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Court decision marks end of the natural accumulation defense

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Massachusetts' somewhat idiosyncratic snow and ice slip-and-fall liability defense has melted. The Massachusetts Supreme Judicial Court (SJC) has decided that it is time to discard the long-standing distinction between "natural" and "unnatural" accumulations of snow and ice, on which the slip-and-fall defense has been based.

Property owners in Massachusetts, as in other jurisdictions, have a duty of "reasonable care," requiring them to keep common areas free of defective conditions. But unlike their counterparts in most other states, Massachusetts courts have recognized a distinction between "natural" and "unnatural" accumulations of snow, the former resulting from the falling and freezing of snow, the latter from something an owner did in response. Under this theory, a plaintiff who suffered a slip-and-fall injury might not have a claim against the property owner, if a court determined that the accumulation was "natural" and thus represented an "obvious" risk that the plaintiff should have recognized and avoided.

The "natural accumulation" defense is an extension of the open and obvious condition defense, which holds that an individual owes a duty of care to avoid open and obvious conditions. A landowner is not responsible for injuries or damages caused by dangers on the premises that would be obvious to persons of average intelligence. Community associations and other Bay State property owners have successfully used both the open and obvious defense and the natural accumulation defense to win summary judgments, dismissing slip-and-fall suits in their earliest stages on a court's finding that the snow accumulation was "natural," never getting to the question of whether the owner owed a duty of care to the injured party. The SJC's recent decision in Papadopoulos vs. Target Corporation has dismantled that legal framework.

"The reliance on a distinction between natural and unnatural accumulation has sown confusion and conflict in our case law," the court ruled. "We now discard the distinction between natural and unnatural accumulations of snow and ice, which had constituted an exception to the general rule of premises liability that a property owner owes a duty to all lawful visitors to use reasonable care to maintain its property in a reasonably safe condition in view of all the circumstances," the SJC decision states.

The plaintiff in this case (Papadopoulos) was injured when he slipped on a mound of snow in the Target parking lot. A lower court granted summary judgment to the store, finding that the snow accumulation was "natural." In his appeal, Papadopoulos argued that the natural accumulation theory was outmoded, and that Massachusetts should follow other states (including Connecticut, Rhode Island and New Hampshire) in rejecting it. Among other problems, Papadopoulos' SJC brief argued, the distinction between natural and unnatural snow accumulations creates a perverse incentive for property owners to refrain from clearing snow and ice, because creating an "unnatural"

accumulation, by moving snow from one spot to another, increases their liability risks.

A "Sensible" Rule

Supporting the "natural accumulation" defense, Target argued that this legal theory has proven to be "sensible and equitable," and that eliminating it would impose an "unreasonable" maintenance burden on property owners, putting them at a disadvantage in defending against slip and fall claims. "One of the sensible reasons for this rule is that in our climate, a number of conditions might exist, which, within a very short time, could cause the formation of ice without fault and without reasonable opportunity to remove it or warn against it or even to ascertain its presence," the Target brief contended. The SJC sided firmly with Papadopoulos, concluding that the natural accumulation defense should be scrubbed. "We now will apply to hazards arising from snow and ice the same obligation that a property owner owes to lawful visitors as to all other hazards," the court concluded: "A duty to 'act as a reasonable person under all of the circumstances including the likelihood of injury to others, the probable seriousness of such injuries, and the burden of reducing or avoiding the risk.'"

Focus on "Reasonable" Care

As a result of the SJC decision, the accumulation of snow and ice will now create the same potential liability as cracked sidewalks, broken handrails and poorly-lit parking lots, and require the same standards of "reasonable care." However, community associations and other property owners will lose a valuable legal tool that has insulated them, to some extent, from snow and ice slip-and-fall liability claims. They will no longer be able to assume, as they have in the past, that they have a good chance of winning an early and easy dismissal of many of these claims, if not all of them. It is also likely that associations will face more slip-and-fall suits going forward. With summary judgment for the association no longer the most likely outcome, plaintiffs' attorneys may now pursue actions they might have discouraged in the past, knowing that liability determinations will be based not on whether snow accumulations were "natural," but on whether snow and ice removal efforts were "reasonable." Either more cases will go to trial or insurers will settle more cases to avoid litigation. Both options will result in higher legal costs for insurance companies, which they will almost certainly pass on, in the form of higher insurance premiums.

The Court's assertion that its decision will not increase the burden on property owners is incorrect. The decision clearly makes owners responsible for natural accumulations of snow and ice - a burden that did not previously exist. With the natural accumulation defense in place, if snow fell overnight, owners did not have to be concerned about how quickly they began the clearing process. This decision sets a new standard. Slip-and-fall liability determinations in the future will be based not on whether the accumulation of snow or ice was natural or unnatural, but on whether the owner's removal efforts were reasonable.

At the end of the day, the loss of Massachusetts' slip-and-fall defense won't require most associations to change their snow removal policies, but it should make them look more closely at the quality of their snow removal efforts and make boards consider whether efforts they have found acceptable in the past will also be deemed "reasonable" by the courts, which will be considering that question in the future.

Andrew Brooslin, Esq. is an associate with the law firm of Marcus, Errico, Emmer & Brooks, PC, Braintree, Mass. He is an active CAI New England chapter member and serves on chapter committees.

Upcoming Chapter Events

September 11
Association Finances-Collecting, Managing & Protecting Funds
Mansfield, MA
September 16-17
M-310 Management Administration
Natick, MA
September 22
Tips, Tricks, Tools & Techniques - Meeting Association Demands in a Tough Economy
Natick, MA
September 25
4th Annual Maine Condo Forum
Portland, ME
Meet the Members
Tony Chiarelli
RMX Northeast, Inc.
Milford, MA
Tony Chiarelli is president of RMX Northeast, Inc. a building envelope consulting and engineering company. He has served 2 previous terms on the CAI-NE board and having been instrumental in the development of the initial CAI-NE Chapter Strategic Plan in 2005, he chaired a 2009 Strategic Plan Update Task Force making recommendations to the board to ensure relevant and timely chapter goals and objectives over the next several years. He will serve his second term as chapter president in 2010.
Tony Chiarelli
RMX Northeast, Inc.
213 West Street
Milford, MA 01757
Phone: 508-482-9415 Fax: 508-902-0244
tony@rmxne.com www.rmxne.com
Jared McNabb, CMCA, PCAM is the Director of Acquisition with Crowninshield Management Corporation. He is the 2009 president of the New England Chapter of the Community Associations Institute, he is also chair of the membership committee and was recently recognized nationally as the recipient of the Excellence in Membership Award in 2008. He holds a Bachelor of Science in Business Administration from Babson College.
Jared McNabb, CMCA, PCAM
Crowninshield Management Corp., AMOÂ®
18 Crowninshield Street
Peabody, MA 01960
Phone: 978-532-4800 FAX 978-532-6023
jmcnabb@crowninshield.com