

# Managing Your Risk

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# Risk Management Issues

- Insurance – Lyne Erwin
- Contracts – Rob Kennaley
- Record Keeping – Gerald Boot

# What is an “Insurance Policy” and the Occupiers Liability Act?

- “...a contract under which one party, the Insurer, agrees – in exchange for payment of premium – to pay for specified losses the Insured may suffer, up to specified amounts, under conditions specified in the insurance contract” ..... **Source:** Federal Insurance Act
  - Insurance works on the principle of risk sharing
  - Protection from the unexpected
  - Peace of mind
  - Form of financial security
- The Occupiers Liability Act states it is expected that an invitee using reasonable care on their part of their own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger, which he knows or ought to know; and that where there is evidence of neglect.

# General Liability Insurance

## Insuring Agreements

- Covers the insured's legal obligation for damages because of liability imposed by law, or assumed under contract, due to bodily injury, personal injury or damage to tangible property that results from:
  - the existence of operating facilities
  - equipment, fixed or mobile (not licensed)
  - the actions of employees
  - products or work that is done for others
  - the actions of others on your behalf for whom you are responsible (“vicarious” liability)
- Legal expenses incurred by the insurer in your defense:
  - Defense expenses inside or outside the policy limit
  - Deductible inclusive of defense costs

# General Liability Insurance

## Types of “Damages”

### Compensatory (Covered)

- **Special** – medical bills, hospital expenses, out-of-pocket expenses, future earnings / expenses, *i.e. actual expenses or those that can be precisely calculated*
- **General** – pain and suffering, loss of amenities, *i.e. items that cannot be precisely calculated*
- **Aggravated** – insult and injured feelings, *i.e. when conduct / motive of defendant has aggravated plaintiff's injuries*

### Punitive / Exemplary (Generally Not Covered)

- Intended to punish and deter – to call attention to “unacceptable” social behaviour

# General Liability Insurance

## Rating Consideration for Snow Removal Operations

- Years of experience in snow removal business
- Estimated annual sales for snow removal and % of overall operations
  - % of Residential (Private homes, Condos or Apartments)
  - % of Commercial (Plazas, Office Buildings, Industrial lots)
  - Municipal or Provincial Contracts
- Type of hold harmless agreement in place
  - Shared or 100% liability acceptance
- If maintenance logs are kept and for what period

# How are liability reserves established?

- Type of bodily injury (broken wrist, leg etc)
- Age of claimant/injured person
  - Sex, marital status
  - Occupation and if he/she has dependents
- Current Employment
  - Missed time off work
  - Returned to same
- Any contributory negligence on part of the claimant
  - Footwear, carrying anything or in a hurry
  - May have a history of falling due to pre-existing medical conditions
- History of claim details
  - What % of liability
  - What are the anticipated legal costs

# Historical Liability Claims for Slip & Falls

1996-2006

- Number of slip, trip and falls 1,166 over 330 participants
- Cost to investigate and settle
  - Claims Paid \$13,282,782
  - Claims in Reserve \$ 6,864,993
  - Legal Expenses Paid \$ 3,719,718
  - Legal Expenses Reserves \$ 5,806,542
- Average settlement without legal representation \$22,000
- Average settlement with legal representation \$56,000
- Defence costs in the range of \$12,500 to \$17,500 through discoveries
- Defence costs in the range of \$50,000 to \$60,000 for pre-trial or trial



# Cause and Injury

52 year old female claimant slipped and fell in parking lot of municipal building. There had been freezing rain and a heavy snowfall the previous night and no clearing operations had been undertaken by mid morning when loss occurred.

Early morning removal of snow and ice conditions before premises open to public.



Settlement \$65,000

Cause of Loss: Preventable

# Cause and Origin

69 year old claimant slipped and was injured. Lip laceration requiring suturing, contusions, loose front teeth, right wrist sprained and right hand broken.



