STUART A. CARPEY, ESQUIRE
scarpey@carpeylaw.com
Identification No.: 49490
KREITHEN, BARON & CARPEY, P.C.
100 W. Elm Street, Suite 310
Conshohocken, PA 19428
(610) 834-6030

ATTORNEY FOR PLAINTIFF

NIKITA WILCOX	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
	:	
CITY OF PHILADELPHIA	:	NOVEMBER TERM: 2008
	:	No.: 4129
and	:	
	:	
SOUTHEASTERN PENNSYLVANIA	:	
	:	
and	:	
	:	
COMMONWEALTH OF PENNSYLVANIA AND COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION	:	
	:	
and	:	
	:	
PKF MARK III, INC.	:	

AND NOW, this _____ of _____, 2010, upon consideration of Defendant, SEPTA and PKF Mark III, Inc.'s, Motion for Summary Judgment and Plaintiff's response thereto, it is hereby ORDERED and DECREED that the Motion for Summary Judgment is **DENIED**.

BY THE COURT:

_____
J.

STUART A. CARPEY, ESQUIRE ATTORNEY FOR PLAINTIFF
scarpey@carpeylaw.com
Identification No.: 49490
KREITHEN, BARON & CARPEY, P.C.
100 W. Elm Street, Suite 310
Conshohocken, PA 19428
(610) 834-6030

NIKITA WILCOX	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
	:	
CITY OF PHILADELPHIA	:	NOVEMBER TERM: 2008
	:	No.: 4129
and	:	
	:	
SOUTHEASTERN PENNSYLVANIA	:	
	:	
and	:	
	:	
COMMONWEALTH OF PENNSYLVANIA AND COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION	:	
	:	
and	:	
	:	
PKF MARK III, INC.	:	

PLAINTIFF'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS' SEPTA AND PKF MARK III, INC.

1-18. Admitted.

19. Denied. To the contrary, because the testimony and evidence in this case show that generally slippery conditions did not prevail in the community at the time of plaintiff's fall, and because plaintiff slipped on an isolated patch of ice on property possessed by moving defendants, the "hills and ridges" does not apply to this case.

WHEREFORE, Plaintiff respectfully requests that the Motion for Summary Judgment of Defendants' SEPTA and PKF Mark III, Inc. be **DENIED.**

RESPECTFULLY SUBMITTED,

BY: _____

STUART A. CARPEY, ESQUIRE
KREITHEN, BARON & CARPEY, P.C.
ATTORNEY FOR PLAINTIFF

STUART A. CARPEY, ESQUIRE
scarpey@carpeylaw.com
Identification No.: 49490
KREITHEN, BARON & CARPEY, P.C.
100 W. Elm Street, Suite 310
Conshohocken, PA 19428
(610) 834-6030

ATTORNEY FOR PLAINTIFF

NIKITA WILCOX	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
	:	
CITY OF PHILADELPHIA	:	NOVEMBER TERM: 2008
	:	No.: 4129
and	:	
	:	
SOUTHEASTERN PENNSYLVANIA	:	
	:	
and	:	
	:	
COMMONWEALTH OF PENNSYLVANIA AND COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION	:	
	:	
and	:	
	:	
PKF MARK III, INC.	:	

PLAINTIFF'S BRIEF IN SUPPORT OF PLAINTIFF'S REPLY TO DEFENDANTS' PKF MARK III, INC. AND SEPTA MOTION FOR SUMMARY JUDGMENT

I. FACTUAL BACKGROUND

Plaintiff Nikita Wilcox was injured on Thursday, March 22, 2007 at approximately 9:00 a.m. as he was walking on the street underneath the Elevated Tracks (the "El") at Dewey Street, near Market Street, Philadelphia, Pennsylvania. At the time, plaintiff was walking with his girlfriend, Claudette Glenn, and had been walking from a variety store on the corner. Plaintiff's testimony is that he slipped and twisted his left ankle and thereby fracturing the ankle on a patch

of ice directly underneath the El. He then fell to the ground, (Plaintiff's deposition pages 21, 23-24).

