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ILLINOIS LAW MANUAL

CHAPTER V

PREMISES LIABILITY

The law regarding liability for injuries occurring upon owned or occupied premises has evolved rapidly in certain areas. Traditionally, a landowner's duties depended upon the status of the injured party as invitee, licensee, or trespasser. In 1984, the Premises Liability Act, 740 ILCS 130/2, abolished the common law distinction between duties owed to invitees and licensees but retained the common law duty owed to trespassers. Invitees include business customers and their children, spectators at sporting events, independent contractors working on the premises, firemen, policemen, baby-sitters, and job applicants. Licensees include social guests and persons given permission to cross a right-of-way. Trespassers are those persons who enter upon the premises of another without invitation or permission.

Under the Premises Liability Act, the duty owed by owners or occupiers of land to invitees or licensees is one of "reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them." 740 ILCS 130/2. Although an owner or occupier of land does not insure the safety of such a person, he or she may become liable to invitees and licensees because of a condition on his or her land if he or she:

- (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees;
- (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it; and
- (c) fails to exercise reasonable care to protect them against the danger.

Ward v. K Mart, 136 Ill. 2d 132 (1990).

The Illinois Supreme Court, in Wakulich v. Mraz, 203 Ill. 2d 223 (2003), held that there is no liability against social hosts who furnish alcohol to guests, regardless of whether the guests are adults or minors. For a discussion of liability under the Liquor Control Act (Dram Shop Act), see Chapter IV, Section F.

Subsequent to the Illinois Supreme Court decision in Wakulich v. Mraz, the Illinois legislature enacted the Drug or Alcohol Impaired Minor Responsibility Act (Impaired Minor Act). 40 ILCS 581 et seq. The Impaired Minor Act legislates that persons over 18 who willfully supply alcoholic beverages or illegal drugs to a person under 18 and cause impairment of that person, are liable for death or injuries to persons or property caused by the impaired minor. The Impaired Minor Act does not allow as a defense the contributory negligence or contributory willful and wanton conduct of the injured party claiming damages under the Act. The Impaired Minor Act, as drafted, allows for recovery of economic damages and non-economic damages including: physical and emotional pain and suffering, physical impairment, emotional distress and other similar damages. It also allows recovery for reasonable attorney's fees, reasonable expenses for expert testimony, and punitive damages. The Impaired Minor Act does not overrule the Wakulich case, to the extent that a social host who supplies alcohol to adults, is not liable under the Act.

Although an owner or occupier of land owes a general duty not to willfully and wantonly injure an undiscovered trespasser, an exception to this general rule now holds that a landowner

owes a duty of ordinary care to avoid injury to a trespasser who has been discovered in a “place of danger” on the premises. Lee v. CTA, 152 Ill. 2d 432 (1992). To create liability under this exception, the condition or activity on the land must make it a “place of danger.” The mere presence of the trespasser on the land alone is insufficient. Rhodes v. Illinois Central Gulf Railroad, 172 Ill. 2d 213 (1996). Further, a landowner or occupier may owe a duty of ordinary care to a trespasser where the landowner or occupier permits regular use of his land for travel or otherwise, and where the landowner is engaged in a dangerous activity involving a risk of death or serious bodily harm. Rodriguez v. Norfolk and Western Ry. Co., 228 Ill. App. 3d 1024 (1992), Benamon v. Soo Line R. Co., 294 Ill. App. 3d 85 (1997). For this exception to apply, the landowner or occupier must know, or based on facts within his or her knowledge should know, that persons constantly and persistently intrude upon some particular place within the land. This exception is known as the frequent trespass doctrine. Miller v. General Motors Corp., 207 Ill. App. 3d 148 (1990), McKinnon v. Northeast Ill. Regional Commuter RR Corp., 263 Ill. App. 3d 774 (1994).

