# IN THE SUPREME COURT OF TEXAS

NO. 03-0408

BROOKSHIRE GROCERY COMPANY,
D/B/A BROOKSHIRE FOOD STORES, PETITIONER

V.

MARY FRANCIS TAYLOR, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE SIXTH DISTRICT OF TEXAS

JUSTICE JOHNSON, concurring.

I join the Court's opinion and concur with the Court's judgment, but write to address an issue highlighted by the dissent: the difficulty of reconciling statements we made in, and the holding of, *Corbin v. Safeway*, 648 S.W.2d 292 (Tex. 1983) with other precedent from this Court. The difficulty breeds confusion as to exactly what an injured invitee must prove and what a premises occupier must defend against in cases such as the one before us.

The facts underlying *Corbin* are that Gary Corbin, a Safeway customer, slipped and fell on a grape near an open grape display in the produce aisle of a Safeway store. Corbin then sued Safeway, alleging the existence of three dangerous conditions in the store. The first condition was the specific grape on which he slipped. The second was the dirty and littered condition of the floor

where he slipped. The third was the method in which Safeway displayed grapes in an open, slanted, self-serve bin above a linoleum floor. *Id*. at 296. The case went to trial and the trial court granted a directed verdict in favor of Safeway. The court of appeals affirmed. On appeal to this Court, we posed the question presented as

> whether an invitee who sustains personal injuries from slipping and falling in a store may recover damages by introducing evidence that a proximate cause of the fall was the storeowner's failure to use reasonable care to protect its customers from the known and unusually high risks accompanying customer usage of a self-service display of goods. We hold that such proof establishes a right to have a jury determine the storeowner's liability, even in the absence of evidence showing the storeowner's actual or constructive knowledge of the presence on the floor of the specific object causing the fall.

*Id*. at 295.

We affirmed the court of appeals' decision that there was no evidence to support Safeway's liability as to the first and second conditions. In addressing the third condition, we stated that "Corbin's right to recover from Safeway depends on his showing Safeway's knowledge of the foreseeable harm of some *course of conduct or method of operation*. He is not required to prove one particular instance of negligence or knowledge of one specific hazard, as Safeway contends." *Id*. at 296 (emphasis added). We cited *Rosas v. Buddies Food Store*, 518 S.W.2d 534, 537 (Tex. 1975) for our statement. But, *Rosas* involved a customer slipping and falling on a wet floor and we referred to a "condition" of the premises, not a "course of conduct or method of operation." Subsequent to our decision in *Corbin* we have specifically refused to eliminate all distinctions between premises condition claims and negligent activity claims. *Keetch v. Kroger Co.*, 845 S.W.2d 262, 264 (Tex. 1992). However, we have not re-examined either *Corbin*'s use of negligent activity

language or its holding that a claim based on a dangerous premises condition can be asserted without showing the premises owner had actual or constructive knowledge of the specific condition causing the plaintiff's injuries.

The facts involved in suits by invitees against premises owners frequently are in question; the elements of a cause of action should not be. The parties do not ask us to re-examine or clarify *Corbin* in this case. We should do so in an appropriate case.

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Phil Johnson
Justice

**OPINION DELIVERED:** December 1, 2006