Dewey Street, where this incident occurred is a City owned street. The Elevated Tracks (El) directly above the location where plaintiff fell is and was at all relevant times owned, maintained, and controlled by SEPTA. Defendant SEPTA had contracted with Defendant PKF for the "Guideway" contract which included reconstruction of the El. PKF was responsible as a contractor to Septa for the overall work that was done at the construction site (Christopher Grys deposition page 22, PKF Associate Project Manager). PKF was at the location of the accident from March 19, 2007 until March 24, 2007 according to Defendants' SEPTA and PKF records (See Exhibit "A"). Moving defendants admit at the second to last page of their brief in support of their Motion for Summary Judgment that they possessed the portion of the roadway underneath the elevated tracks at or near Market and Dewey Streets, right where plaintiff fell.

Plaintiff deposed SEPTA's Corporate designer, Stephen Benigno. He testified that SEPTA contracted with PKF for the reconstruction of the guideway, which is the elevated structure that the Market Frankford train moves on (Benigno deposition page 14). PKF's contractual responsibility was for demolishing the old guideway and replacing it with a new guideway. (Benigno deposition page 18). The ultimate responsibility for the guideway above the location where Plaintiff fell in March 2007 rested on PKF and/or SEPTA. In terms of inspection at ground level on Dewey Street, when asked if PKF and/or SEPTA had "boots on the ground performing inspections at street level," Mr. Benigno answered affirmatively. In fact, he specifically testified as follows at page 23, 24, 25, 29, 36, 37 and 48 of his deposition the following:

A. DMJH Harris, they were the designer for all of the Market Street elevated reconstruction projects.

B.

Q. Like architects?

A. Yes

Q. Did they have boots on the ground or not really?

A. They would come out periodically

Q. How about SEPTA, did SEPTA have boots on the ground during the contract, guideway contract?

A. Guideway contract, periodically. SEPTA hired a construction manager to manage the scope of work out in West Philadelphia.

Q. Stop right there. I didn't mean to cut you off. I want to hear the rest of what you're saying but who is that?
A. That was Jacobs Engineering.

Q. Okay, keep going.
A. Now, prior to Jacobs Engineering, they were called Sverdrup, Jacobs and Sverdrup. And Sverdrup managed the contracts and the work for SEPTA.

Q. What's the difference between what Sverdrup, also known as Jacobs Engineering, did as compared to PKF?
A. Sverdrup, Jacobs Engineering, they had all the inspectors out on the project.

Q. Sverdrup did?
A. Sverdrup, Jacobs, they had their inspection teams. They are the ones who had the boots on the ground everyday,

Q On behalf of SEPTA?
A. Correct.

Q. Underneath the El?...
THE WITNESS: Boots on the ground, meaning, whenever the contractor who was working, they had somebody present.

Q. On behalf of SEPTA?
A. Yes…

Q. Would SEPTA send people of their own out at ground level, boots on the ground, to look at the work area where work was being performed at any portion of the guideway contract?
A. Yes…

Q. Now, Mr. Glen Ely, do you know who he is for PKF?
A. Yes.

Q. He testified that there were photographs of the site taken on at least a monthly basis. When I asked him to specify the site area, he pinpointed it to the area where my client has alleged to have fallen. I suppose what he was saying, was that the photographs were taken on regular basis all along the contract. Does that make sense to you?
A. Yes.

Q. Tell me how that makes sense to you and why.
A. They are called progress photos…

Q. Let's say the fencing in photograph was marked Benigno Number-2 was not secured. It wasn't locked up. The fencing was broken, torn, something like that. Who is responsible for making sure that the fence was made safe or that it was closed off again?
A. PKF Mark, III, was solely responsible for the fencing. They were good at inspecting their own work. They had somebody go by, I'm sure, at the end of each day and, you know, to make sure that the fencing was secure.

