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# Civil Practice Update

## *All the Law That's Fit to Print*

by Michael J. Epstein

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**Does A Commercial Property Owner Owe A Duty To Clear Snow And Ice When The Building Is Vacant?** For those of you who said no based on Abraham v. Gupta, 281 N.J. Super. 81 (App. Div. 1995), you would be wrong! See Gray v. Caldwell Wood Products, 2012 N.J. Super. LEXIS 63 (App. Div. 2012). In Gray, the plaintiff slipped and fell on snow and ice that the landlord had failed to clear, and the Appellate Division reversed the Passaic County trial court's grant of summary of judgment for the defendant. The trial court based its decision on the fact that the building was empty and on Abraham, which held that an owner of a vacant lot owes no duty of care because it has no ability to generate income. The Appellate Division distinguished Abraham in finding that the empty building had generated income in the past, could have been used to generate income, but that the owner had listed it for sale, and that the owner made the property available for potential buyers. Thus, the panel concluded that the commercial property owner had to clear its sidewalk of snow and ice to protect innocent pedestrians according to Stewart v. 104 Wallace Street, Inc., 87 N.J. 146 (1981), and

its progeny. This short opinion provides a great summary of sidewalk law, and is a must read for anyone handling these types of cases.

**Can An Electric Utility Be Liable For Locating A Pole In An Area That Poses An Unreasonable Danger To The Public?** For those of you who said no based on Contey v. New Jersey Bell Telephone Co., 136 N.J. (1994) and N.J.S.A. 48:3-17.1, you would be wrong. See Seals v. County of Morris, 2012 N.J. LEXIS 523 (2012). In Seals, JCP&L installed an electric utility pole in 1937 without seeking or obtaining approval from the County of Morris. Seven accidents have occurred in the area of the pole. The Supremes held that neither Contey nor N.J.S.A. 48:3-17.1 provides immunity to JCP&L because Contey provides immunity to a utility company when a public body directs where the pole is placed and because Contey dealt with telephone poles, not electric poles, which has a different statute. As for the County, the Supremes ruled that the County's failure to direct that the pole be moved does not provide a seal of approval for JCP&L. The Supremes remanded the issue of whether

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plaintiff established a *prima facie* case against the County for a dangerous condition of property under the Torts Claims Act. The Supremes nailed this decision with a thoughtful and analytical decision.

**ACCELERATED TRIALS:** Judge Polifroni has instituted a new procedure in the Law Division for cases where lawyers would like a trial date before receiving one from the court. If both parties consent to try a case in advance of receiving a notice from the court, you should advise Judge Polifroni that the case is ready for trial. You can do this at any time including before the discovery end date. Upon receiving the request, Judge Polifroni will attempt to accommodate the request for an accelerated trial subject to other cases and litigants. Three cheers for Judge Polifroni for attempting a new way of moving cases that are ready for trial.

**Summer Trial Schedule.** Judge Polifroni is also maintaining last year's break in jury trials in August. For the last two weeks of August (August 20 and 27), there will be NO jury trials. In addition, during the week of August

13, there will be jurors for those lawyers who want to try a case, but the emphasis will be on expedited cases during that week. Judge Polifroni understands that vacation schedules make jury trials difficult in the middle and end of August, and he will attempt to accommodate requests based on vacations during the above weeks. If you want a jury trial during the week of August 13, you should advise Judge Polifroni that all lawyers and clients want the case to proceed to trial. Judge Polifroni should be applauded for providing judges and lawyers with a two to three summer hiatus from jury trials, and we hope that his ideas are adopted state wide. The bar appreciates Judge Polifroni's consideration of legitimate scheduling issues.

**Contributions.** If you have an interesting case, rule interpretation, ethics issue, or civil-related story, please contact me at (201) 845-5962, (f) (201) 845-5973, or e-mail [mjepstein@theepsteinlawfirm.com](mailto:mjepstein@theepsteinlawfirm.com).

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