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Snow and ice claims

Is it a question of law or negligence?

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You arrive at your place of business the morning after a nighttime snow fall. There are a couple of inches of accumulation on the ground. The parking lot and driveways need plowing and the walkways need shoveling. Customers will be arriving soon and deliveries are due at your loading dock. Your staff arrives and begins to clear the snow, following the policies and procedures you have established. Customers trickle in and the first deliveries of the day come and go without incident.

By early afternoon the snow has been removed to the edges of the lots and drives, patches of compacting snow and ice have been salted, the sidewalks have been shoveled and salted and the sun is breaking through the clouds. The piles of snow begin to melt and water pools in some lower areas of your lot. By late in the afternoon the temperature drops and the puddles freeze.

At 3:30 p.m. a driver pulls up and parks his truck. He climbs out of the cab and starts to walk across the lot to your dock. His mind is busy reflecting on the last delivery he just made and now focusing on your delivery. As he approaches your building, his left foot strikes a patch of ice. He loses his balance and suddenly begins to fall. He reaches out with his right hand to try to break the fall, and as he crashes onto the frozen surface, the impact and the weight of his body crush his wrist.

Several weeks later you receive a letter from the driver's attorney. They are pursuing a claim against you and your company. They allege you created an unnatural accumulation of ice and thus failed in your duties to provide a safe place for the driver to perform his expected work. They also claim that you failed to warn him of a dangerous condition. He has incurred significant medical expense, has lost time from work and has suffered great pain and may have continuing problems with his wrist, threatening his livelihood and ability to support his family.

Are they right? Did you breach a duty to the driver and are you responsible for his injury? Will your company really owe him for his damages and pain and suffering?

The degree of care you owe to the driver will probably depend on whether the slippery condition resulted from what will be considered a natural or unnatural accumulation of the ice. The question of whether or not a duty exists to remove a natural accumulation of snow or ice has been addressed by a number of state supreme courts and the decisions have been consistent: no such duty exists. The question of whether there is a duty to warn of a dangerous condition resulting from a natural accumulation has also been addressed on numerous occasions and those decisions have also been consistent: natural accumulations of snow and ice are an **open and obvious condition** and therefore no duty to warn is owed.

In order for there to be any chance for the claimant to successfully make a case against you, he must prove that the accident occurred because of an **unnatural accumulation** of snow or ice; that you caused the transformation from natural to unnatural; and that you failed in your duties to protect him, either by failing to warn him about it or otherwise intervene in some way to prevent the accident from occurring.

Natural vs. unnatural accumulations

How does one determine the nature of the accumulation? There are three layers of consideration that must be addressed:

1. How did the snow and ice arrive at the place where the incident occurred?
2. What specific condition is alleged as the cause of the accident?
3. What, if any, intervening acts and/or climatic events occurred between the initial arrival of the snow or ice and the time of the accident?

Natural accumulations – Courts have been consistent in setting the criteria under which an accumulation of snow or ice has been deemed "natural:"

- Newly fallen snow;
- Ice formed when rain water freezes

- Ice formed when snow melts and then freezes
- Ice formed when ice melts and refreezes, even when the ice was melted as a result of adding salt

The absence of a duty to either remove or warn of a natural accumulation arises from the courts' logic that the imposition of such a duty would be unreasonable and impractical.

Unnatural accumulations – Courts have had differing opinions as to whether or not actions taken by landowners have created an unnatural accumulation. Decisions rendered leave us in a situation wherein it is best to answer a number of questions before determining any potential liability on the part of the landowner:

- What is the hazard that caused the accident?
- Did the hazard form in an artificial way?
  - Was there an action taken on the part of the landowner to alter an existing accumulation; or
  - Was the accumulation created as a result of a defective or deficient condition on the real or improved property?
  - Did the actions of the landowner/business operator make the condition more hazardous?
- Was there an effort by the landowner/business operator to make the condition reasonably safe?
- Did the landowner/business operator adequately place warning signs or barriers to alert visitors of the danger?

The following are actual case summaries that demonstrate how courts can offer differing findings on similar factual scenarios:

The plaintiff alleged that she fell on a tire rut which had re-formed from the melted ice and had been covered by snow. The plaintiff argued that the defendant created an unnatural accumulation of ice by sprinkling salt on the ice and failing to remove the melted ice before vehicles drove on it. In affirming summary judgment for the defendant, the appellate court noted that ruts and uneven surfaces created by traffic in snow and ice are not unnatural, and cannot form the basis for liability concluding that a property owner does not aggravate a natural condition by merely sprinkling salt and causing ice to melt, even though the ice may later refreeze.

A defendant gas station added snow cleared from its driveways and the sidewalks adjacent to its property to the piles of snow created by the city's snow plows. After fluctuations in temperature caused the snow to melt and refreeze on the sidewalk, the defendant put down rock salt. The plaintiff fell on a lump of ice or snow on the sidewalk and filed suit alleging that the defendant created an artificial hazard. The court held that the defendant's acts did not create an unnatural accumulation.

