

## Duty of Indiana Landlords to Address Freezing Conditions

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When commercial landlords retain control over common areas, parking lots and sidewalks, they also retain the duty of care and maintenance. This brings specific concerns during winter months, particularly when temperatures drop suddenly and quick freezing occurs. In sum, while Indiana landlords are not required to provide round-the-clock assurance that freezing conditions will immediately be addressed, they do have the duty to reasonably address hazardous conditions, even when such conditions develop outside of typical business hours. This is particularly the case when they know, or should know, that water is prone to collect and re-freeze in specific areas.

Generally speaking, land possessors have the duty to protect anyone lawfully upon their premises from dangerous conditions if the possessor could reasonably have discovered the dangerous condition and made it safe. In *Bell v. Grandville Cooperative, Inc.*, 950 N.E.2d 747 (Ind. Ct. App. 2011), the Indiana Court of Appeals offered valuable guidance as to how this affects landlords within the context of icy weather conditions.

Bell, the plaintiff, was a grandmother who had visited the defendant landlord's apartment complex to baby-sit her grandchild. The evidence showed a pattern of daily thawing and nightly freezing over the prior several days, and also that piles of plowed snow could be found in and around the complex's parking lot. Temperatures were in the 40s when Bell parked at around 4:00 p.m., and she testified that she did not see any ice at that time. Apartment maintenance also did a visual inspection of the lot at around 4:30 p.m. and, seeing no ice, did not spread any salt or ice melt. Maintenance then left for the day at the regularly scheduled time of 5:00 p.m.

Bell's daughter returned after midnight, and Bell proceeded to walk through the parking lot to her car. Unfortunately, a patch of ice had formed near the driver's side of her car, and she was injured after she fell on that ice. Bell sued the apartment complex, alleging that it failed to remedy a known hazardous condition. To support her claim, Bell presented evidence that: (1) in the three or four days before her fall, piles of snow had been melting by day and re-freezing in the lot to create icy patches, (2) unbeknownst to her, water was known to collect and freeze in the area of her fall; (3) her daughter had informed the landlord's management on "numerous" occasions that ice tended to form in that area, and (4) the landlord's maintenance employees had spread ice in that area on the morning before the fall.

The *Bell* court denied the landlord's motion for summary judgment, holding that the landlord had the duty to eliminate the ice hazard, regardless of the time of day, if it knew or had reason to know that ice tended to form in the area of the fall and that there was a reasonable chance that someone would slip on it.

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In reaching its decision, the Court of Appeals specifically differentiated the *Bell* case from cases of weather changes that were so sudden that the Landlord could not reasonably have been expected to have addressed the hazard. For example, in *Rising-Moore v. Red Roof Inns, Inc.*, 435 F.3d 813 (7<sup>th</sup> Cir. 2006), the defendant was granted summary judgment because the freezing conditions had developed too quickly to be addressed. There, a motel patron walked inside the lobby to check in, and was inside for anywhere from five to twenty minutes. Meanwhile, freezing rain moved in and he slipped and fell on the way back to his car. In granting summary judgment for the motel, the Court said that “no reasonable jury could have found the motel breached its duty to the plaintiff to clear ice and snow where the time frame involved was a matter of minutes and the weather situation was still developing.” *Id.* at 874.

The *Bell* Court accepted this analysis from *Rising-Moore*, and specifically noted that landlords do not have a continuous duty to monitor and clear during a winter storm. Further, the *Bell* Court noted that landlords are not the absolute insurer of their premises.

So what does all of this mean? It should be noted that these cases involved summary judgment, which means the courts were considering whether the jury should have had the opportunity to evaluate the landlord’s conduct. In other words, the ultimate decision rests with the jury, and there are really no bright line rules. At least one thing is certain – Indiana landlords cannot escape liability simply by arguing that the premises only became unsafe after business hours. But given cases like *Rising-Moore*, this does not seem to mean that landlords must stand guard and have common areas salted and cleared as soon as a freezing event occurs. Much is likely to hinge upon: (1) whether the landlord has reason to expect for lawful visitors to encounter the hazard, (2) whether the landlord should have learned of the hazard, and (3) how quickly an injury occurs after the hazard arises. According to the *Bell* case, a key consideration is whether the hazard was known to exist in the past as in, for example, the case of a faulty gutter or roof known to leak upon the same spot on a sidewalk. Where that is the case, the landlord will be held to a higher standard of care.

Unfortunately, some weather-related accidents are simply unavoidable, but landlords and property managers can attempt to protect themselves from legal liability by paying attention to weather reports, the patterns of foot traffic upon their premises, and also to known patterns of freezing and the specific locations where freezing is most likely to occur. It might sound simple, but the importance of preventative measures cannot be overstated. A simple, well executed, plan for monitoring, shoveling and salting – particularly before visitors to the premises can be reasonably expected – may end up being the difference between a non-event and a lawsuit.

On a related note, a quick mention of contracts for the removal of snow and ice is probably warranted. Some property owners and managers are under the misimpression that, when they retain an outside contractor for snow and ice removal, they no longer have the legal duty to remediate those hazards. This is not true, because the legal duty to make one’s premises reasonably safe for lawful visitors is non-delegable. However, a well negotiated snow and ice removal contract might require the contractor to monitor and maintain the premises as

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discussed in this article, and to indemnify the premises owner in any lawsuit arising from the contractor's failure to do so. In any event, because these sorts of contracts cannot completely insulate premises owners from the possibility of a lawsuit, it would be wise to make sure the contractor complies with terms of the contract.

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