



PREMISES LIABILITY

HELPFUL INVESTIGATION INSIGHTS

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Goals of Today's Webinar

1. Refresher on what a plaintiff must prove for a slip and fall
2. Things to note when investigating a slip and fall
3. Things to preserve when investigating a slip and fall
4. Things to consider implementing at your facility

TYPICAL TYPES OF ALLEGED SLIP AND FALLS

Foreign substance on the ground



Snow and Ice



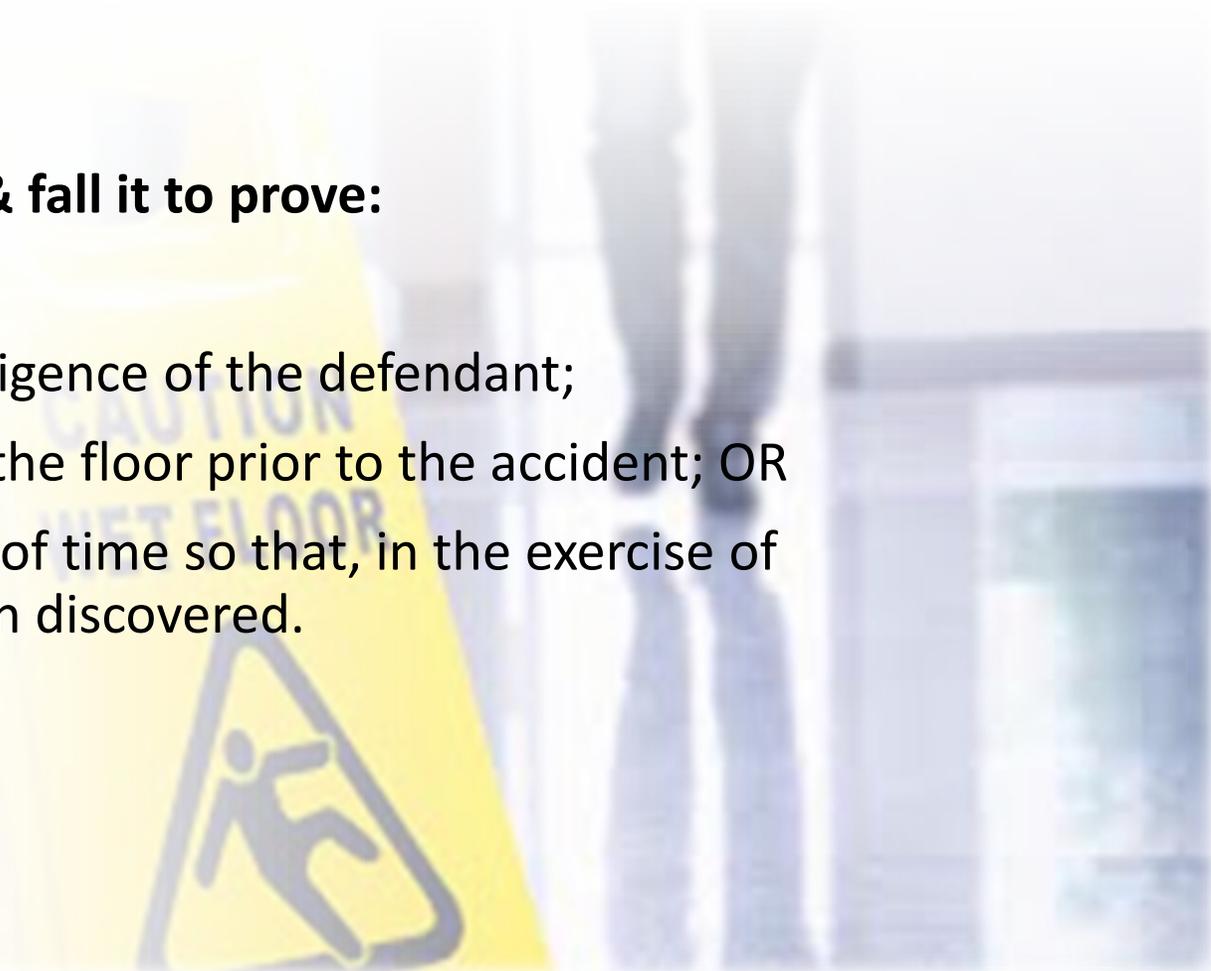
They have different legal requirements

FOREIGN SUBSTANCE - THE LAW



Part of a plaintiff's burden of proof for a slip & fall is to prove:

- A. The substance was placed there by the negligence of the defendant;
- B. The defendant knew the substance was on the floor prior to the accident; OR
- C. The substance was there a sufficient length of time so that, in the exercise of ordinary care, its presence should have been discovered.

