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## Hills and Ridges

[Pro-defense trial court decisions tempered by pro-plaintiff appellate decisions](#)

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With the fast-approaching winter, thoughts turn to the quiet beauty of the first snowfall, the hopeful anticipation of a white holiday season, and the joyful sound of children playing in the snow with abandon. Only in the trained lawyer's mind could such pleasant thoughts be abruptly dashed by a contemplation of the current status of the hills and ridges doctrine.

A review of the published opinions in 2006 concerning the doctrine confirms the courts appear to still take pains to allow these types of cases to proceed to a jury. However, the recent cases show that where it is beyond question that the doctrine is applicable and the plaintiff's case fails to satisfy its elements, the trial courts remain willing to dismiss the matter on summary judgment or by way of a nonsuit at trial.

Generally speaking, Pennsylvania law wisely does not require a landowner to keep walkways free of ice and snow at all times as such would require the impossible given the climatic conditions in Pennsylvania. *Rinaldi v. Levine*, 176 A.2d 623 (Pa. 1962). Rather, the courts have noted that "[s]now and ice upon a pavement create merely a transient danger, and the only duty upon the property owner or tenant is to act within a reasonable time after notice to remove it when it is in a dangerous condition." *Harmotta v. Bender*, 601 A.2d 837, 841 (Pa.Super. 1992).

Under the hills and ridges doctrine, there is no strict liability created by a generally slippery condition of a sidewalk. To the contrary, as the *Rinaldi* court explained, there must be naturally created dangerous conditions in the form of hills, ridges, or elevations in the snow or ice which were allowed to remain for an unreasonable length of time after a snowfall.

The doctrine requires a plaintiff to prove all of the following elements – spelled out in *Gilligan v. Villanova University*, 584 A.2d 1005 (Pa. Super. 1991) – in order to prevail:

that snow and ice had accumulated on the sidewalks in such ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians traveling thereon;

that the property owner had notice, either actual or constructive, of the existence of such condition;

that it was the dangerous accumulation of snow and ice which caused the plaintiff to fall.

The doctrine recognizes certain exceptions to its application. First, proof of hills and ridges is not required when the hazard is not the result of a general slippery condition prevailing in the community, but rather, a localized patch of ice. *Tonik v. Apex Garages, Inc.*, 275 A.2d 296 (Pa. 1971). Nor is proof of hills and ridges necessary where the icy condition was caused by the defendant's neglect such as where a gutter or water pipe leaks water onto a walkway which freezes. *Ward v. Pittsburgh*, 44 A.2d 553 (Pa. 1945).

### Pro-Defense Decisions

*In the few reported cases handed down over the past year, it appears that the pendulum has been shifting somewhat towards the defendant's favor at least at the trial court level. In Coudriet v. Inserra, PICS Case No. 05-2126 (C.P. Centre, December, 2005), the court granted summary judgment to the homeowner defendants who were sued by a Federal Express delivery man who slipped and fell on the property.*

*The court in Coudriet found that the plaintiff's admission that he had slipped and fallen on an area of smooth ice covered by a recent snowfall defeated any claim under the hills and ridges doctrine as there were no areas of accumulated ice or snow that caused the plaintiff to fall. The court was also influenced by evidence that the defendants had made efforts to shovel or remove the snow prior to the event and, therefore, had fulfilled their duty to keep the walkway as clear as possible of snow and ice under the circumstances.*

*Another trial court also issued an opinion this year in favor of the defendant in the case of Besselman v. Joseph's Supermarket, Inc. PICS Case No. 06-0132 (C.P. Lawrence, Jan. 10, 2006). In that case, the trial court ruled that the defendants were entitled to summary judgment where the plaintiff failed to adduce any evidence that the snow and ice had accumulated into hills and ridges on the parking lot where she fell.*

### **Pro-Plaintiff Decisions**

*A review of the published opinions of the appellate courts in 2006 reveals decisions more favorable to plaintiffs. The Superior Court addressed the hills and ridges doctrine this year in the case of Harvey v. Rouse Chamberlain, Ltd., 901 A.2d 523 (Pa. Super. 2006). In that case, the trial court had entered a nonsuit in favor of the defense under the hills and ridges doctrine in a case where the plaintiff was caused to fall by black ice.*

*In reversing the nonsuit, the Superior Court noted that the plaintiff had fallen in*

*an area that had been plowed and salted by a snow removal contractor. Accordingly, the court found that, since the black ice was not the result of an entirely natural accumulation and since the condition of the land had been influenced by human intervention, the hills and ridges doctrine should not have been applied. To the contrary, the case should have been allowed to proceed to the jury on the question of whether the contractor was negligent by insufficiently salting the area.*

*In another more recent appellate court decision, the Commonwealth Court likewise found a defendant liable under the hills and ridges doctrine. Reid v. City of Philadelphia, 904 A.2d 54 (Pa. Commw. 2006). In Reid, the plaintiff slipped and fell on snow and ice that had accumulated on a sidewalk adjoining city property. In its defense, the City argued that the plaintiff had failed to prove that the ice or snow had accumulated to hills and ridges so as to attach liability. The appellate court disagreed and accepted the non-jury trial court's decision that the plaintiff's evidence was sufficient to prove the existence of dangerous elevations of snow and ice.*

*The hills and ridges evidence in Reid included the Plaintiff's testimony and the testimony of the paramedic who attended to the plaintiff after the incident. A city custodial employee also admitted that the sidewalk was icy and snowy when he left his shift before the incident. The trial court had also been influenced by photographs of the scene which, as confirmed by the appellate court's review, depicted elevations in the surface of the ice and snow.*

### **Practice Pointers**

*Thus, the recent cases confirm that the hills and ridges defense can be defeated in cases where it is shown that the doctrine is inapplicable either due to the fact that there was no recent wintry weather or that the ice was not naturally created but formed as a result of some negligence or human intervention. In cases where the doctrine is applicable, the plaintiff should, whenever possible, secure photographs of the area where he or she fell to document the elevations in the ice and snow. An investigation should also be made into whether any witnesses or emergency personnel who responded to the incident can likewise confirm the existence of hills and ridges. Obviously, the plaintiff should also be prepared to properly, but truthfully, testify in detail as to whether there were any elevations in the snow and ice that caused him or her to fall.*

*Conversely, the recent cases also confirm that the hills and ridges doctrine remains a viable and routine defense for slip and fall cases involving ice or snow. These cases reaffirm that the doctrine can succeed as a defense particularly where the snowfall was close in time to the incident and/or proper efforts were made by the landowner to clear the area of ice and snow. •*

