



News From Our Illinois Chapter

The Chapter President's Message from Eric W. Moch...



Happy September! I hope all of you had a safe and enjoyable summer. Here in Illinois we are transitioning into autumn and winter with the help of two wonderful upcoming events. This year we are fortunate to host the NSPII national seminar right here in our backyard, November 14-15, 2016, at the Hilton Chicago/Indian Lakes Resort in Bloomingdale. The topics are always timely and engaging, the networking opportunities are first-rate and the location itself is always a big draw. This year is no exception. **IF YOU HAVE NOT YET REGISTERED, PLEASE TAKE JUST A FEW MOMENTS AND DO SO NOW.** Additionally, if you see an opportunity, encourage another colleague or two to do so as well. We have plenty of spots still available. The cost for this excellent seminar pales in comparison to the professional benefits it provides, which includes continuing education credits. We are also still soliciting sponsors for this great event. If you are interested in a high visibility sponsorship opportunity, please contact me.

On Thursday morning, September 29th, we will be presenting our quarterly training session for the Illinois chapter. We are excited to host Arlington Heights Police Officer Brian Clarke, who will speak about the use of cell phone and cell phone tower data in police investigations. This topic is of obvious value to insurance investigators as well. Come join us at 8:30 a.m. at JC Restoration, 3200 Squibb Avenue in Rolling Meadows.

Finally, we have three informative articles for your consideration below. Three of my colleagues here at HeplerBroom jumped at the chance to discuss some recent legal developments that you should be aware of. If you have any questions about these developments, please feel free to contact the authors directly, or simply call me. I am always available at (312) 205-7712 or . Thank you very much.

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 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.

(Continued on page 12)

Illinois Enacts Anti-Indemnity Legislation (cont'd.)

(Continued from page 11)

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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(This article was reprinted with permission of the authors, Aleen Tiffany and Stephanie Weiner.)