

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>CATHERINE DAUGHERTY and BRUCE</b>	:	
<b>DAUGHERTY, husband and wife</b>	:	
<b>Plaintiffs</b>	:	
	:	
<b>v.</b>	:	<b>No. 04-01,363</b>
	:	<b>CIVIL ACTION</b>
<b>STEP, INC.,</b>	:	
<b>Defendant</b>	:	

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<b>CATHERINE DAUGHERTY and BRUCE</b>	:	
<b>DAUGHERTY, husband and wife</b>	:	
<b>Plaintiffs</b>	:	
	:	
<b>v.</b>	:	<b>No. 04-01,731</b>
	:	<b>CIVIL ACTION</b>
<b>COMMUNITY ACTION REALTY, INC.,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

Before this Honorable Court, is the Plaintiff’s June 12, 2006 Motion for Post-Trial Relief in the form a Motion for a New Trial. The Plaintiff contends that the Court’s refusal to instruct the jury as to the duty owed by a possessor of land to a business invitee in favor of a “hills and ridges” doctrine instruction was an error severe enough to warrant her request for a new trial. For the following reasons, the Court disagrees with the Plaintiff’s contention.

**I. Background**

On December 19, 2003, the Plaintiff, an employee of Complete Cleaning Company, which contracted with Defendant STEP to provide cleaning services at its Lincoln Street facility, was injured when she slipped on ice in the Defendants’ parking lot while attempting to take out the trash in the regular course of her employment. The Plaintiff initiated the instant matter in

2004 alleging that her injuries sustained as a result of the fall she experienced on December 19, 2003 caused by the Defendants' negligence.

Prior to the Court's charge on the law to the jury, the parties met with the Court to discuss their respective proposed points for charge. The parties discussed the issue currently before the Court, at length, at this conference. More specifically, the Defendants asserted that the Pennsylvania Standard Civil Jury Instruction 7.04 (i.e. the "hills and ridges" doctrine) was the exclusively proper instruction regarding their duty to the Plaintiff. Alternatively, the Plaintiff asserted that Pennsylvania Standard Civil Jury Instruction 7.02A, which is largely based on the Restatement (Second) of Torts §§ 343 and 343A, should also be given, or in the alternative, be the exclusive instruction on the issue of the Defendants' duty to the Plaintiff. For the following reasons, the Court opted to instruct the jury only as to the hills and ridges doctrine and denied the Plaintiff's request to also instruct on the more general Pa. SSJI (CIV) 7.02A.

On June 12, 2006, the Plaintiff filed the instant Motion for Post-Trial Relief asserting that the Court's instruction on the hills and ridges doctrine and/or its refusal to also, or in the alternative, instruct the jury on Pa. SSJI (CIV) 7.02A was a fatal error warranting a new trial.

## **II. Discussion**

It is well accepted that a landowner owes a duty to protect invitees from foreseeable harm and in executing this duty, must inspect his /her premises, and discover dangerous conditions. *See, Carrender v. Fitterer, 503 Pa. 178, 469 A.2d 120 (Pa. 1983); Restatement (Second) of Torts §§ 343 and 343A.* "A landowner is only liable for harm to an invitee caused by a condition on his/her land if (1) he/she knows, or by the exercise of reasonable care, would discovered the condition, and should realize that it involves an unreasonable risk of harm to an invitee; (2) should expect that the invitee would not discover or realize the danger, or will fail to protect

themselves against it; and (3) fails to exercise reasonable care to protect the invitee against the danger.” *Id.*; Pa. SSJI (CIV) 7.02A.

If the “dangerous condition” which caused the invitee harm is an ice and/or snow covered walkway or parking lot, the landowners’ duty to an invitee is refined by the hills and ridges doctrine. *Wentz v. Pennswood Apartments*, 359 Pa. Super. 1, 518 A.2d 314 (Pa Super Ct. 1986). The doctrine, which is not contradictory to the general duty a landowner owes an invitee, provides that, when generally slippery conditions exist, a landowner is required to remove ice and snow that has accumulated on the walking surface within a reasonable time after he/she is on notice that a dangerous condition exists. *Wentz*, 359 Pa. Super. 1, 518 A.2d 314 (Pa Super Ct. 1986); *Morin v. Traveler’s Rest Motel, Inc.*, 704 A.2d 1085 (Pa. Super. Ct. 1997). Under the doctrine, “a landowner is only liable for harm to an invitee caused by generally slippery conditions if (1) the ice and snow had accumulated on the walkway in ridges or elevations that unreasonably obstructed travel and were a danger to persons traveling on the walkway; (2) the landowner knew or should have known of the existence of such conditions; and (3) it was the dangerous accumulation of ice and snow that caused the invitee to fall.” *Id.*; Pa. SSJI (CIV) 7.04.

The instant matter arose after the Plaintiff sustained injuries when she slipped and fell, during the course of her employment, in the Defendants’ parking lot. Testamentary and documental evidence presented at trial indicated that, on the day the Plaintiff fell and was injured, the area experienced precipitation (*see*, the Plaintiff’s Exhibit 3: National Climatic Data) and the area where the Plaintiff fell was covered in ice; there was no evidence presented at trial to indicate that the ice was the result of anything but natural events. Accordingly, the Court determined that the hills and ridges doctrine applied and instructed the jury on this more specific

landowner duty (as delineated in Pa. SSJI (CIV) 7.04) as opposed to the more general landowner-invitee instruction (as delineated in Pa. SSJI (CIV) 7.02A). Because it is “the trial judge who is ultimately responsible for defining all pertinent questions of law, and all issues which are relevant to pleadings and proof may become the subject of jury instructions”, *Carpinet v. Mitchell*, 2004 PA Super 197, P7, 853 A.2d 366, 371 (Pa. Super. Ct. 2004) (citations omitted), the Court denies the Plaintiff’s request for a new trial.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of July 2006, the Court hereby DENIES the Plaintiff’s Post-Trial Motion for a New Trial.

By the Court,

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Nancy L. Butts, Judge

xc: Joseph F. Orso, III, Esq.  
Gary L. Weber, Esq.  
Hon. Nancy L. Butts  
Judges  
Laura R. Burd, Esq. (Law Clerk)  
Gary L. Weber, Esq. (Lycoming Reporter)