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SJC changes rules on snow removal

The Boston Globe

Historic decision makes owners liable, regardless of white stuff 's source

By John R. Ellement, Globe Staff | July 27, 2010

In a historic decision, the state's high court ruled yesterday that landowners must make sure their property is clear of any snow and ice that could cause injury to others, regardless of whether the snow came from Mother Nature or from a plow or other source.

The Supreme Judicial Court ruling basically threw out the rules that have guided slip-and-fall lawsuits linked to winter for some 125 years, attorneys said afterward.

Since the late 1800s, Massachusetts courts and juries have had to settle cases of injury by trying to figure out the legal distinction between icy conditions caused by nature and those caused artificially as, for example, when a snowplow moves the snow, and who is responsible for liability.

But the SJC said that lawsuits now will depend on the same standard long used in other accident suits. That means, attorneys said, that everyone will have to clear their property or be sued if someone slips and falls.

"There are those who don't do anything; they've been able to escape liability," said David White — a Boston attorney and former president of the Massachusetts Bar Association, who is not a party to the lawsuit — said about some property owners not cleaning up their snow. "Now, all homeowners and all property owners must pay attention to conditions caused by snow and ice."

The ruling came in a lawsuit filed by Emanuel Papadopoulos against the Target store company and the Weiss Landscape Co., the outfit Target hired to clear the snow and ice from its property at the Liberty Tree Mall in Danvers, the court said.

In 2002, Papadopoulos, 76, of Peabody broke his hip when he slipped on ice that was caused when snow, piled near a handicapped parking space melted and refroze into ice, his attorney, Emmanuel N. Papanickolas, said yesterday.

Lower courts had ruled in favor of Target and Weiss Landscape, based on rules that previously drew a distinction between natural and artificial ice.

Now, Papanickolas said, commercial property owners and the companies who insure their properties will have to be more vigilant.

"This is a day that all the people of Massachusetts should celebrate, because this is a victory on behalf of public safety," he said. "The public should be paying more attention here in Massachusetts to make their premises reasonably safe, so less and less of these injuries take place."

The attorneys for Target and the landscaping company could not be reached for comment yesterday.

In the ruling, Justice Ralph Gants wrote that it "is not reasonable for a property owner to leave snow or ice on a walkway where it is reasonable to expect that a hardy New England visitor would choose to risk crossing the snow or ice, rather than turn back or attempt an equally or more perilous walk around it."

The SJC said its rules take effect immediately and will also apply retroactively to pending lawsuits.

"We now will apply to hazards arising from snow and ice the same obligation that a property owner owes to lawful visitors as to all other hazards: a duty to 'act as a reasonable person under all of the circumstances including the likelihood of injury to others, the probable seriousness of such injuries, and the burden of reducing or avoiding the risk.'"

Martin J. Rooney, a Boston lawyer who filed a friend of the court brief on behalf of the Defense Lawyers Association of Massachusetts, said the SJC ruling was a "sea change" that will generate more lawsuits over the next several years.

"There is no safe harbor now," he said. "The SJC has indicated everything is fair game, and we are going to let the juries sort this out. Are they [juries] going to consider newly fallen snow a dangerous condition? Are they going to say going away for the weekend is dangerous? Or if I live in Wellesley and make \$1 million a year, do you have to hire somebody to do it every day? It remains to be seen."

Papanickolas said he does not expect his neighbors to be furious with him during cold and wintry days later this year because of his success with the SJC.

"I clean out the sidewalks for all of my neighbors," he said. "I've got three snowblowers, and they all come out and they applaud my performance. You'd be surprised how you could make your premises reasonably safe without really overexerting yourself."

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