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Torts—Municipal Liability—"Natural Causes"—Climatic Conditions and Vehicular Traffic

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in Alaska and its total sales for Alaska delivery never exceeded 0.12% of its total annual gross sales volume. The opinion covered the instant facts with particularity, and discussed in detail the *International Shoe, McGee,* and *Hanson* decisions (as well as *Perkins* v. *Benguet Consol. Mining Co.,* 342 U.S. 437 (1952) and *Gray v. American Radiator & Standard Sanitary Corp.,* 22 Ill.2d 432, 176 N.E.2d 761 (1961)). The court's decision seems to turn on the doctrine of "estimate of the inconveniences," as the court found that "it would be far more convenient for Duriron to defend the suits in Alaska than to defend in Ohio and transport all of the witnesses to that state from Alaska," 401 P.2d at 430. If the location of the witnesses is to be the controlling factor in determining the extent of jurisdiction of the Alaska courts, rarely will Alaska courts lack jurisdiction hereafter.

TORTS

Municipal Liability—"Natural Causes"—Climatic Conditions and Vehicular Traffic. A municipality is generally not liable for injuries which result from the "natural causes" of snow and ice on city sidewalks.[1] Three recent Alaska decisions held that pedestrian and vehicular traffic which caused rough surfaces on sidewalks and crosswalks were also "natural causes."

In *Hale v. City of Anchorage,*[2] plaintiff was injured when she slipped on a rough surface of snow and ice on a sidewalk curb-cut. The roughness of the sidewalk had been caused by pedestrian and automobile traffic during periods of alternate thawing and freezing. In *Morrison v. City of Anchorage,*[3] plaintiff was injured while attempting to avoid a slush-filled gutter as she stepped from an icy sidewalk. In *Gunsolus v. City of Fairbanks,*[4] plaintiff was injured when she slipped and fell on an icy manhole cover at a street intersection crosswalk. In all three cases plaintiff sued a city for failing to remove snow and ice. *Held:* Pedestrian and vehicular travel which causes rough surfaces on sidewalks and crosswalks, and rising temperatures which cause slushy gutters, are "natural causes," and, unless an obstruction results, a city is not liable for resulting injuries.

In *Gilfilen v. City of Seward*[5] the Court of Appeals for the Ninth

[1] 19 McQUILLIN, MUNICIPAL CORPORATIONS § 54.84 n. 36, 37 (3d ed. 1950).
[2] 389 P.2d 434 (Alaska 1964).
[3] 390 P.2d 782 (Alaska 1964).
[4] 391 P.2d 13 (Alaska 1964).
[5] 262 F.2d 864 (9th Cir. 1959).

Circuit reversed a determination by the Alaska territorial district court that an accumulation of ice and snow on a sidewalk was, as a matter of law, a "natural accumulation." The court stated,

> The weight of authority . . . is that if snow and ice are permitted to accumulate on a walk until, either by the passing of pedestrians over it, or otherwise, the surface has become so rough or uneven that it is difficult or dangerous for persons to pass over it, then the city may be liable to pedestrians injured by slipping thereon.[6]

In *Hale*, the Alaska Supreme Court rejected this rule as unrealistic, because of Alaska's unusually extreme weather conditions.[7] The court concluded that pedestrian and vehicular traffic should be classed as "natural causes."[8] This conclusion was approved and extended in *Morrison v. City of Anchorage*, when the court by implication included rising temperatures as a "natural cause."[9] In *Gunsolus*, an approved jury instruction listed useful guidelines for determining the scope of an Alaskan city's duty. The jury was instructed to consider,

> The cause and nature of the condition, the practical problem presented, and in general, the necessities and size of the effort; and in this regard . . . the amount of snowfall in the period preceding plaintiff's fall, the temperature at that time, the equipment of the City used for snow removal and ice control, the number of employees, the time devoted to snow and ice control, the amount of streets requiring this work and the size of the City in area and population.[10]

In general, the "natural causes" doctrine excepts municipalities from responsibility for injuries resulting from "mere slipperiness" of streets and sidewalks due to the presence of ice and snow.[11] In *Hale*, the court intimated that pedestrian traffic is as unpreventable as the presence of ice and snow. The Alaska court's decision to include pedestrian and vehicular traffic as "natural causes" was undoubtedly influenced by the harshness of local weather conditions.[12] Alternate freezing and thawing during winter months confront northern cities with the impos-

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[6] *Id.* at 866.
[7] 389 P.2d at 437.
[8] *Id.* at 437-38. 19 MCQUILLIN, MUNICIPAL CORPORATIONS §§ 54.79, 54.85 (3d ed. 1950). For an extensive review of cases dealing with a municipality's sidewalk liability, see Pearson v. Boise City, 80 Idaho 494, 333 P.2d 998, 999 (1959).
[9] 390 P.2d at 782.
[10] 391 P.2d at 14.
[11] 19 MCQUILLIN, MUNICIPAL CORPORATIONS § 54.84 (3d ed. 1950).
[12] 389 P.2d at 437.

sible task of clearing all sidewalks before pedestrian and vehicular traffic cause ice to form into rough and irregular ridges.[13]

Although the court in *Morrison* emphasized a point not clearly established in *Hale,* that an Alaska city has no duty to remove or remedy extremely rough icy surfaces, in neither case were the sidewalk conditions classed as "obstructions to pedestrian travel." Judging from results in other jurisdictions, the Alaska court may hold a municipality liable for ignoring such "obstructions to pedestrian travel" as five-inch high ridges of ice on city sidewalks[14] or structural defects in the sidewalk aggravated by recent snowfall.[15]

Few courts have outlined criteria for determining the extent of a municipality's duty as carefully as did the approved jury instruction in *Gunsolus. Alamosa v. Johnson*[16] illustrates a restrictive view which still prevails in some jurisdictions. In that case, the Colorado court admitted evidence relating to locality, climate, weather conditions, and other circumstances, but excluded evidence relating to equipment available for snow removal and the city's appropriation for clearing sidewalks.[17] It is obviously inconsistent to exclude evidence relating to a city's equipment and funds for snow removal while admitting evidence on weather conditions and local climate. The important consideration is reasonableness of the responsibility imposed upon a municipality, and all evidence bearing on reasonableness should be admitted.

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[13] Speakman v. Dodge City, 137 Kan. 823, 22 P.2d 485 (1933); Scoville v. Salt Lake City, 11 Utah 60, 39 Pac. 481 (1895); Kling v. City of Buffalo, 72 Hun. 541, 25 N.Y. Supp. 445 (Sup. Ct. 1893); Wright v. City of St. Cloud, 54 Minn. 94, 55 N.W. 819 (1893).

[14] Canfield v. City of Philadelphia, 134 Pa. Super. 590, 4 A.2d 605 (1939).

[15] Perri v. City of New Haven, 133 Conn. 291, 50 A.2d 421 (1945). In *Gunsolus,* the Alaska court apparently overlooked any distinction between a city's sidewalk and crosswalk responsibility, although decisions in other jurisdictions have generally imposed greater responsibility on cities to keep sidewalks cleared. 19 McQUILLIN, MUNICIPAL CORPORATIONS § 54.89 (3d ed. 1950).

[16] 99 Colo. 134, 60 P.2d 1087 (1936).

[17] *Id.* at 1088.