	: Supreme Court of New Jersey
ANDRIS ARIAS,	: Docket No.: 089642
	:
Plaintiff/Appellant,	: CIVIL ACTION
	:
-vs-	: ON PETITION FOR CERTIFICATION
	: OF APPEAL FROM FINAL JUDGMENT
COUNTY OF BERGEN, JOHN	: OF THE SUPERIOR COURT OF
DOES 1-5, ABC CORPORATIONS	: NEW JERSEY, APPELLATE DIVISION
1-5, JOHN DOE PROPERTY	:
OWNER(S) 1-5, JOHN DOE	: Docket No.: A-002574-22T2
LESSEE(S) 1-5, JOHN DOE	:
PUBLIC ENTITIES 1-5 (fictitious	: Sat Below:
designations)	:
	: Hon. Jessica R. Mayer
Defendants/Respondents.	: Hon. James R. Paganelli
	: Hon. Lorraine M. Augostini
	:
	:

BRIEF OF AMICUS CURIAE NEW JERSEY ASSOCIATION FOR JUSTICE (NJAJ)

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PRELIMINARY STATEMENT

The New Jersey Association for Justice ("NJAJ") respectfully submits this brief as amicus curiae in support of Plaintiff-Appellant, Andris Arias. This matter arises out of a fall that occurred on April 24, 2021, when Plaintiff-Appellant was severely injured due to the presence of a large crater located on a paved pedestrian pathway while she was rollerblading in Van Saun County Park, located in Paramus and River Edge, New Jersey, which is owned and maintained by the County of Bergen. The trial court dismissed Plaintiff's Complaint against Defendant, County of Bergen, ultimately holding that because Defendant's property is utilized by members of the public for recreational purposes, Defendant, under the Landowners' Liability Act ("LLA"), is immunized from liability for any injuries suffered by individuals who use that property. Plaintiff timely appealed to the Appellate Division, which affirmed the dismissal of Plaintiff's Amended Complaint, holding that Van Saun Park was the type of property entitled to protections under the LLA.

Situations in which members of the public, like Plaintiff in this case, become severely injured from dangerous conditions while engaged in recreational activity on land owned in an urban or suburban setting raise an important concern about the lack of protections afforded to the public and the preclusion of any form of redressability whatsoever. The impetus behind the precursor to the LLA was to limit the liability of owners of agricultural lands or woodlands, who could not be expected

to guard against all imperfections of the land that could pose a threat to entrants who came on their land to hunt or fish. Ultimately, the Act was repealed and replaced with the LLA, which was designed to specifically immunize owners of rural or semi-rural land for injuries that arise for those who engage in recreational activities on the land.

Nevertheless, in tracing the legislative history and evolution of the LLA, our courts have consistently held that the legislative intent was never to broaden the scope of the LLA as some lower courts have held, nor was it the Legislature's intent to rewrite and radically alter the premises liability law of this State. Rather, the purpose of the LLA and its later amendments was to enhance the protections that were already granted to those owners of land located in rural areas.

Despite the Appellate Division's contention, Van Saun Park should not be afforded the protections of the LLA. The Appellate Division ignored binding precedent of the courts of this State, which dictates that the LLA should be construed narrowly to only apply to unimproved rural and semi-rural tracts of land. Van Saun Park is an improved tract of land that includes many paved areas, a zoo, playground, tennis courts, softball and baseball fields, and soccer fields with accompanying parking, is located in a densely populated suburban residential neighborhood, and is not the type of land the Legislature envisioned to apply to the LLA. Therefore,

amicus urges this Court to reverse the Appellate Division's Order so as to achieve the intent of the Legislature and the declared purposes of the Act.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

NJAJ will rely on the Facts and Procedural History as recited by Plaintiff.

