

# Traffic Accidents and Weather Immunity

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Any driver who has driven in conditions like rain, fog, ice or snow knows that it is a risk to drive in bad weather. Sometimes it is a driver going too fast for weather conditions that causes an accident and sometimes the road conditions cause the vehicle to lose control. Since weather is unpredictable, a driver never knows what to expect on the roads.

Recently, a case in New Jersey was argued in court which involved a traffic accident that occurred in bad winter weather. In this case, an injured driver sued the New Jersey State Department of Transportation (DOT) and the State Police for a weather related traffic accident. The driver, who was out of his vehicle due to a seven car pile-up caused by icy road conditions, fell about thirty feet off a state highway onto the road below while running away from an oncoming vehicle. The plaintiff sued the State DOT and State Police for not warning him and others of the icy road conditions and for not having the highway free of ice.

The court in this case discussed the responsibility of the State DOT and State Police by addressing applicable New Jersey Statutes. Specifically, the court noted that state agencies, counties, cities, towns and all public entities in New Jersey get protection in negligence cases from Title 59 of the New Jersey Statutes. Title 59 has numerous laws which limit lawsuits against public entities. The Title 59 statutory provisions protect public entities from being sued unless there is proof that the public entity acted unreasonably and was aware of the negligent condition. Also, there has to be proof that the injured person sustained permanent injuries that are substantial in nature.

By way of example, if a pothole was in the parking lot of a private grocery store and a customer stepped into the pothole and suffered a sprained ankle, that person could file a lawsuit against the

grocery store. However, if the pothole was in a city street the person could not file a lawsuit because a sprained ankle is not a permanent substantial injury.

Although Title 59 laws seem unfair, they were formulated by the New Jersey Legislature to limit lawsuits. If a public entity could be sued for any reason, the state, counties, cities and towns could conceivably go bankrupt or have their budgets stretched to the limit to defend lawsuits and pay money anytime someone was injured.

Another provision of Title 59 is weather immunity; this provision essentially states that if the cause of an accident is the weather, then the public entity cannot be responsible. In this case, all seven cars skidded because of the ice. The plaintiff got out of his car because of the ice and his fall off the highway was related to icy road conditions. Since the court determined the sole cause of plaintiff's injuries was the weather (ice), the State DOT and State Police were immune from any negligence and the plaintiff's case was dismissed. The court noted that although there may have been issues of whether traffic warning signs should have been placed and whether the highway should have been closed, the plaintiff offered no expert testimony as to those issues. Without an expert to discuss warning signs or closing the highway, the court stated that plaintiff could not overcome the weather immunity provision of Title 59.

Although plaintiff suffered significant injuries, there is an old cliché which says: you can't sue Mother Nature. The icy conditions which existed on the state highway were an act of nature and were the sole cause of plaintiff's accident and injuries.