The plaintiff fell on an ice patch covered by a dusting of snow in a gravel parking lot. She testified that the day before the accident, there was no ice in the lot, but there were areas of packed snow, melted snow and puddles of water. She was "99 and 99/100%" sure that the snow melted, collected in the depressions and froze. In affirming entry of summary judgment for the defendants, the court found that the plaintiff failed to present a factual basis in support of the assertion that the ice was created by an unnatural accumulation of snow, because there was no evidence of a connection between the snow pile on the periphery of the lot and the ice in the depressions of the lot. The plaintiff's testimony regarding the source of the ice was considered complete speculation.

The plaintiff slipped on a patch of ice in the portion of the train station that was owned and maintained by the defendant. A pile of snow plowed by the defendant's employees was in close proximity, with ice having formed around the base of the snow mound. An employee of the defendant testified at deposition that it appeared that the ice had formed from the snow melting off the mound. The court stated that where a snow mound is an unnatural accumulation and water melts from the snow mound and refreezes, the resulting ice is also an unnatural accumulation. It is the plaintiff's burden to present facts indicating a "direct link" between the snow pile and the ice. The court found that the plaintiff had presented facts indicating such a link.

The plaintiff was struck by a falling icicle near the entrance of the defendant's premises. Plaintiff brought suit alleging that the defendant was negligent in failing to provide a reasonably safe means of ingress to and egress from its premises, and alleging a defective condition which allowed an unnatural accumulation of ice and icicles above the entrance. The trial court dismissed the case, based on the belief that there was no cause of action for icicles. The Second District Appellate Court reversed, noting that the operator of a business has a duty to provide a safe means of ingress to and egress from its premises. That duty is not abrogated by the presence of a natural accumulation of ice, snow or water. Further, taking into consideration the plaintiff's allegations of specific building defects, includ-

ing an improperly pitched overhang roof, improperly hung and sized gutters and downspouts, an inadequate number of downspouts and improper drainage of the overhang roof, the court found that the plaintiff could allege a set of facts that would state a cause of action based upon the presence of defective conditions on defendant's building that caused an unnatural accumulation of ice.

Liability for unnatural accumulations of snow or ice may not be limited to that which originally fell on the ground. If a building or structure allows water runoff in an area where people will walk, and the water freezes for a period of time sufficient to give the landowner notice of the dangerous condition, it is not unreasonable to hold the landowner liable for injuries caused by those unnatural accumulations of ice. If evidence or testimony is presented to a jury that shows that the patch of ice on which a plaintiff falls came from water that dripped from melting snow on the roof and refroze or came from patches of snow left behind by plows that would melt and refreeze, there may very well be a question of fact as to whether the accident arose because of an unnatural accumulation of ice.

Summary

The distinction between a "natural" and "unnatural" accumulation is a factual issue that will frequently be left up to the trier of fact (a judge or jury) and cannot necessarily be decided via a summary judgment motion as a matter of law.

The following are some guidelines to review in determining whether the claim involves a "natural" vs. an "unnatural" accumulation.

Factors that may lead to an unnatural accumulation:

a. a leaky roof;
b. a leaky overhead structure;
c. an excessive sloping;
d. an irregularly surfaced parking lot;
e. an improperly constructed sidewalk;
f. a snow mound or pile.

Liability considerations involving a natural vs. unnatural accumulation

No liability for a "natural" accumulation

The owner or possessor of real property is not liable for injuries resulting from the natural accumulation of ice, snow, or water, whether created directly or indirectly by the owner or possessor. There is no duty to remove a natural accumulation of ice or snow.

Potential liability for an "unnatural" accumulation

On the other hand, a property owner has the duty and may be liable in negligence when injuries are the result of an unnatural or artificial accumulation of snow, ice or water, or a natural condition aggravated by the owner's use of the area and creation of the hazardous condition.

If one voluntarily assumes the duty to remove natural accumulations of snow, ice or water, one is usually held to a standard of ordinary care, and will owe a duty not to leave or cause unnatural accumulations. The mere removal of snow which may leave natural ice formations remaining on the premises does not of itself constitute negligence. The gratuitous performance of removing snow or ice does not alone create a continuing duty to perform those tasks.

Notice requirements for a "natural" and "unnatural" accumulation

If the hazard is classified as natural, there is no duty to remove it, even if one has notice of the hazard and a reasonable amount of time to remedy the condition. Furthermore, if the hazard is natural, even failure to warn about a natural accumulation is insufficient to establish liability of any kind.

In the event a plaintiff succeeds in persuading a court that an accumulation is artificial, a duty to remove or warn arises but only if the defendant is proven to have had actual or constructive notice of the hazard.