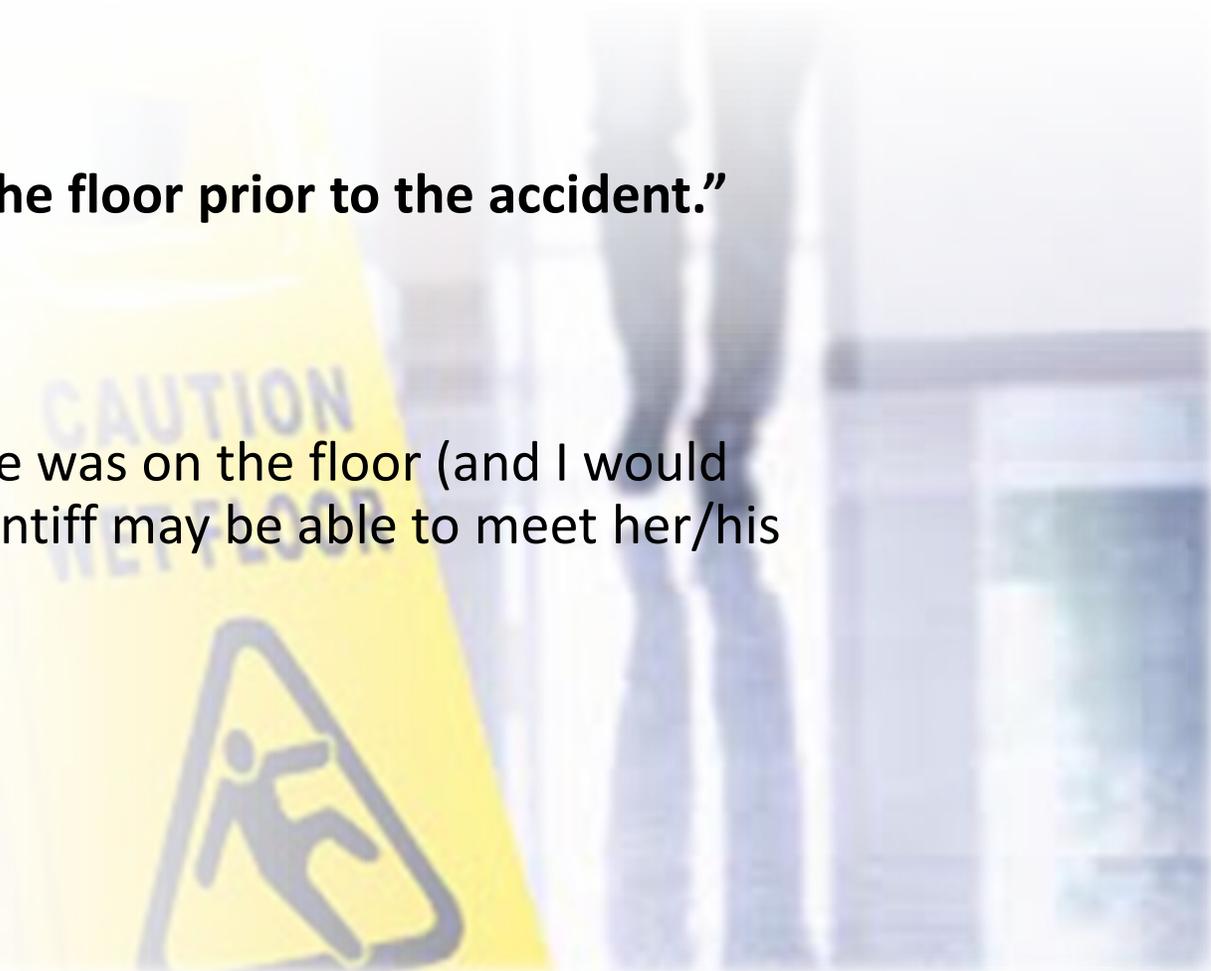


FOREIGN SUBSTANCE - THE LAW



“The defendant knew the substance was on the floor prior to the accident.”

