Illinois Enacts Anti-Indemnity Legislation in Snow and Ice Removal Contracts, *by Aleen Tiffany and Stephanie Weiner*

It's official: Illinois Governor Bruce Rauner signed the Snow Removal Service Liability Act ("the Act") into law. Effective August 29, 2016, this legislation holds that certain indemnity agreements between a "service provider," i.e., a snow and ice removal contractor, and a "service receiver," i.e., a customer, are unenforceable in Illinois.

Specifically, the Act provides that it is against public policy and void for a snow and ice removal contract to require *either* a snow and ice removal contractor *or* customer to: (1) indemnify the other for their own negligence; (2) hold the other harmless for their own negligence; or (3) impose a duty to defend the other for their own negligence.

The Act, and similar legislation pending in other states, was spearheaded by the lobbying efforts of the Association of Snow Contractors Association ("ASCA"). ASCA sought multi-state legislation making indemnity, duty to defend and hold-harmless provisions in snow and ice removal contracts void against public policy and unenforceable as a matter of law. ASCA focused its lobbying activities across states within the "Snow Belt," and anti-indemnity legislation is pending in Michigan, New York, New Jersey, and Pennsylvania.

ASCA's motivation behind these efforts (as stated) are multi-fold, but the primary goal appears to be to lower insurance premiums for snow and ice removal contractors. Other benefits to this legislation (as touted by ASCA) include alleviating insurance carrier concerns about contract language; increasing the value of professional snow and ice contractors; and more favorable scope of work provisions (such as decreased trigger depths and more specific criteria for salt application).

While the ASCA was successful in in its efforts in having anti-indemnity legislation passed in Illinois, it is not a complete "win" for the ASCA. Following successful lobbying efforts by the Illinois Association of Defense Trial Counsel ("IDC"), the Act does not apply to insurance policies, and is reciprocal to prevent indemnification reciprocally between service providers and receivers.

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Therefore, while the Act makes contract provisions requiring contractual indemnity for one's own negligence void as against public policy, additional insurance requirements remain enforceable. The import of this insurance policy exclusion means that customers can, and likely will, continue to require that the snow and ice contractor name the customer as an additional insured on the contractor's CGL policy.

The insurance exception to the Act may undermine some, if not all, of the ASCA's stated goals. Enforceable "additional insured" requirements may mean that, in reality, contractor's CGL premiums are not decreased. As such, while the Act provides some insulation to contractors for contractual indemnity claims, it leaves these same contractors out in the cold on their primary goal of reducing insurance premiums as additional insured requirements remain enforceable in Illinois.

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Estoppel, and Duty to Defend, and Moorman, Oh My!, *by Alex Belotserkovsky*

June and July of 2016 were busy months for Illinois appellate courts. Among the cases of particular interest due to developments involving insurance law are Hartwell v. Fireman's Fund Ins. Co. of Ohio, (Ill. App. Ct. 1st Dist.) (June 30, 2016 decision); Hecktman v. Pacific Indem. Co., (Ill. App. Ct. 1st Dist.) (July 20, 2016 decision); and Westfield Ins. Co. v. West Van Buren, L.L.C., (Ill. App. Ct. 1st Dist.) (July 20, 2016 decision).

In Hartwell v. Fireman's Fund Ins. Co. of Ohio, the plaintiff, an employee of a subcontractor, sued general contractor for negligence in supervising the construction site where he was injured. General contractor's insurer paid for the defense due to the duty to defend. General contractor's attorneys for whom the insurer was paying filed an answer to the plaintiff's interrogatories stating that general contractor had a liability insurance policy with the insurer and the maximum liability limit under the policy was $1 million.

The policy included an endorsement requiring the general contractor to obtain certificate of insurance and hold harmless agreements from all subcontractors, and that failure to do so would result in insurer's paying a maximum of $50,000 for all damages and defense costs due to any "bodily injury" "arising out of any covered acts". The insurer send the general contractor a series of letters stating that, due to the general contractor's failure to comply with this endorsement, the limits of insurer's liability have been reduced to $50,000. General contractor received these letters after its attorneys filed responses to interrogatories stating that the maximum liability limit was $1 million, but general contractor's attorneys (who also represented the insurer), never amended this discovery response regarding the maximum liability limit under the policy.

After the case went to trial against the general contractor only (with the insurer paying for the defense), the jury found in favor of the Plaintiff, awarding more than $50,000 in damages and the general contractor went out of business with no assets to satisfy the judgment. The Plaintiff brought a declaratory judgment action against the general contractor and insurer asking for a declaration that the policy covered his damages. Both parties moved for summary judgment and the court granted summary judgment to the insurer. The Appellate Court for the First District reversed finding that the insurer was estopped from asserting endorsement against the Plaintiff because the failure to disclose to the Plaintiff the change in the policy limits prevented the Plaintiff from seeking settlement with the general contractor or changing his trial strategy.

In Hecktman v. Pacific Indem. Co., (Ill. App. Ct. 1st Dist.) , the First District affirmed the dismissal of Plaintiffs' negli-

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