



Municipal Client Advisory
January 2011
Liability for Snow and Ice Accumulation

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A recent decision of the Massachusetts Supreme Judicial Court regarding liability for accumulation of snow and ice on property has raised many questions in Massachusetts municipalities.

Papadopoulos v. Target Corporation, 457 Mass. 368 (2010) involved injuries from a slip and fall on a patch of ice in the Liberty Tree Mall in Danvers in front of a Target department store. The Superior Court granted summary judgment for the Defendants (Target Corporation doing business as the Target Stores and its snow removal contractor), applying the then applicable rule that a property owner does not violate the duty of reasonable care by failing to remove natural accumulations of snow and ice. The Supreme Judicial Court vacated the allowance of summary judgment in favor of the Defendants and remanded the case to the Superior Court for reconsideration of the Defendants' motion for summary judgment in light of this opinion. The Supreme Judicial Court abolished the distinction between natural and unnatural accumulations of snow and ice. The Supreme Judicial Court applied to hazards arising from snow and ice the same obligation that a property owner owes to lawful visitors as to all other hazards: "a duty to act as a reasonable person under all of the circumstances including likelihood of injury to others, the probable seriousness of such injuries, and the burden of reducing or avoiding the risk".

The Court held that "The duty of reasonable care does not make a property owner an insurer of its property; 'nor does it impose unreasonable maintenance burdens'. The snow removal reasonably expected of a property owner will depend upon 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".

The Supreme Judicial Court applied this new rule retroactively, but the Papadopoulos decision will not benefit or revive the action of a Plaintiff whose claim for physical injuries has been concluded by judgment or settlement or by the running of the statute of limitations.

Summary

1. For an injury arising from a fall on snow or ice on private property, the new rule is that a property owner owes to lawful visitors the same obligation with respect to



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hazards arising from snow and ice as applies to all other hazards: a duty to act as a reasonable person under all of the circumstances including the likelihood of injury to others, the probably seriousness of such injuries, and the burden of reducing or avoiding the risk.

2. The new rule applies retroactively, but not to a claim for injuries that has been concluded by judgment or settlement or by the running of the statute of limitations.
3. This decision did not change the existing standard, based upon M.G.L. Chapter 84, Section 17, that whenever ice or snow on a public way or a public sidewalk is the sole proximate cause of the accident, there shall be no liability in the municipality, but where at the time of the accident there is any other defect to which the accident is attributable as a proximate cause, there may be liability in the municipality notwithstanding the fact that the accident may also be attributable in part to ice and snow. This rule also applies to public sidewalks and to park roads.
4. Given that the Supreme Judicial Court has abolished the distinction between natural and unnatural accumulation of snow and ice, that court may decide in the future to apply the rule in the Papadopoulos case to an accident which arises from a fall on snow or ice on municipal property, such as walkways, ramps and stairs, which is not located within the layout of a public way.
5. The Papadopoulos decision did not change the rule that an owner of land which abuts a public way or a sidewalk where the public has an easement of travel is not liable for an accumulation of snow or ice on that public way or sidewalk unless that accumulation of snow or ice was created by the landowner or its servants or agents.
6. The Papadopoulos decision did not address the applicability of the Massachusetts Tort Claims Act to accidents resulting from snow or ice on municipal property. M.G.L. Chapter 84, Section 17 applies to such accidents in public ways or sidewalks. It appears that the Massachusetts Tort Claims Act, including any applicable exceptions, applies to such accidents on municipal property that is not within the layout of a public way or within a public sidewalk.

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Murphy, Hesse, Toomey & Lehane, LLP is a full-service law firm with offices in Quincy, Boston, and Springfield, Massachusetts. The firm represents a wide range of public entities throughout the Northeast. For questions about this alert and other legal issues, interested parties should contact John P. Flynn at 617-479 - 5000, or contact the attorney assigned to your account.

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