present a damages computation tied to admitted paid-or-incurred and future-care evidence. Preserve charge requests and objections in writing and on the record.

Witness order and closing proof

A workable order is scene witness, member, first responding employee, system custodian, manager or organizational representative, technical experts, treating clinicians and damages witnesses, adjusted for

availability and tactical needs. Keep the incident timeline visible but label each mark as observed, recorded, inferred or disputed. During defense proof update the chart nightly. Closing should explain the precise inference that bridges each element rather than invite jurors to punish a large retailer. Do not use a per-minute pain formula without evidentiary and legal support; review *Gregory v. Chohan*, 670 S.W.3d 546 (Tex. 2023), and current damages law. Forms P, Q and R provide editable witness, jury-selection and presentation tools.

Chapter 19 Jury charge closing and error preservation

Draft a proposed charge from the current Texas Pattern Jury Charges and controlling law, tailored to pleaded theory and evidence. Separate premises liability, active conduct, responsible parties, proximate cause and legally recoverable damages. Compare charge alternatives with the verdict form and potential proportionate responsibility. File written requests and objections timely, state grounds precisely, secure rulings, and preserve an offer of proof when evidence is excluded.

Closing should walk the actual charge. Start with condition and the proved knowledge route, then reasonable response, causation, fault allocation and each damages category. Display the exact time evidence and its uncertainty. A video not showing the origin should be described as such. Confront the defense's strongest inference and explain why record evidence supports a more likely one. Use a damages worksheet whose medical numbers match paid-or-incurred proof and whose future assumptions match expert testimony. Avoid unsupported mathematical multipliers for pain. Preserve objection and requested relief if the other side makes an improper argument.

Chapter 20 Postverdict and publication boundaries

Reconcile the verdict with Chapter 33 responsibility, settlements and credits, § 41.0105, costs, interest, and judgment form under current law. Calendar posttrial deadlines and appeal. Update the client on net recovery uncertainty and any postverdict settlement. Keep privileged valuation models and confidential discovery out of public articles. The public knowledge hub can describe a legal concept and link to this treatise's general discussion, but should not reproduce sealed video, a protected corporate manual, or lawyer work product.

Part V Focused Litigation Workshops

Chapter 21 Constructive notice motion workshop

The dispositive motion record should be assembled months before the deadline. Start with the shortest plausible hazard duration, not the plaintiff's desired duration. If the alleged spill may have occurred 30 seconds before the fall, identify an independent fact that rules out that possibility. A last clean inspection at 10:00 and a fall at 10:30 establish only that the condition arose sometime in that half hour. The fact that no employee walked through the aisle during the interval does not prove the spill was present for the entire interval. Conversely, a 10:12 frame visibly showing the same spill and a 10:30 fall can establish a meaningful minimum, subject to authentication and clock accuracy.

Develop three alternative notice routes but never blur them. Route one is actual report: customer identifies precise hazard to employee before event; prove receipt and opportunity to act. Route two is creation: employee activity produces condition; prove identity and causal mechanism. Route three is constructive time: record shows hazard's duration and discoverability. A recurring source can matter if prior reports identify the same unit and exact floor area and the present condition can be tied to that source. General leak

repairs elsewhere failed in *Peterson*. A defense lawyer may argue that an inference is equally consistent with a customer spill seconds earlier. The response must identify the record evidence that favors one inference without relying on speculation.

For a summary judgment hearing, create a six-page evidentiary appendix: site map; camera screenshots with source and validated times; inspection records with custodian foundation; report and its precise receipt time; relevant deposition excerpts; and an element chart. Cite specific admissible passages in the response and address each objection. If important ESI is outstanding, pursue timely discovery and relief under the operative procedure rather than expecting the motion hearing to cure an undeveloped record. A request for more discovery should specify what exists, why it matters, diligence, and the anticipated evidence. Recheck the 2026 Rule 166a timetable for the court and motion date.

Chapter 22 Pallet and display reconstruction workshop

For a pallet obstruction, photograph from the claimant's approach, from eye height, and orthogonally with a scale. Measure the aisle width, intrusion, height, ambient illumination and display profile. Determine whether the object was moved after injury. Obtain product planograms or placement instructions only when they relate to the actual setup; compare with photographs and stock records. Identify who placed the pallet, when the area was last accessible, whether a forklift was still operating, and whether cones or a barrier were used. If a third-party vendor controlled the display, obtain the contract and actual decision-making testimony.

