



September 27, 2010

MEMORANDUM TO MUNICIPAL CLIENTS

To: BOARD OF SELECTMEN/MAYOR/TOWN AND CITY COUNCILS  
TOWN MANAGER/TOWN ADMINISTRATOR/EXECUTIVE SECRETARY/  
DEPARTMENT OF PUBLIC WORKS

Re: Important Decision Addressing Snow and Ice Removal on Municipal Premises

The Supreme Judicial Court recently abolished the longstanding distinction between property owner liability for injuries sustained from “natural” versus “unnatural” accumulations of snow and ice on their property. In Papadopoulos v. Target Corporation, 457 Mass. 368 (2010), the Supreme Judicial Court ruled that a property owner can now be liable for snow and ice injuries, whether such injuries occur from the natural accumulation of snow or ice or from ineffective snow or ice removal. Prior to the Court’s ruling in Papadopoulos, property owners, including municipalities, were generally not liable for injuries that occurred by the failure to remove natural accumulations of snow and ice on their property. Significantly, the Supreme Judicial Court established a new rule in its decision, whereby liability is now based on whether property owners, including cities and towns, act reasonably in removing snow and ice on their property, not whether the snow or ice is in its “natural” or “unnatural” state when an injury allegedly occurs. This new rule is currently in effect and will be applied retroactively to all pending litigation.

In Papadopoulos, the Supreme Judicial Court emphasized that under its new rule, the “snow removal reasonably expected of a property owner will depend on the amount of foot traffic to be anticipated on the property, the magnitude of the risk reasonably feared, and the burden and expense of snow and ice removal.” As such, municipalities must act reasonably in determining appropriate snow and ice removal on their properties, including evaluating the “likelihood of injury to others, the probable seriousness of such injuries, and the burden of reducing or avoiding the risk.” Practically speaking, the Court’s decision requires cities and towns to promptly and effectively remove snow and ice from parking lots, building entrances, stairs, walkways and entrances on property it owns and/or maintains, and to use appropriate levels of salt or snow and ice treatment to ensure that the property is safe for pedestrian traffic. As a practical matter, you may already take steps to ensure that pedestrians can access public facilities after snowfalls. But now, municipalities have a legal obligation to do so, or face increased risk of liability for failing to do so.

It is important to note that the Court’s holding in Papadopoulos does not affect the standard for snow and ice removal on public ways, including sidewalks located within public ways. As you may know, Massachusetts General Laws, Chapter 84, §17 establishes the liability standard for injury or damage caused by snow and ice on a public way. Under Chapter 84, a municipality shall not be liable for injury or damage from snow or ice on a public way if, at the time of the accident, the location was “otherwise reasonably safe and convenient for travelers.” As such, under Chapter 84, municipalities are obligated to keep public ways safe and convenient for travel, which includes the removal of snow and ice. Cities and towns are not required to maintain roads in a perfect condition, but officials should