125.00
LIABILITY FOR FALLS ON SNOW AND ICE

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INTRODUCTION

As a general rule, property owners have no duty to remove natural accumulations of snow, ice or melt water from their premises. Riccitelli v. Sternfeld, 1 Ill.2d 133, 115 N.E.2d 288 (1953); *see also* Selby v. Danville Pepsi-Cola Bottling Co., 169 Ill.App.3d 427, 435, 523 N.E.2d 697, 119 Ill.Dec. 941 (4th Dist.1988); Smalling v. LaSalle Nat'l Bank, 104 Ill.App.3d 894, 899, 433 N.E.2d 713, 60 Ill.Dec. 671 (4th Dist.1982); Hankla v. Burger Chef Sys., Inc., 93 Ill.App.3d 909, 418 N.E.2d 35, 49 Ill.Dec. 391 (1st Dist.1981). There is no liability for clearing off snow under which there is a natural accumulation of ice. McCann v. Bethesda Hosp., 80 Ill.App.3d 544, 549, 400 N.E.2d 16, 35 Ill.Dec. 879 (1st Dist.1979).

Recovery for falls on icy sidewalks or parking lots can be based on negligent design or maintenance of the underlying pavement. Sepesy v. Archer Daniels Co., 59 Ill.App.3d 56, 375 N.E.2d 180, 16 Ill.Dec. 549 (4th Dist.1978) (sloping surface created unnatural accumulations); McCann v. Bethesda Hosp., 80 Ill.App.3d 544, 549, 400 N.E.2d 16, 35 Ill.Dec. 879 (1st Dist.1970) (architect testified to improper design of entry way which resulted in unnatural accumulations); Webb v. Morgan, 176 Ill.App.3d 378, 531 N.E.2d 36, 125 Ill.Dec. 857 (5th Dist.1988) (slope of parking lot altered natural run-off); Wolter v. Chi. Melrose Park Assocs., 68 Ill.App.3d 1011, 1019, 386 N.E.2d 495, 25 Ill.Dec. 224 (1st Dist.1979) (negligent maintenance of parking lot surface could cause unnatural accumulation of ice). Other cases have recognized a cause of action for negligent removal of ice and snow because an “unnatural accumulation” resulted. Fitz Simons v. Nat'l Tea Co., 29 Ill.App.2d 306, 173 N.E.2d 534 (1961); Foster v. George J. Cyrus & Co., 2 Ill.App.3d 274, 276 N.E.2d 38 (1st Dist.1971); McCarthy v. Hidden Lake Village Condo. Ass'n, 186 Ill.App.3d 752, 542 N.E.2d 868, 134 Ill.Dec. 522 (1st Dist.1989).

Illinois courts have applied the “unnatural accumulation” requirement in a number of specific contexts. There is no duty to warn customers or invitees of the danger of natural accumulations. McCann v. Bethesda Hosp., 80 Ill.App.3d 544, 549, 400 N.E.2d 16, 35 Ill.Dec. 879 (1st Dist.1979). Property owners have no duty to clean up ice, snow or water which is tracked in by customers. Demario v. Sears, Roebuck & Co., 6 Ill.App.3d 46, 284 N.E.2d 330 (1st Dist.1972), or to provide mats or rugs for customers to wipe their feet. Lohan v. Walgreens Co., 140 Ill.App.3d 171, 488 N.E.2d 679, 94 Ill.Dec. 680 (1st Dist.1986). A mat, which becomes saturated in a store's entryway due to tracked-in water, does not transform the water into an unnatural accumulation, nor does it aggravate the water's natural accumulation. Wilson v. Gorski's Food Fair, 196 Ill.App.3d 612, 554 N.E.2d 412, 143 Ill.Dec. 477 (1st Dist.1990). Where there is no evidence to show that moisture originated from an unnatural accumulation, property owners are under no duty to remove water from interior floors near mats. Roberson v. J.C. Penney Co., 251 Ill.App.3d 523, 623 N.E.2d 364, 191 Ill.Dec. 119 (3d Dist.1993); *see* Richter v. Burton Inv. Props., Inc., 240 Ill.App.3d 998, 1004, 181 Ill.Dec. 780, 608 N.E.2d 1254 (2d Dist.1993) (holding that the placement of mats on a ceramic tile floor did not create a duty to

