Snow and Ice Removal: Does Your Contract Protect You From Personal Injury Liability?

Amundsen Davis Tort Litigation Alert
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With the season's first snowflakes already fallen in the Chicagoland area, snow and ice removal contractors are surely gearing up to meet the demands of another winter. In addition to addressing equipment and staffing concerns, now is also the time to review the written agreements you have in place that govern these services. This is because a recent decision out of the Illinois First District Appellate Court holds that a snow and ice removal contractor's liability for personal injuries can now turn on the terms included in the contract.

The longstanding rule in Illinois had been that a snow and ice removal contractor can only be liable to an injured person who can show that their injury was caused by an "unnatural accumulation" of snow or ice. This rule makes sense – we all know there are times when Mother Nature laughs at even the most conscientious and aggressive snow and ice cleaning. Despite best efforts, sometimes snow keeps falling, melts, freezes, or otherwise causes naturally occurring slippery conditions. There are times when no surface can ever be 100% free of naturally falling snow or freezing ice. The former prevailing rule was that only those contractors who created unnatural accumulations of snow or ice – poorly placed snow mounds, crushed or compacted snow or ice, etc. – which caused injury on the properties they maintain, could be liable to injured plaintiffs.

However, the court in *Mickens v. CPS Chicago Parking*, LLC 2019 IL App (1st) 180156, has ruled that the "natural accumulation" exception to snow and ice removal contractor liability should no longer apply in personal injury cases. Instead, *Mickens* held that a snow and ice removal contractor's liability to an injured plaintiff arises out of the terms of the contract for snow removal. If a contractor makes a promise to perform snow or ice removal services at a given location, and a person is injured on those premises due to the contractor's failure to perform those services with reasonable care, *Mickens* holds that the contractor should be liable to the plaintiff regardless of whether the snow or ice that caused the injury was naturally or unnaturally accumulated.

This so-called "voluntary undertaking" rule is not new for contractors generally. And there are some cases with unique facts where it has been applied to snow and ice removal contractors, too. But no court has been so enthusiastic about its

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application and an across-the-board elimination of the natural accumulation exception as the *Mickens* court.

Under *Mickens*, if your contract is to "remove all snow and ice," and a person slips and falls on snow or ice and is injured, you can be liable. However, if your contract only calls for the removal of snow and ice to the satisfaction of the client, and you obtain your client's approval of services in writing, you are better positioned to defend against a lawsuit should an accident occur. Other terms, like those requiring photographing of the serviced area, maintaining service logs, and adhering to insurance requirements, should also be diligently followed.

For those contractors with developing business relationships, it is extremely important to ensure that written agreements clearly and appropriately describe the contractor's scope of work. For those with existing relationships that will carry over into the 2020-2021 winter, it is equally as important to review controlling written agreements to ensure that services provided meet the contractual obligations. For those with only a "handshake" agreement – get your obligations in writing!

Now is a good time to review your existing or proposed snow and ice removal contracts and to discuss strategies for improving your contractual agreements. Take these steps to protect yourself and your companies before the heavy stuff starts falling.

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