- This is referred to as “actual notice.”
- If one of your employees knew the substance was on the floor (and I would argue with sufficient time to act), then a plaintiff may be able to meet her/his burden of proof.



FOREIGN SUBSTANCE - THE LAW



“The substance was there a sufficient length of time so that, in the exercise of ordinary care, its presence should have been discovered.”

- This is referred to as “constructive notice.”

A blurred background image showing a person walking past a yellow triangular sign that reads "CAUTION WET FLOOR" with a graphic of a person slipping. The sign is in the foreground, and the person is in the background, slightly out of focus.

CAUTION
WET FLOOR

KNOWING THE BURDEN OF PROOF



Why does it benefit you all as risk managers to know the plaintiff's burden of proof?

- To help you know what to look for and document when investigating an alleged slip and fall.
- To help you assess what to preserve if there is any security video of the incident.
- To help you assess your facility's culture on how you deal with potential safety hazards.
- To help your facility assess what, if any, types of policies it wants to implement and/or maintain with regard to inspecting for potential safety hazards and/or addressing potential safety hazards.



INVESTIGATING A SLIP AND FALL

What to look for and document



? Why is this person on the property?

- The law applies different duties depending on whether the person is lawfully on the property vs. a trespasser.

? What is the person wearing?

- Footwear?
- Anything on/over her/his head?
- Any evidence of the liquid/substance on the person/person's clothes?

? Was the person holding anything?

- Cell phone? Talking on it? Looking at it?
- Food or drink? Did the drink have a lid or cap on it?

? Was anyone with the person?

- Try to get names/addresses.

? For the person who says she/he fell and anyone with that person, if willing to talk

- What was the person doing leading up to the fall
- Did the person see anything on the floor before the fall?
- Description of how the plaintiff fell.

? Did any staff witness the fall?

- Names of staff witnesses.
- Observations of what happened.
- Did the staff member see anything on the floor before/after the fall?
- Did the staff member see any liquid or substance on the person?

INVESTIGATING A SLIP AND FALL

What to look for and document



- ❓ **Who responded to assist the person after the fall?**
 - Names of staff members.
 - How did they become aware of the alleged incident?
 - Observations/actions.
 - Did the staff member see anything on the floor after the fall?
 - Did the staff member see any liquid or substance on the person?

- ❓ **If there was a liquid/substance on the floor, then note...**
 - Its general location.
 - Description of the liquid/substance.
 - Size, shape, color.
 - Was the liquid disturbed?
 - Any trail of liquid?

- ❓ **If you know the source of the liquid, note it. Otherwise, do not speculate.**
 - Keep any reporting factual.

- ❓ **What equipment was in the area?**

- ❓ **Were there any wet floor signs present before the fall?**

- ❓ **Approximate time of the fall.**
 - What time did the person arrive at the facility?

- ❓ **What was the weather outside?**
 - Rain? Snow?

PRESERVATION OF SECURITY VIDEO



To help you to assess what to preserve if there is any security video of the incident.

- Did the alleged fall happen in a location that has security video?
- If so, does the security video still exist?
- If so, you need to promptly review the security video to assess whether the fall was captured on the security video.
- *PRESERVE THE VIDEO REGARDLESS* of whether the fall was captured on it.



PRESERVATION OF SECURITY VIDEO

- Is it enough to preserve the security of the video of only the incident? **NO!!!**
- Why not? **You risk having an I.P.I. 5.01 - Failure to Produce Evidence jury instruction given against you.**

I.P.I. 5.01 - FAILURE TO PRODUCE EVIDENCE



In deciding whether to give an I.P.I. 5.01, a court will look at:

- Was the evidence under the control of a party and could have been produced?
- Was the evidence not equally available to the adverse party?
- Would a reasonable person have offered the evidence if it favored the reasonable person?
- Is there a reasonable excuse for the failure to produce the evidence?



REMINDER!