An expert may opine on visibility and reasonable pedestrian movement, but the opinion must use the event's conditions. Ask the expert whether the field of view is blocked by a cart, whether peripheral vision differs from direct focus, and whether a paused warehouse photo exaggerates salience. A model based on a staged pallet after the warehouse was rearranged should identify every difference. Preserve contemporaneous measurements when available; otherwise disclose assumptions and ranges. Test whether the hazard was an open and obvious stationary condition and whether a separate active-equipment theory is supported.

For falling merchandise, reconstruct the exact shelf bay and item mass, stacking method, packaging, retaining features, access, and last disturbance. Establish whether a person actively handled the item when it fell. Video showing only impact cannot assign cause. Ask whether evidence of earlier falling items concerns the same configuration and product. Separate a foreseeable toppling risk from a conjecture that a shopper pulled an item. Model both explanations in the proof chart and document their evidentiary support.

Chapter 23 Refrigeration and water source workshop

Identify the equipment asset and locate drains, coils, condensation paths and adjacent floor slope. Seek service calls and repair records near the incident date for that unit, not every refrigerator in a chain. Ask whether a leak was continuous or intermittent, whether staff noticed it before the fall, and whether a source could form the puddle within the available time. If a work order predates the injury but describes a different symptom or spot, its probative value may be limited. Photograph any nearby mats, cones, absorbents or buckets and establish when each was placed.

Consider alternative sources: tracked rain, spilled drink, fresh floor cleaning, defrost water or a damaged package. A technician or engineer may explain whether the proposed mechanism is physically plausible, but a plausible source does not establish duration. If a recurring discharge is alleged, demand successive work orders, technician notes, photographs and personnel reports. Link the recurrence to the same precise

condition, then separately prove the incident-day manifestation. *Peterson* makes this distinction critical. In deposition ask whether staff saw active dripping or merely inferred "rain" on a report after the injury.

Chapter 24 Digital evidence deposition script

Begin with the witness's responsibility: "What system stored this camera's recording?" "Which camera ID captured this view?" "Was it recording continuously, on motion, or by another trigger?" "Does the overlay time come from the camera, recorder, or export program?" "How is that clock checked?" "What is the normal retention setting, and was it changed before this incident?" "Who created the delivered clip, from what native file, on what date?" "Does the provided export include all frames in the identified interval?" Ask for system manuals only after establishing the installed version.

When two clips appear inconsistent, do not accuse alteration first. Ask whether frames were dropped, whether cameras have independent clocks, whether one timestamp reflects export creation, and whether the software interpolates playback. Request an export log and a test from an independent known event. If a still frame is enhanced, have the expert preserve original pixels and record each adjustment. Explain to the jury what can be seen at normal speed. Label arrows and annotations as advocate-created if offered, subject to ruling.

For inspection data: "What does the status code complete mean?" "Can a user complete several zones from one screen?" "Is a location scan required?" "Can a supervisor correct an entry?" "What fields record original and changed values?" "Are timestamps local?" "Can two people share a device or login?" "What does the record say about this exact aisle?" Secure a data dictionary and an actual demonstration if needed. Distinguish the business record from a witness's interpretation of its fields.

Chapter 25 Expert retention and cross preparation

Retain a scene or human-factors expert only when the technical dispute warrants one. Define the opinion question narrowly: visibility from the actual approach, slip resistance of a preserved surface, camera-based timing within an error range, or mechanism of a refrigeration leak. Supply unfavorable evidence and ask the expert to identify assumptions that might reverse the opinion. A polished diagram with guessed measurements is more dangerous than a plain witness account with known limitations. Keep the test conditions, instruments, calibration and raw data.

Prepare a cross grid for each defense expert: opinion; required assumptions; records not reviewed; alternative method; uncertainty; common ground; relief sought. For a video expert ask whether the condition itself appears, what pixel size it occupies, whether compression masks liquid, whether the timestamp is validated, and whether a claimed 18-minute interval starts at the first visible condition or merely the first available frame. For a safety expert ask about the applicable standard, actual floor, walking direction, cart, lighting, and whether a prior policy violation proves knowledge. For a medical expert ask whether a prior degenerative finding is symptomatic, whether the mechanism can aggravate it, what the temporal record shows, and what alternative causes were tested. Do not cross into specialties the witness has not addressed; secure concessions on limits.

A Rule 702 motion should identify the exact opinion and the missing reliable connection to facts. Do not demand exclusion merely because the opinion is unfavorable. Preserve an alternative cross plan if admitted. For plaintiff experts, rehearse the strongest omitted-variable and methodological questions before designation deadlines. A technically valid reconstruction can still be unhelpful if it does not establish the legal element of notice.

