



Slipping On Ice

by John D. Whitaker

Well, it looks like old man winter has descended upon our little village with a vengeance. I was attempting to get my garbage can back in the garage the other day with the wind howling across my driveway which was covered with ice and snow. The wind caught the lid to the garbage can blowing it up nearly knocking my head off. Then, the can spun around and caught the wind full sail blowing the can and me all the way down my driveway where we collided with a big shrub. It's a wonder I didn't wind up in the can. Who says God doesn't have a sense of humor? So, I thought I would let the weather pick the topic for today. What happens when someone is injured by the weather at your house?

Wyoming follows what we call the "natural accumulation of ice and snow" rule. Simply put, this rule provides that when someone is injured as the result of naturally occurring ice and snow the owner of the property is not responsible. The rationale for this rule is based on another rule which we call the "open and obvious danger rule." This rule provides that when a danger is open and obvious to everyone, then we all must use care to keep safe. When we come in contact with danger caused by the weather, we are in the best position to decide what precautions should be taken at the very moment they are encountered. Natural winter conditions make it impossible for us to prevent all accidents on our property.

This seems simple, right? Well, before you sell your snow shovel we better talk a little about a big exception to these rules. Hazards which are not naturally occurring can create liability for the homeowner. To come within the exception the hazard must have been created or made worse by the homeowner; he must know or should know about the existence of the hazard; and the hazard must be more dangerous than it would have been in its natural state. For example, if the homeowner has a downspout that empties directly on



a walkway which is located in a shaded area where water from the roof drains down and forms an ice sheet on part of the walkway. This would not be the natural accumulation of ice because it came from the downspout, not the sky. A homeowner has control over his own property and therefore he has the ability to either move the downspout or redirect the water. If he has lived in the house for a sufficient time to where he either knew or should have known that this area becomes more dangerous than other parts of the walkway then he has sufficient notice of the hazard to support liability. The homeowner is in a better position to foresee and prevent injuries from the downspout than someone visiting the

property for the first time.

Now let's talk about the special problem of wind. We all know a little about wind, don't we? The other night the weather guy was saying that we could expect hurricane force winds here in Casper. Another thing we all know about wind is that sometimes it comes in gusts. One minute you can be walking up your driveway pulling your garbage can and the next minute you can find yourself in your garbage can with a black eye.

Our Supreme Court recently extended the natural accumulation rule to include wind in *Valance v. VI-DOUG Inc.*, 50 P.3d 697,703 (Wyo. 1992). The Court held in this case that "In general, the possibility of a sudden gust of wind, particularly in Wyoming, is an obvious danger foreseeable to anyone." However, in this case the Court went on to find that when a business owner put a sign on the front door advising patrons to "Please Hold Door Tight Due To Wind" he may have actually made the wind more dangerous to his customers. An elderly patron was severely injured when she held on to the door as the wind caught it throwing her to the ground.

I guess you just have to take the weather here in stride. Wyoming is a wild and beautiful place because of our weather, not in spite of it.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.