NJ Justices' Walmart Ruling Clarifies Future Snowstorm Duty

By **Maxx Johnson** (September 15, 2026)

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The New Jersey Supreme Court has reinforced and clarified the protections afforded commercial property owners during active winter weather.

In Gallardo v. Walmart Inc. on July 30, the court held that a snow-removal contractor's spreading of salt on a minimal snow accumulation during an ongoing storm did not create the "unusual circumstances" necessary to trigger an exception to the "ongoing storm rule" recognized by the court in the 2021 ruling in Pareja v. Princeton International Properties.

The 4-3 decision reverses a New Jersey Superior Court, Appellate Division, ruling that ordered a new trial after a Union County jury awarded the plaintiff more than $1.1 million for injuries allegedly sustained in a slip-and-fall in a Walmart parking lot.

The court directed entry of summary judgment for Walmart. For commercial property owners, retailers, property managers and snow-removal contractors, Gallardo provides important clarity that ordinary, good faith efforts in storm response do not themselves create a duty, or liability, while precipitation is ongoing.

The Ongoing Storm Rule and Pareja Exceptions

In Pareja, the court adopted the ongoing storm rule for commercial property owners, which holds that commercial property owners have no duty to remove snow or ice while precipitation is actively falling and instead must act within a reasonable time to do so after the storm ends.

However, the rule is not without exceptions. Pareja identified limited circumstances in which a duty may arise before the storm concludes:

- When the property owner's conduct increases the risk to pedestrians by exacerbating the dangerous condition; and
- When the hazard existed before the storm and was not caused by the ongoing precipitation.

The issue in Gallardo concerned the first exception: whether Walmart's contractor created an actionable risk by salting the parking lot during a storm without pretreating the pavement before the precipitation began.

The Court's Holding: 'Unusual Circumstances' Remain Essential

In holding that the facts in Gallardo did not establish the "unusual circumstances" required under Pareja's first exception, the New Jersey Supreme Court emphasized that the exception cannot be reduced to a simple question of whether a property owner or contractor took some action that arguably increased a pedestrian's risk.

Rather, the defendant's conduct must create unusual circumstances that aggravate the risk beyond ordinary storm conditions.

As the court explained, a contractor's spreading of salt on the minimal accumulation of snow at issue did not, by itself, warrant imposing a duty on a commercial property owner during an ongoing storm.

The court reasoned that treating routine mid-storm salting as actionable would undermine the ongoing storm rule's purpose by encouraging property owners and contractors to defer any remediation until precipitation stops.

The court therefore rejected the Appellate Division's conclusion that a jury could determine whether Walmart's salting created an exception to the rule and directed the trial court to enter summary judgment for Walmart. The court also directed the Committee on Model Civil Jury Charges to review and revise Model Civil Jury Charge 5.20B because the charge does not include Pareja's "unusual circumstances" language.

The Dissent: A Materially Different View of Tort Duty and the Jury's Role

The dissent viewed the majority as rewriting Pareja by adding what it characterized as a "novel, ill-defined, and unworkable" unusualness requirement to conduct that increases risk. It further maintained that the majority departed from established tort principles and improperly displaced the jury's finding that Walmart's negligence caused the plaintiff's injuries.

The dissent thus reflects the principal future fault line in ongoing-storm litigation. Plaintiffs might rely on the dissent reasoning to argue that proof of risk-enhancing conduct should be sufficient and that expert disputes concerning refreezing, pretreatment, material selection or service timing ordinarily belong to the jury.

However, the majority opinion is controlling: Those issues must first satisfy Pareja's threshold requirement that the alleged conduct creates unusual circumstances.

Practical Takeaways for Commercial Property Owners and Contractors

Gallardo offers meaningful defense-side protection, but it should be read as an incentive for careful winter-weather planning — not as a reason to relax treatment practices.

Key takeaways include the following actions:

- Continue reasonable midstorm treatment — ordinary snow and ice treatment during active precipitation remains appropriate and, under Gallardo, does not itself create liability.

- Use written protocols — establish clear decision-making and escalation procedures for pretreatment, salting, plowing, inspections and changing weather conditions.

- Document the response in real time — complete and written service logs, weather records, photographs and contractor communications can be critical in establishing that the response was routine and nonaggravating.

- Review vendor agreements and insurance — confirm that contracts allocate snow-removal responsibilities clearly and require appropriate recordkeeping, indemnification and insurance coverage.

- Evaluate claims promptly through the Pareja/Gallardo framework — at intake, determine whether precipitation was ongoing, whether the claimed condition existed before the storm and whether there is evidence of truly unusual conduct that worsened conditions.

- Tailor requests for a jury charge — in cases that proceed to trial, preserve the argument that any charge on the first exception must include the "unusual circumstances" component reaffirmed in Gallardo.

Bottom Line

Gallardo preserves the crux of New Jersey's ongoing-storm rule: Commercial property owners are generally not required to eliminate snow and ice hazards while precipitation is ongoing. More importantly, the court makes clear that ordinary treatment efforts during an active storm do not alone create an exception to that rule.

To establish liability before a storm ends, a plaintiff must show unusual circumstances in which the defendant's conduct materially exacerbated the risk.

For commercial defendants, the decision provides a clarified path to early dismissal in appropriate cases and removes a disincentive to undertake reasonable mid-storm safety treatment. For plaintiffs, it raises the evidentiary threshold for claims based on alleged snow-removal mishaps during active precipitation.

Meanwhile, for all litigants, it signals that the language of Pareja — including its "unusual circumstances" limitation — must guide both dispositive motion practice and jury instructions going forward.

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