Chapter 26 Medical proof workshop

The damages file must distinguish the injury from later treatment choices and from preexisting findings. Create a medical timeline showing first complaint, examination, objective tests, referral, conservative care, surgery if any, and restrictions. Identify intervening injuries and admissions that do not match the claimed mechanism. Obtain a clinician's explanation of aggravation versus natural progression where it matters. A causation opinion cannot be supplied by a spreadsheet of bills alone.

For each past medical charge, record provider, service date, gross billed, adjustment, paid, legally owed, and disputed amount. Verify insurance and lien status without conflating a reimbursement claim with the amount admissible as medical expenses. Future care should specify treatment, expected frequency, duration, and probability. If a life-care plan lists every conceivable intervention, ask which are reasonably probable and whether costs reflect local actual charges. For earnings, distinguish lost wages, capacity, and household work; do not simply annualize one missed paycheck. Cross-check all arithmetic before mediation and trial.

For pain and physical impairment, develop testimony about specific activities before and after the event: walking a warehouse, sleeping, caring for family, working a shift, climbing stairs. A witness's account should include better days and recovery as well as limits. Avoid an invented dollar-per-minute argument. Test a proposed closing number against the actual evidence and current Texas damages precedent.

Chapter 27 Mediation decision tree

If notice proof is strong but medical causation weak, use focused medical review to separate undisputed immediate injury from contested future care. If causation is strong but notice weak, do not compensate with a larger damages demand; determine whether a decisive system witness or video source can be obtained. If both are contested, evaluate the cost of additional discovery against the likely shift in probability. Present the mediator with a short memo explaining these pivots and a private settlement range tied to assumptions.

At the start of mediation confirm attendees, authority path, confidentiality agreement, and whether the defense has actually reviewed native video and updated expenses. Offer a neutral time-indexed exhibit map before argument about what footage shows. Track each proposal in a log: time, gross amount, conditions, releases, costs, liens, expiration, and client approval. If a side proposes a bracket, restate its meaning in writing. Use a mediator's proposal only after discussing acceptance, rejection, and disclosure of the proposal with the client. Resolve settlement mechanics before announcing agreement.

The net-to-client sheet should show fees under the actual contract, reimbursable costs, lien estimates, potential reductions, and timing. Avoid implying a lien is resolved before confirmation. If the client rejects a recommended offer, record advice and instructions without pressuring the decision. Preserve the ability to resume talks after a targeted evidentiary event; a failed session is not necessarily a failed settlement opportunity.

Chapter 28 Trial run of show

A trial binder should contain the charge elements, witness order, foundations, exhibit IDs, objections and rulings, deposition page-line cites, demonstratives, and backup playback. Number videos and stills so a displayed frame can be traced to native source. Conduct a courtroom technology test with the exact files. Prepare a paper chronology if the screen fails. Give the witness only the exhibit that has been admitted or

permitted for identification. Separate the customer's recollection from expert reconstruction and counsel annotation.

In opening, show the jury the route and identify the disputed minute. In direct examination, let a witness establish what was personally seen, then use a corroborating exhibit. In cross, obtain a concise concession, impeach only after foundation, and stop when the record is made. During defense case update the element chart each evening and review whether an offer of proof or instruction is needed. In closing, show the actual charge and connect each answer to the admitted evidence. If the first visible spill appears at 12:07 and the fall at 12:19, say that; do not claim an earlier origin without proof. Address any admitted comparative-fault evidence fairly.

Before charge conference, reconcile the questions, predicates, definitions, and apportionment against pleaded claims and evidence. Tender written alternatives, object clearly, and secure rulings. After verdict, review inconsistency, credits, settlement effect, medical expense adjustments, interest, judgment wording, and appeal deadlines. Keep the client informed of posttrial uncertainty.

Part VI Editable Model Forms

Model Forms A Through R

These forms are editable drafting models for a Texas civil case. Bracketed fields require case-specific facts and current-rule review. They are intentionally limited by incident, location, source and a justified time window; broader discovery requires a specific reason. Omit a request if its predicate does not exist. For court filings, add the actual caption, certificate of service, signature, proposed order and local-rule material. Check privilege, protective orders, discovery level, deadlines and federal rules if removed. A preservation letter is not a discovery request, and a form is not evidence.

