

The Storm in Progress Doctrine

On January 5, 2024, northern New Jersey received its first significant snow accumulation in two years. It was a wet, heavy, slushy 3-5 inches of snow that would inevitably turn to ice overnight. Therefore, thoughts immediately turned to the storm in progress doctrine.

The storm in progress doctrine is recognized in several northern States and holds that a commercial landowner does not have a duty to remove or treat accumulations of snow and ice until the conclusion of a storm and has a reasonable time after the storm ends to remediate conditions before a storm-related hazard is actionable.

The principle was affirmed in New Jersey in *Pareja v. Princeton International Properties*, 249 N.J. 546 (2021). In *Pareja*, both sides agreed that a wintery mix of snow, sleet and freezing rain began about 1:30-2:00 A.M. and continued at about 8:00 A.M. when plaintiff arrived at the office building where he worked. Plaintiff slipped and fell on ice that formed on the apron connecting the parking lot with the sidewalk abutting the building, fracturing his hip. He claimed, *inter alia*, that the building's ownership and management were negligent in not pre-treating the exterior walking surfaces with ice-melt.

In affirming the trial court's grant of summary judgment, the Court said that "... We hold that commercial landowners do not have the absolute duty, and the impossible burden, to keep sidewalks on their property free from snow or ice during an ongoing storm." The Court further explained, "The premise of the rule is that it is categorically inexpedient and impractical to remove or reduce hazards from snow and ice while the precipitation is ongoing"

The Court noted that ten other States, including New York, Connecticut, Pennsylvania, and Delaware ("each of which have climates similar to our own") have a similar storm in progress rule.

Two exceptions were carved out. First, the landowner remains liable if its actions increase the hazard to pedestrians. Second, the landowner is not relieved of liability where there is a pre-existing danger unrelated to the storm, such as a melting and re-freeze of snow from a previous storm that created ice under newly fallen snow.

The most formidable challenge is raising the doctrine often is determining when the storm event stopped, which can be contentious. Particularly thorny are situations where the storm temporarily abates, and plaintiff argues there was a hiatus where meaningful action could have been taken to abate the risks. Obviously, the guidance of a weather expert is frequently needed. Although we should never underestimate the creativity of some counsel in devising attempts to work-around the defense, the storm in progress doctrine is a powerful tool in the right circumstances to defeat a winter slip and fall claim.

As they say in Game of Thrones, "Winter is Coming." It is best to be prepared.