



2020 CLM Workers' Compensation, Retail, Restaurant & Hospitality Conference
May 20 to 21, 2020

**Trends in Snow and Ice Slip and Fall Litigation: Industry Standards, Certifications,
Legislation and Changing Contract Terms**

I. Overview of Industry Standards

A. What are the standards?

Created by Accredited Snow Contractors Association (ASCA), the full title of the standards are System Requirements for Snow and Ice Management Services: ANSI/ASCA A1000-2014.

The Industry Standards for the snow and ice management industry were created to provide companies with procedures to reduce risk. These standards identify proper documentation and procedures in defense of a potential slip-and-fall lawsuit.

The Industry Standards for the snow and ice management industry cover many topics, including:

- Scope and Purpose
- Education and Training
- Preseason site inspection reports
- In-event documentation
- Post-event standards
- Environmental standards
- Weather service standards

B. How do the standards impact claims?

Ensuring that a contractor is complying with the industry standards means they are documenting every stage of the work, from pre-season site inspections, in-event service, and post-event monitoring and communications.

These standards can be used as both a sword and a shield. The panel will explore how this impacts defense of claims, and more specifically how it can be change defense of a claim when Defendants must show what was done at 3 AM in Mid-February three (3) years earlier.

II. Snow and Ice Management Industry Certifications

A. ASCA-C and SIMA Certifications

The ASCA provides courses and certifications to confirm that snow and ice management companies are correctly document their work, improve company standards, and reduce the company's risk. Our ASCA-C certification positions your company as reliable, professional, and trustworthy; protecting both you, and by extension, your clients

The Snow and Ice Management Association (SIMA) provides a Certified Snow Professional Designation. This education is focused more on the actual services provided and less on the documentation/risk management.

The panel will discuss how these certifications can give a claim's professional an idea of whether they are detailing with a company that has their ducks in a row or the proverbial "Chuck in a truck".

B. ISO Certification

Accredited Snow Contractors Association (ASCA) created a quality management system specifically for the professional snow and ice management industry. SN 9001 – a system exclusive to professional snow contractors -- works in conjunction with the existing ISO 9001. This program is based on ISO 9001 with additional requirements based on our industry and the Industry Standards.

Contractors earn ISO9001/SN9001 certification through an independent, third-party audit that focuses on processes and procedures that adhere to service quality, as well as the implementation of the Industry Standards for the professional snow and ice management industry. The panel will share their thoughts on how having ISO certified contractors as party can change assessment on liability.

III. Tort Legislation Impacting Snow and Ice Slip and Fall Claims

A. State initiatives: Anti-Indemnity Bills

Snow service-related Anti-indemnity Bills have passed in Illinois, Colorado and Connecticut. Each state has slightly different language, but the commonality is that these bills forbid or make null and void contractual demands that: (1) requires a service provider to indemnify a service receiver for acts not required under the terms of a snow and ice removal contract; or (2) requires a service provider to hold a service receiver harmless for the acts or omissions of the service receiver or its agents or employees.

The group will talk about an impact on ability to transfer risk by way of contract and changing scope of work as a result of same.

B. Federal Level: Lawsuit Abuse Reduction Act (LARA)

H.R. 720 amends Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability by restoring mandatory sanctions for filing frivolous lawsuits, to protect individuals and businesses from unnecessary legal costs. Specifically, the bill:

- (1) restores mandatory sanctions for filing frivolous lawsuits in violation of Rule 11;
- (2) removes Rule 11's "safe harbor" provision that currently allows parties and their attorneys to avoid sanctions for making frivolous claims by withdrawing frivolous claims after a motion for sanctions has been filed; and,
- (3) requires monetary sanctions, including attorneys' fees and compensatory costs, against any party making a frivolous claim.

This bill, introduced by Chuck Grassley of Iowa and Lamar Smith of Texas, has stalled in House of Representatives.

IV. Claim Trends

A. Increasing Use of Industry Specific Experts

The panel will discuss how Snow and Ice Liability Experts, such as John Allin, can provide opinions based on experience in the industry and knowledge of the new standards and certifications. Provides a strong story as compared to an engineer quoting from coefficient of friction testing.

B. Focus on Negligent Hiring and Supervision Claims

Plaintiff's counsel focusing on negligent hiring and supervision claims
Additional efforts seen in proving that property owner and/or initial contractor did not ensure that ultimate service provider had training and capability of servicing site.

The panel will discuss what is needed to defend against such claims. This will include but not limited to Application/Bid documents, Internal efforts to ensure ultimate service provider could handle site(s), assessing contractor's equipment, references, certifications and credentials.

V. Industry Changes Impacting Risk Management Perspective

A. Earlier Assessment Possible

The panel will engage in a discussion about how having clear and concise contract terms, pre-season site documentation, and in-event documentation can allow for earlier claim resolution or denials.