

Message From Chris....

Icy, snowy, slippery sidewalks (say it 3 times fast). We've all seen our share this winter. In response to a large number of inquiries I've received from concerned hotel, restaurant, office and retail owners and tenants, as well as the several requests I've received from our local insurance underwriting community that I write on the topic, I wanted to write a short piece in the hopes it saves some of you needless worry and, possibly, money. Accordingly, I'll answer the two most commonly asked questions from the groups mentioned above. This should be helpful to everyone... (and don't forget to click on my Facebook or YouTube links below to also see my short video on this material).

Ice, Ice Baby (Vanilla Ice, *To The Extreme*, 1989)

**Question #1:** *"If I put out snow melt on my sidewalks, does it somehow serve as an admission of guilt if someone should subsequently slip and fall on the premises?"*

**Answer:** **No.** The very act of putting out snow melt, etc... in an effort to prevent people from slipping, falling and hurting themselves cannot later be used against you. In other words, you can't use someone's efforts to avert an accident against them later on if and when the accident occurs. If you could, it would be tantamount to saying "...I'm suing you for trying to help me." Now, there are other relevant factors including, but not limited to, whether or not another person slipped and fell in the same area just before the plaintiff slipped and fell, whether you put out enough – and many others. However, the fact that you put out snow melt, in and of itself, is not an admission of guilt; nor can it later be used against you in showing negligence. Accordingly, don't be afraid to put out snow melt when the weather gets bad. **However, and most importantly**, when you put it out, put out enough to **really do the job** (including getting out your shovel if need be so the area(s) in question are clean, clear and safe).

**Question #2:** *"When should I put out snow melt?"*

**Answer:** **It depends.** Actually, the legally correct answer to this question is "when it's reasonable to do so." Say what??! I know..., it's legalese and not really clear. However, you can pretty much nail it down if you ask yourself the following question: **"Given the current weather conditions; if my mother came to see me at work today, should I put out snow melt?"** If the answer is yes, put it out. Otherwise, don't sweat it.

## What My Clients Are Saying

“Chris Griswold was instrumental in negotiating a very solid, long-term lease for our new bank branch in Oklahoma City. His industry knowledge helped us avoid several potential pitfalls with a landlord that was somewhat difficult at times. It was a pleasure to work with Chris because of his professional style and easy going demeanor.”

**Charlie Crouse / President / Summit Bank / Oklahoma City, Oklahoma**

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From 1/21/16 Oklahoman Article (which is an adaptation from the above):

“Businesses should use reasonable care in preventing icy accidents”

Q: When is it reasonable for commercial establishments to put out snow melt?

A: Ask yourself this question: “Given the current weather conditions; if my mother came to see me at work today, should I put out snow melt?” If the answer is "yes," put it out.

Q: If businesses put snow melt on their sidewalks, does it serve as an admission of guilt or negligence if someone should subsequently slip and fall on the premises?

A: No. You can't use someone's efforts to avert an accident against them if and when an accident occurs. However, and most importantly, when you put out snow melt, put out enough to really do the job, including getting out your shovel if necessary so the areas in question are clean, clear and safe.

Q: Are there conditions in which operators could be sued by accident victims, such as if they didn't put out sufficient snow melt?

A: Perhaps, say if someone had fallen previously and the business operator had failed to timely remediate the area in the interim. Other considerations might be the state of the victim's physical condition prior to their fall and/or whether such victim has previously filed suits for other alleged falls in their lifetime, and/or how quickly the weather changed after the first fall so as to determine whether the operator had enough time to use reasonable efforts/reasonable care in preventing the subsequent fall.

Q: In exercising the use of reasonable care, does potential liability differ if the business operator owns or leases the property?

A: Yes. An owner of a commercial, non-residential project who's leased it to a tenant operator to use and maintain won't likely be liable for snow/ice removal on the tenant's demised premises, except for the common areas of the project (if any) which will usually remain the responsibility of the owner of the commercial project.

Owners of residential, commercial property (who are apartment operators) should instead use "best efforts" to keep their properties as free as possible of ice and snow, as people have to get in and out of their homes. Owners of rental homes will usually look to their tenants to keep the home free of ice and snow (since the tenant lives there alone, without landlord or any of landlord's employees present on a regular basis). However, if an accident arguably results at the rented home from some underlying construction defect of the house that is beyond a tenant's control to mitigate or manage, then the owner of such rental home could be liable and joined as a defendant in any subsequent lawsuit.

PAULA BURKES, BUSINESS WRITER