Form A Targeted Preservation Letter

[Date] | By [delivery method] | To [legal contact and local warehouse contact if appropriate] | Re: [Claimant], incident at [warehouse address], [date], approximately [time and zone]

Our firm represents [claimant] concerning an event described as [neutral, one-sentence mechanism] at [precise location]. Please preserve potentially relevant materials within your possession, custody or control while this matter is investigated. This request concerns the period [reasoned start] through [reasoned end], and the specific area [map or description], including approaches and response views. If a source requires a different window to capture creation or response, please discuss it with us promptly.

Please suspend routine deletion, overwrite, alteration or disposal, where reasonably possible, of: (1) native recordings from cameras that view the location, approaches, nearby activity, first report or response, with existing exports, player files, metadata and access/export logs; (2) camera map, clock and retention settings for those sources; (3) original incident reports, photographs, witness accounts and communications; (4) inspection, cleaning and safety records for the area, including original and changed entries, user/device fields and data dictionary if a digital system exists; (5) related maintenance, equipment, stocking or contractor records for [identified mechanism]; and (6) physical items [specific item if identified]. This is a preservation request, not a demand to disclose privileged material or unrelated customer information.

Please identify a contact to discuss source scope, preservation feasibility and any anticipated technical limitation. Confirm by [reasonable date] what sources are preserved, any source that did not exist or is unavailable, and the retention or overwrite issue requiring prompt resolution. We are willing to discuss reasonable narrowing and privacy protections. Please preserve the original source when producing any edited or redacted copy. Sincerely, [attorney].

Customization record: [incident source]; [why each camera and time range matters]; [known system]; [recipient relationship]; [follow-up date]. Do not represent that delivery alone automatically creates every asserted duty; analyze *Brookshire Brothers* in context.

Form B Proposition to Proof Ledger

Matter: [case] | Warehouse and precise area: [location] | Version: [date] | Prepared by: [name] | Privileged status: [assessment]

Element or defense	Proposed fact and exact source	Foundation and next step
Operator control	[entity/lease/witness/page]	[authenticity and remaining issue]
Condition and unreasonable risk	[photo/video/testimony]	[measurement and competing explanation]
Actual report or creation	[recipient/actor/time]	[identify and depose]
Constructive duration	[first proved presence/fall time]	[clock and same-condition proof]
Response and proximate cause	[warning/cleanup/fall mechanism]	[witness and objection]
Medical and other damages	[record/provider/payment]	[causation and recoverability]
Comparative fault	[specific conduct and source]	[alternative explanation]

For every row add an **adverse evidence** note, disclosure deadline, and owner. State “not yet supported” where needed. A postevent photograph establishes the condition after injury only unless other evidence supports an earlier time. Reconcile the ledger after every deposition and before mediation, Rule 166a response and charge conference.

Form C Camera and Inspection Time Reconciliation

Matter: [case] | Time standard and time zone: [basis] | Analyst: [name and qualification] | Version: [date]

Source ID and native file	Original time and validated offset	Observation, uncertainty and alternative
[camera/filename/hash]	[overlay; independent event; range]	[what actually visible; blind spot]
[inspection raw row/record ID]	[device/server/entry time]	[zone, user, edit or offline issue]
[receipt/call log]	[time provenance]	[independent anchor and limitation]

Write a short method statement: “I validated Camera [ID] against [independent event], observed at [source and reference time], giving an estimated offset of [range]. I did not assume other cameras shared this clock.”

Preserve master files and scripts or manual notes used in calculations. Record first proved presence, last proved absence, fall, first report and response separately. Mark any disputed match between a visual patch and the alleged condition. This is a working chart until admitted through appropriate witnesses.

Form D Mediation and Trial Readiness Record

Matter: [case] | Client meeting date: [date] | Privileged/work product assessment: [by counsel]

Mediation: Liability route [specific evidence]; adverse notice proof [source]; best and worst causation opinions [source]; recoverable past medical calculation [worksheet]; future care basis [expert]; low/mid/high verdict scenarios [assumptions]; costs, fees, liens and estimated net proceeds [ranges]; current written demand and offers [amount/date/conditions]; client's instructions and authority [record]. Confirm defendant's actual decision maker and all material proposed terms, including release scope, payment, liens and dismissal.

Trial: Witness and exhibit list [version]; native video and derivative log [location]; technology test [date]; Rule 702 and in-limine rulings [citation]; impeachment page-lines [record]; charge requests and objections [filing]; backup visual presentation [location]; client settlement instructions updated [date]. Assign an owner and due date to each incomplete item. No prospective trial representation in this form is a substitute for an admitted foundation.