LEGAL ARGUMENT

POINT I

AN EXAMINATION OF THE LEGISLATIVE RECORD AND CASE LAW REVEALS THAT THE INTENT OF THE LEGISLATURE IS INAPPOSITE TO THE APPELLATE DIVISION'S REASONING AND HOLDING THAT THE LLA IS APPLICABLE TO VAN SAUN PARK

The LLA, N.J.S.A. 2A:42A-2 to -10, in its current form provides, as a general rule, that owners of certain premises, whose property is open to the public, owe no duty to keep the premises safe or give a warning as to any hazardous condition on the land. As such, these owners/operators are immunized from liability for any injury arising on the owner's land, when such persons are engaged in sports and recreational activities on the property. See N.J.S.A. 2A:42A-3a. Specifically, § 2A:42A-3a., provides as follows:

> a. An owner, lessee or occupant of premises, whether or not posted as provided in section 23:7-7 of the Revised Statutes, and whether or not improved or maintained in a natural condition, or used as part of a commercial enterprise, owes no duty to keep the premises safe for entry or use by others for sport and recreational activities, or to give warning of any hazardous condition of the land or in connection with the use of any structure or by reason of any activity on such premises to persons entering for such purposes.

While the term "premises" is not defined within the statute, see N.J.S.A. 2A:42A-3, an inquiry into the legislative history of the LLA provides evidentiary support that the Legislature never intended for the LLA to extend immunity to owners of suburban or urban land.

While the history and origins of the LLA can be traced as far back as 60-plus years ago, the current version was adopted in 1991. Although the Act was amended and the language was altered over time by the Legislature, the jurisprudence of this State has demonstrated the need to interpret the language of the statute throughout its evolution. This is based upon the principle of statutory construction, which states that when interpreting the language of a statute, a court must give deference to the intent of the legislature. See generally DiProspero v. Penn, 183 N.J. 477, 492 (2005). This principle has been routinely applied by our courts, as this Court has repeatedly emphasized, " 'when interpreting a statute, [the court's] overriding goal must be to determine the Legislature's intent.' " Frugis v. Barcigliano, 177 N.J. 250, 280 (2003) (quoting Cornblatt, P.A. v. Barow, 153 N.J. 218, 231 (1998)). Although the best indicator, generally, of that intent is through the statutory language, DiProspero, 183 N.J. at 492 (citing Frugis, 177 N.J. at 280), the court must look to other interpretative aids to assist it in understanding the will of the Legislature for any language that is not clear and unambiguous on its face. Pizzullo v. New Jersey Mfrs. Ins. Co., 196 N.J. 251, 263-64 (2008).

Examining the legislative history of the LLA, coupled with our courts' statutory interpretation of both the precursor to, and subsequent reiterations of the LLA, reveal that the purpose of the Act was for it to be liberally construed such that the individuals who were afforded immunity from liability were those who owned large agricultural lands and woodlands. Through the years of closely examining the text of the Act, the courts have consistently held that the LLA was not intended to radically alter premises liability law of this State by extending immunity beyond owners of large agricultural premises and woodlands. See generally, Toogood v. St. Andrews at Valley Brook Condo. Ass'n, 313 N.J. Super 418 (1998). Rather, it was the intent of the Legislature for the LLA to apply to rural or semi-rural areas where the land is isolated from densely populated neighborhoods and not freely accessible to the public. Harrison v. Middlesex Water Co., 80 N.J. 391, 400-01 (1979).

In 1962, the precursor to the LLA, previously codified at N.J.S.A. 2A:42A-1, was adopted by the New Jersey Legislature. Id. at 398 (citing N.J.S.A. 2A-42A-1 (L. 1962, c. 107)). The Act stated the following:

> No landowner of agricultural lands or woodlands shall be liable for the payment of damages suffered resulting from any personal injury to, or the death of, any person, while such person was hunting or fishing upon the landowner's property, except that such injury or deaths resulted from a deliberate or willful act on the part of such landowner.
>
> Id. (citing § 1).

The impetus behind such an Act was to limit the liability of owners of private lands in exchange for making their lands available to members of the general public without charge. See Council of State Governments, 1965 Suggested State Legislation, 150-52 (1965). As such, in addition to the benefits that private premises holders received, the State became a beneficiary of such arrangement because recreational land was provided to the State's citizenry without the State having to purchase or maintain land. Id. In the specific case of this State enacting N.J.S.A. 2A:42A-1, private landowners in rural areas benefited because they were deemed immune from liability, while the State benefited since it did not have to provide recreational land and was freed of the responsibility of maintaining the land.