Q. Walk the site?
A. Walk the site, yes…

Q. To make sure things were safe?
A. Yes.

Q. And that was ultimately on behalf of SEPTA?
A. No. That was PKF's Mark, III, responsibility.

Q. But ultimately SEPTA was the beneficiary of that; yes?...
A. THE WITNESS: I'm sure there would be a benefit for SEPTA somehow,…

Q. If fencing was up as depicted in the photographs on your left, and a porta potty was up at Market and Dewey or actually more that one porta potty, do you believe based on your knowledge and experience, that PKF had somebody not just on the guideway up above but on the ground level if it says they were maintaining work areas?
A. Yes. They could have had people on ground level…

A document was produced by Defendants PKF and SEPTA which was called a "Two Week Look Ahead" by Defendants and marked as Benigno #4 at his deposition. When questioned about this document, Mr. Benigno testified as follows:

Q. Have you seen – what's it called again?
A. I call it a two week look-ahead

Q. Two week look-ahead. How do you know that's what it's called? Because you've seen them before?
A. Yes. That's the terminology the engineers use.

Q. You have seen this type of document before?
A. Yes.

Q. You're familiar with them?...

A. Yes, some of them.

Q. You understand what the columns mean?
A. The columns, yeah; the activity, the subcontractor, the dates…
A. For the dig down, for example, I still don't know what that means.

Q. All right. But how about maintain work area, you know what that means; right?
A. Yes.
Q. So we've established that you're familiar with the two week look-ahead document as a whole?
A. Um-hum

Q. Yes?
A. Yes.

Q. That you've seen Benigno Number-4 before today's deposition; yes?
A. Yes

Q. That you're familiar with what's on the columns and the terminology within the two week look-ahead in general?...
A. Yes.

Q. But you're not sure what the term dig down fully encompasses?
A. Yes.

Q. But you are familiar with the terminology, "maintain work area" means?
A. Part of it, yes.

Q. Well, what part are you familiar with, and what part aren't you familiar with?
A. Well, maintain work area means they probably had a supervisor or work crew on site.
And there's a lot that goes with that. You know, there may be signage that the contractor had to maintain or install.

Q. At ground level?
A. Or they would put it on a pole or in the street somewhere.

Q. Why would they put signage up?
A. If they had to detour traffic.

Q. Or pedestrians?
A. Yes, if they had to detour a – close a street.

Q. Because of the work area and the work being done?...
A. Yes.

Q. And we've also established that you're familiar with being able to read the dates as part of the columns in the two week look-ahead?
A. Yes.

Q. And we've also established that you're able to understand what the location is on the two week look-ahead within the columns like 61 and so on?
A. Yes…

So, the Plaintiff can establish from Mr. Benigno's testimony that SEPTA by and through PKF, and PKF individually and SEPTA individually were performing construction on the SEPTA guideway specifically above Dewey Street where Plaintiff fell for many months before Plaintiff's incident; that during the week of Plaintiff's incident SEPTA, PKF and various subcontractors and employees of SEPTA and PKF were maintaining the area, including at street level, performing "dig downs" at street level and painting the guideway. These entities were performing inspection and taking photographs.

The deposition of Christopher Grys was also taken by Plaintiff, he was the associate project manager for PKF pertaining to the guideway contract with SEPTA. He confirmed based on photographic evidence that the location of Plaintiff's fall was directly under a portion of the guideway that PKF was reconstructing during the months preceding Plaintiff's fall and after (Grys' deposition page 24-25). He confirmed that PKF had hired a subcontractor to paint the guideway above Dewey Street during the week of Plaintiff's fall in March 2007 (Grys' deposition page 17, 26-27). Grys further testified that both SEPTA and PKF would walk by the area in question where work was being done "to just inspect the general area of work," and to make sure the ground surfaces were safe (Grys' deposition pages 27-28) "to the best of everybody's ability." PKF was the general contractor for the guideway contract with SEPTA (Gry's deposition page 10).

