



Snow and Ice

By: Michael J. Rossi, Esq.

As property owners make the usual preparations for the season's first winter storm, they may want to take note of a change in the legal landscape. A recent decision by the highest court in Massachusetts has changed property owners' responsibility to remove snow and ice on their property.

For more than a century, the so-called "natural accumulation rule" shielded property owners in the Commonwealth from legal liability for injuries caused by untouched snow and ice. Only once the snow and ice became "unnatural" – altered by human actions such as footprints, snowplow tracks, or leaking gutters – could an injured person successfully sue a property owner for failing to treat or remove the condition. As one might expect, this rule (unique to Massachusetts) led to thousands of cases in which litigants argued about the condition of the snow (was it white or discolored?) and even retained "weather experts" to present evidence as to whether snow and ice was a natural or unnatural accumulation. The line was often blurred.

This past July, the Massachusetts Supreme Judicial Court abolished the "natural accumulation rule" and decided that property owners can now be held responsible to injured persons for failing to remove dangerous snow and ice, regardless of whether the condition accumulated naturally or unnaturally. As a result, property owners now have the same duty to remove snow and ice as they do to remove all other hazards, such as cracks in a walkway or a missing front step. That duty is to exercise "reasonable care" in the maintenance of their property.

What is reasonable care? The Court provided some guidance: "The snow removal reasonably expected of a property owner will depend on the amount of foot traffic to be anticipated on the property, the magnitude of the risk reasonably feared, and the burden and expense of snow and ice removal," according to the Court's decision. "Therefore, while an owner of a single-family home, an apartment house owner, a store owner, and a nursing home operator each owe lawful visitors to their property a duty of reasonable care, what constitutes reasonable snow removal may vary among them." Ultimately, Massachusetts juries will be left to determine whether the particular actions or inactions of a property owner were reasonable under the circumstances.

Many lawyers predict that the new law will lead to an increase of "slip and fall" lawsuits because property owners can no longer defend such cases on the grounds

that snow was untouched. In addition to taking the shovels down from the attic and stocking up on ice melt this winter, property owners might want to consider the following:

- Be sure that your insurance coverage is sufficient and up-to-date. Liability coverage can protect you in two ways. First, it covers the costs of your legal defense if you are sued. Second, it will pay any court judgments against you (or settlement) up to the policy limit.
- Review your existing snow removal contracts. Contractors should be adequately insured, responsive to your requests for snow removal and vigilant about keeping records of the dates and times winter maintenance was performed. These records could be a valuable weapon in proving to a jury that the maintenance was reasonable.
- Prepare to do battle with the fallen snow, early and often. When snow falls, clear it. When ice forms, treat it. While it may not be reasonable to expect a homeowner to awake in the middle of the night to clear freshly fallen snow before the early morning commute, the same may not be true for a landlord or commercial property owner. Under the new standard, simply leaving the snow in its natural condition is no longer an option to avoid liability.

Regardless of one's opinion of the new law, its impact is clear: litigants will focus less on the condition of the snow and more on the conduct of the property owner. To guard against lawsuits, property owners must be prepared to convince a jury of their peers that they have acted reasonably. Even for hardy New Englanders, this is not a burden to be taken lightly.

The information presented in this article reflects the personal views of the author and should neither be construed as formal legal advice nor the creation of an attorney-client relationship.

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