- A plaintiff must prove the defendant caused the foreign substance, the defendant had actual notice of the substance, or the defendant had constructive notice of the substance.
- Security video is a great way to prove the above OR for us to disprove the above.

PRESERVATION OF SECURITY VIDEO



How much security video do you preserve?

War story: *I was defending a hospital where the person claimed there was a slip and fall in an elevator lobby. You could see her fall, but nothing was visible on the ground. The hospital only saved the security video of the incident itself (i.e., the fall). Remainder of the security video was not preserved and was erased in the ordinary course of business.*

How much to preserve when the fall is captured on security video?

- Preserve the video of the incident and a reasonable amount of time before the incident.
- The case law does not define what is a “reasonable” amount of time, so it depends.
- In a high-volume area, probably safe to preserve 2-4 hours of video.
- In a low volume area, probably safe to preserve 6-8 hours of video.

PRESERVATION OF SECURITY VIDEO



Why preserve the video regardless?

- It helps dispute the claim of a fall if it happened where there should be video.
- Because one never knows what a plaintiff will claim.

War story: *The visitor reported that she fell. The Director of Security did a beautiful job of tracking her as she went up and down on a particular elevator bank between the first and second floors. The Director saved all the video. Based on the video, it appeared that if she did fall, she did it while she was on an elevator. Get into litigation and she claims that she got off the elevator on the third floor and fell in an area that was being mopped. None of the video from the other floors by that elevator bank were preserved.*

ASSESS CURRENT FACILITY CULTURE



To help you assess your facility's culture on how you deal with potential safety hazards.

- Do you have a culture that empowers your staff to act if they see a safety concern?
- Is there a number that employees can call if they see a potential safety hazard to have it addressed?
- Is the staff taught to stay by the hazard to direct others around it until it can be addressed?
- Does the hospital have wet floor signs that are readily accessible to put down in the area of a spill?

Think of it as the reverse-Reptile: When we are arguing there was no notice, it is great to have deposed staff members say that they know to and are empowered to address a potential safety hazard.

ASSESS CURRENT FACILITY POLICIES



To help your facility assess what, if any, types of policies it wants to implement and/or maintain with regard to inspecting for potential safety hazards and/or addressing potential safety hazards.

