

“Ongoing Storm Rule” - No Longer Defense To New Jersey Snow/Ice Claims

Commercial landowners and their insurers should take notice of a new Appellate Court ruling that has rejected the "ongoing storm rule" as a defense for slip and fall-type accidents from snow and ice, during an active winter weather storm. That "rule" had essentially given commercial landowners "immunity," for fall down accidents occurring during an ongoing winter storm.

In *Pareja v. Princeton* (decided on April 9, 2020), the plaintiff slipped and fell on black ice in the commercial landowners's parking lot during a winter event described by the plaintiff as "drizzling sleet." In applying the "ongoing storm rule," the trial court granted Summary Judgment to the commercial landowner, on the basis that the commercial landowner's duty to remediate the snow/ice condition did not begin until the cessation of the winter storm. The Appellate Court has just reversed the grant of Summary Judgment and ordered that the matter proceed to a jury trial. It is unknown at this time whether this case will be appealed to the New Jersey Supreme Court to address this issue directly, or not. Unless and until that occurs, this opinion controls these matters.

The Appellate Court held that the "ongoing-storm rule" arbitrarily relieves commercial landowners from any obligation to try to render their property safe while sleet or snow is falling. According to the Appellate Court, such a "bright line rule" ignores situations when it is reasonable for a commercial landowner to remove or reduce foreseeable and known snow or ice hazards, during the weather event.

Instead, the Appellate Court determined that it was for a jury to determine whether the commercial landowner's actions during an ongoing winter event were reasonable under the circumstances.

In so holding, the Appellate Court laid out guidelines for the jury to consider in their deliberation at trial that includes the following:

1. Would any action would be inexpedient or impractical,
2. The extent of the precipitation and the time of the day it occurred,
3. The efforts implemented for snow/ice remediation,
4. The kind of foot traffic that would occur at the location, and
5. The practicality of reasonable safety measures or methods of ingress or egress.

Comment: As a result of the "broad brush" ruling outlined in the *Pareja* decision, in most cases, a commercial landowner will unfortunately not likely succeed in a Summary Judgment motion, no matter the severity of the storm or the snow/ice remediation taken. It instead will be left for the jury at the time of trial to evaluate the reasonableness of the actions taken by the commercial landowner based on the specific circumstances of the case. It is still yet to be determined to what extent a commercial landowner could prevail on a lack of notice defense (of an upcoming storm), or how liability might be passed to a third party vendor contracted to treat snow/ice conditions, during the weather event. Certainly, internal client policies and procedures, as well as contractual agreements with snow vendors, need to be reassessed in light of this significant change of the law in New Jersey.