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Ice, Slip & Fall Accidents, and the Duty of Care in New Mexico

With winter storms approaching, so too are the inevitable slip and fall accidents on ice that come with them. These accidents will occur in all manner of situations. They will occur around the home on driveways and sidewalks. They also commonly occur at public facilities such as malls, strip centers, gas stations and every other variety of public space.

The injuries from a slip and fall on ice range from the mundane to the catastrophic. Falls on ice often come with knee, wrist and back injuries. Far too often, they even result in serious traumatic brain injury.

Often the first question the injured person or the injured person's family will have is whether the property owner/manager can be held liable for the injuries. The answer is dependent upon the circumstances of the case. The personal injury cases dealing with ice and snow have been long established in the New Mexico Supreme Court cases of *Proctor v. Waxler* (1972) and *Crenshaw v. Firestone* (1963).

Essentially, the court has ruled that snow and ice are such obvious hazards that pedestrians have a duty to protect themselves from harm. In fact, the court has ruled that the property owner/manager has no greater duty to protect the visitor than the visitor has him or herself.

The courts framed the issue in terms of assumption of risks. In other words, the pedestrian should know of the risk of ice and snow and by venturing out into the ice and snow assumes the risks of falls. The court in *Crenshaw* remarkably ruled that this is the case even if the owner/manager has knowledge of the risks and an opportunity to correct the dangerous conditions.

Both cases involved obvious risks of snow and ice. The accidents occurred soon after a winter storms. Neither addressed the situation of black ice which is clearly the most hazardous condition following a storm.

Under the law, a pedestrian indeed has an equal duty to protect him or herself from known dangers. However, black ice is typically not a known danger to a pedestrian. The essence of black ice is that it is neither apparent nor obvious to the eye.

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In cases of black ice, the owner/manager will have a much higher duty. In fact, it is the owner/manager alone who will have knowledge of the propensity for black ice on the property. It is also the owner/manager that is in the best position to both detect and correct the dangerous condition.

Of course, if a pedestrian is aware of the black ice and ventures on to it despite the risks, then again there will be significant issues regarding liability and comparative negligence. In fact, the claim could be barred completely when there is a high level of negligence on the part of the pedestrian. More likely, the fault and liability would be apportioned according to the comparative negligence of each. With catastrophic injuries, even a high level of comparative negligence will not completely bar recovery.

There is a widely held misconception that there is strict liability for injuries suffered in a slip and fall accident, particularly when ice is involved. This is not the case. These cases rest on the negligence and comparative negligence of the parties. Both have a duty. And that duty will vary substantially from one case to the next.

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