Recently, the Supreme Judicial Court of Massachusetts issued a decision in Papadopoulos v. Target Corp., 457 Mass. 368 (2010), which significantly impacts the potential premises liability exposure of property owners in Massachusetts. Specifically, the Supreme Judicial Court abolished the long-standing "unnatural accumulation doctrine" in Massachusetts. Papadopoulos concerned a plaintiff who alleged negligence against a property owner, claiming he was injured after slipping on a piece of ice frozen to the pavement of a parking lot at the Liberty Tree Mall in Danvers.

The "unnatural accumulation" doctrine, also known as the "Massachusetts rule", pertained to snow and ice slip-and-fall negligence claims. The doctrine provided that property owners, or others responsible for maintaining property, did not violate the duty of reasonable care by failing to remove natural accumulations of snow and ice. See Sullivan v. Brookline, 416 Mass. 825, 827 (1994). Where the question of whether the doctrine applied was often one of law, defendants in premises liability matters, including the defendant Target at the trial court level before this decision, were often able to obtain dismissal through motions for summary judgment, avoiding liability and minimizing the costs of defending such matters. The doctrine also seemingly acted as an impetus to the filing of questionable or attenuated slip and fall claims in the first place.

The Papadopoulos decision abandons this rule, applying "to all hazards arising from snow and ice the same obligation of reasonable care that a property owner owes to lawful visitors regarding all other hazards." Papadopoulos, 457 Mass. at 369. Simply put, the duty is one to "act as a reasonable person under all of the circumstances including the likelihood of injury to others, the probable seriousness of such injuries, and the burden of reducing or avoiding the risk." Id. at 383, quoting Young v. Garwacki, 380 Mass. 162, 169 (1980) (citations omitted). This recent decision is not surprising; Papadopoulos continues a trend in recent years whereby the Supreme Judicial Court has issued several decisions in the area of premises liability law similarly changing long-standing doctrines that were favorable to property owners in favor of more simplified and/or modernist approaches. See e.g., Sheehan v. Roche Bros. Supermarkets, Inc., 448 Mass. 780, 791-92 (2007).

The full impact of the Papadopoulos decision is not yet clear, but reasonably we can expect an increase in the number of snow and ice slip and fall cases asserted by plaintiffs in the courts, coupled with either higher average settlement values for plaintiffs (and liability insurance premiums) or an increased percentage of these types of cases going to trial.

It is important to note that this decision does not impose any new obligations on landowners or their agents with respect to removal and treatment of snow and ice conditions. Ultimately, the question of whether a property owner or manager might bear liability for injuries claimed by a plaintiff is one of reasonableness under the circumstances. Clients should create or review existing plans for the removal and treatment and snow and ice. The best way to minimize potential liability is by having clearly defined policies and procedures to address these potential hazards that are easy to observe and allow for situational flexibility.

Please contact me should you have any questions or concerns in this regard.