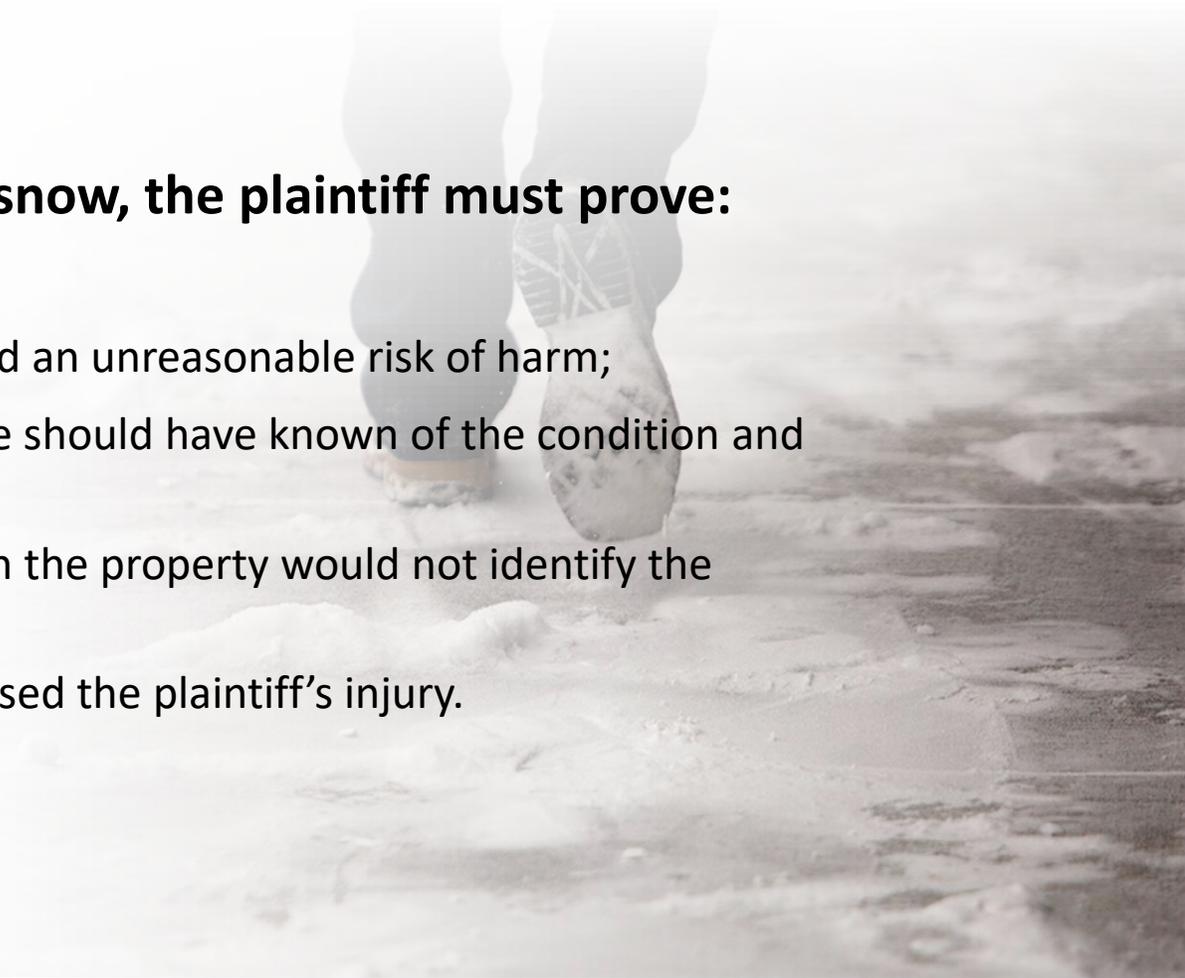
- This may seem counter-intuitive, but having policies that quantitatively define how frequently inspections should happen may actually hurt your defense.
- *Newson-Bogan v. Wendy's*, 953 N.E.2d 427 (1st Dist. 2011) – The court found a genuine issue of material fact when plaintiff testified that she had not observed any employee inspect the area where she fell for at least 20 minutes and the defendant's policy stated inspections should occur every 15 minutes.
- Something to consider - does your facility have a policy that requires drinks to have lids or caps?

FALLS DUE TO ICE AND/OR SNOW



For plaintiff to win a slip and fall due to ice or snow, the plaintiff must prove:

1. There was an unnatural accumulation that represented an unreasonable risk of harm;
2. The defendant knew or in the exercise of ordinary care should have known of the condition and risk;
3. The defendant could reasonably expect that people on the property would not identify the condition/risk and/or protect themselves from it; and
4. The defendant was negligent, and that negligence caused the plaintiff's injury.



SNOW ACCUMULATION



What is a natural vs. unnatural accumulation?

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.)]