The vice president and project manager for PKF, Glen Ely, was also deposed. He confirmed the location of Plaintiff's fall was encompassed in the Guideway project, (Ely deposition page 8). He also confirmed that a painting subcontractor of PKF was painting a portion of the guideway above Dewey Street at Market for the week of Plaintiff's fall, (Ely deposition page 9). He testified that the painting crew worked out of a small van at the location (Ely deposition page 15), that photographs of the area were taken approximately once per month

(Ely deposition page 15), and that visual inspection of the work done at Dewey and Market was performed by PKF, (Ely deposition page 20). Regarding inspections, this is what Mr. Ely said at page 18 of his deposition.

> *Q. How often were the inspections done?*
> *A. At whatever frequency our guys had time and scheduled to do it.*
>
> *Q. To have boot s on the ground to look at the stuff being done?*
> *A. Yeah…*

He further stated the following at page 28 of his deposition regarding safety and inspections at the location where Plaintiff fell at or around the time he fell:

> *Q. Who controlled the job site for the week of March 22nd, or thereabouts, 2007, in the location we've talked about at Dewey Street that's depicted in these photographs in front of you? Was it SEPTA, PKF, Gracie, or some other entity?...*
>
> *THE WITNESS: Safety was first the responsibility of the sub performing the work. PKF also assisted in safety oversight if we saw an issue and needed to take care of it, as well as SEPTA and their agent…*

The local climatological data from the NOAA (Exhibit "B") indicates that approximately 3 inches of snow fell in the Philadelphia area on March 16, 2007. Between March 16 and March 21, the highest temperature reached was 54° Fahrenheit (March 20, 2007) with a low of 25° (March 19, 2007). On March 22, 2007 the high temperature for the day was at 70°, with a low of 41°. Certainly the precipitation of snow on March 16, 2007 combined with the range of temperatures above and below the freezing point leading up to the morning of March 22, 2007 is consistent with Plaintiff's description of the street level which he was attempting to navigate before he fell and fractured his ankle; namely a few isolated patches of ice, and one in particular which caused his injury.

Plaintiff puts forth the following basic theories of liability applicable to slip and fall cases, as follows.

(1) Defendants PKF and SEPTA failed to warn pedestrians such as plaintiff of the icy condition on Dewey Street beneath the El when they knew or should have known of the condition of those conditions. (Restatement of Torts §§ 343 and 343A). They also failed to inspect the property on a reasonable basis to determine the condition of the street and/or did so in

such a careless and negligent manner as to be considered nonexistent inspection of the defective condition of the street, despite the fact that Defendants, Septa and PKF were at the location of the accident on a daily basis in the days leading up to the incident.

(2) Defendants PKF and SEPTA failed to properly repair or correct the defective condition (ice on the street where pedestrians traverse) when they knew or should have known of the defect.

(3) Defendants PKF and SEPTA allowed ice to remain on the street creating a trap for pedestrians and failed to warn pedestrians of the condition at a time when it was their responsibility to maintain the property in a reasonable condition.

(4) Defendants PKF and SEPTA failed to perform its snow and ice removal duties after March 16, 2007 within a reasonable amount of time and a reasonable manner as required by law, including ice removal both at street level and from the El - failure to remove snow or ice from the El allowed melting snow to drip to street level on Dewey Street, and re-froze before the morning of March 22, 2007, thus creating a hazardous condition upon which plaintiff fell. Moving Defendants have filed the instant Motion for Summary Judgment and rely exclusively of the protection afforded possessors of land by the "hills and ridges" doctrine. The correction application of the law would be not whether the hills and ridges protects defendants, but rather whether defendants were negligent in the maintenance of their property.

II. ISSUES PRESENTED

A. Whether the "hills and ridges" doctrine applies to this case where the evidence reveals that plaintiff slipped and fell on an isolated patch of ice, and, moreover, the parties do not dispute that generally slippery conditions did not exist at or near the location of this accident on the date of the accident?

Suggested answer in the negative.

B. Does a genuine issue of material fact exist in terms of whether Defendants PKF and SEPTA acted with reasonable care in the inspection and maintenance of Dewey Street where Plaintiff's accident occurred at a time when said Defendants admittedly possessed and controlled Dewey Street during construction of the SEPTA "Guideway" contract?

Suggested answer in the affirmative.

