

MASSACHUSETTS APPEALS COURT TAKES FIRST STEP IN ERODING DEFENSES IN SNOW AND ICE PREMISES LIABILITY

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The Massachusetts Appeals Court has issued a significant decision in what appears to be a looming shift in Massachusetts law regarding the duty of a condominium association or landowner to keep the common areas and premises free from defective conditions. The long-standing rule in Massachusetts has been that although an association is responsible for using reasonable care in maintaining the common areas, an individual has an equal duty to use reasonable care when on the premises. If an open and obvious defective condition existed (i.e., a sheet of ice across the walkway, a broken stair, a pothole) the individual had a duty to avoid those conditions. The failure of an individual to avoid an open and obvious condition was grounds for the dismissal (many times at the pre-trial stage) of an injured party's case even where the condominium association failed to use reasonable care in maintaining the premises. The decision in Soederberg virtually eliminates the likelihood of a pre-trial dismissal and places a far heavier burden on the landowner.

The day after a significant snowstorm Ms. Soederberg fell and broke her hip on ice on the common area walkway. The condominium association had the snow cleared following the snowfall but a layer of ice developed on the walkway. At trial the jury found that the ice was an unnatural accumulation of snow and ice. However, the jury also determined the ice was an open and obvious condition and Ms. Soederberg had an alternate means to avoid the ice. Ms. Soederberg had a duty to avoid the ice and failed to do so. Pursuant to Massachusetts case law at the time, the judge entered a verdict in favor of the condominium association because the plaintiff's failure to use care outweighed the association's duty to remove the ice.

The Appeals Court determined the judge's application of the long-standing interpretation of the open and obvious rule was incorrect. The Appeals Court reasoned that the open and obvious rule does not override an association's duty of care to remedy hazardous conditions. The rule may be used to limit an injured party's recovery but it can no longer be used as a weapon to eliminate liability.

The result of this change in the law is that associations need to be ever more vigilant in ensuring the premises are free from defects because it can no longer use the injured party's conduct as a liability defense. The focus will now be on whether the association took reasonable care to ensure the property was free from defect rather than whether the injured party used reasonable care to avoid the defect.

We believe the Appeals Court's decision continues the recent trend in Massachusetts that places more responsibility on associations and landowners to eliminate potential hazards from the premises. We expect this trend will culminate in the Supreme Judicial Court's elimination of the natural accumulation of snow and ice defense in the pending case of Papadopoulos v. Target Corporation that was argued in February. Stay Tuned!

[Soederberg Decision]