

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>MATTHEW J. SPINELLI, et al.,</b>	:	
<b>Plaintiffs,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>COSTCO WHOLESALE CORP., et al.,</b>	:	<b>No. 02-8028</b>
<b>Defendants.</b>	:	

**MEMORANDUM AND ORDER**

**Schiller, J.**

**December 18, 2003**

Plaintiffs Matthew and Margaret Spinelli bring this personal-injury action against supermarket operator Costco Wholesale Corp. d/b/a Costco Wholesale (“Costco”) for injuries sustained by Margaret Spinelli in a slip-and-fall incident at one of Defendant’s stores. Presently before the Court is Defendant’s motion for summary judgment. Defendant argues that it is entitled to judgment as a matter of law because: (a) there was no substance on the floor that caused Ms. Spinelli to fall; or (b) if there was such a substance, Costco had no notice of it. For the reasons set out below, the Court denies this motion.

Plaintiffs have raised at least two genuine issues of material fact sufficient to warrant submitting this case to a jury. *See* FED. R. CIV. P. 56(c). First, and most importantly, it is unclear whether there was a foreign substance on the floor of the store. Although Margaret Spinelli has stated that she did not see any such substance before she fell (Spinelli Dep. at 58-59), witnesses observed residue on both the floor and Ms. Spinelli’s shoe. (Chacra Dep. at 17-18, 21-22.) Plaintiffs argue that this residue was the remainder of the substance that caused Ms. Spinelli’s fall, while Defendant argues that the material on the floor was merely a “scuff mark” left by her shoe. Despite Defendant’s assertion, however, the evidence that such a dual residue existed could permit a

reasonable jury to conclude both that there was a substance on the floor and that this substance caused Ms. Spinelli's fall. *See Miller v. Hickey*, 81 A.2d 910, 914 (Pa. 1951) ("[N]egligence need not be proved by direct evidence, but may be inferred from attendant circumstances if the facts and circumstances are sufficient to reasonably and legitimately impute negligence."); *Ryan v. Super Fresh Food Mkts., Inc.*, Civ. No. 99-1047, 2000 WL 537402, \*3, 2000 U.S. Dist. LEXIS 5713, \*7-8 (E.D. Pa. Apr. 26, 2000) (denying summary judgment in slip-and-fall case where plaintiff produced circumstantial evidence to support claim).

Second, regarding the issue of notice, Plaintiff has produced evidence tending to show that Costco employees were aware that a food-serving area several feet away from the spot where Ms. Spinelli fell was a "mess," with various condiments strewn about. (Pl.'s Resp. Ex. F ("Floorwalk Checklist" of Feb 11, 2002); Miano Dep. at 24-25.) Costco apparently does not dispute this fact. (Def.'s Mot. for Summ. J. ¶ 18.) Thus, a reasonable jury could conclude that Costco should have inspected the food area and adjacent walkways for spillage more frequently, given the chance that slippery food products could land on a highly-trafficked customer walkway. *See* RESTATEMENT (SECOND) OF TORTS § 343 (1965) ("A possessor of land is subject to liability . . . if he . . . by the exercise of reasonable care would discover the [dangerous] condition . . .").<sup>1</sup>

Thus, for the reasons set out above, the Court denies Defendant's motion for summary judgment. An appropriate Order follows.

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<sup>1</sup> Because there are material facts in genuine dispute, the Court does not address the spoliation of evidence issue raised by both parties. If necessary, the parties may address this issue in pre-trial motions.

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<b>Defendants.</b>	:	

**ORDER**

**AND NOW**, this 18<sup>th</sup> day of **December, 2003**, upon consideration of Defendant's Motion for Summary Judgment (Document No. 22) and Plaintiffs' response thereto, it is hereby **ORDERED** that:

Defendant's Motion for Summary Judgment is **DENIED**.

**BY THE COURT:**

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**Berle M. Schiller, J.**