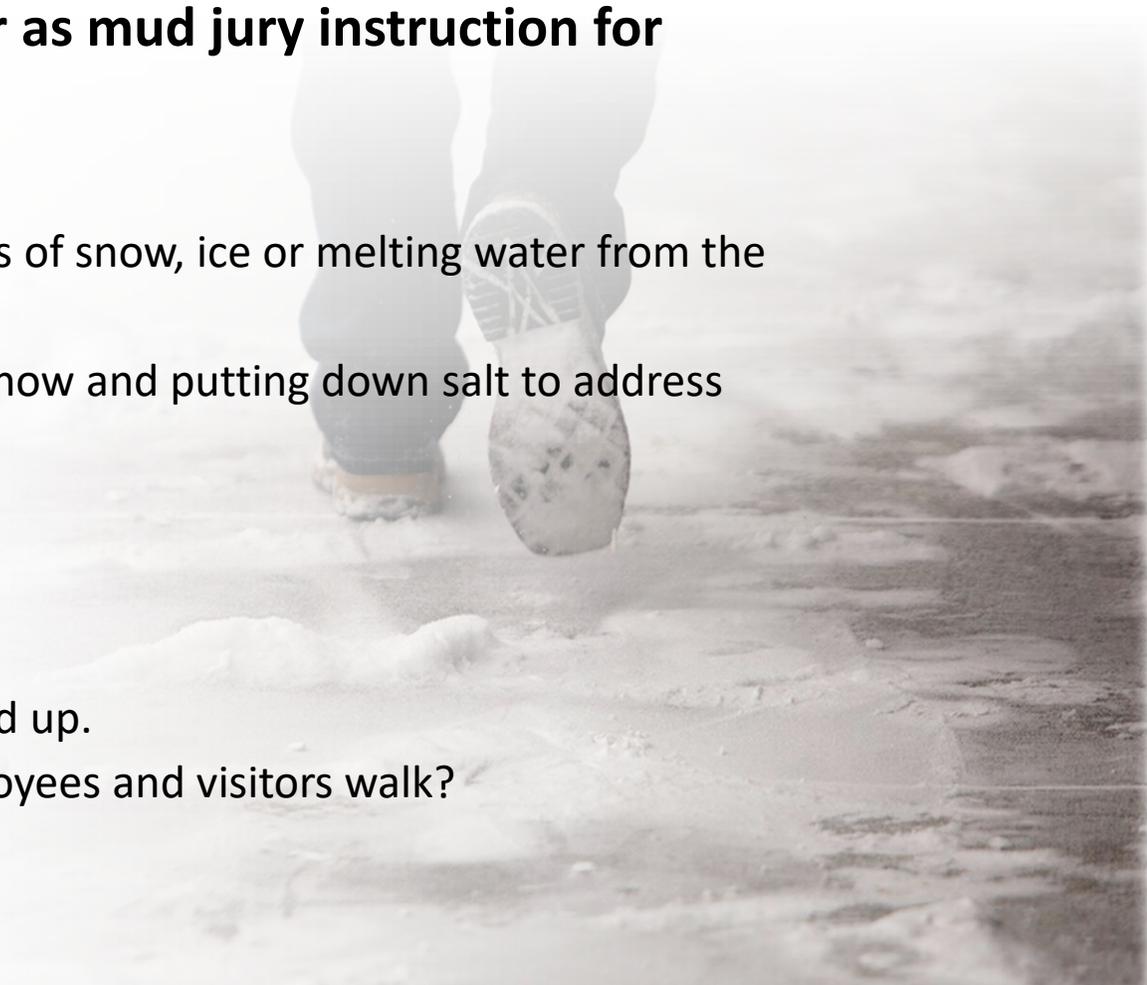
Whether the [snow] [ice] [____] which the plaintiff claims proximately caused injury was a natural accumulation or was an unnatural accumulation is for you to decide.