Form E Limited Interrogatories

Caption: [court, parties, cause] | Set [number] | Definitions: "Incident Area" means [precise location]; "Relevant Window" means [reasoned hours]; "Relevant System" means [identified or described system, if any]. The requests are subject to the governing discovery level, proportionality, objections, privileges and any court order.

1. Identify each entity with possession or operational control of the Incident Area on [date], the nature of control and persons knowledgeable about it.
2. Identify employees or contractors whose assigned work placed them within [defined zone] during the Relevant Window, stating role, shift and available business identifier.
3. Describe every preincident report of [specific hazard] at [specific location] during the Relevant Window, with maker, recipient, approximate time, words communicated and action taken; distinguish postincident reports.
4. State each actual inspection of the Incident Area during [narrow period], including person, route, observation, record created and the basis for each stated time.
5. Identify cameras reasonably believed to show the Incident Area, approaches, alleged source or response; identify custodian, native source, clock and retention method.
6. Identify the factual basis, witnesses and records for any contention that [claimant or third party] created or could have avoided the condition.
7. If the alleged mechanism involves [named equipment/display], identify its responsible maintainer or operator and related work during [limited dates].

Service notes: [response deadline under applicable rule]; [definitions and objections conformed]; [leave out questions without predicate]. Do not ask for a statewide roster without a foundation.

Form F Requests for Production of Video and ESI

Caption: [court and cause] | Set [number] | Area: [map/description] | Incident window: [start/end with rationale] | Proposed form: native source plus reasonably usable access method; confer on proprietary formats, privacy and protective terms.

1. Produce native recordings, existing exports and associated players for cameras showing the Area, approaches, alleged source or initial response during the Incident Window, identifying camera and source file for each.
2. Produce a camera map or equivalent records sufficient to identify coverage and blind spots for those cameras on [date]; redact unrelated secure areas by agreement or order.
3. Produce source-specific clock, recording mode, retention, overwrite and export settings, together with export/access logs relating to the Incident Window.
4. Produce original inspection entries for [zone and limited period] with available user, device, creation, completion, synchronization, modification and deletion fields, plus field definitions and a version history necessary to interpret them.
5. Produce original incident photographs, report versions and relevant communications concerning [condition/location] during [limited period], subject to privilege objections and a compliant log where required.
6. For [identified mechanism], produce same-location maintenance or stocking records during [justified lookback], and incident-date work records.

If a requested source does not exist, request a response identifying the search undertaken and knowledgeable custodian to the extent required by governing discovery rules. Negotiate a sample export if burden is disputed. Do not demand credentials, full proprietary code or unrelated members' data absent necessity and protective safeguards.

Form G Requests for Admission and Authenticity

Caption: [court and cause] | Exhibit schedule attached: [IDs and complete copies]

1. Admit that Exhibit [X] is an export made from camera [ID] covering [date/time], without substantive changes other than [specified redaction]. If denied, identify the respect in which it differs.
2. Admit that the original recording underlying Exhibit [X] was retained as [source ID] as of [date], if within responding party's knowledge.
3. Admit that [named person] was employed by [entity] and assigned to [defined area] during [limited time].
4. Admit that record [ID] is an authentic business record generated by [identified system] on [date], without admitting the truth of every embedded entry.
5. Admit that [specific report] was received by [recipient] at [time], if supported by attached record.
6. Admit that the proposed site map accurately depicts [fixed structural features] on [date], subject to listed changes.

Avoid compound admissions, ultimate negligence requests and statements premised on an unverified clock. A denial may identify a discrete foundation witness or missing record. Counsel should evaluate fee-shifting consequences and applicable response rules before service.

Form H Texas Corporate Representative Notice

Caption: [court and cause] | To: [organization and counsel] | Deposition: [date, time, location or remote method, recording method] | Applicable rule: Texas Rule of Civil Procedure 199.2(b)(1), subject to court order.

The organization is requested to designate one or more persons to testify on information known or reasonably available to it concerning the following **reasonably particular topics** for [warehouse] and [incident date], limited to [area and period]:

1. The entities and personnel responsible for control, inspection and response in the Incident Area.
2. The actual procedures in effect on [date] for identifying, reporting, inspecting, warning of and cleaning [specified hazard] in that area.
3. The identities and assignments of persons relevant to the first notice, inspection, incident response and report creation.
4. Camera coverage, native storage, clock settings, export, retention, preserved sources and production for the listed cameras.
5. Structure and meaning of the inspection system actually used for [zone], including original and edited fields, offline synchronization and user permissions, if such a system existed.
6. Same-location equipment maintenance or third-party control relevant to [specific alleged source] during [limited dates].
7. Search and preservation steps for the identified incident sources, excluding privileged legal advice.

