

BACE LAW REPORT

LEGAL NEWSLETTER

VOLUME 2, NO. 4 - APRIL 2008

Ice, Snow, and Slip and Fall Accidents

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The National Center for Injury Prevention and Control estimates that 8 million people were injured in falls in the United States in 2004. Injuries can range from serious bruising, to broken bones, and even as severe as head trauma and death. It should come as no surprise to most people, that if someone is invited onto your property, and they hurt themselves as a result of a dangerous condition, you may be subject to civil liability. The generic term is “slip and fall,” and it applies to any injuries that occur as a result of a property owner’s negligence, or a dangerous or hidden condition on the owner’s property.

But, what if typical New England wintry weather has caused an accumulation of snow on your front steps? Can liability attach if a neighbor breaks a bone attempting to enter your home? The following is a brief explanation of the general rules regarding when liability can attach to a landowner as a result of ice and snow accumulation.

An owner or possessor of land owes a

common-law duty of reasonable care to all persons lawfully on the premises. *O’Sullivan v. Shaw*, 431 Mass. 201, 204 (2000). This places a burden on a landowner to take reasonable steps to maintain her property in a safe condition. *Id.* With respect to winter weather, as a matter of law, a landowner’s duty of reasonable care “is not violated by a failure to remove a natural accumulation of snow or ice.” *Sullivan v. Brookline*, 416 Mass. 825, 827 (1994), citing *Aylward v. McCloskey*, 412 Mass. 77, 80 (1992). Therefore, in general, there is no legal duty to remove the natural accumulation of snow or ice so that your neighbors will have a clear path to your door.

In cases where a person slips and falls on snow or ice, the state of the slippery condition or defect is the critical focus. Massachusetts courts consistently hold that “the law does not regard the natural accumulation of snow and ice as an actionable property defect, if it regards such weather conditions as a defect at all.” *Aylward*, 412 Mass. at 79. Therefore, a landowner is not liable to a slip and fall victim if she fell after a recent storm and no other factor other than the storm itself contributed to the slippery condition of the landowner’s property.

Liability may attach, however, “where some act or failure to act has changed the condition of naturally accumulated snow and ice, and the elements alone or in connection with the land become a hazard to lawful visitors.” Id. at 80 n.3. If the snow or ice becomes an unnatural accumulation, the landowner will have a duty to warn or protect against it. See Id. at 80-81, quoting *Collins v. Collins*, 301 Mass. 151, 152 (1938). As one example, this may occur when a water drainage pipe on a landowner's property causes ice to form and that accumulation of ice is not remedied. In this case, a slip and fall victim will potentially have suffered an injury from an actionable property defect. Yet, a landowner is not a guarantor for complete safety and the duty to warn is eliminated, and therefore, so is recovery, once a slip and fall victim takes notice of the property defect before suffering an injury. This is referred to as the “open and obvious danger” rule.

Therefore, generally speaking, liability will not attach if the victim was aware of the obvious and open dangerous condition.

“[A] landowner's duty to protect lawful visitors against dangerous conditions on his property does not extend to dangers that would be [open and] obvious to persons of average intelligence.” *O'Sullivan v. Shaw*, 431 Mass. 201, 204 (2000). The open and obvious danger rule obviates any duty to warn of the dangerous

condition. Id. At 204, 207. The test for determining the openness and obviousness of a hazard is objective. Id. At 206. Tying the foregoing discussion together, a landowner is not liable for the accumulation of snow or ice that is inevitably present after a storm. If a person slips and falls after a storm and nothing contributed to the injury, there will be no legally recognized cause of action.

Obviously, the rules vary depending on the unique circumstances of your claim. The above is nothing more than a general discussion of some of the principles associated with ice and snow. If someone has been injured on your property, or, if you have been the victim of a fall as a result of a dangerous condition on someone else's property - contact your attorney immediately. Only an attorney, licensed in the Commonwealth can determine how these rules apply to your specific matter.



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