Ready for the Defense

No Liability For Removing Ice and Snow and Leaving a Thin Glaze of Ice

One type of claim made against townships and other local public entities is a slip and fall on ice and snow injury claim. The fact that ice and snow are the natural creations of weather and that every person knows and understands that there is a danger or peril of slipping and falling and sustaining injuries on ice and snow does not prevent persons who fall from blaming their own carelessness on the property owner who did not remove the ice and snow or who removed it, but could not make the pavement "bone dry."

As claim for injuries from falls on ice and snow begin to come in from the winter's weather conditions, we thought it could be an appropriate time to discuss some of the defenses which townships and other local public entities can assert to these claims.

Possible Defenses To Ice & Snow Fall Down Claims

When ice and snow fall down claims or lawsuits are brought against townships, the following defense rules should be considered:

(1) There is no duty to remove natural accumulations of ice and snow.

(2) There is no duty when removing ice and snow to remove it leaving a "bone-dry" surface—there is no liability if, when removing ice and snow, a thin glaze of ice remains.

This is a common sense, practical rule. Snow plows and snow shovels cannot remove the thin glaze of ice remaining when ice and snow are removed. The public policy of Illinois (as revealed in the Residential Snow Removal Act, 745 ILCS 75/1 & 2) is to encourage citizens to undertake to remove ice and snow even if it can't be done perfectly (creating a "bone-dry" surface).

The removal of several inches of snow, which eliminates the peril or danger of "vehicle wheel tracks" or "pedestrian footprints," is encouraged. That is, a thin glaze of ice is far less dangerous and much safer for pedestrians than "vehicle wheel tracks" or "pedestrian footprints" to walk on.

(3) There is no duty to spread rock salt or cinders or ashes on natural accumulations of ice and snow.

That is, if the law does not require landowners or possessors to remove natural accumulations of ice and snow, it, likewise, does not require the landowner or possessor to place rock salt or cinders or ashes on such ice and snow.

(4) There is no duty to remove ice and snow even if the township or other local public entity has its own internal "guidelines or policies or rules" providing ice and snow will be plowed or removed after a snowfall of 1" or 2".

That is, the failure to follow a local public entity's own internal or self-imposed policies, procedures, guidelines, rules or regulations is not a breach of duty and cannot result in liability. The reason being such internal or self-imposed policies, guidelines or procedures are not the law—only violations of the law can result in liability for negligence—that is, no common law/case law rule or statute, code or ordinance requires ice and snow removal.

(5) Plaintiff bears the burden of proving the contention that a township or other local public entity's removal of ice and snow created an artificial accumulation of ice and snow causing plaintiff's slip and fall.

The common contention in this regard is that the township plowed the snow and piled it on one end of the parking lot and the snow melted and ran downhill, creating an icy condition on which plaintiff slipped and fell. This contention is often based on purely guess, conjecture and speculation rather than on evidence proving such. Guess, conjecture and speculation is never proof of a cause of action.

And, ordinarily, parking lots, just as streets and roads, are designed and constructed with slopes or slants (crowns in the road) to allow water to drain and not stand or puddle. Thus, if there is a slope or slant and nature melts the ice and snow and funnels to the drain, as

designed to do, nature's refreezing of the ice does not impose liability.

(6) The fact that parking lots and parking facilities are designed to slope or slant downhill toward drain facilities (usually a 3% or 5% slope) does not impose liability for a slip and fall on ice and snow on the facility. It will be recalled that road surfaces are crowned at the center to allow water to drain down and off the road—to prevent puddling of water and to make roads safer.

(7) The plaintiff's own contributory negligence in slipping and falling on ice and snow may bar any claim against a local public entity for negligence for two reasons:

   (a) Ice and snow presents the "open and obvious danger or peril" of slipping and falling and there is no duty to warn persons coming onto property of the "open and obvious conditions" on such property.

   (b) A plaintiff's cause of action is barred if the plaintiff is over 50% at fault or negligent in causing the accident and injury under § 2-1116 of the Code of Civil Procedure (745 ILCS 5/2-1116).

The *Greenwood* Case Explains These No Liability Rule Cases

A good summary of these rules is found in the case of *Greenwood v. Leu*, 14 Ill.App.3d 11, 302 N.E.2d 359 (5th Dist. 1973), where the Appellate Court found no liability for a slip and fall on ice and snow and discussed these rules. The *Greenwood* Court offered the following observations;

> If liability of a business owner may not be predicated on falls resulting from natural accumulations of ice or snow, it follows the business owner is not required to warn of the presence of such natural accumulations of ice or snow. The duty of warning against a particular condition or hazard coexists with the corresponding liability for the consequences or hazards of the condition if no appropriate warning is given.
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> Absent any evidence that the ice or snow was the result of an unnatural, or artificial accumulation thereof, the only inference is that it was a natural accumulation and if so, defendant was under no duty of warning (by way of illumination) against the hazards thereof.
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> … This same reasoning can be applied to plaintiff's other allegations of negligence, the failure to provide adequate safeguards, such as a hand railing, salt or foot mat. As we have already seen in *Kelly*, there is no duty to scatter cinders, sand or some substance to prevent a slippery condition of ice.
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> Numerous cases have dealt with this specific situation (a slope or slant on the property), where pedestrians have slipped and fallen on snow and ice covered inclines. All have found no liability on the part of the owner of the incline. (14 Ill.App.3d at 15-17, 302 N.E.2d at 362-63).

The following cases also explain the bases of the rules discussed in this column:

(1) *Sheffer v. Springfield Airport Authority*, 261 Ill. App.3d 151, 632 N.E.2d 1069 (4th Dist. 1994) (Airport Authority, a common carrier with highest degree of care to passengers, owed no duty to airline passenger who fell on patch of ice left on ground after snow removal—ice left after snow removal is a natural accumulation of ice or snow).

(2) *American States Insurance Co., v. A.J. Maggio Co., Inc.*, 229 Ill.App.3d 422, 593 N.E.2d 1083 (2d Dist. 1992) (general contractor on construction site had no duty to remove ruts of ice and snow on construction site driveway where plaintiff fell—ruts created by traffic in ice and snow constitute a natural, not an unnatural accumulation of ice and snow).

(3) *Madeo v. Tri-Land Properties, Inc.*, 239 Ill. App.3d 288, 606 N.E.2d 701 (2d Dist. 1992) (neither owner of property nor snow plow company liable for pedestrian's slip and fall in parking lot as proof insufficient to show ice in lot created as artificial or unnatural accumulation by defendant's plowing of lot).

(4) *Bakeman v. Sears, Roebuck & Co.*, 16 Ill.App.3d 1065, 307 N.E.2d 449 (2d Dist. 1974) (landowner department store not liable to plaintiff who fell on thin glaze of ice after snow had been removed from parking lot).

Conclusion

As the rules discussed herein tend to show, claims or lawsuits suing for damages for injuries occurring as the result of slip and fall accidents on ice and snow are very defensible. In ordinary circumstances, the condition of ice and snow on property is open and obvious and a claimant or plaintiff knows to be careful in encountering such and the blame for a slip and fall accident should not be transferred to the township or other local public entity.