cure an excessively slippery floor). *But see* Fanning v. Lemay, 78 Ill.App.2d 166, 222 N.E.2d 815 (5th Dist.1966), *rev'd on other grounds*, 38 Ill.2d 209, 230 N.E.2d 182 (1967) (liability predicated on negligent use of floor tile which became slippery when wet). Normal usage of the property by vehicles or pedestrians which leaves ruts or ridges or ice in natural accumulations or which causes ice to form as a result of thawing and refreezing on an otherwise properly maintained surface has been held to be a natural accumulation. Selby v. Danville Pepsi-Cola Bottling Co., 169 Ill.App.3d 427, 435, 523 N.E.2d 697, 119 Ill.Dec. 941 (4th Dist.1988); Harkins v. Sys. Parking Inc., 186 Ill.App.3d 869, 872-73, 542 N.E.2d 921, 134 Ill.Dec. 575 (1st Dist.1989).

Given that a property owner is not liable for injuries caused by natural accumulations of ice and snow, a property owner cannot be held liable for a failure to provide adequate safeguards to prevent others from falling as a result of those natural accumulations. Branson v. R & L Inv., Inc., 196 Ill.App.3d 1088, 1094, 143 Ill.Dec. 689, 554 N.E.2d 624 (1st Dist.1992).

The existence of a municipal nuisance ordinance does not imply a duty to remove natural accumulations where the common law creates no such duty. Thompson v. Tormike, Inc., 127 Ill.App.3d 674, 469 N.E.2d 453, 82 Ill.Dec. 919 (1st Dist.1984). A municipal ordinance requiring abutting property owners to remove snow and ice from public sidewalks within 24 hours of snowfall of two inches or more is an ordinance for the benefit of the municipality. Such an ordinance does not create a duty for the landowners. Klikas v. Hanover Square Condo. Ass'n, 240 Ill.App.3d 715, 608 N.E.2d 541, 181 Ill.Dec. 468 (1st Dist.1992).

A contract or a lease agreement that requires snow removal can create a duty to remove natural accumulations. Schoondyke v. Heil, Heil, Smart & Golee, Inc., 89 Ill.App.3d 640, 411 N.E.2d 1168, 44 Ill.Dec. 802 (1st Dist.1980). The plaintiff has the burden of proving that the defendant knew or should have known of the dangerous condition and failed to take proper steps to guard against it. The lease may create a duty of snow removal but does not establish a strict liability standard. Tressler v. Winfield Vill. Coop., Inc., 134 Ill.App.3d 578, 481 N.E.2d 75, 89 Ill.Dec. 723 (4th Dist.1985). A visitor on the property is not necessarily a third-party beneficiary of a contract of the property owner with a snow removal service. Wells v. Great Atl. & Pac. Tea Co., 171 Ill.App.3d 1012, 525 N.E.2d 1127, 121 Ill.Dec. 820 (1st Dist.1988). However, Eichler v. Plitt Theatres, Inc., 167 Ill.App.3d 685, 521 N.E.2d 1196, 118 Ill.Dec. 503 (2d Dist.1988), held that a lease requiring the removal of "all" snow and ice would be construed as requiring removal of all that was reasonably practical and that such a lease could create a duty of ordinary care toward a business patron who fell (applying the *Restatement (Second) of Torts* §324A).

The General Assembly adopted the Snow and Ice Removal Act (745 ILCS 75/1-75/2), effective September 14, 1979. Section 2 provides:

> §2. 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 from his or her acts or omissions unless the alleged misconduct was willful or wanton.

In 1996, the Second District considered this statute in the context of removal of snow and ice from “sidewalks abutting” residential property. Yu v. Kobayashi, 281 Ill.App.3d 489, 667 N.E.2d 106, 217 Ill.Dec. 313 (2d Dist.1996). In Yu, the court found that the defendant was not liable for any negligence in removing or attempting to remove snow from a paved area between the stoop of an apartment and a parking lot where plaintiff slipped and fell. The court noted that the paved area, part of the continuous walkway, was sufficiently similar to a traditional sidewalk and to classify it otherwise would be unreasonable. Other cases have considered snow and ice removal from “sidewalks abutting” property without referring to the statute. See Klikas, 240 Ill.App.3d 715, 608 N.E.2d 541, 181 Ill.Dec. 468 (1st Dist.1992) discussed above.

125.01 Duty Of Landowner--Snow And Ice Removal--Condition Of The Premises

[However,] The [owner] [occupant] of property is under no duty to remove ice or snow which has resulted from natural accumulations.

Notes on Use

This instruction should be given in cases where the landowner or occupier's liability is based upon the existence of unnatural accumulations of snow or ice, whatever the cause. This instruction should be given in conjunction with IPI 125.02.

