



STERNS & WEINROTH, P.C.

## LITIGATION

# Update

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January 2003

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### **BEWARE: THE DREADED GRAPE**

The New Jersey Supreme Court has expanded "slip and fall" liability and the culprit is that dreaded grape on the floor! In a January 22, 2003 opinion (Nisivoccia v. Glass Gardens, Inc., d/b/a Shop-Rite of Rockaway), the Court took the opportunity to re-visit Wollerman v. Grand Union Stores, Inc., 47 N.J. 426 (1966) and expanded the potential area of premises liability for supermarkets and grocery stores from the limited area of the produce aisle to the entire store.

Plaintiff, Katherine Nisivoccia slipped and fell on some loose grapes lying about three feet from the entry to the supermarket checkout aisle. There was no proof as to how the grapes came to be on the floor or how long they had been there. It was undisputed, however, that in the produce area grapes were displayed in open-top, vented plastic bags that permitted spillage.

At trial, plaintiff requested a "mode-of-operation" jury charge. Such a jury charge entitles a plaintiff to an inference of negligence, imposing on the supermarket the obligation to come forward with rebutting proof that it had

taken prudent and reasonable steps to avoid the potential hazard. The trial court denied plaintiff the "mode-of-operation" jury charge because of the location of the accident – it was not in the produce aisle and was several feet away from the checkout cashier. The supermarket was granted a directed no-cause of action verdict because plaintiff had not produced any evidence of the store's actual or constructive notice of a dangerous condition.

The Supreme Court reversed holding that plaintiff was entitled to an inference of negligence. The Court noted that the "mode-of-operation" charge is appropriate when loose items that are reasonably likely to fall to the ground during customer or employee handling would create a dangerous condition.

Two aspects of this decision are critical and may affect your business. First is that store location, *i.e.*, produce aisle or checkout aisle, was not the determinative consideration for the Court. Instead, the key issue was the nature of the packaging of the grapes



allowing them to accidentally spill out anywhere in the store due to the open and air-vented bags.

Second is that a "mode-of-operation" jury charge may be appropriate not only whenever any loose items are involved – that is, items that are reasonably likely to fall to the ground during customer or employee handling and which would cause a dangerous condition.

The lessons to be learned: (1) take precaution not only in areas where customers and employees handle loose items, but also review how such loose items are packaged and displayed in your store; and (2) be prepared to come forward and produce evidence of due care in guarding against the dangerous condition.

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