The notice should attach the incident area map and disputed data dictionary if available. Document requests, if any, must follow the applicable procedure and lead time; do not treat topic designation as automatic production. Ask what each witness reviewed and whom they consulted, and identify unanswered topics for a reasonable continuation.

Form I Store Manager Examination Outline

Witness: [name] | Shift and position: [records] | Exhibits: [incident report versions, site map, camera stills, inspection rows] | Objective: distinguish preinjury knowledge from postevent inference.

Foundation and assignment: Confirm shift, zones of responsibility, workers, contractors, reporting channels and inspection process actually used that day.

Before the injury: “What report, if any, did you personally receive about [condition] at [location] before [time]?” Follow with exact words, source, recipient, clock, response and record. “When did anyone last personally inspect the precise spot, and what was seen?” Avoid asking the witness to adopt a broad digital status without explaining its meaning.

After the injury: Fix first notification, scene condition, photos, witness names, who moved any item or cone, cleanup, report author and revisions. Ask why the report identifies a source and whether that source was observed or assumed.

Records and contradictions: Establish whether the witness viewed native video or an excerpt, the origin of each timestamp, persons interviewed, and basis for organizational assertions. Use an inconsistent statement only after identifying document, context and exact passage; allow explanation as required. Finish

with missing witnesses and records. Note separately: personal observation [ ], business record [ ], third-party statement [ ], inference [ ].

Form J Video Custodian Foundation Script

Witness: [name and system role] | Source: [camera ID, native file, date] | Exhibit: [version/hash/export log].

1. "What system recorded this view, how was the camera identified, and what area did it cover on [date]?" Establish familiarity with routine system operation.
2. "Was recording continuous or event triggered? What gaps or limitations existed? Which clock generated the displayed time, and how was it synchronized?"
3. "Who retrieved the source, when, using what software and procedure? Does Exhibit [X] include the entire requested interval? List crops, re-encoding, speed changes, redactions and overlay additions."
4. "Where is the native master kept? Can the exhibit be compared with it? What original player or codec is needed?"
5. "Does Exhibit [X] fairly reproduce what the source recorded in the stated range, apart from disclosed changes?"

If the witness lacks knowledge of a critical export or timestamp, identify the proper custodian rather than manufacture a foundation. Seek a court ruling on each disputed version. Do not solicit an opinion that an ambiguous dark patch is water from a custodian without personal or expert basis.

Form K Inspection System Foundation Script

Witness: [system administrator or knowledgeable custodian] | System/version: [identify] | Raw record: [ID] | Area: [zone].

Ask who creates entries, how a zone is assigned, whether presence is required to mark completion, which event populates each displayed timestamp, whether offline entries synchronize later, and whether employees share devices or accounts. Have the witness interpret one original row field by field. Ask what is retained on edits, deletions, supervisor corrections and layout changes. Produce a data dictionary and original export where possible. Then ask the assigned worker what route was actually taken and what floor was seen. Separate the system's record of an input from proof that an inspection occurred. Mark any camera comparison with validated offsets and blind spots. The intended trial proposition is [specific limited proposition]; the unanswered question is [field or witness].

Form L Motion to Compel Framework

Caption: [court and cause] | Title: Plaintiff's Motion to Compel Limited Production of [source] | Hearing request: [under local rules]

Relief requested. Order [party] to produce [exact source, fields, native format or reasonably usable alternative] for [area/time] by [date], subject to [specified protective provisions]. Alternatively order a technical conference or sample production.

Record. Request [number] served [date]; response or objection [date and text]; good-faith conference [date and positions]. Attach the request, response and conference record as required. Explain what was produced

and precisely what remains missing. Do not say “all metadata” when only original and changed timestamps, user ID and field definitions are needed.

Relevance and proportionality. [Source] can test [particular notice or authenticity proposition]; a screenshot omits [specific fields]. The requested zone, interval and fields limit burden. State information suggesting the source exists, and address any asserted privacy, trade secret or privilege concern with a concrete redaction, staged access or protective order.

Proposed order. Identify source, search custodians if necessary, format, deadline, confidentiality and how to raise a claim of nonexistence or technical impossibility. Do not seek a declaration that withheld material would favor plaintiff merely because an objection was made. Verify Texas Rules 192, 193, 196 and 215 and the court’s discovery order.

