

NJ LAWS EMAIL NEWSLETTER I

Kenneth Vercammen, Attorney at

January

Dear Ken,

In this Issue:

- 1. Liability of Owner of Commercial Property for Defec and Ice Accumulation and Other Dangerous Condi Abutting Sidewalks.**
- 2. Recent case-Sometimes in DWI case AIR permitted mic where defense did not claim prejudice**
- 3. No 5th amendment claim where suspect did not invoke p**

1. Liability of Owner of Commercial Property for Defec and Ice Accumulation and Other Dangerous Condi Abutting Sidewalks.

The law imposes upon the owner of commercial or property the duty to use reasonable care to see to it that the s abutting the property are reasonably safe for members of th who are using them. In other words, the law says that the c commercial property must exercise reasonable care to see to i condition of the abutting sidewalk is reasonably safe and subject pedestrians to an unreasonable risk of harm. The c reasonable care requires the owner of commercial property action with regard to conditions within a reasonable period

after the owner becomes aware of the dangerous condition or, through the exercise of reasonable care, should have become aware of it.

If there was a condition of this sidewalk that was dangerous, that it created an unreasonable risk of harm for pedestrians, and the owner knew of that condition or should have known of it but failed to take such reasonable action to correct or remedy the situation within a reasonable period of time thereafter as a reasonably prudent commercial or business owner would have done under the same circumstances, then the owner is negligent.

No one plans on being injured in an accident, whether a car accident, fall down or other situation. Speak with a personal injury attorney immediately to retain all your rights. The store is responsible for the maintenance of their premises, which are open to the public. It is the duty of the store to inspect and keep said premises in a safe condition and free from any and all pitfalls, obstructions or traps that would likely cause injury to persons lawfully thereon.

If the unsafe condition is alleged to be **snow** and ice, and any ordinance adopted by the municipality is charged as a factor, the jury should consider the reasonableness of the time the defendant(s) has (have) waited to remove or reduce the snow or ice condition from the sidewalk.

What actions must the owner of commercial property take with regard to defects / **snow** / ice accumulation/ dangerous conditions? The action required by the law is action that a reasonably prudent person would take or should have taken under the circumstances present to correct the defect / **snow** / ice accumulation.

dangerous condition, to repair it/remove it or to take other action to minimize the danger to pedestrians (for example, to give warning signs) within a reasonable period of time after notice thereof. The question is: did the commercial property owner take the action that a prudent person who knows or should have known of the condition would have taken in that circumstance? If he/she did, he/she is not negligent. If he/she did not, he/she is negligent.

If you are injured, after seeking medical treatment, please advise the store/mall, CALL KENNETH A. VERCA ESQ. 732-572-0500 for an Appointment.

More info

at: http://www.njlaws.com/fall_down_injuries_on_snow.htm

2. Sometimes in DWI case AIR permitted mid trial where defense did not claim prejudice

State v Wolfe 431 NJ Super. 356 (App. Div. 2013)

The Court affirmed a drunk driving conviction where defendant unsuccessfully sought to block admission of his Alcohol Level Report (AIR), a report generated by an Alcotest breathalyzer because the State did not provide complete discovery after requested. During trial, the municipal court required defense to specify the grounds for his objection to the admissibility of the AIR, and the State was then allowed to cure the deficiencies of the foundational evidence pointed out by defense counsel. The court interpreted Rule 7:7-7(h) to allow this mid-trial discovery. The defendant alleges no prejudice and the State did not intend to

the defense.

3. US Supreme Court says No 5th amendment claim where defendant did not invoke privilege Salinas v. Texas 133 S. Ct. 928 (2013)

When defendant had not yet been placed in custody or given Miranda warnings, and voluntarily responded to some questions by police about a murder, the prosecution's use of his silence in response to another question as evidence of his guilt at trial did not violate the Fifth Amendment because petitioner failed to expressly invoke the privilege not to incriminate himself in response to the question.

Editorial Assistance provided by Sara Quinlan. Ms. Quinlan currently attends Mercer County Community College and is participating in Kenneth Vercammen's Winter Internship Program.