Settlement: \$68,500

Cause of Loss: Preventable

# Contract Issues

- The Maintenance Responsibility Starts with the Occupier under the *Occupier's Liability Act*
- The Owner/Property Manager/Client will be an Occupier under the *Act*

# The Contract and Scope of Work

- The Owner/Property Manager/Client can assign under a Contract some of its responsibilities under the *Act*
- The Contractor becomes responsible to meet the obligations he assumed under the Contract

# The Contract and Scope of Work

- The Contractor is not responsible to do work, undertake tasks or assume risk unless he has, *either expressly or by implication*, agreed to do so under the Contract
- It is accordingly *critical* that the Contractor properly describe the Scope of Work in the Contract

# The Contract and Scope of Work

- **The Vague or Overreaching Scope of Work:**
  - Promising the Unknown
  - Promising the Impossible
  - The “open by” Undertaking
  - The problem of the “Second Pass”
  - Assuming Responsibilities Voluntarily

# The Contract and Scope of Work

## Specifications / Schedules / Site Plans

- Site Plans *Must Be Used!!!*
- These Should be Made a Schedule
- Particular Limitations / Issues Can  
and Should be Addressed in the Site Plans

# The Contract and Scope of Work

- Improperly Maintained Premises
- Snow Stockpiling and Removal
- Parked Vehicles
- Severe weather conditions?
- Stop work orders
- Strikes, lock-outs, etc.
- The Use of Acknowledgments



# Discretion to Use Ice Melters

- Contracts should clarify the contractor's obligation to use ice melting products
- Determine *who* makes the decision about the application of ice melting products...
- ... either it is the Contractor or the Client

# Discretion to Use Ice Melters

- If Owner makes the decision, the contractor's *sole responsibility* is to apply product as directed.

# Discretion to Use Ice Melters

- If the Contractor makes the decision, the Owner must pay the Contractor for whatever ice melting products are applied in the Contractor's discretion ...

# Discretion to Use Ice Melters

- If the Contractor makes the decision, the Owner must pay the Contractor for whatever ice melting products are applied in the Contractor's discretion ...
- ... and the Contractor must implement a system to properly exercise that discretion

# Discretion to Use Ice Melters

- Contractor's must take this responsibility seriously
  - A system to monitor weather and conditions
  - A system to deal with freeze and thaw cycles
  - A system to deal with problem areas
  - As system to confirm the system was followed!

# Hold-Harmless & Indemnification

- Indemnification should only occur where the contractor breaches the contract or is negligent in the performance of his work as specified
- Indemnification should also be limited to damages for personal injury or property damage, and to the limits of the Contractor's insurance

# Record Keeping Issues

- A Good Contract details what the Contractor is hired to do for his money
- A Good Contract is *worthless* if the Contractor is unable to show that he *did what he was hired to do*, in the event of a slip and fall!

# Record Keeping Issues

- Contractors MUST Keep Detailed Records of the Work Performed
- Contractors MUST Keep Detailed Records of the Training of Employees and Subcontractors



# Record Keeping Issues

- The More Detailed the Site Records the Better!
  - Time and location of work;
  - Salt distribution;
  - Conditions
  - Obstructions and other Issues

# Record Keeping Issues

- [Sample Winter Maintenance Record Keeping Log - 1.pdf](#)

## SAMPLE SALT TIMESHEET

DATE: \_\_\_\_\_ OPERATOR: \_\_\_\_\_

START TIME: \_\_\_\_\_ FINISH TIME: \_\_\_\_\_ TOTAL: \_\_\_\_\_

AREA COVERED: F.L. = full lot  $\frac{3}{4}$   $\frac{1}{2}$   $\frac{1}{4}$  SA = spot application