III. LEGAL ARGUMENT

A. LEGAL STANDARD

The standard for granting a Motion for Summary Judgment is established by Pa. R.C.P. 1035.2, which states as follows:

> After the relevant pleadings are closed, but within such time as not to reasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law
>
> > (1) Whenever there is no genuine issue of any material fact as to a necessary element of a cause of action or defense which could be established by additional discovery or expert report, or
> >
> > (2) If, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

The moving party may meet his or her burden by showing that there is an absence of evidence to support the non-moving party's claims. Pa. R.C.P. 1035.2(2). While the non-moving party is not required to present its entire case in opposing a Motion for Summary Judgment, the non-movant cannot rest upon mere allegations in its pleadings but must present depositions, affidavits, or other acceptable documents which show that the moving party is not entitled to judgment as a matter of law. Pa. R.C.P. 1035.3, Ertel v. The Patriot News Company, et. al., 544 Pa. 93, 674 A.2d 1038 (1996); Brecher v. Cutler, 396 Pa. Super. 211, 578 A.2d 481 (1990).

A motion for summary judgment can be granted only where the moving party shows that there is not genuine issue as to any material fact. Carns v. Yingling, 406 Pa. Super. 279, 594 A.2d 337 (1991); Carringer v. Taylor, 402 Pa. Super. 197, 586 A.2d 928 (1990); Consumer Party of Pennsylvania v. Commonwealth of Pennsylvania, 510 Pa. 158, 507 A.2d 323 (1986); Thompson Coal Co. v. Pike Coal Co., 488 Pa. 198, 412 A.2d 466 (1979); Linwood Harvestore, Inc. v. Cannon, 427 Pa. 434, 235 A.2d 377 (1967). A material fact is one which affects the outcome of a case. Beach v. Burns Intern. Sec. Svcs., 406 Pa. 160, 593 A.2d 1285 (1991).

Summary judgment is appropriate only in the clearest of cases, Malesky v. Stevens, 427 Pa. 352, 235 A.2d 154 (1967), in which there is not the slightest doubt as to the absence of a triable issue of fact, Prince v, Pavoni, 225 Pa. Super. 286, 302 A.2d 452 (1973); Marks v. Tasman, 527 Pa. 132, 589 A.2d 205 (1991). The court is bound to examine the record in the light most favorable to the non-moving party, determine whether any genuine issues of material fact exist, and resolve all doubts in favor of the non-moving party. Johnson v. Woodland Hills School District, 135 Pa. Commw. 43, 582 A.2d 395 (1990). Applying the above standards to the case at bar, it is clear that the Motion for Summary Judgment of moving Defendant should be denied, for the reasons set forth hereinafter.

B. ARGUMENT

The "hills and ridges" doctrine is a refinement of the duty owed by a possessor of land under Section 343 and 343A of the Restatement (Second) of Torts.

> ***§ 343 Dangerous Conditions Known to or Discoverable by Possessor***
>
> *A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees. (b) should expect that they will not discover or realize the danger or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger.*
>
> ***§ 343A Known or Obvious Dangers***
>
> *(1) A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.*
> *(2) In determining whether the possessor should anticipate harm from a known or obvious danger, the fact that the invitee is entitled to make use of public land, or of the facilities of a public utility, is a factor of importance indicating that the harm should be anticipated.*

Defendants' specific duty to plaintiff is dependent on plaintiff's status as an invitee as defined in the Restatement (Second) Torts as follows:

> ***§332 Invitee Defined***
>
> *(a) An invitee is either a public invitee or a business visitor.*

(b) A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose of which the land is held open to the public.

(c) A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.

Pursuant to § 332, plaintiff is a public invitee. This is not seriously in dispute. Plaintiff was crossing a public street at the time of his incident.

