

Recycling Activities Included in Recreational Use Statute

***Ward v. Town of Barnstable*, Barnstable Superior Court, C.A. No. 1672CV00075 (2017 MSJ Granted)**

PDP attorney Jason W. Crotty successfully argued a Motion for Summary Judgment based upon the protections of M.G.L. c. 21, § 17C, the so called Recreational Use Statute. The litigation stemmed from a trip and fall accident on a walkway at the Town Transfer Station in Barnstable. At the time of the accident, the plaintiff, who did not live in town, was at the Transfer Station dropping off recyclables.

In plaintiff's Complaint, she alleged that the Town "negligently failed to keep the area where the plaintiff tripped and fell in a reasonably safe condition," and "failed to warn plaintiff of a dangerous tripping hazard." The plaintiff neither presented a recklessness cause of action in her M.G.L. c. 258 presentment letter, nor did she plead recklessness in her Complaint.

In the Motion for Summary Judgment, PDP argued that the Recreational Use Statute was applicable because the Town made the Transfer Station available to the public, free of charge, for purposes enumerated by the statute, namely, "conservation, environmental and ecological." The Statute originally governed only recreational uses, but was amended in 1998 to include other uses of social import, including conservation, scientific, educational, environmental, ecological, research, religious or charitable. The Statute also encompasses injuries that occur walking to and from the activity in question. *Seich v. Town of Canton*, 426 Mass. 84, 86 (1997); *Whooley v. Commonwealth*, 57 Mass. App. Ct. 909, 910 (2003). The plaintiff testified that she tripped and fell while walking from her car towards a recycling bin with her recyclables in hand.

Plaintiff's counsel did not dispute that the plaintiff was on the property free of charge, or that the Transfer Station was open to the public; rather, he argued that recycling plastics and cardboard was not a "conservation, environmental or ecological" activity, as those terms are used in the Statute. The Court was not persuaded by this argument. In a brief written decision, the Court granted the Motion for Summary Judgment, noting that "when a term is not defined, a court looks to its ordinary meaning." The Court used both the American Heritage Dictionary and Black's Law Dictionary to define the meanings of "conservation, environmental and ecological" purposes, ultimately determining that recycling activities were contemplated in the plain meaning of those words.

This decision should prove helpful in defending future claims in which suit is brought against a municipality under similar non-recreational circumstances.