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What does new ruling for natural accumulation mean for property owners/managers?

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The new Supreme Judicial Court (SJC) ruling eliminates Massachusetts' longstanding natural accumulation of snow defense in premises liability cases, but it does not change the fact that property owners and managers must do what is reasonably prudent as respects removal of snow and ice.

The incident responsible for the change in the SJC ruling took place in December of 2002 when the plaintiff, Papadopoulos, went to the Liberty Tree Mall in Danvers to shop at the Target store. It was below freezing, but it was not snowing or raining. The lot had been plowed, but there were still areas of snow and ice remaining on the ground. The plaintiff parked his car in a handicapped spot next to a raised median strip that separated the parking area from the traffic lane running between the lot and the store.

When the plaintiff returned to his car after leaving the store, he slipped on a patch of ice covered with dirt and sand. The patch was either the result of fallen snow from the median or melted snow that ran off the pile. The plaintiff fractured his hip and required surgery.

The SJC decision held that property owners can now be liable for failing to keep their land free of dangerous snow and ice, regardless of whether the conditions resulted from natural or unnatural causes. Formerly, a property owner was only liable for slip and falls caused by unnatural accumulations of snow and ice (such as those caused by plowed snow). The trial court judge granted summary judgment against Target on the grounds the ice patch was a natural accumulation of snow and ice.

Although the SJC's decision in this case does away with the long-standing distinction between natural and unnatural accumulation of snow and ice, the duty owed by property owners and managers remains the same.

The fact is, the duty owed is still reasonable care, regardless of the nature of the hazard; whether a natural or unnatural accumulation of snow or ice. Property owners and property managers must continue to take the necessary steps to maintain their premises and eliminate potential hazards caused by snow and ice.

Developing procedural guidelines, documenting all efforts of snow and ice removal, as well as transferring the risk to subcontractors are just a few suggested best practices for dealing with the defense of these claims. Now is the perfect time of year to make sure these initiatives are underway. Lisa Hartman, ARM is the director of claims and loss management at Albert Risk Management Consultants, Needham, Mass.

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