

Applicability of “Ongoing-Storm” Defense to New Jersey Snow/Ice Claims in Flux

There has been continuing attention to the application of the “ongoing-storm rule” as a valid defense in New Jersey for landowners and their insurers in slip and fall-type accidents from snow and ice, during an ongoing winter event. That “rule” offered a defense that there was no duty to perform snow/ice remediation while a winter storm is ongoing.

In Pareja v. Princeton (App. Div. April 9, 2020), the Appellate Court reversed a Summary Judgment ruling in favor of the defendant commercial landlord that argued that its duty to remediate the snow/ice condition in its parking lot was not triggered until the cessation of the winter storm. 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 and that 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. Please check out our [April 2020 WG Alert here](#) to learn more about this matter.

The reasoning set forth in Pareja has recently been applied to slip and fall accidents involving snow/ice conditions on private property where commercial activity is conducted. In Berniz v. Atkins (App. Div. October 8, 2020), the plaintiff was hired to clean the defendants’ residence during a severe winter storm. After finishing the job, the plaintiff slipped and fell from snow on the defendants’ driveway as she was heading toward her car. Summary Judgment was granted at the trial level based on the “ongoing-storm” defense. Relying on the Pareja decision, the Appellate Court reversed, stating that the “mere fact that snow was falling when [the] plaintiff slipped and fell did not blanket defendants with immunity” and finding that the “ongoing-storm rule” has “no place in our jurisprudence.” Instead, the Appellate Court held that the defendants owe the plaintiff a duty, as a business invitee, to act reasonably and within a reasonable period of time after they knew or should have known of the hazard caused by the snowfall. Whether the defendants were negligent turns on a consideration of all the relevant circumstances, only one of which was the continuing snowfall.

Comment: The Supreme Court of New Jersey has granted certiorari of the Pareja matter and arguments were held on February 1, 2021. Accordingly, The Supreme Court of New Jersey will soon have the final word as to whether property owners and their insurers can rely on the “ongoing-storm rule” as a viable defense. As it presently stands, a landowner permitting commercial activity on the premises 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 landowner based on the specific circumstances of the case. Certainly, once the Supreme Court of New Jersey makes a final ruling on the applicability, scope, and breadth of the “ongoing-storm rule,” internal client policies and procedures, as well as contractual agreements with snow removal vendors should be reassessed accordingly.