This instruction should be given with IPI 125.02 and such premises liability instructions as may be applicable. If the plaintiff claims he was injured directly by a snow removal operation, then use IPI 20.01 and IPI 10.03 instead of this instruction.

This instruction can be added as an additional paragraph to the applicable duty instruction (e.g. IPI 10.04-negligence, or IPI 14.04-willful and wanton) by using the bracketed word, “However,” or can be given as a separate instruction without that word.

This instruction should not be given if “natural accumulation” is not an issue for the jury.

Comment

The refusal to give an instruction about the duty as to natural accumulations was held to be reversible error in Foster v. George J. Cyrus & Co., 2 Ill.App.3d 274, 276, 276 N.E.2d 38 (1st Dist.1971). A similar instruction was approved with additional comments on the law in Wolter v. Chi. Melrose Park Assocs., 68 Ill.App.3d 1011, 1019-20, 386 N.E.2d 495, 500-01, 25 Ill.Dec. 224, 229-30 (1st Dist.1979). *See* Smalling v. LaSalle Nat'l Bank, 104 Ill.App.3d 894, 433 N.E.2d 713, 60 Ill.Dec. 671 (4th Dist.1982).

If a duty to remove or protect against natural accumulations of snow or ice is created by conduct or contract, then the plaintiff need not prove the existence of “unnatural accumulation” and this instruction is inapplicable. Schoondyke v. Heil, Heil, Smart & Golee, Inc., 89 Ill.App.3d 640, 411 N.E.2d 1168, 44 Ill.Dec. 802 (1st Dist.1980); Tressler v. Winfield Vill. Coop., Inc., 134 Ill.App.3d 578, 481 N.E.2d 75, 89 Ill.Dec. 723 (4th Dist. 1985); Eichler v. Plitt Theatres, Inc., 167 Ill.App.3d 685, 521 N.E.2d 1196, 118 Ill.Dec. 503 (2d Dist. 1988); Williams v. Alfred N. Koplin & Co., 114 Ill.App.3d 482, 448 N.E.2d 1042, 70 Ill.Dec. 164 (2d Dist.1983) (duty arose by voluntary conduct).

125.02 Falls On Ice Or Snow--Negligence Only--No Issue As To Ownership Or Control--Issues/Burden Of Proof

[In Count __], plaintiff [plaintiff's name] seeks to recover damages from the defendant [defendant's name]. In order to recover damages, the plaintiff has the burden of proving:

First, there was an unnatural accumulation of [ice] [snow] on the [property] [land] [building] [other] which presented an unreasonable risk of harm to people on the property.

Second, the defendant knew or in the exercise of ordinary care should have known of both the condition and the risk.

Third, the defendant could reasonably expect that people on the property [would not discover or realize the danger] [or] [would fail to protect against such danger].

Fourth, the defendant was negligent in one or more of the following ways:

a) ________,

b) ________,

c) ________,

Fifth, the plaintiff was injured.

Sixth, the defendant's negligence was a proximate cause of the plaintiff's injury.

Notes on Use

This instruction should be given with IPI 125.01 and IPI 125.04. If there is an issue as to ownership or control over the premises, this instruction must be modified accordingly. Do not use this instruction unless there is an issue concerning an unnatural accumulation. If the case is based upon improper removal of or attempts to remove snow and ice from residential sidewalks, pursuant to 745 ILCS 75/2, this instruction cannot be used as written because the statute requires "willful and wanton" conduct.

This instruction as drafted is applicable only if there is no willful and wanton allegation. Poole v. City of Rolling Meadows, 167 Ill.2d 41, 656 N.E.2d 768, 212 Ill.Dec. 171 (1995), held that a plaintiff's contributory negligence is a damage-reducing factor if the defendant's willful and wanton conduct was "reckless," but not if it was "intentional." Therefore, if plaintiff's only claim is that defendant's conduct was the intentional form of willful and wanton, this instruction should not be used in its present form. If plaintiff claims intentional willful and wanton conduct in addition to other claims, this instruction should be modified accordingly. If there is a willful and wanton allegation, this instruction may need to be modified so that one instruction is given with respect to negligence and contributory negligence and one is given with respect to willful and wanton conduct. The content of the latter instruction will depend on the trial court's ruling as to the effect of the plaintiff's contributory fault, if any.

This instruction should be combined with the appropriate instructions from the 128 series. If contributory negligence is an issue, use IPI 128.02. If there is no contributory negligence issue, use IPI 128.01.