Beginning the analysis with this prior Act is particularly instructive. The Act's specific delineation of "landowners of agricultural lands or woodlands" "was intended specifically to apply to owners of rural or semi-rural tracts, pointedly agricultural and wooded tracts." Harrison, 80 N.J. at 398-99. The rationale of the Legislature in passing such an Act was its recognition of the inability of private landowners to control trespassers or even to provide reasonable protection to invitees who hunted and fished on their property. Id.

Shortly after the Act's passage, beginning in 1965, a series of bills were introduced in the Legislature to amend the earlier law. Id. These bills would have expanded the immunity of the statute to those individuals who entered land to camp,

to trap, and to hike, or for other recreational purposes in addition to hunting and fishing. Id. (citing Senate Bill No. 25 (1965); Senate Bill No. 44 (1966); Senate Bill No. 170 (1967)). Despite the fact that these bills replaced the prior designation of the covered lands as agricultural lands or woodlands with the word "premises," there was nothing to suggest that these series of proposed amendments intended to extend immunity to all types of property without any limitations. Id. Rather, the activities identified in these bills included fishing, hunting, trapping, hiking, camping, and similar activities which typically occur either "on large tracts or areas of natural and undeveloped lands located in thinly populated rural or semi-rural areas or on property having all or most of the characteristics of such rural and semi-rural lands, particularly as to size, naturalness and remoteness or insulation from populated areas." Id. Nothing suggests immunity was intended for paved, improved land.

In 1968, the Legislature repealed N.J.S.A. 2A:42A-1 and replaced it with the Landowners' Liability Act, N.J.S.A. 2A:42A-2 to -10. Upon its passage in 1968, the LLA stated as follows:

> a. An owner, lessee or occupant of premises, whether or not posted as provided in section 23:7-7 of the Revised Statutes, owes no duty to keep the premises safe for entry or use by others for sport and recreational activities, or to give warning of any hazardous condition of the land or in connection with the use of any structure or by reason of any activity on such premises to persons entering for such purposes ***.
>
> N.J.S.A. 2A:42A-3.

Included among the changes in the 1968 Act was the Legislature's decision to replace the use of the phrase "agricultural lands or woodlands" with the word "premises." See id.

Subsequent to the passage of the LLA in 1968, in Boileau v. De Cecco, 125 N.J. Super. 263, 266 (App. Div. 1973), aff'd, 65 N.J. 234 (1974), the Appellate Division was tasked with interpreting the meaning of the undefined word "premises" within the Act in order for it to determine the scope of immunity granted by the statute. It held that the owner of a suburban home with a swimming pool in the backyard could not claim immunity under the Act in an action brought by the estate of the decedent, who fractured his neck and subsequently died of his injuries after diving into defendant's pool. 125 N.J. Super. at 264, 268. In order to properly reach its decision, the Appellate Division acknowledged that its task was to ascertain the intent of the Legislature. Id. at 266.

The Boileau Court found it significant that N.J.S.A. 2A:42A-3 refers to N.J.S.A. 23:7-7, the provisions of the Fish and Game section of the statutes relating to legal notices. Id. The Court noted that the latter statute references the manner in which a landowner should post "no trespassing" notices should the landowner wish to have the sanction of the law behind him to prosecute hunters and fishermen who trespass upon the premises of the owner. Id. at 266-67; See N.J.S.A. 23:7-1. The Court opined that "[s]uch internal reference lends substance to the conclusion that

the Legislature was referring to rural or semi-rural tracts of land in the statute in question." Id. at 267.

In arriving at the conclusion that the statute did not confer immunity upon defendant from plaintiff's claim, the Court acknowledged that because of the progeny of the statute (i.e., the predecessor provision to the Act), along with the statute's reference to "posting" and the types of activities that were specified in the Act, "the legislative change of the term 'agricultural lands or woodlands' to 'premises' was not intended to enlarge the protected class of landowners to homeowners in suburbia." Id. at 266-67. The Appellate Division's interpretation as to the meaning of the statute was affirmed, without opinion, by this Court. Boileau, 65 N.J. at 234.

This Court's interpretation of the extent to which immunity to liability applied according to the LLA was endorsed again subsequently in Harrison, supra. Harrison involved an action that was brought against a water company and municipality by decedent's estate after decedent drowned in a made-made lake situated on a 136-acre property surrounded by a heavily populated community. 80 N.J. at 394.

