

Case Focus

The Abolition of the “Natural” Accumulation Defense in Snow and Ice Cases: an Overview of *Papadopoulos v. Target*

By Matthew C. Welnicki

In *Papadopoulos v. Target*, 457 Mass. 368 (July 26, 2010), the Massachusetts Supreme Judicial Court (SJC) abolished the long-standing distinction between “natural” and “unnatural” accumulations of snow and ice in slip-and-fall cases. Prior to the *Papadopoulos* decision, Massachusetts law held that a property owner was not liable for injuries caused by “natural” accumulations of snow or ice on the owner’s property. In *Papadopoulos*, the SJC ruled that all property owners are now held to the same duty of care — to “act as a *reasonable* person under all of the circumstances” — regardless of whether a property defect arises out of a “natural” or “unnatural” hazard or accumulation of snow or ice. The SJC also ruled that it will apply this standard retroactively.

In *Papadopoulos*, the plaintiff slipped and fell on a patch of ice while walking in Target’s parking lot. There, after a snow storm, a plow had cleared the parking lot and piled the snow on a median. The ice in question had either fallen from the snow pile or formed from snow that melted and ran off the pile.

The trial court ruled that the ice was a “natural” accumulation. Under then-existing Massachusetts case law, property owners had no obligation to remove or warn of “natural” accumulations of snow and ice. Therefore, the trial court concluded that the plaintiff could not prevail on his negligence claims and allowed Target’s motion for summary judgment. The plaintiff appealed and the



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Appeals Court affirmed the trial court's decision in favor of Target.

On further appellate review, the SJC rejected the long-standing distinction between "natural" and "unnatural" accumulations of snow and ice and vacated the trial court's allowance of summary judgment for Target. The SJC concluded that the standard of care in snow and ice cases should be no different than the standard of care owed by a landowner in any other premises liability action. Specifically, it held that a landowner owes a duty to maintain its premises in a *reasonably* safe condition given the circumstances.

The SJC examined the history of premises liability law and explained that the "natural" accumulation rule was a "relic" of abandoned landlord-tenant law. Accordingly, the court held that all property owners now owe a duty to keep their property reasonably safe for lawful visitors regardless of the source of the danger, whether "an act of nature [or] an act of another person." Further, it was important to the SJC's analysis that the question of whether an accumulation of snow or ice was "natural" or "unnatural" was sometimes difficult to answer and could be a distraction from the ultimate issue of the property owner's negligence.

The SJC rejected the argument that all "natural" accumulations of snow or ice are "open and obvious" dangers. The court explained that property owners should realize that while visitors should look out for themselves, a "hardy New England visitor would choose to risk crossing the snow or ice rather than turn back or attempt an equally

or more perilous walk around it." Therefore, even though accumulations of snow and ice may be recognizable dangers, a property owner still has a duty to be reasonably careful in making its property safe. The SJC also rejected the argument that requiring property owners to remove "natural" accumulations of snow and ice would be impractical. It specifically noted that the highest courts of all other New England states had rejected Massachusetts' rule for "natural" accumulations.

The SJC cautioned that its decision is not intended to make owners insurers of their property. The new standard introduces no special burden on property owners. "If a property owner knows or reasonably should know of a dangerous condition on its property, whether arising from an accumulation of snow or ice, or rust on a railing, or a discarded banana peel, the property owner owes a duty to lawful visitors to make reasonable efforts to protect lawful visitors against the danger."

The SJC explained that courts will now balance the expense of removing the snow and ice with the likelihood and seriousness of foreseeable harm to visitors. It also listed factors that the courts will now consider:

The snow removal reasonably expected of a property owner will depend on 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. Therefore, while an owner of a single

family home, an apartment house owner, a store owner, and a nursing home operator each owe lawful visitors to their property a duty of reasonable care, what constitutes reasonable snow removal may vary among them.

The SJC noted that it was not yet deciding whether property owners must remove snow or ice *during* a snow storm.

The SJC also concluded that the standard should apply retroactively to all cases that have not yet been resolved by judgment, settlement or the running of the three-year statute of limitations. It reasoned that retroactively applying the new standard was fair because property owners did not make decisions about snow or ice removal based on a distinction between “natural” or “unnatural” accumulations and that distinction’s impact on their potential tort liability. The SJC noted that most property owners have long been required to keep access to their property free of snow and ice under more demanding state and local regulatory requirements.

The *Papadopoulos* decision will likely increase the overall number of snow and ice slip-and-fall claims brought in Massachusetts. This increase may be especially noticeable in the short term as injured persons rush to assert claims that were previously precluded by the “natural”

accumulation defense. But it will remain to be seen whether the *Papadopoulos* decision has any dramatic impact on the risk of exposure that property owners, or their liability insurers, will face. The decision does not create a “new” standard of care, rather, it provides for a more uniform application of the familiar “reasonable person” standard. Plaintiffs in snow and ice cases will still need to prove all of the elements of negligence before recovering and the owners will still have defenses such as comparative negligence. Snow and ice cases will no longer be decided by a legal characterization of the nature of the accumulation. Rather, the ultimate determination of liability will be made by jurors who can rely on their own experiences with clearing snow and crossing uncleared paths. ■

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