

# Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed April 21, 2010.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D09-3152  
Lower Tribunal No. 09-39409

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**Mattie Lomax,**  
Appellant,

vs.

**Publix Supermarkets, Inc., a Florida corporation,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Ronald C. Dresnick, Judge.

Mattie Lomax, in proper person.

Quintairos, Prieto, Wood & Boyer, Philip J. Kantor and Andrew S. Connell, Jr., for appellee.

Before COPE, WELLS, and ROTHENBERG, JJ.

WELLS, Judge.

The order under review is affirmed. As Doyle v. Pillsbury Co., 476 So. 2d

1271, 1272 (Fla. 1985), explains:

A producer or retailer of food should foresee that a person may well become physically or mentally ill after consuming part of a food product and then discovering a deleterious foreign object, such as an insect or rodent, in presumably wholesome food or drink. The manufacturer or retailer must expect to bear the costs of the resulting injuries.

The same foreseeability is lacking where a person simply observes the foreign object and suffers injury after the observation. The mere observance of unwholesome food cannot be equated to consuming a portion of the same. . . . When a claim is based on an inert foreign object in a food product, we continue to require ingestion of a portion of the food before liability arises.