The Court's task was to interpret the scope of the LLA. Id. The specific question that was raised on appeal was whether the Act immunized the defendant water company from liability for the death of the decedent. Id. The Court acknowledged the Appellate Division's holding in Boileau. Id. at 397. As such, in

finding that the LLA did not apply, the Harrison Court concluded that it would continue to adhere to the view that the Act did not immunize owners or occupants of land situated in populated (i.e., urban areas) and residential neighborhoods (i.e., suburban areas). Id. Rather, according to the Court, the Legislature intended to extend immunity solely to premises holders of rural or semi-rural parcels of land. Toogood, supra, 313 N.J. Super at 423.

As reiterated above, following the passage of the 1968 Act, the Harrison Court had turned toward the purpose of the Act's predecessor statute, N.J.S.A. 2A:42A-1 to provide the Court with guidance on who was afforded immunity from liability for injuries that occurred on a landowner's premises. 80 N.J. at 398. In doing so, based upon the facts of the case, this Court acknowledged that it was not the Legislature's intent for the Act to be given such a broad application to those property owners entitled to immunity. Id. at 401. In addition, this Court established a series of factors that would assist our State's courts in determining whether a particular tract of land would permit its owner to claim immunity from liability under the Act. Id. These factors included: the use of the land for which it is zoned, the nature of the community in which the land is located, whether or not the land is isolated from densely populated neighborhoods, and whether or not the land is accessible to the public. Id. This Court opined that "[i]t is not reasonable to posit as a legislative objective the immunization of all landholders from liability for injuries incurred

during the course of outdoor recreational activity on their property, particularly with respect to improved lands freely used by the general public" located in populated urban or suburban areas. Id.

The Harrison Court reasoned that the land where the decedent drowned was on an improved tract located in a highly populated suburban community and was not the type of premises that the Legislature envisioned would provide immunity under the Act. Id. at 401-02. The land was surrounded by private homes and recreational facilities. Id. at 402. The Court distinguished the land from lands located in rural or woodland zones since the land on which the drowning occurred was surrounded by both private homes and public recreational facilities. Id.

This Court held that a 94-acre reservoir and the 42 acres of surrounding land in the middle of a highly suburban population were not the types of land that the Legislature intended for the LLA to cover. Id. at 401-02. Thus, this Court concluded that the defendant water company was not immune under the LLA. Id. at 403.

In 1991, the LLA was once again amended by the Legislature; this time the phrase "whether or not improved or maintained in a natural condition, or used as part of a commercial enterprise," N.J.S.A. 2A:42A-3, was added as a modifier of the word "premises." Toogood, 313 N.J. Super. at 431. In addition, included among the amendments to the LLA was a provision that the Act should be "liberally construed." Id.; See N.J.S.A. 2A:42A-5.1.

Nevertheless, despite the addition of the phrase and the provision providing for a liberal construction, the Appellate Division, in Toogood, opined that its understanding of the legislative history of the 1991 amendments, which introduced the aforementioned phrase, was indication that the amendments were designed to strengthen the long-standing interpretation of the word "premises" rather than to expand upon its meaning. 313 N.J. Super. at 423-24. The Court reiterated that since 1962, the Legislature had not defined the term "premises." Id. at 423. Thus, according to the Court, "the Legislature's failure to disagree with the long-standing judicial interpretation of the term and its consequent limitation of the scope of the immunity afforded by the Act are powerful evidence that the Legislature agrees with the interpretation of 'premises' offered by the Court." Id.; See White v. Twp. of N. Bergen, 77 N.J. 538, 555-56 (1978).

The Court found that it was obvious that the 1991 amendments to the Act were added in response to a decision made by the Appellate Division a year earlier in Whitney v. Jersey Cent. Power & Light Co., 240 N.J. Super. 420 (App. Div. 1990), certif. denied, 122 N.J. 376 (1990) and that the inclusion of the liberal construction provision must be read in that context. 313 N.J. Super. at 424. In Whitney, plaintiff's decedent was killed while operating an ATV along a former railroad right of way in a wildlife preserve. Id. at 422. Jersey Central Power & Light Company (JCP&L) had converted the railroad right of way to a roadway and maintained it. Id. In determining

whether JCP&L was immunized or not, the Appellate Division turned its attention to the improved nature of the roadway and its use in conjunction with commercial activity. Id. As such, the Court held that JCP&L was not immunized by the Act. Id.