SNOW ACCUMULATION



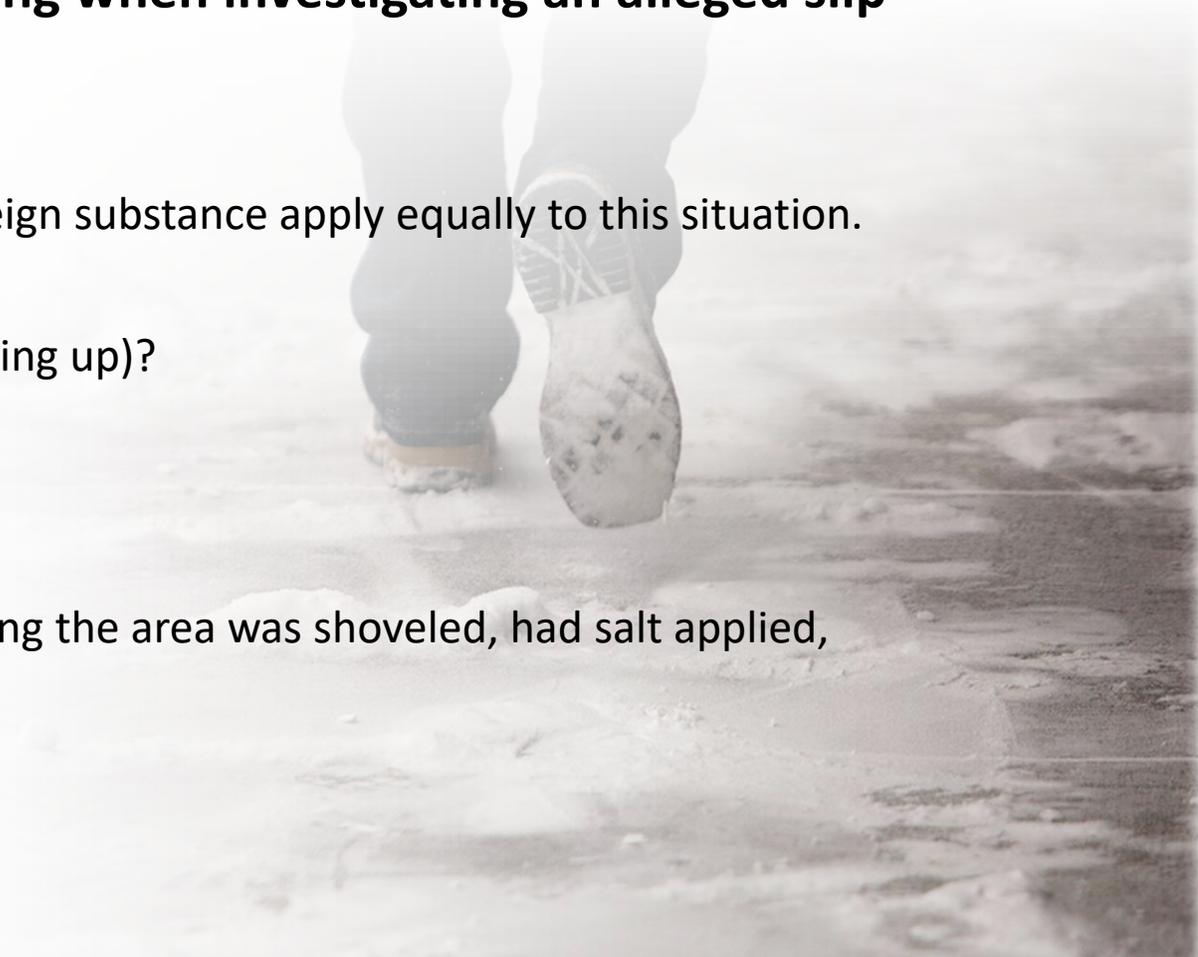
What are the practical implications of this clear as mud jury instruction for your facility?

- The facility has no duty to remove natural accumulations of snow, ice or melting water from the premises.
- While there is no duty, the facility should be shoveling snow and putting down salt to address potential and/or actual ice.
- Be cognizant of gutters, drains and the like.
 - Where are they flowing?
 - Are they blocked off?
- Be cognizant of where shoveled snow is going to be piled up.
 - Is it going to melt and flow into pathway that employees and visitors walk?



What should you be looking for and documenting when investigating an alleged slip and fall due to ice or snow?

- The suggestions that apply to a slip and fall due to a foreign substance apply equally to this situation.
- Additional things to note:
 - What was the weather that day (or in the days leading up)?
 - Did it snow?
 - Was there freezing rain?
 - Temperatures conducive for ice?
- Is there any documentation and/or security video showing the area was shoveled, had salt applied, etc.?
 - Preserve that evidence.
 - Note who performed the maintenance.
- Consider photographs of the area in question.

