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[August 6, 2010]

RE: CLIENT ADVISORY
Papadopoulos v. Target Corp. Decision

As you know, at Petrini & Associates, P.C., we place great importance in the delivery of quality legal representation. In this regard, we sometimes provide advisory updates on significant developments in various areas of the law affecting our clients.

Recently, the Supreme Judicial Court of Massachusetts issued a decision in Papadopoulos v. Target Corp., 457 Mass. 368 (2010), which significantly impacts the potential premises liability exposure of property owners in Massachusetts. Specifically, 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. Papadopoulos 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.

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). Where the question of whether the doctrine applied was often one of law, defendants in premises liability matters, including the defendant Target at the trial court level before this decision, 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 an impetus to the filing of questionable or attenuated slip and fall claims in the first place.

The Papadopoulos decision abandons this 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,

quoting Young v. Garwacki, 380 Mass. 162, 169 (1980) (citations omitted). This recent decision is not surprising; 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. See e.g., Sheehan v. Roche Bros. Supermarkets, Inc., 448 Mass. 780, 791-92 (2007).

The full impact of the Papadopoulos decision is not yet clear, but reasonably we can expect an increase in the number of snow and ice slip and fall cases asserted by plaintiffs in the courts, coupled with either higher average settlement values for plaintiffs (and liability insurance premiums) or an increased percentage of these types of cases going to trial.

While Papadopolous abolishes the distinction between natural and unnatural accumulations of snow and ice in determining if landowners or their agents have a duty to remove or treat such conditions, broadening the legal duty owed, from a practical standpoint this decision should not impose any new costs or obligations on landowners or their agents. The now-abrogated distinction, which was significantly blurred over the years by a series of exceptions and special circumstances in the case law, was hardly a bright line rule for a landowner or its agents to rely upon, and for most was probably not a factor in snow and ice removal and treatment plans.

This decision also impacts cities and municipalities in addition to private parties. However, it only changes the duties of cities and towns as property owners, and not with respect to public ways. This is because Papadopolous only alters 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, s. 17 provides as follows:

> A county, city or town shall not be liable for an injury or damage 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 been changed. Plaintiffs still must establish an underlying defect in the road to recover against municipalities for injury or damage sustained on a public way.

Ultimately, the best practice for all property owners or managers seeking to minimize potential liability for injuries claimed by a plaintiff was and continues to be to do what is reasonable under the circumstances. Clients should create or review existing plans for the removal and treatment and snow and ice, ensuring there are clearly defined policies and procedures to address these potential hazards that are easy to observe and allow for situational flexibility.

Please contact me should you have any questions or concerns in this regard.