According to the Appellate Division, since the liberal construction provision was included in the Act as part of the general amendments in reaction to Whitney, "Whitney was a case which unnecessarily restricted the immunity afforded to landowners of rural and semi-rural or open tracts of land by focusing on the activity and the presence or absence of improvements on the rural or semi-rural land." Id. at 425. The Court noted that "[n]othing in the language of the Act or its legislative history suggests these amendments were intended to radically alter the law of premises liability by extending immunity to suburban or urban landowners." Id. at 426.

Toogood involved a plaintiff, who was visiting a friend and who fell while rollerblading on a road within a partially constructed residential condominium complex where plaintiff's friend resided. Id. at 420. The complex was located in a suburban environment. Id. Plaintiff, at the intersection of two paved roadways, slipped and fell because of sand that accumulated on the surface of the roadway. Id.

To aid in the Court's interpretation of the amended Act, the Court looked at the legislative committee's statement of the purpose of the proposed bill. Id. at 425. In doing so, the Court stated that the statement of purpose, including the nature and

effect of the measure, "is a highly persuasive indication of legislative intent." Id.; See Helfrich v. Hamilton Twp., 182 N.J. Super. 365 (App. Div. 1981); 2A Sutherland Statutory Construction §48.06 (5th Ed. 1992). The Court noted that pursuant to the bill's proponent's, the purpose of the legislation was to enhance and remove impediments to the immunity already afforded to both rural and semi-rural tracts of land and was not to expand the scope of the premises subject to the Act. Id.

Based on the textual analysis, along with the legislative history of the amendments to the Act, the Toogood Court's unequivocal conclusion in 1998 that the LLA, as amended, did not immunize landowners and occupiers of suburban residential property, confirmed that the 1991 amendments by the Legislature were never intended to drastically change the premises liability law of this State such that landowners of suburban or urban land were afforded immunity from liability for their negligent acts. Id. at 426. As such, the Appellate Division in Toogood reversed the trial court's grant of summary judgment to defendants on the basis that the defendants were immune from liability. Id. at 420.

The Appellate Division's decision in Benjamin v. Corcoran, 268 N.J. Super. 517 (App. Div. 1993), provides further support as to the interpretation and application of the LLA pursuant to the Legislature's intent. In Benjamin, plaintiffs sued for injuries a child sustained when he was bitten by a dog while sleigh riding on the grounds of defendant, a nursing home. Id. at 519-20.

The Court indicated that the LLA has no application to improved lands which are located in a populated suburban area. Id. at 529. This was precisely the description of the grounds on which the child who was sleigh riding. Not only were the premises located in a densely populated area, but the grounds of the nursing home facility were surrounded by residential lots. Id. at 531. Accordingly, the Court determined that the defendant was not absolved of liability under the LLA because the sledding accident occurred on premises that consisted of an improved tract of land in a suburban area. Id. at 517, 531. Similarly, six years following Benjamin, according to the Appellate Division in Mancuso ex rel. Mancuso v. Klose, "immunity under the Act did not extend to landowners such as defendants whose property is located in residential and populated neighborhoods even if those neighborhoods were part of a larger undeveloped, open, and expansive rural and semi-rural areas." 322 N.J. Super 289, 295 (App. Div. 1999).

POINT II

WHEN APPLYING THE HARRISON FACTORS, IT IS ABUNDANTLY CLEAR THAT VAN SAUN PARK IS NOT THE TYPE OF PREMISES THE LEGISLATURE INTENDED FOR THE LLA TO APPLY

The extensive tracing of the history and rationale as to why the Legislature did not intend for the LLA to apply broadly, coupled with the application of the factors that the Harrison Court provided, provide compelling support that Defendant, County of Bergen, contrary to the Appellate Division's decision, should not be

afforded the protections of the LLA because Van Saun County Park consists of land that does not permit the landowner to claim immunity. Rather, the characteristics of the land and surrounding area are such that Defendant should be held liable for any injuries sustained by entrants to the property, while engaged in recreational activity, due to negligence of the Defendant.

