

Risk*topics*

snow and ice removal

Introduction

When snow and ice accumulate on walking surfaces, the potential for slips and falls greatly increases. The property owner/manager must make a reasonable effort to reduce the potential for injury to guests and patrons. This is particularly important for establishments like hotels, shopping centers, supermarkets, office complexes and apartments. In order for these businesses to control this exposure, it is wise to have an effective Snow and Ice Removal Plan in place.

Case Study

The case involves injuries to a hotel guest in a suburban Minneapolis hotel parking lot. After several inches of snow fell early on a spring day, it was removed from the parking lot. A couple of days later, after a late-night check-in, a guest fell on ice while getting out of the car in the parking lot. The fall resulted in serious injuries including a fractured leg. Unable to get in the rear entrance, he finally crawled back 200 feet to the car and drove to the front of the hotel for help. Weather records for the day of the accident indicated a high temperature of 37°F at 3:00 p.m. and the temperature dropped to 28°F by midnight. This variation in temperature was sufficient to cause a thaw and refreeze in the parking lot area.

The jury found the guest 20 percent liable due to his intoxicated condition. Jurors found the hotel 80 percent liable awarding the hotel guest \$243,000 for his injuries.

The Minnesota Court of Appeals ruled that because the hotel "... invites guests to stay in its hotel and is aware that its guests will park in its lot and walk from the lot to the hotel, ... [it] has a duty as matter of law to its patrons, to provide safe access from its parking lot to its building. It was entirely reasonable for the jury to consider ... [the hotel's] failure to salt and sand a breach of duty of reasonable care under the circumstances particularly in Minnesota after a substantial snowfall in early spring where the temperature was fluctuating above and below freezing ..." (Myers v. Winslow R. Chamberlain Co., 443 N.W. 2nd Minn., 1991).

Case Study Considerations

In reviewing the above case study, the following are some of the questions that can be raised:

- Was there a Snow Removal Plan?
- Is it "reasonable" given the geographic location and past history of snowfall in the area?
- Was the plan followed?

Some local ordinances may allow up to 24 hours for removing snow/ice from the sidewalks and in front of the premises. Compliance with such regulations may not diminish the liability for snow/ice-related accidents. A violation, on the other hand, is likely to result in statutory fines and provide evidence of negligence. Either having a plan and not following it or not having any plan at all will have the same adverse impact and will most likely strengthen a negligence allegation.

The determination of what are considered reasonable efforts in snow removal will depend on specific facts and circumstances. It is unreasonable to expect parking lots and walkways to remain free of snow/ice in the middle of a blizzard. But, it is certainly reasonable to expect a property owner to remove the snow/ice promptly once snow stops falling.

Faced with the responsibility to control snow and ice hazards, the property owner/manager has two options. The first consists of utilizing in-house personnel. There should be adequate staff and proper equipment to implement the plan.

Due to the standby nature of snow-removal activities, most organizations prefer the second option, which is using contractors specializing in snow removal. Even if a business has the capabilities to perform their own snow removal, it would be prudent to at least have a contractor available on a standby basis "just in case."

Contractor Considerations

When hiring a snow and ice removal contractor, there are some important insurance considerations. In addition to selecting a contractor based on review of expertise, response times and capabilities, it is important to verify that the contractor has a comprehensive insurance program. There should be statutory Workers Compensation coverage for the contractor's employees. The contractor should have a General Liability coverage that will cover claims for the property damage and/or bodily injuries caused by the contractor's employees or their operations. There should be coverage for Products/Completed Operations that is intended to pay for any claims arising out of the completed work by the contractor. If the terms of a formal contract include hold harmless and indemnification clauses, the contractor should have Contractual Liability coverage. It is important to obtain Certificates of Insurance to verify that the contractor does, in fact, carry all the stipulated insurance coverages and has appropriate limits.

The contract should specify under what condition snow/ice removal begins. Contracts can specify 1-, 2- or 4-inch snowfall provisions. Others depend on a telephone call requesting specific services. Most services will include distribution of rock salt or sand but there may be a separate charge. Special provisions may need to be established to control certain situations like water runoff from hillsides.

Care must be taken when selecting a contractor. Many perform snow/ice removal during off-season lulls in their main business. These can include landscapers, nurseries and even window cleaners. There are also individuals who start their own business when they merely buy a four-wheel-drive vehicle and attach a snowplow. The latter situation examples, particularly in the case of landscapers, may be a good choice to perform snow/ice removal. Those companies already know the property and there may be a cost benefit to combining the services. Even experienced contractors may use individuals to assist their efforts. This may occur during heavy snowfalls or if contractors have limited equipment resources. Again, experience and insurance provisions should play an important part in selecting a contractor.

Management Considerations

- Develop and implement a written Snow and Ice Removal Plan that outlines responsible individuals, use of a snow/ice removal log, contractor selection guidelines, frequency of snow/ice removal procedures, use of sand or salt, and proper claim-handling practices. The snow/ice removal log should record pertinent data, including the individual's name, estimated snowfall amounts, ice buildup, temperature, action taken (called contractor, used plow, applied sand/salt), dates and times, inspection notes and any unusual conditions.
- Use the services of professional snow-removal companies. Many of these will furnish a list of their activities along with their regular bill for services rendered. Some can provide an immediate printout of their activities once completed. Service should include regular checks on the location, and 24-hour and on-call capabilities.
- Provide appropriate equipment, tools and supplies when using internal personnel for snow/ice removal. Ensure that these employees promptly report unusual conditions.
- Post appropriate warning signs in high-hazard areas.
- Provide adequate lighting in all areas, where feasible.
- Conduct accident/incident investigations promptly. The injured person should be attended to immediately. Treatment at a local healthcare facility should be emphasized, no matter how minor the injury initially appears to be – compassion is important. Showing adequate concern for the safety and well-being of the injured guest will go a long way in creating goodwill and preventing unwanted litigation.
- Assign a coordinator to synchronize snow removal efforts of contractors with those of in-house personnel to assure that all areas are treated properly.

Other Considerations

- Allow sufficient time for treatment to take effect.
- Consider the type of treatment for conditions at hand. Calcium chloride is more effective than rock salt in extreme cold. It is also less damaging to plants and soil.
- Temperature can fluctuate widely between night and day, thus permitting a refreeze.
- High piles of snow might reduce visibility around corners. Melting of snow from piles adjacent to a walkway can result in refreezing of water on the surface.
- Consider engineering controls like heated walking surfaces. Relocate downspouts if they discharge water onto walking surfaces.
- Excessive salt and sand used in for treatment can be tracked indoors resulting in possible damage to carpets and floor surfaces, and can even cause another potential slip-and-fall hazard.
- Remove or provide warnings of “hidden” hazards that could be inadvertently struck by cars or pedestrians if covered by snow (fire hydrants, curbs, grates and debris in walkway).

Summary

The first line of prevention and defense against snow and ice accidents is a well-planned strategy and implementation of a Snow and Ice Removal Plan. A limited amount of liability for losses can also be transferred if removal operations are subcontracted to others. From a post-loss standpoint, having and following an effective plan goes a long way toward fulfilling the obligation owed to the general public. A proactive approach, rather than a reactive one or none at all, will be viewed favorably.

References

1. *Hospitality Law*, November 1989 and December 1991, pp. 4-5.
2. “Independent Contractor Exposure.” Zurich Services Corporation. Risk Topic 4-6.001. May 1990.
3. Malecki, Donald S., James H. Donaldson and Ronald C. Horn. *Commercial Liability Risk Management and Insurance*, 2 vols.



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