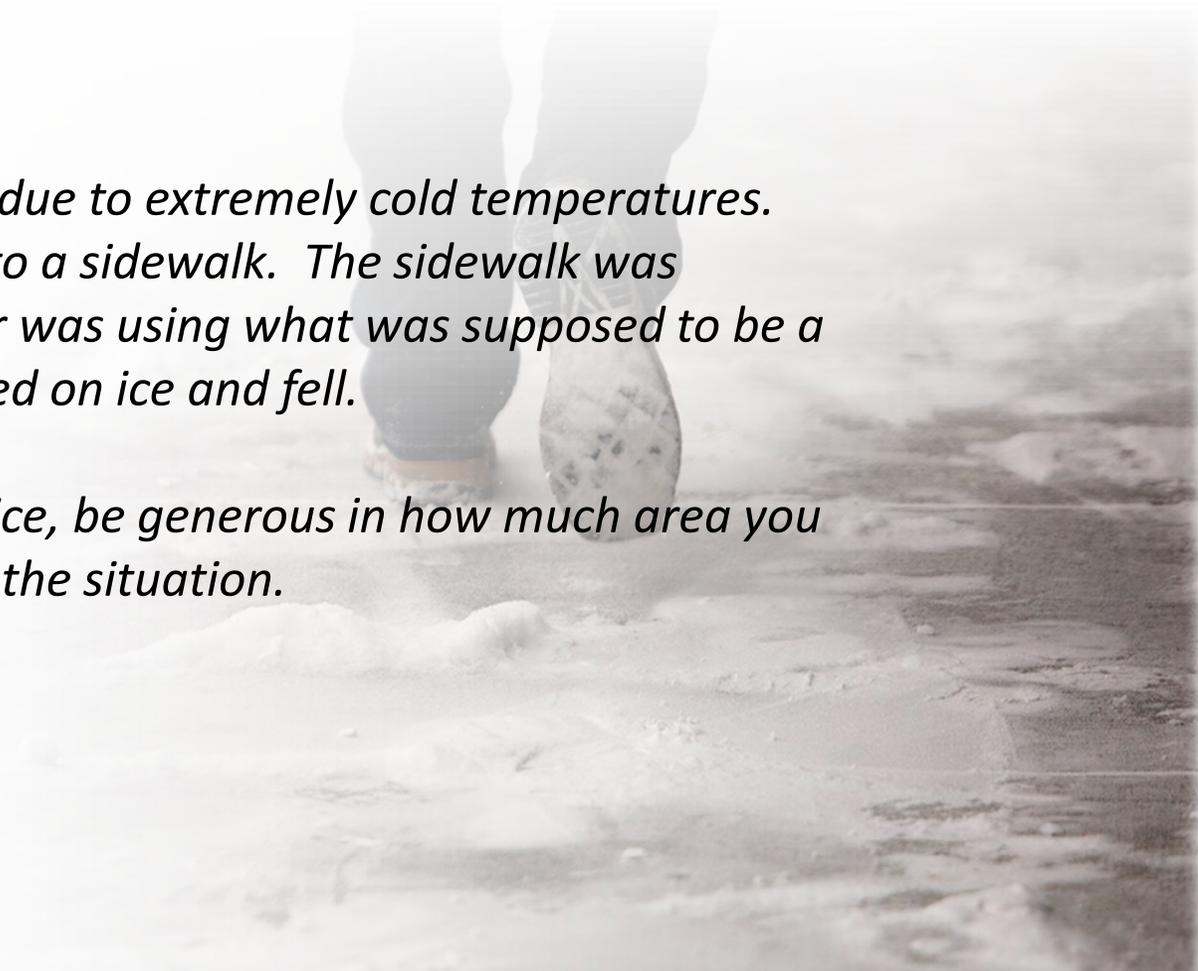


FALLS DUE TO ICE AND/OR SNOW



War story: *A pipe in the wall of the hospital burst due to extremely cold temperatures. The water was flowing down from the building onto a sidewalk. The sidewalk was blocked off, but not enough. As a result, the visitor was using what was supposed to be a safe pathway around the ice when he clearly slipped on ice and fell.*

Moral of story: *If you identify an accumulation of ice, be generous in how much area you block off to keep people safe until you can remedy the situation.*



QUESTIONS?



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THANK YOU!

Aaron Ryan has devoted his legal career to the defense of hospitals, nurses and physicians in medical malpractice litigation. That includes many cases involving birth trauma and catastrophic injuries to children and adults, as well as other medical issues ranging from mental health and suicide to cardiac and infectious disease. Aaron has also successfully defended clients in matters related to premises liability, securing favorable outcomes for his clients both through successful defense at trial and via summary judgment.

Ryan served from 2010 to 2018 as an elected member of the Illinois Supreme Court's Character and Fitness Committee for the First Judicial District. That role involved meeting with applicants seeking admission to the Illinois Bar, and evaluating those applicants to ensure that they met the state's standards for moral character and fitness before being granted permission to represent individuals, corporations and others in the State of Illinois.

EDUCATION

- DePaul University College of Law, J.D., summa cum laude (2003)
- DePaul University, B.S., summa cum laude (1996)

ADMISSIONS

- Illinois
- Florida