A. THE LLA DOES NOT APPLY TO AN IMPROVED PARK DUE TO THE USE FOR WHICH THE LAND IS ZONED AND NATURE OF THE COMMUNITY IN WHICH THE LAND IS LOCATED

Van Saun Park borders Paramus to the west and River Edge to the east. An assessment of the zoning maps for the respective boroughs unquestionably leads to the conclusion that the Park is situated in a suburban residential neighborhood. (Pa79-Pa80). The zoning map for Paramus depicts the Park in green, which is located in the lower-left portion of the map. The Park is completely surrounded by residential one-family homes. (Pa79). On the River Edge zoning map, the Park is shown in the top left and center of the map. Directly due north, east, and south of the Park are properties that are entirely zoned for residential purposes. (Pa80).

Therefore, since Van Saun Park is surrounded by residential zones in the two municipalities which encompass the Park, the Park is definitively located in a suburban residential zone. Being that the Park is situated in a suburban neighborhood zoned for entirely residential purposes and because the Legislature's intention was to immunize landowners with property situated in rural or semi-rural areas which

would not be surrounded by residential lots, Defendant, County of Bergen, should not be afforded the protections of the LLA.

B. THE LLA DOES NOT APPLY TO AN IMPROVED PARK BECAUSE IT IS NOT ISOLATED FROM POPULATED NEIGHBORHOODS

As the Court acknowledged in Harrison, supra, a parcel's relative isolation from densely populated neighborhoods is another fact that must be considered when assessing whether the LLA should immunize owners and occupiers from liability for any injuries which occur on the land. Moreover, since the legislative intent behind the creation of the precursor to the LLA, along with the subsequent creation of the LLA itself, was to provide immunity to owners of rural and semi-rural tracts of land, then logic dictates that the LLA shall only be found to apply to premises located in sparsely populated regions.

Van Saun Park is located in Bergen County and is approximately 16 miles west of Manhattan. Bergen County had the highest population density of all 21 of the State's counties in both 2010 and 2017, with a total population of 8,791,894 and 9,005,644, respectively. State of New Jersey, "Population Density by County and Municipality: New Jersey, 2010 and 2017," https://nj.gov/health/fhs/primarycare/documents/Rural%20NJ%20density2015-revised%20municpalities.pdf (last visited June 6, 2025). Based upon statistics from the United States Census Bureau from 2022, the population of Bergen has only since grown, and the County continues to be the most densely populated county in the State. United States Census

Bureau, "QuickFacts: Bergen County, New Jersey," https://www.census.gov/quick-facts/fact/table/bergencountynewjersey,NJ/PST045222 (last visited June 6, 2025).

Accordingly, because Van Saun Park, and other similar parks, are located in the most densely populated county in the State, Van Saun Park in no way is isolated from densely populated residential communities. There is nothing suburban about it.

C. THE LLA DOES NOT APPLY TO AN IMPROVED PARK WHERE IT IS ACCESSIBLE TO THE GENERAL PUBLIC

The Harrison Court's general accessibility factor is particularly instructive for supporting a finding that the LLA is not applicable in this particular case. As this Court noted in Harrison, "[i]t is not reasonable to posit as a legislative objective the immunization of all landholders from liability for injuries incurred during the course of outdoor recreational activity on their property, particularly with respect to improved lands freely used by the general public located in populated neighborhoods in urban or suburban areas." 80 N.J. at 401. Not only is Van Saun Park, and other parks with similar characteristics, situated around a heavily populated suburban area, but the owners/operators of such parks make those parks freely accessible to the general public.

An overwhelming amount of evidence exists which demonstrates that the subject premise is readily accessible to the public. A description of Van Saun Park on Bergen County's website states that "Van Saun Park is one of Bergen County's most utilized parks." (Pa84-Pa85). In addition, Van Saun Park offers a wide range of

year-round activities for guests of all ages. Id. This includes pedestrian and bike trails, a carousel and pony ride, the Bergen County Zoological Park, an ADA accessible Harmony Playground with a water sprinkler feature. Id. The Park also contains softball and baseball fields. Id.

Van Saun Park is also easily accessible by the general public via major highways. (Pa99). It has two (2) vehicular entrances, both of which provide access to the northern section of the Park where most of the Park's programming is located. (Pa100). The Park is within easy reach via public transportation. (Pa102-Pa103).

