

RETAILERS IN MASSACHUSETTS FACE AN AVALANCHE OF CLAIMS

A recent decision by Massachusetts' highest court will dramatically change the way snow and ice cases are litigated in Massachusetts. In *Papadopoulos v. Target Corporation, et al.*, the Massachusetts Supreme Judicial Court abandoned its long-standing "natural accumulation" rule under which property owners had no obligation to remove or even warn of "natural accumulations" of snow and ice. Instead, the SJC held that property owners can now be held liable for failing to keep their land free of dangerous snow and ice, regardless of whether the condition results from natural or unnatural causes.

Plaintiffs' lawyers in Massachusetts are already cheering the decision and retailers should now expect to see an avalanche of claims being filed. This is because the SJC also decided that its new rule should apply retroactively to accidents which have taken place in the past three years. Although many of those claims would not previously have been brought because of the high standard that Massachusetts had traditionally required for demonstrating that the accident occurred on an "unnatural" accumulation, plaintiffs' attorneys will be reviewing those claims anew and bringing them under this more relaxed standard.

Another big change will be that the court's elimination of the old natural accumulation standard will now prevent most defendants from succeeding at summary judgment. Under the old standard, many cases were disposed of on motions for summary judgment because it was undisputed that the hazard was a natural accumulation. Now,

the question of what is reasonable and what is not reasonable is going to be an issue of fact and these claims will have to be settled or will go to trial.

The decision underscores the importance to retailers of having a comprehensive risk-management program, including liability insurance with appropriate limits. Where appropriate, retailers should also examine their leases to ensure that their landlord has responsibility for snow removal and is obligated to indemnify them where a claim results from the landlord's failure to appropriately clear snow and ice. Finally, if retailers employ snow removal services themselves, they should make sure that those contracts not only provide for indemnity but also require the contractor to itself carry liability insurance and to make the retailer an additional insured on any such policy.

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