

Important Ruling Affecting NJ Premises Liability Claims

The issue before the Supreme Court in *Prioleau v. Kentucky Fried Chicken, Inc.*, 2015 LEXIS 957 (September 2015), was whether the plaintiff was entitled to a mode of operation charge at trial based on a theory that the restaurant's use of grease to cook food was its "mode of operation." The plaintiff in Prioleau alleged that as she was heading toward a restroom facility at a Kentucky Fried Chicken restaurant, she slipped and fell from a combination of water from outside elements and grease tracked from the kitchen area.

The "mode of operation" rule has traditionally been limited to circumstances where a customer suffers an injury from a condition arising from a self-service setting. This rule is not desirable for a defendant because it gives rise to a rebuttable inference that the defendant is negligent, and eliminates the need for the plaintiff to prove actual or constructive notice.

The Supreme Court held that the trial court improperly applied the mode of operation rule and remanded the matter for a new trial. The mode of operation rule was inappropriately used because the accident location bore no relationship to any self-service component of the defendant's business.

Even if employees tracked grease from the kitchen to the restroom area, the Supreme Court reasoned that it resulted from the preparation of food in a kitchen area that was off limits to patrons. The Supreme Court held that the mode of operation rule only applies in situations where the customer foreseeably serves himself or herself, or otherwise directly engages with products or services unsupervised by any employee.

Comment: A defendant in a premises liability case should be able to use this opinion as a sword where there is no evidence of notice, as well as a shield, against overreaching efforts by plaintiffs relying on the mode of operation rule.