

SHARK BAIT

By Debra A. Newby, Attorney at Law

Welcome! This Q & A legal column is designed with YOU in mind to serve our West County community. I am honored to volunteer my 23-years of experience as a practicing lawyer to address burning legal issues that are on your mind. Please send me your questions via e-mail (contact information below). Although every inquiry may not be published, we will publish as many as possible. Finally, this legal column does not create an attorney-client relationship and is intended as a community service to discuss general legal principles (you know us lawyers...always have to create disclaimers)! Let's begin . . .

Q. I had a small accident in Kmart yesterday—while shopping in the pet aisle a package of Viva paper towels fell from above the aisle and hit me on the side of the head. I filled out an accident report at the store. One of the employees commented that the rolls were stacked too high. I didn't think I needed an ambulance, but by the time I got to Trader Joes next door, my neck and back started to tighten. I then went to see my regular doctor who said I had a mild case of muscle strain/whiplash. Kmart called me today to check on me. What should I do? N.S.

A. It appears that you may have a premises liability claim against Kmart due to their negligence in failing to properly stack the merchandise. Storeowners have a legal duty to keep their premises safe and free from hazardous conditions. Now, I know a few of you may be reading this and chuckling...what damage can a paper towel do? Ask Newton. He will tell you that objects fall at 32 feet per second per second, so if the roll of Vivas were stacked, say, 10-12 feet above you, by the time it rides the gravity wave, it can carry a pretty whomping weight and surprise you, especially if your attention was on the best shaped pig-ear for Waldo the wonder hound.

Up to about five years ago, stores like Kmart would successfully defend cases like yours--meaning that they would "win" if the store did not have any notice of the dangerous condition that caused the injury. The notice rule does make a bit of sense—how can a storeowner prevent or correct a dangerous condition if he/she doesn't know about it? But then one day a fella named Richard Ortega was shopping at a Kmart in LA when he slipped on a puddle of milk in the aisle. Busted -up his knee real bad—ligament tears. The court determined that Kmart had a duty to not only keep the store safe, but to also conduct inspections within a "reasonable" amount of time. The jury awarded Richard \$47,200, but I bet he wished Kmart would have used your quicker-picker upper Viva towel to clean up the spilled milk instead.

Kmart has a right to call you to see how you are doing. If a lawyer represents you, though, they can only speak to your lawyer. Be truthful but smart on the call. The store sounds like it is genuinely concerned about you, but be warned—all calls will be recorded. The store is probably trying to gauge how serious you were injured, so they

can report back to their insurer to determine the value of the claim. If you can prove that Kmart had notice of the unsafe condition, or failed to inspect the aisle regularly to detect and prevent the dangerous condition, then the store will likely be “liable” for your injury. If the store is assuming liability, then you are entitled to have your medical bills paid, plus compensation for wages lost and pain and suffering.

You should probably settle this claim on your own, but don’t settle too early. Wait until you are totally healed, which may take several months or longer for a soft tissue injury. You have two years from the date of the accident to file a suit or settle. Plenty of time to play with Waldo... or to rearrange your kitchen cabinets for the perfect storage place for paper towels (avoid high shelves)!

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