The frequent trespass doctrine typically involves cases arising from railroad accidents that include evidence of a “beaten” or “well worn path,” or evidence of constant intrusion on the railroad’s property by pedestrians who had a custom of crossing the right-of-way or tracks and evidence the railroad knew of, and tolerated the circumstance. Nelson v. Northeast Illinois Regional Commuter R.R. Corp., 364 Ill. App. 3d 181 (2006). The Nelson court, further explaining the frequent trespass doctrine, held that any open and obvious risk in crossing the railroad tracks did not negate the railroad’s duty under the frequent trespass doctrine. The Nelson court also held that a local public entity has a duty to exercise ordinary care to keep its property in a reasonably safe condition for the use of people whom the public entity intended and permitted to use the

property. An immunity for public entities applies only where two requirements are met: (1) the injured party was not an intended and permitted user of the property; and (2) the injury arose from the condition of the property. The immunity does not apply where the injuries arose from an unsafe activity conducted on an otherwise safe property. Nelson, 364 Ill. App. 3d at 190.

The recent Illinois Supreme Court decision of Marshall v. Burger King, 222 Ill. 2d 422 (2006), imposes a duty on a landowner or occupier to aid or protect persons on its property against an unreasonable risk of physical harm posed by the negligent actions of third parties. In Marshall, the plaintiff's decedent was eating at a Burger King restaurant when a car crashed through the wall of the restaurant and killed the decedent. Plaintiff filed a complaint alleging that Burger King was negligent because it failed to design and maintain the restaurant so as to prevent the accident. The Illinois Supreme Court held that Burger King owed a duty to aid or protect its customers against an unreasonable risk of physical harm posed by the negligent actions of third parties. The Supreme Court held that the allegations in the complaint regarding the placement of the restaurant's location and issues regarding design, and the absence of precautions taken in the construction of the restaurant were sufficient to state a cause of action. As a result of the Marshall decision, an owner or occupier may owe a duty to protect persons on their premises against acts of third parties, including third parties who lose control of their automobiles. A proximate cause defense to similar types of claims would likely still exist. The Marshall decision broadens an owner or occupier's potential liability.

A. ICE & SNOW

1. Basic Law

Because of the geographical location and climate of the more heavily populated regions of Illinois, the law applicable to suits for injuries resulting from a slip and fall on ice and snow is

well-developed. Generally, in order for an owner or occupier of land to be held liable for a slip and fall on snow or ice, the owner must be shown to have, in some way, caused an unnatural accumulation of ice or snow, or to have aggravated a natural condition. Kellerman v. Car City Chevrolet-Nissan, Inc., 306 Ill. App. 3d 285 (1999). Further, notice of an unnatural accumulation of snow or ice is required to impose liability upon the landowner or occupier. Id.

2. Analysis

a. Natural v. Unnatural

There is no duty upon owners and occupiers of land to remove natural accumulations of ice or snow from their property. Lansing v. County of McLean, 69 Ill. 2d 562 (1978), Nowak v. Coghill, 296 Ill. App. 3d 886 (1998). Therefore, snow that has fallen and collected, sleet or freezing rain that forms ice, or melting snow that re-freezes into ice may remain upon a landowner's premises without liability for falls thereon. In Harkins v. System Parking, Inc., 186 Ill. App. 3d 869 (1989), the plaintiff fell while walking across the defendant's parking lot which contained ruts formed by a combination of the defendant's application of salt and vehicular traffic. The court in Harkins held that traffic and temperature changes, which mold snow into ruts, do not create an "unnatural accumulation." Further, the application of salt by a landowner, causing ice to melt and refreeze, does not aggravate the natural accumulation already present. Id.

However, where there is evidence that a mound of snow was created during the snow removal process and ice formed from the snow mound, the ice formation will be considered an unnatural accumulation. Johnson v. National Supermarkets, Inc., 257 Ill. App. 3d 1011 (1994); Russell v. Village of Lake Villa, 335 Ill. App. 3d 990 (2002). In Russell v. Village of Lake Villa, the plaintiff fell on a sidewalk that had been cleared of snow and ice.