Form M Spoliation Motion and Hearing Framework

Caption: [court and cause] | Specific lost source: [camera/file/date range] | Requested relief: [limited remedy]

Issue presented. The movant asks the court to determine whether [party] failed to preserve [specific source] after a duty arose and, if so, what remedy is proportionate under *Brookshire Bros., Ltd. v. Aldridge*, 438 S.W.3d 9 (Tex. 2014). This template does not presume an adverse inference.

Chronology with attached proof: [incident and report time]; [when litigation reasonably anticipated]; [notice to custodian and hold measures]; [source existence and relevance]; [retention or overwrite process]; [date and cause of loss]; [remaining copies or alternative evidence]; [prejudice]. Identify who can testify to technical facts. Separate intentional destruction from negligence and a source that was never recorded.

Requested findings and proportionality: Ask for findings on duty, breach, culpability, relevance, prejudice and less severe cures. Explain why [additional discovery, costs, evidence exclusion, limiting instruction or other requested relief] addresses actual harm. If an adverse-inference instruction is requested, address the demanding intent or exceptional negligent-loss conditions described in *Brookshire Brothers*. Request an evidentiary hearing and submit a narrowly worded proposed order. Preserve the objection and record without telling the jury that missing material proves fault absent a ruling.

Form N Rule 166a Response Framework

Caption: [court and cause] | Title: Plaintiff’s Response to [exact motion title] [and Request for Oral Hearing if requested] | Motion filing date: [date] | Response due: [21-day calculation or order] | Hearing/submission: [date].

Introduction and grounds: The motion challenges [list exact elements and traditional grounds]. Plaintiff relies on [actual report/creation/constructive duration], supported by [precise record]. Identify any ground with no supporting evidence candidly.

Record chart:

Challenged proposition	Admissible evidence and record cite	Reasonable inference and answer to defense
[control]	[exhibit/page/line/foundation]	[fact issue]

Challenged proposition	Admissible evidence and record cite	Reasonable inference and answer to defense
[condition]	[exhibit/page/line/foundation]	[fact issue]
[notice]	[validated time and same-condition proof]	[Peterson distinction or limitation]
[breach/cause]	[witness and record]	[alternative inference response]

Argument: State the governing standard and apply evidence element by element. For notice, distinguish actual report, employee creation and constructive time. Address *Peterson* on exact place and duration, not just by citing different case names. Respond separately to any traditional grounds. Make specific objections to challenged evidence and request rulings. Attach the proposed order.

Unavailable evidence, only if true: File a separate compliant affidavit or declaration identifying requested source, diligence, why it is essential and requested extension or discovery relief under Rule 166a(d)(3). Check amended Rule 166a response, reply, setting and exhibit requirements for a motion filed on or after March 1, 2026. A conclusion that evidence "might exist" is not enough.

Form O Mediation Valuation and Offer Log

Privileged assessment if counsel determines applicable | Matter: [case] | Version and date: [date] | Client instructions: [date and source].

Liability assumptions: actual notice evidence [source]; constructive time [earliest proof/uncertainty]; summary judgment risk [reason]; trial comparative-fault range [basis]; appeal or exclusion risk [issue]. Avoid false precision and do not multiply dependent probabilities mechanically.

Damages and net: past medical paid or incurred [verified amount]; future care [expert and range]; earnings [proof]; non-economic [evidentiary basis]; gross scenarios [three amounts]; less fee [agreement], costs [ledger], lien/reimbursement [verified or estimate], settlement credit [if applicable]; client net [range]. Separate a current lien from expected negotiation.

Time and proposal	Gross and material terms	Client authorization and next step
[offer]	[amount/release/payment/expiration]	[instruction and record]

Written term sheet: Parties; released claims; amount and deadline; payment and tax language only if supportable; lien allocation; confidentiality if agreed; dismissal and costs; signatures. Confirm any Texas Rule 11 requirement and special approval for minors or estates. Do not record a proposed bracket as an agreed settlement.

Form P Trial Exhibit Impeachment and Demonstrative Ledger

Matter: [case] | Version: [date] | Coordinator: [name].

