Risk Management from a Legal Perspective:
The importance of Contracts and other Documentation

The importance of Contracts and other Documentation - Overview

• Why is it important to have a signed contract and other documentation?
• Why is it important to maintain this documentation and to turn it over to the carrier and defense counsel?

The importance of Contracts and other Documentation - Overview

• What impact does lack of a written contract and/or documentation have on insurance carriers evaluation of the claim?
• What impact does lack of a written contract and/or documentation have on counsel’s ability to defend the claim?
Managing risk to protect against and properly defend lawsuits

• In order to properly manage risks a contractor must understand those risks.
• Throughout the process, from bidding through performing, the contractor needs to constantly ask “Have we done enough?”

Document, Document, Document

• If you are following the proper procedures (such as the ASCA standards), the defense of a claim will start and end with documentation.
  – Written Contract and any addendums
  – Pre-season site inspection records
    ▪ Check for defects on property and photograph
  – Log notes for each time on site (including name of employees on site, work performed, exact time performed, equipment used, and materials used)

Document, Document, Document

  – Monitoring and inspection that was performed
  – Other post-event follow up work
  – Photographs before and after completion of work
  – Any and all communication with client
  – Weather Reports
Legal impact of documentation (or lack thereof)

- Documents need to show time the exact time the work was performed. Missing this details has changed the liability evaluation or trial result in numerous cases
  - If your employers were at the job site from 3:01 AM to 4:23 AM, the log notes should reflect that exact time (no rounding)
- Even if the contractor has a seasonal contract, you need to document everything for litigation purposes
- If you are subbing out work, you need to require this same level of detail from the sub-contractor

Legal Impact of Documentation

- I believe there is a direct connection between the length and breadth of a companies loss runs and the documentation policies of those companies
- Companies that do not have proper contracts, in-event documentation or other key documentation procedures are more likely to get sued and more likely to have verdicts and/or larger settlements against them

Importance of Written Contracts

- All contracts should be confirmed in writing and executed by both parties
  - The language in the snowplow contract, in conjunction with the facts of each case, will determine who will be responsible for the loss - is it the snowplow contractor or the property owner?
- Contracts should not be copy and paste jobs
  - A contractor should understand the basic meaning of each section of the contract
Importance of Written Contracts

• The scope of the work is one of the most important parts of the contract
  – It should define specifically how, when and where the snow professional will perform operations

• The contract should also have indemnification/hold harmless language that is well-defined and limited to the scope of work agreed upon in the contract.

Importance of Written Contracts

• A snow removal contractor who sub-contracts the work needs to make sure that all obligations identified in the initial contract are covered in the sub-contract

• In conclusion, you need to know what is in your contract
  – I would highly recommend having local counsel review your current contracts and sub-contracts to make sure that they properly define the work and protect your interests

The Lawsuit:
Working with your carrier and counsel

• An insured should report notice of a claim right away and provide all documentation to the carrier
  – This should include the documents identified in the ASCA standards
    • Pre-season Site Inspection records
    • In-Event Documentation
    • Written Ice Watch records
    • Post Event Inspections
    • Environmental standards
    • Weather Service Reports
    • Photographs
The Lawsuit: Working with your carrier and counsel

- If your insurance carrier and defense counsel do not have the documentation from the outset, they could:
  - Settle a case that should be defended
  - Defend a case that should be settled

Conclusion

- **Documentation is key**
  - Make sure you have a written and signed contract for every account
  - Document everything, from pre-season site inspections through post-event inspections
  - Create a documentation system and be diligent about having employees complete maintain all documentation

Conclusion

- Provide all documentation to your carrier and counsel from the outset
- Be proactive when working with clients, the carrier and defense counsel
  - Contractors that are actively involved in the process put themselves in the best position to defend themselves against lawsuits
Part II

Behind the Scenes of Lawsuit