RATE: L = Light (2.7kg/sec) M = Medium (3.8kg/sec) H = Heavy (4.8kg/sec)

| ADDRESS     | TIME IN | TIME OUT | SPREAD TIME     | RATE | AMOUNT APPLIED | NOTES |
|-------------|---------|----------|-----------------|------|----------------|-------|
| 55 Main St. | 10:15pm | 10:20pm  | 4 mins<br>5 sec | M    | 931 kg         | F.L.  |
|             |         |          |                 |      |                |       |
|             |         |          |                 |      |                |       |
|             |         |          |                 |      |                |       |
|             |         |          |                 |      |                |       |
|             |         |          |                 |      |                |       |
|             |         |          |                 |      |                |       |
|             |         |          |                 |      |                |       |
|             |         |          |                 |      |                |       |
|             |         |          |                 |      |                |       |
|             |         |          |                 |      |                |       |
|             |         |          |                 |      |                |       |

| SALT LOAD | TAKEN FROM | AMOUNT (tons) | TIME |
|-----------|------------|---------------|------|
| 1         |            |               |      |
| 2         |            |               |      |
| 3         |            |               |      |
| 4         |            |               |      |
| 5         |            |               |      |
| TOTAL     |            |               |      |

# Record Keeping Issues

- Sample Winter Maintenance Record Keeping Log - 2.pdf

NAME: Ralph DATE: \_\_\_\_\_ TRUCK#: \_\_\_\_\_

START TIME: \_\_\_\_\_ END TIME: \_\_\_\_\_ TOTAL: \_\_\_\_\_

OTHER EMPLOYEES:

NOTES:

WEATHER:

TEMPERATURE: \_\_\_\_\_

ICE: \_\_\_\_\_ SNOW: \_\_\_\_\_ ACCUMULATION: \_\_\_\_\_

ROAD CONDITIONS: \_\_\_\_\_

| SITE                | TIME - START | TIME - FINISH | Salt Application<br>Area Covered |     |     |     | Roads /Parking Lot<br>Amount of Material |        |      | De-Icing Walkways<br>Amount of Material |                      |                      | Snow Removal |        |        |
|---------------------|--------------|---------------|----------------------------------|-----|-----|-----|--|--------|------|---|----------------------|----------------------|--------------|--------|--------|
|                     |              |               | FULL                             | 3/4 | 1/2 | 1/4 | Low                                      | Medium | High | Salt                                    | Ice Melter Off Truck | Ice Melter From Site | PLOW         | SHOVEL |        |
|                     |              |               | FULL                             | 3/4 | 1/2 | 1/4 |  |        |      |   |                      |                      |              | PLOW   | SHOVEL |
| 145 George Street   |              |               | FULL                             | 3/4 | 1/2 | 1/4 |  |        |      |   |                      |                      |              | PLOW   | SHOVEL |
| 162 George Street   |              |               | FULL                             | 3/4 | 1/2 | 1/4 |  |        |      |   |                      |                      |              | PLOW   | SHOVEL |
| 180 George Street   |              |               | FULL                             | 3/4 | 1/2 | 1/4 |  |        |      |   |                      |                      |              | PLOW   | SHOVEL |
| 132 Richmond Street |              |               | FULL                             | 3/4 | 1/2 | 1/4 |  |        |      |   |                      |                      |              | PLOW   | SHOVEL |
| 140 Richmond Street |              |               | FULL                             | 3/4 | 1/2 | 1/4 |  |        |      |   |                      |                      |              | PLOW   | SHOVEL |
| 10 Fredrick Street  |              |               | FULL                             | 3/4 | 1/2 | 1/4 |  |        |      |   |                      |                      |              | PLOW   | SHOVEL |
| 20 Fredrick Steet   |              |               | FULL                             | 3/4 | 1/2 | 1/4 |  |        |      |   |                      |                      |              | PLOW   | SHOVEL |
|                     |              |               | FULL                             | 3/4 | 1/2 | 1/4 |  |        |      |   |                      |                      |              | PLOW   | SHOVEL |
|                     |              |               | FULL                             | 3/4 | 1/2 | 1/4 |  |        |      |   |                      |                      |              | PLOW   | SHOVEL |

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