The "hills and ridges" doctrine provides that an owner, possessor or occupier of land is not liable for generally slippery conditions, for to require that one's walkways, including parking lots and other pedestrian walking areas, always be free of ice and snow would impose an impossible burden in view of the climatic conditions in this hemisphere. It must appear that the dangerous conditions due to hills and ridges were allowed to remain for an unreasonable length of time. Rinaldi v. Levine, 406 Pa. 74, 78, 176 A.2d 623, 625 (1962), Morin v. Traveler's Rest Motel, Inc., 704 A.2d 1085 (Pa. Super. 1997), appeal denied, 555 Pa. 708, 723 A.2d 1025(1998).

In Zieg v. Pittsburgh, 348 Pa. 155, 34 A.2d 511 (1943), the Pennsylvania Supreme Court enunciated the basic rule for liability for accumulated ice and snow. To prove negligence, the plaintiff must prove a dangerous condition existed and that the injuries sustained were proximately caused by the accumulation of ice – a build-up of sufficient size to constitute an unreasonable obstruction to travel. The defendant must have actual notice, or the condition must have existed for a sufficient length of time to charge it with constructive notice.

The doctrine of "hills and ridges" emerged as an exception to this general rule of liability, as it would be evidence that the ice and snow was not freshly fallen, and thus the property owner would have had time for constructive notice of the condition.

To repeat, under the "hills and ridges" doctrine, in order to recover for a fall on an ice or snow covered walkway, a plaintiff must prove that:

(1) Snow and ice had accumulated on the property in ridges of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians thereon and that the dangerous conditions of hills and ridges were allowed to remain for an unreasonable length of time;

(2) The property owner had actual or constructive notice of the existence of such condition;

(3) It was the dangerous accumulation of snow and ice that caused the plaintiff to fall. Wentz v. Pennswood Apartments, 359 Pa. Super. 1, 518 A.2d 314 (1986), Rinaldi, supra. Snow and ice upon a pavement is merely a transient danger, and the only duty upon the property possessor is to act within a reasonable time after notice to remove the dangerous condition. Williams v. Schultz, 429 Pa. 429, 240 A.2d 812, 813-814 (1968). The evidence must show hazardous conditions due to *hills or ridges* that were allowed to remain for an unreasonable length of time, or that were created by defendant's negligent conduct before the injury occurred. This is obviously a major protection in terms of liability for possessor of land, and it is obvious why moving defendants in this case would like to avail themselves of this protection.

Note that in Williams v. Schultz the Court stated it is sometimes "difficult to distinguish the {hills and ridges} exception from the rule," 429 Pa. at 432, 240 A.2d at 813. **But proof of hills and ridges is necessary only when it appears that the accident occurred at a time when general slippery conditions prevailed in the community as a result of recent or continuing inclement weather. Williams v. Schultz, supra.** ***This is the singular point which moving defendants miss***. **Where a localized patch of ice or snow lies on an otherwise cleared pedestrian walking area, the existence of hills and ridges does not need to be established and the doctrine does not apply. Tonik v. Apex Garages, Inc., 442 Pa. 373, 275 A.2d 296 (1971).** In Williams v. Schultz, the Supreme Court found that the hills and ridges doctrine would not apply because there was no proof of general slippery conditions and the plaintiff fell on a patch of ice on defendant's property. Since this was a specific localized area of ice, the court stated that "it is comparatively easy for a property owner to take the necessary steps to alleviate the condition, while at the same time considerably more difficult for the pedestrian to avoid it even exercising the utmost care." Id., 429 Pa. at 432, 240 A.2d at 813. **"A prerequisite to the application of the 'hills and ridges' doctrine is a finding of generally slippery conditions as opposed to isolated icy patches."** Morin v. Traveler's Rest Motel, Inc., 704 A.2d 1085, 1088, (Pa. Super. 1997), *citing* Harmotta v. Bender, 601 A.2d 837, (Pa. Super. 1992), appeal denied, 530 Pa. 655, 608 A.2d 30 (1992). So, for instance, the many snowstorms of the 2009-2010 winter provide a good example. If a property owner allowed 8 inches of snow, 12 inches of

snow, or 24 inches of snow, for example, to remain on his or her walkway, did not make an attempt to clear the walkway for an *unreasonable period of time* and *hills and ridges* of snow/ice had been permitted to remain, that property owner would be liable to one who slipped and fell on the walkway. The plaintiff in that scenario would have to prove the existence of hills and ridges of accumulated snow/ice.