However, a mound of snow from a nearby parking lot had been plowed to an area adjacent to the sidewalk. Ice formed from the melting of the mound of snow. The Russell court reasoned that the defendant landowner undertook to remove snow and ice from the property, that the mound of snow created by the defendant proximately caused ice to form, and that the mound of snow the ice came from was an unnatural accumulation. Therefore, a duty was owed to the plaintiff.

Residential landowners or occupants are only liable for willful and wanton misconduct in the removal of ice or snow. The applicable statute provides:

Any owner, lessor, occupant or other person in charge of any residential property, or any agent of or other person engaged by any such party, who removes or attempts to remove snow or ice from sidewalks abutting the property shall not be liable for any personal injuries allegedly caused by the snowy or icy condition of the sidewalk resulting in his or her acts or omissions unless the alleged misconduct was willful or wanton.

745 ILCS 75/2.

The courts have applied the Residential Snow and Ice Removal Act in the situation where the injury may have occurred on a stoop adjacent to a sidewalk. Yu v. Kobayski, 281 Ill. App. 3d 489 (1996).

The natural accumulation rule that a property owner owes no duty to remove snow or ice that accumulates naturally on the premises also applies to falling ice and snow that forms on a building. Bloom v. Bistro Restaurant Limited Partnership, 304 Ill. App. 3d 707 (1999). The Bloom court used the same factors as previous slip and fall decisions to determine whether the natural accumulation rule applied, including whether an unnatural accumulation resulted due to the design, construction, or maintenance of the building. Id.

b. Tracked-In Moisture

A landowner has no duty to remove the tracks of persons who have walked through natural accumulations of slush, snow, and water. Stypinski v. First Chicago Building Corp., 214 Ill. App.

3d 714 (1991). Further, a landowner does not have a duty to continuously remove tracks left by customers who have walked through natural accumulations. Lohan v. Walgreens Company, et al., 140 Ill. App. 3d 171 (1986). A mat that becomes saturated in a store's entry way due to tracked-in moisture neither transforms the moisture into an unnatural accumulation nor aggravates the natural accumulation. Swartz v. Sears, Roebuck and Company, 264 Ill. App. 3d 254 (1993). This rule also applies to common carriers such as elevator companies, even though they owe a higher duty to persons on the land. Sheffer v. Springfield Airport Auth., 261 Ill. App. 3d 151 (1991).

c. Sloping Surfaces

Where there is evidence that snow has melted, accumulated, and refrozen because of a slope upon the landowner's premises, courts have examined liability on a case-by-case basis. There is no precise formula to differentiate a dangerous slope from a reasonable slope. McCann v. Bethesda Hospital, 80 Ill. App. 3d 544 (1979); Siegel v. Village of Wilmette, 324 Ill. App. 3d 903 (2001). More recently, courts have required evidence of dangerousness, beyond merely alleging the existence of a slope or stating that "water flows downhill." Selby v. Danville Pepsi Cola Bottling Co., Inc., 169 Ill. App. 3d 427 (1988); Madeo v. Tri-Land Properties, Inc., 239 Ill. App. 3d 288 (1992). Generally, testimony of the specific pitch of the surface is required, and there must be evidence linking the ice formation to a known source of snow or water at the top of the slope. Expert testimony that a landowner improperly plowed snow uphill in a parking lot, causing runoff to form downhill during a thaw, which formed ice where plaintiff fell, was sufficient to defeat a motion for summary judgment. Webb v. Morgan, 176 Ill. App. 3d 378 (1980).

d. Underlying Defect

A landowner may be found liable, even though there is a natural accumulation, where an underlying dangerous condition is present upon the premises. McGourty v. Chiapetti, 38 Ill. App.

2d 165 (1962); Smalling v. LaSalle Nat'l Bank of Chicago, 104 Ill. App. 3d 894 (1982). In Kittle v. Liss, 108 Ill. App. 3d 922 (1982), a plaintiff was injured after a fall upon a stairway leading from the defendant's business. Although the stairs were covered with a natural accumulation of snow, the court found that the lack of proper lighting for the stairway created a hazard that was not eliminated by the natural accumulation present. Id.

