BRACE FOR SNOW—AND CLARIFICATION TO THE ONGOING STORM RULE

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As winter approaches and snowstorms become unavoidable, the New Jersey Supreme Court's recent decision in *Gallardo v. Walmart, et al.*, clarifies the State's application of the ongoing storm rule.

In 2021, the New Jersey Supreme Court adopted the "Ongoing Storm Rule" in *Pareja v. Princeton International Properties*, 246 N.J. 546 (2021). The Rule generally provides that commercial property owners have no absolute duty to clear snow and ice until a reasonable time after a storm has ended. *Id.* at 558.

The Court's rationale was simple: it is "categorically inexpedient and impractical to remove and reduce hazards from snow and ice while the precipitation is ongoing." *Id.* at 568 (internal citations omitted). The Court recognized two exceptions that may impose a duty on a commercial landowner despite an ongoing storm: (1) the owner's conduct increases the storm-related risk; or (2) the hazard that caused the plaintiff's injury existed before the storm began. *Id.* at 549.

Since *Pareja*, the Rule and its exceptions have remained largely undisturbed. That changed on May 28, 2025, when the New Jersey Supreme Court granted Certification in *Haydee Gallardo v. Walmart, et al.*, a case asking the Court to revisit the Rule and its exceptions.

Gallardo v. Walmart arose from a Union County personal injury action in which Gallardo alleged that she slipped and fell on slushy ice and snow in a Walmart parking lot during an ongoing winter storm. 265 N.J. 1, 3-6 (2026). Although the parties did not dispute that the storm was ongoing, Gallardo argued that the Ongoing Storm Rule did not apply because Walmart increased the storm-related risk. *Id.* In opposition to Walmart's motion for summary judgement, Gallardo specifically claimed that Walmart's use of rock salt during the storm melted snow and ice, creating the condition that caused her fall, thereby invoking an exception to the Rule. *Id.* at 8.

Conversely, Walmart argued that the exception to the ongoing storm rule did not apply, as applying rock salt is a preventive safety measure, not the type of conduct that the *Pareja* Court intended to capture through the Rule's exceptions. *Id.* The trial court ultimately denied Walmart's summary judgment motion, finding that the exception to the Ongoing Storm Rule applied. *Id.* At trial, the jury found Walmart negligent and the trial court subsequently entered judgment in Gallardo's favor for over $1.3 million. *Id.* at 12.

After trial, Walmart appealed, urging in part that the trial court erred when it declined to instruct the jury on the Ongoing Storm Rule, when it declined to grant summary judgment in favor of Walmart, declined to grant judgment at trial, and declined to grant judgment notwithstanding the verdict. *Id.* at 12-13. The Appellate Court granted Walmart's appeal, finding that the trial court erred when it did not instruct the jury on the Ongoing Storm Rule. *Id.* at 13. However, the Appellate Division held that Walmart was not entitled to summary judgment, judgment at trial, or judgment notwithstanding the verdict, finding that there was a genuine issue of material fact as to "whether spreading salt on snow during the storm was an unusual circumstance increasing or exacerbating the risk" created by the storm. *Id.* at 13-14.

Subsequently, Walmart filed a cross-petition for certification to the New Jersey Supreme Court, arguing, among other things, that under *Pareja*, a commercial landowner's performance of normal snow removal operations during an ongoing storm does not give rise to "unusual circumstances" warranting application of the first exception to the Ongoing Storm Rule. *Id.* at 14.

On July 30, 2026, the New Jersey Supreme Court sided with Walmart and remanded the matter to the trial court for entry of summary judgment in Walmart's favor. *Id.* at 27. In doing so, the Court clarified that the first exception to the Ongoing Storm Rule applies narrowly to "unusual circumstances." *Id.* at 22-23. The Court held that spreading rock salt or other de-icing materials during a storm is an ordinary remediation effort and not unusual conduct that triggers liability. *Id.* at 26-27.

The Court reasoned that allowing claims based on routine safety measures during a storm would encourage property owners to "forgo any remediation effort until a storm is over." *Id.* at 26. That result, the Court noted, would "eviscerate the ongoing storm rule" by making parking lots and walkways more dangerous for customers and visitors - undermining the Rule's purpose of reasonably protecting both commercial landowners and the public. *Id*.

The decision by the New Jersey Supreme Court reaffirms that New Jersey law encourages, rather than penalizes, commercial property owners who make good-faith efforts to protect visitors by remediating snow and ice during winter storms.