Here, based upon the pretrial record it is not disputed whether generally slippery conditions existed on the morning of Plaintiff's fall. They did not. Plaintiff's testimony alone is enough to establish a genuine issue of material fact. As such, this case is not controlled by the "hills and ridges" doctrine, because no hills and ridges of accumulated snow and ice were present on the morning of Plaintiff's fall. Rather, this case is controlled by **Williams v. Schultz, supra, and Rinaldi v. Levine, 406 Pa. 74, 78, 176 A.2d 623, 625 (1962),** and Plaintiff must prove that Defendants SEPTA and PKF were negligent in the inspection and maintenance of the property that they possessed on the date of Plaintiff's fall, and that Defendants' negligence was a substantial factor in causing Plaintiff's injury. That is a question for the jury.

The trial courts in Pennsylvania have been crystal clear that isolated patches of ice without generally slippery conditions do not allow for the "hills and ridges" doctrine to be applied. For instance, in Thorpe v. Gant, the trial Court of Philadelphia County denied defendant's motion for a new trial and held that plaintiff's claim was properly submitted to the jury where the houses on either side of defendant's property were cleared of snow and ice. Under the facts of that case, therefore, the defect on the defendant's property was found to be a localized patch of ice because at the surrounding area was not icy. Thorpe v. Gant, 57 D. & C. 4th 140 (2001).

In Herbst v. Inven Associates, a Dauphin County case, the Court denied defendants' motion for summary judgment in three separate and distinct cases. In the Herbst case there was evidence that an icy condition consistently existed on the parking lot in question due to generally poor maintenance. In the companion Monteith case, there were facts from which a jury could find that the icy patch had been present long enough for the defendants to know of it. In the third case, Woltcheck, the plaintiff testified that the weather caused no problems as he drove to work or in walking from the parking lot to the work area. This was held to be sufficient evidence to

bar the applicability of "hills and ridges" doctrine, since it requires evidence of generally slippery conditions. Herbst v. Associates, 35 D. & C. 4th 167 (1998).

In Bosco v. Joseph, 57 D. & C. 49th 438 (2000), the Lehigh County trial Court held that the hills and ridges doctrine was not available as a defense where a tenant is injured on slick ice on the common areas of landlord's property.

In Hackett v. Mac and Sam, Inc., 54 D. & C. 4th 569 (2001), the plaintiff testified that he had no difficulty walking from his car into the car dealership. Later, when the plaintiff went to pick up his car after it had been serviced, his car was in a different location all in the lot as compared to when he dropped it off and he fell on a patch of ice. The trial court of Delaware County refused to charge the jury on the hills and ridges doctrine and denied defendant's motion for a new trial, because the evidence indicated that the hazard where plaintiff fell was a localized patch of ice rather than generally slippery conditions.

Obviously, it was defendants' antecedent negligence that was the main factor in causing plaintiff's injury, including moving defendant's failure to properly and appropriately inspect the premises and remove the icy patch that plaintiff was forced to navigate by before he fell. In summation on this point, the doctrine of "hills and ridges" clearly does not apply instantly. At a minimum, there exists a genuine issue of material fact as to the existence of generally slippery conditions in the community at the time of plaintiff's accident. Moreover, there is substantial evidence that moving defendant's own actions contributed to the icy conditions which plaintiff encountered on the morning of his fall, thusly creating an artificial as opposed to natural condition. Accordingly a grant of summary judgment is wholly unwarranted. Ultimately, a jury must decide whether moving defendants' inspection methods constituted reasonable care under the circumstances.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Defendants' Motion for Summary Judgment of Defendants SEPTA and PKF Mark III, Inc. be Denied.

RESPECTFULLY SUBMITTED,

BY: _____

STUART A. CARPEY, ESQUIRE
KREITHEN, BARON & CARPEY, P.C.
ATTORNEY FOR PLAINTIFF