

To: XXXXXXXXX  
From: George Schuhmann  
27 April 2009

**Legal Memorandum re:  
Landlord's Duties re: Ice and Snow under Indiana Law**

**I. Duty of Care of Landlord**

The seminal case in this area is *Rossow v. Jones*, 404 N.E.2d 12 (Ind.App.1980).<sup>1</sup> In *Rossow*, the tenant had slipped on ice and snow that had been accumulating for a week in the common area of an apartment complex. *Rossow*, 404 N.E.2d at 13. The appellate court “conclude[d] that a landlord does have a duty of reasonable care that the common ways and areas, or areas over which he has reserved control, are reasonably fit, and that hazards created through a natural accumulation of ice and snow are not beyond the purview of that duty.” *Id.* at 14. The trial court had found for the plaintiff, and although there was sufficient evidence for a trier of fact to have found the plaintiff contributorily negligent, the appellate court noted that “if reasonable minds could differ [concerning conflicting facts in witness testimony], the question is for the trier of fact.” *Id.*

In an aside in *Childress v. Bowser*, 546 N.E.2d 1221, 1223 (Ind. 1989), the Indiana Supreme Court confirmed that *Rossow* stands for the principle that a “landlord has [a] duty to remove ice and snow from common areas.”

**II. Tenant Needs No Compelling, External Reason to Venture Forth**

Under Indiana law, a tenant does not need any “strong, external compelling circumstance,” such as the purchase of necessities, in order to justify his or her venturing forth over icy or snowy conditions in a common area. *See, e.g., Countrymark*

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<sup>1</sup> Note: All cases cited have been cite-checked (Sheperdized) as of April 27, 2009, to insure that none has been overturned, overruled, or otherwise abrogated on the point of law for which the case is cited herein.

*Cooperative, Inc. v. Hammes*, 892 N.E.2d 683, 689 (Ind.App.2008) (noting that a plaintiff's walking across ice need not be undertaken due to compelling external circumstances "[g]iven the Indiana Supreme Court's pronouncement in *Baxter*"). In *Smith v. Baxter*, 796 N.E.2d 242, 245 (Ind.2003), the Indiana Supreme Court held that, in a landowner's liability arising under Sections 343 and 343A of the Restatement (Second) of Torts, "[t]here is no requirement under these sections that an invitee's conduct be undertaken for compelling circumstances."

An extensive search of Indiana case law has not revealed any further special or specific duty of the landlord to provide "reasonable ingress and egress" for tenants using common areas to exit or enter a property for necessary activities, such as buying groceries or taking out the trash.<sup>2</sup> Thus, the landlord's duties in such circumstances would appear to fall under the standards of Sections 343 and 343A of the Restatement (Second) of Torts (see previous memo).

### **III. Landlord's "Continuing Duty"?**

Beyond the landlord's duties as a landowner under Sections 343 and 343A of the Restatement (Second) of Torts as outlined in *Smith v. Baxter* (see previous memo), Indiana law does not appear to have a special or specific "continuing duty," once measures have been taken to remove ice and snow from common areas, to continue in that removal effort or risk incurring some further liability.<sup>3</sup> While "[a] duty to exercise care and skill may be imposed on one who, by affirmative conduct, assumes to act, even

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<sup>2</sup> Search terms included: landlord & tenant & ingress & necessities; "continuing duty" & landlord; "continuing duty" & tenant; "continuing duty" & (landowner OR "property owner"); ice & slip & duty & landowner; landlord /p duty /p (business OR invitee); landlord /p duty /p ice; ingress /s egress /s duty /s landlord; and INGRESS /S EGRESS /S DUTY /S landowner.

<sup>3</sup> Search terms included: landlord & (assumed /s duty /s (repair OR ice)); landlord & (assumed w/4 duty); landlord /p duty /p common p/ice; LANDLORD & (ASSUMED /S DUTY /S (REPAIR ICE)); "landlord has assumed" (0 Docs); "landlord has begun" (0 Docs); and landlord /s begun.

gratuitously, for another” (*Masick v. McColly Realtors, Inc.*, 858 N.E.2d 682, 692 (Ind.Ct.App.2006)), there does not appear to be a case decided under Indiana law imposing a particular or different duty upon a landlord in this regard. Thus, the fact that a landlord has undertaken snow or ice removal will be one more factual inquiry into breach under the *Baxter* standards.

It may also be worth noting that an Indiana appellate court has ruled that an exculpatory clause in residential rental contract is “contrary to public policy insofar as it seeks to immunize [the landlord] against damages caused by her negligence, if any, in maintaining common areas.” *Ransburg v. Richards*, 770 N.E.2d 393, 403 (Ind.App.2002) (ruling of a provision of a lease contract seeking to exculpate landlord from liability for any criminal activity occurring on the leased property).