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MEMORANDUM

TO: JC Landscaping
FROM: Russell Z. Goldberg, Esq.
DATE: August 3, 2010
SUBJECT: New Supreme Judicial Court Ruling in Papadapoulus v. Target Corporation

The Massachusetts Supreme Judicial Court recently abolished what was known as the “natural accumulation” rule with regards for liability of a landowner for injuries sustained as a result of snow and ice. Every property owner and property maintenance provider needs to understand what has changed and how it may affect them.

The information contained herein is my legal opinion based on my review of the decision as well as my knowledge and 25 years of litigation experience in negligence (slip and fall) actions. The use of this information is intended for the use of our clients only.

- 1) What was the “natural accumulation rule”? Since 1883, in the Commonwealth, a party could not recover damages for injuries sustained as a result of a fall on naturally accumulating snow and ice. In order to prevail, the plaintiff needed to show that the snow or ice was “not natural” meaning that it had been moved, or shoveled, or plowed. Once it was “touched” it was no longer natural. There are literally hundreds of cases that address the issues of what is no longer “natural” from snow drifts caused by fences, to ice melt from gutters.
- 2) What is the new “rule” regarding “snow and ice” liability? The “new” rule is really the “old rule”, with the exception of no longer carving out the limited exception for “natural snow and ice” accumulations. Since the late 1800’s a land owner or person in possession of land, had a duty and obligation to maintain their property in a “reasonably safe condition”. There has never been a “guidebook” created by the Courts or the legislature that would set forth and define what “reasonably safe” meant. For nearly a century, slip and fall cases have been litigated on issues ranging from a missing stair tread, to an “uneven” lawn area. The “new” decision will use the same criteria as the existing duty of care for landowners that remains, “to keep their premises in a reasonable safe condition”.
- 3) What is a “reasonable safe condition” for “snow and ice removal”? The answer remains to be addressed by the trial courts on a “case by case basis”. Just as the

Courts have imposed liability on a supermarket for a slip on “water on the floor” in a “vegetable aisle”, the Courts will continue to impose restrictions on recovery that will look at “How long was the water there? What procedures were in place for the area to be supervised and checked for water? Were there any warning signs or markers placed? What was the floor made of? Was it slip resistant? Had there been prior falls in that area? What type of shoes was the Plaintiff wearing? Where there any witnesses? What did the Plaintiff do or not do at the time of the fall that may have contributed to the fall??”

- 4) What, if anything, should be done differently as a result of this decision? There will be an initial round of cases that may not be decided for at least 12-18 months that will provide some initial direction as to just how much further a property owner needs to go to be considered to have taken “reasonable care” to lawful visitors. Until that happens, it would be wise that any property maintenance/ snow removal is done in such a manner that it
- (a) Is performed in a timely manner in accordance with a pre-existing plan or schedule; (Plowing, shoveling, storage, removal, sanding, all set forth)
 - (b) The anticipated amount of foot traffic is adequately addressed; (The standard will be higher for entrance ways and steps, than for the “recreational pathway” that kids may use to go sledding)
 - (c) The magnitude of the intended risk is taken into consideration. (was it a freak storm that dumped 12 inches in 2 hours or a predicted “storm of the century”)
 - (d) Takes into consideration the financial burden and expenses of snow removal. (Yes, this was noted in the SJC decision. Clearly the Court was suggesting that although it may be wise to hire professionals for snow removal, the job they may have done, versus the three teenagers, will not really be relevant. This is all about what a reasonable property owner would do for snow removal in New England. It may vary from town to town, even county to county.)
 - (e) It would be prudent, to send notice to tenants or lessees, informing them prior to the first snow fall what the “snow removal protocol” will be. The more notices and “warnings” that can be sent or posted, the more “cautious” the property will be perceived by a Jury. While it is certainly absurd to have to place a warning sign on YOUR property that states “WARNING, ACCUMULATED SNOW MAY MELT CAUSING ICE TO FORM. THE ICE MAY NOT BE VISIBLE AND WILL BE VERY SLIPPERY AND MAY LIKELY CAUSE YOU TO FALL” or “WARNING, THE NATIONAL WEATHER SERVICE HAS ISSUED A WINTER STORM WARNING FOR OUR AREA WITH A POSSIBILITY OF SNOW AND ICE

ACCUMULATING OVER THE NEXT 12 HOURS. THE SNOW AND ICE WILL BE SLIPPERY AND MAY CAUSE YOU TO SLIP AND FALL”.

In closing, we all continue to get a chuckle when we purchase a cup of coffee and it states “WARNING CONTENTS HOT”. This new decision really will not change the way a majority of Massachusetts residents conduct snow and ice removal. The “reasonable care” standard remains critical. The new “rule” only expands the standard to snow and ice accumulations.

A person, who fell on snow or ice, prior to this decision, had a very difficult burden to simply get their case to a Jury. These types of cases will now make it to juries and Judges across the Commonwealth, who will have to decide whether or not the snow and ice removal and the overall condition of the property, was “reasonable”.

➔END➔