



Considerations for Limiting Contract Liability

In our September 1, 2024 WSA Update, we provided info from a discussion entitled “[Sweeping Industry Faces Rising Tide of Litigation](#),” and promised to expand upon what steps might be taken to offset the trend.

Power sweeping contractors have been facing a significant increase in lawsuits, many of which are unrelated to the actual services provided. To reduce the occurrence of these negative impacts, companies and individuals in the industry should consider these proactive measures:

Strengthen Contract Language

One of the most crucial steps is to improve contract language and terms. Companies should:

- Carefully review and modify contract terms, particularly those related to additional insured status and indemnification clauses
- Implement stronger contract language and addendums to limit liability
- Be willing to walk away from contracts with unreasonable terms

Enhance Documentation Practices

Improving documentation can help protect companies from unwarranted legal action. This includes:

- Conducting detailed site inspections before taking on new accounts
- Implementing thorough hazard reporting systems
- Maintaining comprehensive records of all work performed and conditions observed

Educate Customers

Companies should take the time to educate their customers about:

- The reasons behind new contractual measures
- The importance of fair and reasonable contract terms
- The potential consequences of excessive litigation on service quality and costs



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Collaborate with Industry and Governmental Associations

Working together as an industry can help address these challenges. This involves:

- Collaborating with industry associations to establish standards
- Pushing for legislative changes to protect sweeping companies from frivolous lawsuits
- Sharing best practices and experiences with other industry professionals

Improve Risk Management

Implementing better risk management strategies can help reduce liability:

- Develop and maintain quality control processes
- Conduct regular training for employees on safety procedures and hazard identification
- Stay up-to-date with industry standards and regulations

Focus on Local and Regional Relationships

Building stronger relationships with local and regional customers may provide some protection:

- These customers may be more receptive to reasonable contract terms compared to national chains or third-party management companies
- Cultivate long-term partnerships based on trust and mutual understanding

Insurance Considerations

Companies should also:

- Review and potentially adjust their insurance coverage
- Work closely with insurance providers to understand and mitigate risks
- Consider higher deductibles or self-insurance options to manage costs



To reduce liability and protect themselves from unwarranted lawsuits, companies in the sweeping industry can improve their contract language in several ways, including the following:

Strengthen Indemnification Clauses

- Clearly define the scope of indemnification, limiting it to damages directly caused by the sweeping company's negligence or misconduct
- Exclude indemnification for incidents unrelated to the sweeping services provided

Limit Additional Insured Status

- Specify that additional insured status applies only to liabilities arising directly from the sweeping company's work
- Include language that limits the duration of additional insured status to the period when work is being performed

Define Scope of Work

- Clearly outline the specific services to be provided
- Include language that explicitly states what is not included in the scope of work

Implement Liability Caps

- Include clauses that set a maximum limit on the company's liability
- Consider using a multiple of the contract value as the liability cap

Add Waiver of Consequential Damages

- Include language that waives the right to claim consequential or indirect damages

Specify Dispute Resolution Mechanisms

- Include clauses for alternative dispute resolution methods, such as mediation or arbitration, before resorting to litigation

Include Force Majeure Clauses

- Define circumstances beyond the company's control that would excuse performance



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Add Notice and Opportunity to Cure Provisions

- Require customers to provide prompt notice of any issues and allow the sweeping company an opportunity to address them before legal action can be taken

Incorporate Site Condition Acknowledgments

- Include language acknowledging the pre-existing condition of the site
- Specify that the sweeping company is not responsible for pre-existing hazards or damages

Limit Duration of Liability

- Include clauses that limit the time period during which claims can be brought against the company

By implementing these improvements in contract language, sweeping companies can better protect themselves from unwarranted legal action and reduce their liability exposure. It's crucial to work with legal professionals to ensure that these clauses are properly drafted and enforceable in the relevant jurisdictions.