



# Ready for the Defense

## § 3-105 Weather Immunity For Injuries/Damages Caused by Rain, Snow, Ice & Wind

**T**HIS MONTH'S COLUMN discusses § 3-105, weather immunity, of the Tort Immunity Act (745 ILCS 10/3-105), which is a frequently overlooked and a little used provision in the Tort Immunity Act. As the Illinois Appellate Court stated in the case of *Enriquez v. City of Chicago*, 187 Ill.App.3d 1110, 543 N.E.2d 905 (1st Dist. 1989), § 3-105, weather immunity, is merely the statutory codification of the "no liability for natural accumulations of ice, snow and water" rule:

When enacted, this section of the Act codified the preexisting common law rule of nonliability and also extended that rule to counties. ... (187 Ill.App.3d at 1115, 543 N.E.2d at 908.)

Section 3-105, weather immunity, of the Tort Immunity Act provides, in pertinent part, as follows:

### **10/3-105. Use of Streets, Etc.**

(a) Neither a local public entity nor a public employee is liable for an injury caused by the effect of weather conditions as such on the use of streets, highways, alleys, sidewalks or other public ways, or places, or the ways adjoining any of the foregoing. ... For purposes of this section, the effect of weather conditions as such includes but is not limited to the effect of wind, rain, flood, hail, ice or snow ... (745 ILCS 10/3-105.)

As the Appellate Court has ruled in *Enriquez v. City of Chicago*, 187 Ill.App.3d 1110, 543 N.E.2d 905 (1st Dist. 1989), in a case involving ice on a city bridge, § 3-105, weather immunity, applies to icy conditions, among other weather-related conditions, on public entity property:

Section 3-105 provides that a local public entity or public employee is not liable for injuries which result from the effect of weather condi-

tions, including the natural accumulation of ice and snow. (187 Ill.App.3d at 113, 543 at 907.)

### **This § 3-105 Weather Immunity Completes Our 4-Month Discussion On No Liability For Weather Conditions**

This § 3-105 weather immunity discussion completes our 4-month discussion on no liability for weather conditions defenses for local government. Those discussions include our January, February and March columns on the following topics:

- (1) January – "Township Not Liable For Fall on Ice or Snow Unless It Creates an Unnatural Condition."
- (2) February – "No Liability For Slip & Fall on Snow & Ice on Sidewalk With 5.7° Slope."
- (3) March – "No Liability For Slip and Fall on Rainwater Tracked in From Outside."

### **Cases Applying § 3-105 Weather Immunity**

Illustrative of the application of § 3-105, weather immunity, are the cases of *Enriquez v. City of Chicago*, 187 Ill.App.3d 1110, 543 N.E.2d 905 (1st Dist. 1989), and *International Memory Products of Illinois, Inc. v. Metropolitan Pier & Exposition Authority*, 335 Ill. App.3d 602, 781 N.E.2d 505 (1st Dist. 2002).

In *Enriquez v. City of Chicago*, 187 Ill.App.3d 1110, 543 N.E.2d 905 (1st Dist. 1989), Antonio Enriquez was driving west on 106th Street across a city bridge and Javier Bermea was eastbound, and Bermea lost control on the ice on the bridge and slid into the Enriquez auto, resulting in Enriquez's death. The Enriquez Estate sued the City of Chicago for allowing an "unnatural accumulation of ice" on the bridge. The trial court granted summary judgment for the City based upon § 3-105, weather immunity. The Appellate Court affirmed.

Noting that because the City had no duty to remove the ice, it also had no duty to warn of it, the *Enriquez* Court explained:

If a municipality has no duty to remove accumulated snow and ice, it, therefore, also has no duty to warn that it has not done so. ... Since we have found that the City was not liable for the accumulation of ice and snow on the bridge here, we must also find that the City had no duty to warn motorists of the accumulation. (187 Ill.App.3d at 1117, 543 N.E.2d at 910.)

The Appellate Court, finding § 3-105, weather immunity, barred plaintiff's claim against the City, concluded:

The accumulation on the bridge here was natural and the City had no duty to specifically remove it; hence, the City was not liable to the plaintiff under the provisions of section 3-105 of the Tort Immunity Act. (187 Ill. App.3d at 1119, 543 N.E.2d at 911.)

In the case of *International Memory Products of Illinois, Inc. v. Metropolitan Pier & Exposition Authority*, 335 Ill.App.3d 602, 781 N.E.2d 505 (1st Dist. 2002), International Memory Products was an exhibitor at the "Print 97" show at McCormick Place, owned and operated by the Metropolitan Pier and Exposition Authority, setting up a booth and was permitted by McCormick Place to use the massive emergency exit doors to bring its products and materials into the exhibition hall. Plaintiff International Memory sued the Metropolitan Pier Authority, claiming property damage to its exhibits and booth when heavy winds blew through the massive emergency exit doors while they were open.

The Metropolitan Pier Authority argued that it owed no duty to Plaintiff under § 3-102 of the Tort Immunity Act and that it had immunity from the effects of weather under § 3-105, weather immunity, of the Tort Immunity Act. The trial court granted summary judgment for the Metropolitan Pier Authority, finding no duty and § 3-105 immunity. The Appellate Court affirmed.

The Appellate Court found § 3-102 and § 3-105 barred the cause of action, absent a voluntary undertaking, and since there was no voluntary undertaking, the claim was barred. The Appellate Court explained:

Since MPEA had no duty to protect plaintiff from the effects of the wind coming into McCormick Place, the only way that MPEA can be held liable for the damage to plaintiff's property under sections 3-102(a) and 3-105 is if the facts of this case indicate that MPEA has somehow voluntarily undertaken a duty to protect plaintiff's property from the effects of the wind. (335 Ill.App.3d at 614, 781 N.E.2d at 515.)

The Appellate Court found § 3-105, weather immunity, barred the cause of action:

As such, section 3-105 is applicable to preclude recovery in favor of plaintiff and summary judgment in favor of MPEA was proper. Since we find that section 3-105 provides immunity to MPEA, we need not address plaintiff's argument that section 3-108(a) also does not apply. (335 Ill.App.3d at 616, 781 N.E.2d at 516.)

### Conclusion

It is hoped that these discussions of the law applying to injuries or damages caused by weather conditions will provide local government defenses against claims and lawsuits. Every person is aware of and knowledgeable of the dangers created by nature which are "open and obvious dangers to all" (*e.g.*, ice is slippery and there is a danger of falling and becoming injured).

The Appellate Court in *Riccitelli v. Sternfeld*, 349 Ill.App. 63, 109 N.E.2d 921 (1st Dist. 1952), noted the common condition and open and obvious danger presented by ice and snow, stating:

No one can live through winters in this latitude without recalling the piles of snow banked on either side of the walks even in the busiest portions of the city, sometimes staying through the spring months, with lumps of ice often falling onto the cleared portion of the sidewalks. (349 Ill.App. at 66-67, 109 N.E.2d at 922.)