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## Point of View

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### A PROPERTY OWNER'S RESPONSIBILITIES WHEN IT COMES TO REMOVING SNOW AND ICE ACCUMULATIONS

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#### **Introduction:**

Recent changes in Massachusetts case law have changed and clarified a property owner's responsibilities when it comes to snow and ice removal. Historically, courts in Massachusetts have relied upon a distinction between natural and unnatural accumulations of ice and snow in determining liability for injuries resulting from a slip and fall. After several attempts in recent years to both clarify the line dividing natural and unnatural accumulation, as well explaining the rationale behind such a distinction, the Supreme Judicial Court ("SJC") abolished the distinction entirely in the recent case of Papadopoulos v. Target Corp., 457 Mass. 368 (2010).

#### **Facts of the Underlying Case:**

The plaintiff, Emanuel Papadopoulos, was walking through a parking lot after exiting the Target store at the Liberty Tree Mall in Danvers. It was not snowing or raining at the time of the accident and the parking lot had been plowed to the point where it was essentially clear. As he headed towards his vehicle, he slipped on a piece of ice on the pavement which had either fallen from snow that was piled on the median or melted off the pile and

refroze to the pavement. Mr. Papadopoulos subsequently filed suit alleging negligence by Target Corporation, which controlled the area of the parking lot where Mr. Papadopoulos was injured, and Weiss Landscaping Company, Inc., the contractor hired by Target to provide snow and ice removal services.

#### **Procedural History of the Case:**

Prior to trial, the defendants filed a Motion for Summary Judgment arguing that the snow and ice which caused Mr. Papadopoulos' injuries were a natural accumulation and, as a result, the defendants had no duty or obligation to remove the offending snow and ice.

At the time, the long-established rule in Massachusetts with regard to snow and ice accumulations was that a property owner had no duty to remove natural accumulations. Only where the accumulations were determined to be unnatural or artificial – a definition that has always been subject to widely divergent definitions over the years – would a property owner have had a duty to remove or remediate the conditions.

In light of this standard, once the trial judge determined that the offending snow and ice in this case was a natural accumulation, Mr. Papadopoulos

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could not prevail, as a matter of law, on his claims of negligence and the defendants' motion for summary judgment was allowed.

After the trial court's determination was upheld by the Massachusetts Appeals Court, Mr. Papadopoulos sought further appellate reviews by the Massachusetts Supreme Judicial Court. The SJC granted his request for further appellate review and specifically requested that the parties brief the issue of whether the natural/unnatural distinction with respect to snow and ice accumulation should continue to be a factor in determining liability for injuries resulting from a slip and fall.

### **The SJC Decision:**

Before explaining its reasoning for abandoning the distinction between natural and unnatural accumulation, the Court engaged in an in-depth analysis of the origins of the modern "Massachusetts Rule," as it is known throughout the country. In doing so, the Court provided a thorough review of all of the seminal cases over the years illustrating the evolution of the prior rule.

The Court noted, after delineating its origins, that the rule has done a disservice to all residents of the Commonwealth by forcing "judges and juries to focus not on whether the property owner acted reasonably to keep the property safe, but on whether the accumulation of snow and ice was natural or unnatural." In addition, the rule has been difficult to apply as there has been much disagreement over the years regarding when a natural accumulation becomes unnatural or artificial in nature.

In light of these considerations, the Court held that snow and ice accumulation should be treated like all other hazards on a property owner's premises; a property owner has "a duty 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." In short, the obligation is to make reasonable efforts to protect lawful visitors from any dangerous condition that the property owner is, or should be, aware of on the property.

### **The Impact of the SJC Decision:**

In future, and currently-pending, cases involving negligence claims for injuries resulting from snow and ice accumulation, a trial judge will now evaluate the

dangers posed by the conditions, as well as any attempts at remediation or removal by the defendants, in the same manner that a court would treat other dangers, such as a stairway railing or a cracked sidewalk: were the efforts "reasonable in light of the expense they impose on the landowner and the probability and seriousness of the foreseeable harm to others?"

In addition, the SJC suggested that trial court judges evaluate all of the surrounding circumstances of the subject premises and the risk that existed, such as the amount of foot traffic that is anticipated on the affected area of the property, the severity of the potential risk to others, and the burden and expense of the snow and ice removal. As a result of these considerations, what constitutes "reasonable snow and ice removal efforts" may differ greatly depending on the nature of the premises in question. The owner of a single-family home will not likely have the same obligations as the owner of a busy commercial establishment. All property owners, however, will have a duty of reasonable care with regard to removal of snow and ice on their property, just as they have a reasonable duty of care with respect to all other hazards that exist on the property. The Court, in Papadopoulos, merely brings snow and ice hazards under the same umbrella that has governed the legal analysis of other hazards in Massachusetts.



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