Unlike rural or semi-rural land, due to the Park's offerings and ease of accessibility, Van Saun Park, and other parks like it, are conveniently available to the public. Due to a high utilization rate, the Legislature would never have intended to immunize all landowners, like the County of Bergen, on premises that are freely utilized by members of the public in populated neighborhoods located in urban or suburban neighborhoods. Moreover, the ease of accessibility and the awareness of the overwhelming number of entrants on these types of premises in turn allows the operator/landowner to exercise more control over the population as compared to a landowner in rural areas. Thus, because the activities of those who enter parks, like Van Saun Park, can be supervised and/or controlled by the owner/operator, they should not be afforded the immunity protection of the LLA.

D. THE APPLICATION OF THE HARRISON FACTORS PERMITS A COURT TO CONCLUDE THAT AN IMPROVED PARK IS ANALAGOUS TO THE PROPERTY THAT WAS AT ISSUE IN HARRISON

As previously mentioned in Point I above, in Harrison, this Court concluded that the LLA did not apply to a lake that was found on a company's property in a populated suburban area because the incident occurred on an improved tract of land located in a highly populated suburban community and the lake was surrounded by private homes and recreational facilities. Id. at 395, 401-02. In addition, this Court noted that the lake was not situated in a rural area where the activities of those who came onto the land could not be supervised or controlled, but was located in a populated area where such factors were less substantial. Id. at 402.

Similar to the lake in Harrison, Van Saun Park and other similar parks, are located in a populated suburban area and are surrounded almost entirely by residential homes. Contained on the land throughout these parks are numerous improvements including pathways, buildings, edifices, other facilities, and amenities. Included among the amenities at the Park are sports fields, a playground, a zoo, and a carousel. The Park, and others like it, are situated in a suburban area where the activities of the people who enter such premises can be controlled or supervised. Based upon the characteristics of such parks, along with their location, owners/operators, like the County of Bergen, are able to look after and supervise the activities of those premises with minimalist effort.

POINT III

THE COURT BELOW DEVIATED FROM BINDING PRECEDENT, ELECTING TO INSTEAD CREATE A NEW "DOMINANT CHARACTER OF THE LAND" ANALYSIS

The Appellate Division disregarded binding precedent when it failed to consider the nature and character of Van Saun Park's surrounding community when determining whether the Park was subject to the LLA, drastically changing this State's premises liability law and marking, for the first time since this Court's decision in Harrison, where a court in this State has failed to do so. Included amongst these cases are all court decisions subsequent to the 1991 amendments to the LLA. See Benjamin, supra, 268 N.J. Super. at 517, 532; Toogood, supra, 313 N.J. Super. at 425-26; Weber v. U.S., 991 F. Supp. 694 (D.N.J. 1998); Tompkins v. Cnty. of Mercer, 2020 WL 4647867 (App. Div. 2020); and, Vaxter v. Liberty State Park, 2010 WL 4237242 (App. Div. 2010). While the courts in each of those cases properly analyzed whether the subject parcel of land was surrounded by populated residential neighborhoods which would make the LLA inapplicable, the Appellate Decision limited its analysis to the dominant character of the subject land, while dispensing with the character of the subject land's surrounding community.

Specifically, the decision below directly conflicts with Harrison, supra, where, as noted in Point I, this Court held that the LLA did not immunize owners or occupiers of land located in residential and populated neighborhoods, finding that it was

not the Legislature's intent that the LLA "be accorded a broad application." 80 N.J. at 397, 401. Thus, rather than electing to follow precedent, and apply the Harrison factors specifically created to assist courts with determining whether land, such as Van Saun Park, qualified as "premises" under the LLA, the Appellate Division ran afoul of what the Legislature had intended, by improperly expanding its scope.

