

SNOW+ICE

GUIDE

TAKE *note*

One expert advises how to avoid being found liable in slip-and-fall lawsuits.

BY BETH GERACI

Limit your exposure to liability by putting everything in writing.

JOHAN A. ALLIN, CSP, flipped through his slides at the 14th Annual Snow & Ice Symposium and looked intently at his audience of national snow and ice contractors.

"It's all about the money," he emphasized.

The expert witness and professional consultant in snow and ice litigation was talking about the motivation behind slip-and-fall lawsuits — and how contractors can avoid them.

A snow and ice lawsuit is prompted as much by greed as by sidewalk imperfections, on-site errors and bad judgment, Allin says. He added that if a lawsuit is filed against them, contractors are doomed to lose if they haven't systematically and painstakingly documented their work.

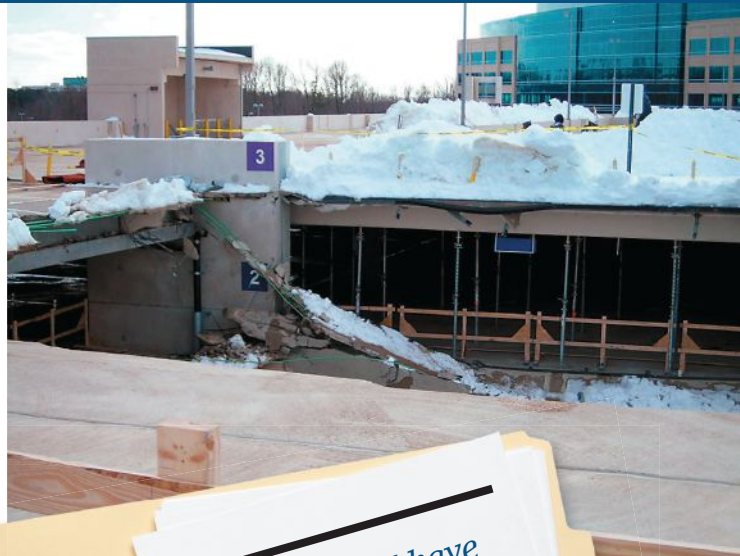
In fact, documenting adequately is the single most important step a snow and ice contractor can take to protect him or herself from liability, Allin says, because it helps in "proving you did what you were contracted to do."

"Keeping records that are customary and consistent is key," he says. "Documenting is not a one-time event. It's an every-time event."

What's more, Allin advises keeping records on file for at least seven years. Document your training programs, he says. Take photographs. And most importantly, have a formal plan and execute it.

The list of what contractors should document is exhaustive: work per-

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formed; length of time the project took to complete; materials used; obstacles; accomplishments; all correspondence; and everything in between.

Recordkeeping doesn't start and end with administrative assistants, Allin cautions. Everyone is responsible for documenting information, he says, "from the person answering the phone and keeping track of incoming calls, to the plowers and salters and sidewalk crews at the site."

But as vulnerable as lax documentation makes contractors to a payout, no mistake is more egregious than failing to follow the language in a contract, Allin says. He reminded the audience they have the ability to change a contract's language, and that they absolutely should if they're uncomfortable with the contract.

"Do the job you were hired to do," he said, nothing more, nothing less.

"Have a process, document it and do it," Allin continued. The problem is, few snow contractors actually have formal procedures in place. And contractors who don't have them better implement them, he says.

"By far and away, most snow contractors have an 'out of sight, out of mind' mentality about 'process,'" he says. "If they think 'I have not been sued ever, so it will not ever happen,' this is foolish, shortsighted and an avoidance of responsibility."

In all his years consulting as an expert witness in snow-and-ice lawsuits, Allin says he has observed one universal flaw in the way snow and ice companies operate: Attention to

A vehicle toppled into a parking garage that collapsed from a bad plow job.

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detail is nearly always lacking.

Such carelessness has the same effect as contaminants rising up the food chain; problems intensify the farther contractors advance in the project.

Moreover, "a lack of attention to detail and proper documentation eventually retards progress and growth to a point where the company begins to fold under its own unorganized weight," Allin says.

At the seminar, Allin displayed photos of snow and ice work gone awry. One was a shot of piles of snow plowed up against a man's front door and across the front walk. The man had no way to leave his house, and when he tried, Allin said, the homeowner slipped and fell.

The other photo featured a collapsed parking garage. A snow plower pushed so much snow up against the

parking garage, a wall collapsed, Allin said, adding a vehicle later drove right into the abyss.

The audience laughed at the images' absurdity. But bad plow jobs are no laughing matter, Allin says. So, when snow and ice contractors find themselves embroiled in litigation, they should take control and "participate in the lawsuit," Allin says. Contractors can't afford to sit idly by and hope their lawyers take care of everything, he says.

"Once you are notified of the suit filing, sending it to the insurance agent and then forgetting about it is tantamount to misconduct," Allin asserts. "You need to supply the lawyer with documentation that can aid in their defense of your position. You need to ask to participate, and then actually do so. The insurance carrier's defense is only as good as your records." LMI