COA Opinion: Leaseholders without possession and control of sidewalks outside facility cannot be liable for slip and fall injury

3. November 2010 By Julie Lam

Plaintiff slipped and fell on an icy sidewalk in front of the only customer entrance to an exercise facility. The trial court denied defendants' motion for summary disposition because it found that there were genuine issues of material fact. In *Hoffner v Lanctoe*, No. 292275, a *per curiam* opinion published on November 2, 2010, the Court of Appeals affirmed in part, reversed in part, and remanded. The Court of Appeals determined that the leaseholders of an area inside the Lanctoes' building could not be liable because they did not have possession and control of the sidewalk outside of the facility where plaintiff fell. The Court of Appeals made this determination based on the lease between the Lanctoes and the exercise facility, along with their actions and intent. The Court of Appeals also determined that whether or not a contract between plaintiff and the exercise facility, containing a release of liability for the exercise facility, etc. "and all others", could apply to the Lanctoes, required factual development and that summary disposition was inappropriate. Finally, the Court of Appeals found that the trial court appropriately denied summary disposition regarding defendants' argument that plaintiff's claim was barred by the open and obvious doctrine where there was only one customer entrance, and where although plaintiff, an invitee, noticed that the sidewalk was covered by "glare ice," she testified that she thought she could safely cross it.