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RE: P&A CLIENT ADVISORY (2011: 01)
Papadopoulos v. Target Corp. SJC Decision:
Expansion of Premises Liability

The fundamental mission of Petrini & Associates, P.C., is to deliver quality legal representation to our clients. Part of this mission is to assist clients in avoiding potential new liabilities. In furtherance of this mission we sometimes provide advisory updates on significant developments in various areas of the law affecting our clients.

The Supreme Judicial Court of Massachusetts recently issued a decision in Papadopoulos v Target Corp., 457 Mass. 368 (2010). This case concerned a plaintiff who alleged negligence against a property owner, claiming he was injured after slipping on a piece of ice frozen to the pavement of a parking lot at the Liberty Tree Mall in Danvers. In this case, the Supreme Judicial Court abolished the long-standing “unnatural accumulation doctrine” in Massachusetts. The new rule set forth in Papadopoulos, which will be applied retroactively, now requires property owners or their agents to remove or treat natural accumulations of snow and ice if reasonable under the circumstances. This decision significantly impacts the potential premises liability exposure of property owners in Massachusetts.

The “unnatural accumulation” doctrine, also known as the “Massachusetts rule,” pertained to snow and ice slip-and-fall negligence claims. The doctrine provided that property owners, or others responsible for maintaining property, did not violate the duty of reasonable care by failing to remove natural accumulations of snow and ice. See Sullivan v. Brookline, 416 Mass. 825, 827 (1994). By virtue of this rule, premise liability defendants were often able to obtain dismissal through motions for summary judgment, avoiding liability and minimizing the costs of defending such matters. The doctrine also seemingly acted as a restraint to the filing of questionable or attenuated slip and fall claims in the first place.

The Papadopoulos decision abandons the national accumulation rule, applying “to all hazards arising from snow and ice the same obligation of reasonable care that a property owner

owes to lawful visitors regarding all other hazards.” Papadopoulos, 457 Mass. at 369. Simply put, the duty is one 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.” Id. at 383, (citations omitted). Papadopoulos continues a trend in recent years whereby the Supreme Judicial Court has issued several decisions in the area of premises liability law similarly changing long-standing doctrines that were favorable to property owners in favor of more simplified and/or modernist approaches.

With respect to public landowners such as cities or towns, this decision changes the duties of cities and towns as property owners, but not with respect to public ways. This is because Papadopolous alters only a common law duty a property owner owes to a visitor. The potential liability of a city or town for snow and ice accumulations on a public way is limited by statute. G.L. c. 84, § 17 provides as follows:

A county, city or town shall not be liable for an injury or damages sustained upon a public way by reason of snow or ice thereon, if the place at which the injury or damage was sustained was at the time of the accident otherwise reasonably safe and convenient for travelers.

Nothing in Papadopolous alters this statutory provision. A municipality’s duties with respect to snow and ice removal on public ways have not changed. Plaintiffs still must establish an underlying defect in the road that made the road unsafe as a condition precedent to recovery against municipalities for injury or damage sustained on a public way.

The full impact of Papadopoulos decision remains to be seen. It is reasonable to predict that we will see an increase in the number of snow and ice slip and fall cases brought by plaintiffs in the courts, coupled with either higher average settlement values for plaintiffs or an increased percentage of these types of cases going to trial. It is also possible that this decision will result in higher insurance premiums for municipalities and private businesses over the long haul, depending on the number of cases filed and the impact on settlement values. The best practice for a property owner or manager seeking to minimize potential liability for injuries claimed remains that they should do what is reasonable under the circumstances. Accordingly, private and public landowners should create and periodically review plans for the removal and treatment and snow and ice to ensure that they protect guests.

Please contact Christopher Petrini, Christopher Brown or one of the other attorneys at P&A at (508) 665-4310 or info@petrinilaw.com if you have any questions regarding this advisory. Thank you.