Comment

The plaintiff has the burden of proving that the accumulation of ice and snow is "unnatural," that the defendant had actual or constructive notice of the condition, and that defendant failed to take reasonable precaution to avoid injury to others. Wolter v. Chi. Melrose Park Assocs., 68 Ill.App.3d 1011, 1018-19, 386 N.E.2d 495, 500-01, 25 Ill.Dec. 224, 229-30 (1st Dist. 1979); *see also* Selby v. Danville Pepsi-Cola Bottling Co., 169 Ill.App.3d 427, 435, 523 N.E.2d 697, 700, 119 Ill.Dec. 941, 944 (4th Dist.1988).

The issue of whether or not accumulations are natural is a question of fact. Turner v. Cosmopolitan Nat'l Bank, 180 Ill.App.3d 939, 536 N.E.2d 706, 812, 129 Ill.Dec. 756, 762 (1st Dist. 1989) (broken door which allowed snow to blow into building created jury issue as to unnatural accumulation); Johnson v. Sears, Roebuck & Co., 186 Ill.App.3d 725, 727-28, 542 N.E.2d 841, 842-43, 134 Ill.Dec. 495, 496-97 (1st Dist. 1989) (broken bag of garden soil near door which mixed with tracked-in water created jury issue as to unnatural accumulation); McCarthy v. Hidden Lake Vill. Condo. Assoc., 186 Ill.App.3d 752, 542 N.E.2d 868, 134 Ill.Dec. 522 (1st Dist. 1989) (negligently conducted plowing created jury issue as to unnatural accumulation).

If a duty to remove or protect against natural accumulations of snow or ice is created by conduct or contract, then the plaintiff need not prove the existence of an "unnatural accumulation" and this instruction is inapplicable. Schoondyke v. Heil, Heil, Smart & Golee, Inc., 89 Ill.App.3d 640, 411 N.E.2d 1168, 44 Ill.Dec. 802 (1st Dist. 1980); Tressler v. Winfield Vill. Coop., Inc., 134 Ill.App.3d 578, 481 N.E.2d 75, 89 Ill.Dec. 723 (4th Dist. 1985); Eichler v. Plitt Theatres, Inc., 167 Ill.App.3d 685, 521 N.E.2d 1196, 118 Ill.Dec. 503 (2d Dist. 1988); Williams v. Alfred N. Koplin & Co., 114 Ill.App.3d 482, 448 N.E.2d 1042, 70 Ill.Dec. 164 (2d Dist. 1983).

125.03 Reserved

125.04 Natural Accumulation Defined

In these instructions, I have used the expression "natural accumulation of [ice] [snow] [____]."

The [snow] [ice] [____] involved in this case was a natural accumulation if it resulted from [(fill in appropriate language determined by the court to define the disputed issue in the case, e.g., moisture which is tracked into a building; the normal effects of pedestrian or vehicular traffic on snowfall; normal freezing and thawing; the effects of normal snow removal, etc.)]

On the other hand, the [snow] [ice] [____] involved in this case was an unnatural accumulation if it resulted from [(fill in appropriate language by the court to define the disputed issue in the case, e.g., impaired or altered drainage of the premises; negligent maintenance of the underlying sidewalk/parking lot by the property owner; negligence of the property owner in leaving spilled liquid in a high traffic area, etc.)]

Whether the [snow] [ice] [____] which the plaintiff claims proximately caused injury was a natural accumulation or was an unnatural accumulation is for you to decide.

Notes on Use

This instruction is appropriate only if there is a disputed issue of fact for the jury to decide on the issue of "natural" vs. "unnatural" accumulation. If the material facts regarding this issue are not in dispute, this instruction should not be given and IPI 125.01 also should not be given.

Because this issue usually arises in a highly factually specific context, the court should determine which facts in the case will establish an "unnatural" accumulation giving rise to a duty, which facts will establish a "natural" accumulation, and complete the instruction accordingly. The examples in the instruction are offered as illustration based on present case law. However, these examples are not intended to represent any opinion by the committee as to what the law is or should be or as to the exact language for instructing the jury in any given case.

In completing the instruction, the language of the court should be based on the evidence and issues of the specific case and should be understandable and nonargumentative.

Comment

Swartz v. Sears Roebuck & Co., 264 Ill.App.3d 254, 636 N.E.2d 642, 201 Ill.Dec. 210 (1st Dist. 1993), held that it was reversible error for the trial court to refuse to instruct the jury on the issue of what constituted a natural accumulation of moisture in the context of that case.

For a general discussion of the law on this issue, see the Introduction, IPI 125.00.