BRACE YOURSELF: THE POLAR VORTEX OF LITIGATION RETHINKING HOW TO DEFEND & WIN THE SNOW & ICE CASES

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Initial Investigation:

- Photos
- Statements (TIME)
 - Address
 - Cell phone
 - Email
 - » Alternative address
- Business Records
 - Salt
 - Shovel
 - Plow (contract)***
 - Other contracts
- Police Report
 - "Turned ankle crossing street"
 - TIME
- Landlord/Tenant
 - Lease (delegation and indemnification)
 - » Insurance
 - ♦ Additional insured
- Weather Record

Defenses:

- Storm in Progress
 - Administrative Code § 16-123

- » Although abutting owners and/or tenants are generally charged with removing sidewalk snow and ice under Administrative Code § 7-210, a major exception is posed by Administrative Code § 16-123, entitled "Removal of snow, ice and dirt from sidewalks; property owners' duties," which provides in pertinent part as follows:
 - (a. Every owner, lessee, tenant, occupant, or other person, having charge of any building or lot of ground in the city, abutting upon any street where the sidewalk is paved, shall, within four hours after the snow ceases to fall, or after the deposit of any dirt or other material upon such sidewalk, remove the snow or ice, dirt or other material from the sidewalk and gutter, the time between nine post meridian and seven ante meridian not being included in the above period of four hours."
 - "... if such person shall have begun to remove the snow or ice from the sidewalk and gutter before the expiration of such four hours and shall continue and complete such removal within a reasonable time."
 - "... in case the snow and ice on the sidewalk shall be frozen so hard that it cannot be
 removed without injury to the pavement ... cause the sidewalk abutting on such premises to
 be strewed with ashes, sand, sawdust, or some similar suitable material ..."
- » As confirmed by the Appellate Division, First Department, the four-hour grace period of § 16-123 extends to 11:00 a.m., therefore a defendant cannot be held liable for a slip-and-fall which occurs in the early morning hours. See, e.g., <u>Colon v. 36 Rivington St., Inc.</u>, 2013 N.Y. Slip Op 4439 (1ST Dept. 2013) (granting summary judgment where snow stopped falling at 6:00 a.m. because, "[p] ursuant to Administrative Code of City of NY § 16-123(a), defendants had until 11:00 a.m. to clear the snow and ice from the sidewalk. Since that period had not yet expired at the time that plaintiff fell, defendants established their entitlement to judgment as a matter of law").
- » Similarly, a defendant is absolved from removing snow and ice during a "storm in progress." See, e.g., <u>Dowden v. Long Is. R.R.</u>, 305 A.D.2d 631, 759 N.Y.S.2d 544 (2d Dept. 2003) (explaining that under the "storm in progress" rule, "a property owner will not be held responsible for accidents occurring as a result of the accumulation of snow and ice on its premises until an adequate period of time has passed following the cessation of the storm to allow the owner an opportunity to ameliorate the hazards caused by the storm").



	NEW YORK CITY	BURBS (VARIES)
DUTY	Owner: (Abutting) Non-delegable duty to clear sidewalks 	Owners: (Abutting) Non-delegable duty to clear sidewalks
	Administrative Code § 7-210	Actual/constructive ice Reasonableness
DEFENSE	§ 16-123 Admin Code Duty EXCUSED	"an adequate period of time"
	4 hours and	Investigate
	• 9-7	• WARNINGS
		STAY AT HOME
	Eg. 6:00 a.m. precipitation	"Storm of Century"
	has until 11 a.m.	Can be Pleasantville

Pitfall:

- Hard pack reasonable
- Creates a hazardous condition in snow removal
- Joseph v. Pitkim Carpet, Inc. 44 AD 3d 462 1st Dept. 2007

Pitfall 2:

- Your structure
 - Step
 - » Reasonableness

Comparative Negligence:

- Plaintiff walked onto snow pile
 - Owner can't put the snow pile in the street
 - Reasonableness
- Duty to see
 - Reasonableness
- Plaintiff carrying objects/footwear?
 - Reasonableness

Third Party:

- Owner
 - Contract
 - » Terms

Plow:

- Ok to render service assumes duty
- Espinal v. Melville Snow Contractors 98 NY 2d 136 (2002)
 - Contractor to take over non delegable duty of owner
 - Speculation and Evidence
 - » Launched a force to make worse "Exacerbated by merely plowing"
 - ♦ Speculative evidence
 - » Plaintiff relied on continued care by contractor "Plaintiff relied on plow to continue to care/clear"
 - » Contractor displaced owner "Call to plow and come back", "Assume unrelenting care"
 - Exercised reasonable care in performing its snow removal service and in no way launched a force or instrument of harm
 - Plaintiff did not detrimentally rely upon snow contractors performance of its contract with owner
 - The contract was not so comprehensive and exclusive as to entirely displace owners duty to maintain the premises in a reasonably safe condition
 - » Subject to inspection and approval
 - » Does not direct continuous snow removal operations during a snowstorm or to return to a particular location for any reason
 - » Owner has right to request whether or not work is to be performed and can direct whether or not work will be performed at any given moment
 - » Tell contractor where to pile snow
 - » Never to clear from beneath/underneath vehicle
 - » Performs at express request of owner/management



- » No complaints were made to the contractor about the work
- » Called back to redo it
- To show a snow removal, contractor created
- To prove ice condition caused by negligent snow removal something in the record/depositions would have to show that an icy condition existed at the time the snow contractor removed the snow plowed
- Many times the falls occur days after the storm or the plowing
- What if the person falls before the contractor gets there to plow or while plowing?
- Does the contract require it to be done by a specific time after snow?
- Snow removal efforts which are merely incomplete do not constitute negligence where the Defendant does not owe a common law duty of care to remove the snow
 - » Like as a landowner
- So as to snow contractor notice/created exacerbated condition won't matter
 - » **If** contract is not comprehensive and exclusive intended to replace the landowners duty to maintain the property in a reasonable safe condition



CLIENT FOCUSED - RESULTS DRIVEN

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