The decision below is also directly inapposite to Toogood, where despite the 1991 amendments to the LLA that were made by the Legislature, the Appellate Division previously held that the amendments were designed to strengthen the long-standing interpretation of the word "premises" rather than to expand upon its meaning. 313 N.J. Super. at 423-24. In addition, Toogood echoed the holding in Harrison that the intention of the LLA was never to immunize owners or occupiers of land located in residential and populated neighborhoods. Id. at 422-23; accord Labree v. Millville Mfg., Inc., 195 N.J. Super. 571, 581 (App. Div. 1984). Yet, rather than relying on the Court's actual reasoning in Toogood, the Appellate Division departed from precedent and went beyond the intent of the Legislature. Instead, it chose to rely upon a single sentence from the Toogood decision for the sole purpose of creating a "dominant character of the land" analysis to assess whether the LLA applied to Van Saun Park, stating, in its decision, that "the 1991 amendment was 'clearly designed to focus the inquiry on the dominant character of the land and to account for the evolving types of activities considered recreational pursuits.' "

(emphasis added) (Op. 19) (quoting Toogood, 313 N.J. Super. at 425-26). In so doing, the court below completely dispensed of the Harrison factors, even though the court in Toogood supported the continued viability of the Harrison Court's definition of "premises." See 313 N.J. Super. at 423.

As noted above, the Toogood Court's reference to the dominant character of the land was simply in reaction to the Appellate Division's decision in Whitney, supra. Id. at 424. As the Toogood Court noted, the 1991 amendments by the Legislature were an effort to rectify this unintended result of Whitney's focus on whether the land was in its natural condition or improved, and whether it was used for commercial purposes, and were not intended to radically alter premises liability law by extending immunity to suburban or urban landowners. Id. at 425-26.

The Appellate Division erred by expanding the scope of the LLA's immunity protections by applying its new test, which resulted in improperly restricting its analysis to the character of Van Saun Park itself, rather than the nature of the community in which the property is located**.** Under such a test, every owner of land used for recreational purposes would be granted immunity regardless of geographic location. Had it chosen to apply the Harrison factors, the court below would have, undeniably, concluded that the Park was: surrounded by land zoned for residential purposes, situated in a suburban community, not isolated from densely populated neighborhoods, and generally accessible to the public at large. See Id. at 401.

The Appellate Division departed from the intent of this State's Legislature and referenced out-of-state courts' interpretation of their own recreational use statutes in support of its "dominant character of the land" analysis. Rather than adhering to the fundamental principle that when a court is to interpret statutory language its duty is to carry out the desired intent of the legislature that enacted the statute, DiProspero, supra, 183 N.J. at 492, and not the intent of a different state's legislature enacting entirely distinct legislation, Int'l Longshoremen's Ass'n v. Waterfront Comm'n of New York Harbor, 171 N.J. Super. 508, 514 (App. Div. 1979), the court below enigmatically looked to out-of-state courts in Ohio and Nevada and their interpretations of those states' recreational use statutes. (Op. 24-27)

Not only may those legislatures have had vastly different intentions, but the Appellate Division ignored the indisputable contention that courts "should not interfere with the policy choices made by the Legislature," DiProspero, 183 N.J. at 506, by electing to revisit the Legislature's policy decisions. By making the de facto legislative finding that due to the density of development in this state, "it is unlikely that residents can find premises available for sport and recreational uses not surrounded by existing residential or commercial development" (Op. 22), the Court relied on "the diminishing open tracts of land in New Jersey" to apply a "dominant character of the land analysis," rather than the Harrison factors. (Op. 23). In so doing, the Court engaged in inappropriate policymaking reserved for the Legislature.

POINT IV

AN OVERBROAD INTERPRETATION OF THE LLA BY COURTS SETS FORTH A DANGEROUS PRECEDENT

Any rulings in which our State's courts have provided an overbroad interpretation of the LLA, sets forth a dangerous precedent. The immunity granted to certain landowners in suburban or urban settings, who never were intended to reap the benefits of the LLA, signals to these property owners that it is okay for them to allow dangerous conditions to exist on premises which are accessible to the public.

Any continued broad interpretation of the LLA would result in none of those parks' guests having any legal recourse for injuries sustained on the premises while engaged in recreational activity, due to any form of negligence on the part of the owner/operator. Most importantly, it would disincentivize property owners/operators from keeping premises safe for all patrons, making the public significantly less safe.

CONCLUSION

For the foregoing reasons, amicus curiae respectfully requests that this Court reverse the judgment of the Appellate Division and remand to the trial court.

Respectfully submitted,

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Dated: June 11, 2025