Exhibit or target	Foundation and admissibility	Ruling, fallback and witness
[native video and derivative]	[source, edits, Rule 901/1001]	[status and backup]

Exhibit or target	Foundation and admissibility	Ruling, fallback and witness
[inspection row]	[custodian, dictionary, 803(6)/805]	[status and limitation]
[medical record]	[custodian/expert and objection]	[status]
[demonstrative]	[source data, assumptions, disclosure]	[use permitted and label]

For impeachment add witness's current statement, prior exact wording, date, exhibit, page-line or timestamp, foundation, Rule 613 opportunity to explain, substantive evidentiary route if any, and the element it affects. For video list native master, cropped version, playback speed, time offset and courtroom copy separately. Mark "for identification only" until admitted. Reconcile exhibit numbers with witness outlines and charge arguments daily.

Form Q Voir Dire Question Set and Juror Notes

Court limits and local practice: [time and rulings] | Charge issues: [premises elements, responsibility, damages].

Open questions: "What work or experience have you had with warehouse safety or retail claims?" "What do you think a video can tell us when it does not show the origin of a spill?" "Could you fairly evaluate a claim even if the injured person had a prior condition?" "How do you view compensation for an injury that cannot be measured on a bill?" "Could you find for either side after applying the judge's instructions about proof and responsibility?" Follow with neutral examples from the juror's own answer rather than hypothetical commitments.

Juror	Exact response and follow-up	Cause issue, rehabilitation and strike decision
[number/name]	[verbatim as practicable]	[ruling and record]

Do not ask jurors to promise a verdict, accept a particular damages amount, or prejudge Costco. Note exact language, request rehabilitation and preserve the court's ruling under applicable procedure.

Form R Opening Closing and Charge Proof Map

Matter: [case] | Charge draft version: [date] | Evidentiary rulings checked: [date].

Opening structure: (1) location and precise condition; (2) source evidence of creation or knowledge; (3) reasonable opportunity and response; (4) mechanism and supported injury; (5) candid preview of contested facts. For every promised exhibit mark admitted [ ], ruling pending [ ], remove [ ]. Show original footage at normal speed before a disclosed enlargement if permitted. Do not tell the jury an inference is a recorded fact.

Closing chart:

Actual charge question	Supporting admitted evidence	Defense response and precise answer
[condition and notice]	[exhibit/witness/time]	[alternative source/time]

Actual charge question	Supporting admitted evidence	Defense response and precise answer
[reasonable response and cause]	[exhibit/witness]	[warning or other cause]
[responsibility]	[specific conduct]	[allocation evidence]
[damages]	[paid-or-incurred/future proof]	[causation and adjustment]

Preserve written charge requests and specific objections. Update this form after the court's charge rulings; closing must follow the charge actually submitted. Avoid a generic "big company" appeal, evidence excluded by ruling, and unsupported per-minute damages calculations.

Authority table and verification sources

- *Wal-Mart Stores, Inc. v. Reece*, 81 S.W.3d 812 (Tex. 2002): duration and constructive notice.
- *Wal-Mart Stores, Inc. v. Gonzalez*, 968 S.W.2d 934 (Tex. 1998): insufficient speculative circumstantial time evidence.
- *Wal-Mart Stores, Inc. v. Spates*, 186 S.W.3d 566 (Tex. 2006): employee proximity and notice.
- *H-E-B, L.P. v. Peterson*, 732 S.W.3d 541 (Tex. 2026) (No. 24-0310): time and place; unrelated prior leaks and protocols do not supply missing duration. Official opinion: https://www.txcourts.gov/media/1462570/240310.pdf.
- *Brookshire Bros., Ltd. v. Aldridge*, 438 S.W.3d 9 (Tex. 2014): constructive notice discussion and spoliation.
- *Austin v. Kroger Texas, L.P.*, 465 S.W.3d 193 (Tex. 2015): open and obvious condition and necessary use.
- *United Scaffolding, Inc. v. Levine*, 537 S.W.3d 463 (Tex. 2017): claim classification.
- *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995); *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713 (Tex. 1998): expert reliability and fit.
- *Haygood v. De Escabedo*, 356 S.W.3d 390 (Tex. 2011); *Gregory v. Chohan*, 670 S.W.3d 546 (Tex. 2023): damages questions.
- Texas Civil Practice and Remedies Code §§ 16.003, 33.001–.003, 41.0105: https://statutes.capitol.texas.gov/.
- Texas Rules of Civil Procedure 11, 166a, 192, 193, 196, 199; Texas Rules of Evidence 106, 401–403, 607, 613, 702, 705, 801–803, 901–902, 1001–1006: https://www.txcourts.gov/rules-forms/rules-standards/.

These are starting points, not a representation that the cited rule controls every variant. Check subsequent history, rule effective dates, pinpoint citations, district-specific orders, and federal analogues if the case is removed.