

MEMORANDUM

TO : TO CLIENTS AND FRIENDS

FROM : Coto Malley & Tamargo, LLP

DATE : September 14, 2005

RE : Supreme Court of Puerto Rico Ratifies Rule of Law that
Owner Of Commercial Establishment Open to the Public
is not an Absolute Insurer of the Safety of Customer.

In Ramos Rosado v. Wal-Mart Stores, Inc., 2005 T.S.P.R. 123, 165 D.P.R. _____ (August 31, 2005), the Puerto Rico Supreme Court took a "responsible and impassionate" look at the record after a plaintiffs' verdict was appealed, and found that plaintiffs had failed to show all elements of their slip and fall case. The Court ratified long standing case law to the effect that an owner of a commercial establishment opened to the public is not an absolute insurer of the safety of its visitors. As such, the establishment is not strictly liable for damages suffered by its clients in the premises.

The Court held that the duty of care due to the customers extends only to the exercise of reasonable care for the protection and safety of customers. The Court also ruled that, in connection with slip and fall cases, plaintiffs need to establish, and the Court needs to determine, that the existence

of any such dangerous condition was known by the commercial establishment or such knowledge could be implied.

In the action that gave rise to this ruling, plaintiff slipped and fell in a Wal-Mart Store in an area where Wal-Mart displayed wax products and other cleaning substances for sale. Allegedly, plaintiff slipped and fell due to some colorless slippery liquid that was on the floor.

The High Court, based on testimony of Wal-Mart's chief of operations and the absence of evidence of notice from plaintiffs, ruled that plaintiff had failed to show that Wal-Mart knew or should have known of the existence of the condition that allegedly caused the accident.

Should you have any questions regarding this opinion or any other premises or product liability issues, kindly call or e-mail any of the partners of Coto Malley & Tamargo, LLP:

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