The separate duty of a landowner to provide a reasonably safe means of ingress and egress from his business cannot be avoided by the mere presence of natural accumulations of ice or snow. Johnson v. Abbott Laboratories, Inc., 238 Ill. App. 3d 898 (1992). In Johnson, the plaintiff was injured when he fell while walking on a hillside he was using as a pathway to the garage where his truck was parked. No other pathways to the garage were accessible to him. The hillside was covered with twelve inches of snow and had loose rocks under the snow. The area was not illuminated. Based upon these facts, the court upheld the jury's verdict in favor of the plaintiff, finding that the owner had a duty to provide a reasonably safe means of ingress and egress from his place of business. That duty was not eliminated by the presence of a natural accumulation of ice, snow, or water. Id.

However, if there is no evidence of an underlying defect, the mere allegation of insufficient lighting does not create a duty upon a landowner or occupier if the only evidence is that the Plaintiff fell on a natural accumulation of ice or snow. Lansing v. County of McLean, 69 Ill. 2d 562 (1978); Newcomm v. Jul, 133 Ill. App. 2d 918 (1971).

e. Voluntary Undertaking

Even though there is generally no duty to remove natural accumulations of ice and snow, a landowner's voluntary undertaking to do so may subject him to liability, if the removal is performed negligently or results in an unnatural accumulation of snow that causes injury to a

plaintiff. Graf v. St. Luke's Evangelical Lutheran Church, 253 Ill. App. 3d 588 (1993). In Graf, the plaintiff slipped on a church stairway that had only been partially cleared. The court found that the partial removal of snow by the church employees had contributed to the formation of an ice layer over the previously cleared portion of the stairway and that this had created an unnatural accumulation. Id.

In Nowak v. Coghill, 296 Ill. App. 3d 886 (1998), the court used public policy to determine the limits of a voluntarily undertaken duty. It noted that the duty of care arising from a voluntary undertaking is limited to the extent of the undertaking. In Nowak, the plaintiff stepped into a pile of shoveled snow that had been moved from the residential owner's driveway and did not allow the plaintiff enough room to step out of his truck. The court reasoned that it would be inappropriate to hold that a residential property owner who voluntarily undertakes to shovel his driveway must shovel a driveway so that the cleared surface is wide enough to allow the driver of any vehicle that parks on the driveway to avoid stepping into shoveled snow. Id.

f. Contract Obligation

A contractual obligation to remove snow or ice may create liability for a landowner or occupier. This generally arises in cases involving commercial enterprises, such as shopping malls and retail stores, but can also arise in a condominium or apartment setting. If the landowner promises the removal of snow and/or ice, and the removal is performed negligently or creates an unnatural condition, the landowner may be liable for resulting injuries. Eichler v. Plitt Theaters, Inc., 167 Ill. App. 3d 685 (1988). The injured person need not be a party to the contract, as long as he or she is a foreseeable user of the premises. Schoondyke v. Heil, Heil, Smart & Golee, Inc., 89 Ill. App. 3d 640 (1980).

In *Schoondyke*, the defendants agreed to remove snow from a condominium premises and failed to do so on the date of the plaintiff's injury. The court found that the plaintiff, though not a condominium owner or party to the agreement, was still a foreseeable plaintiff. *Id.* In *Eichler*, a snow and ice removal contract between two owners of parking lots at a shopping mall allowed the plaintiff, a movie-goer, to maintain a suit for her injuries sustained in a slip and fall on ice that had not been removed from the parking lot. *Eichler*, 167 Ill. App. 3d at 686.

Where a contract for removal of ice or snow exists and a plaintiff falls on the property after the snow was removed, the plaintiff must show that the removal was done negligently in order to establish a breach of duty. *Burke v. City of Chicago*, 160 Ill. App. 3d 953 (1987).