

The JLF Report

Fall 2006 ~ Vol. 5 No. 4 ~ A Quarterly Publication of the Joye Law Firm

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“Attention Shoppers, This Store Contains Hidden Dangers” Joye Law Firm Settles Claim Against Big Box Retailer

Every year, thousands of shoppers are injured, and sometimes killed, due to falling merchandise and other negligent acts of corporations that own and operate shopping centers and stores. With the increasing size and number of warehouse-style retail stores (also known as "big-box retailers," "super-stores", and "mega-stores") and the corporate owners taking minimal action to prevent injuries, the number of shoppers injured each year due to corporate negligence will continue to rise.

The precise number of shoppers injured each year from falling merchandise is difficult to calculate because corporations typically assert that such information is proprietary and confidential. Also, there are no state or federal regulations requiring corporations to report store injury data. Nonetheless, based on investigative reports by various news sources, including ABC News and Inside Edition, jury verdicts and settlements from across the country, and the American Society of Safety Engineers' warning to customers to be aware of hidden dangers while shopping, there is no doubt that serious injuries caused by falling merchandise occur at an alarming rate.

Unfortunately, one local family became part of an unwanted statistic during a shopping visit to a big-box retailer. David Graves was three years old when he was seriously injured while shopping with his mother (the client's name has been changed for confidentiality purposes). David was standing by his mother when he was struck by several large boxes that fell from a display rack. The boxes struck David with such force that he sustained a severe fracture to his leg requiring an extended hospital stay, traction, surgery, and immobilization for 10 weeks in a half body cast.

"This was not a situation where a child was misbehaving or was not being watched by his mom or dad," explained Joye Law Firm

attorney Chris McCool. "Instead, the child was standing by his mother when the display shelf gave way," added McCool. A pre-suit investigation revealed that the boxes fell because the store owner overstocked a poorly designed shelving unit. Therefore, the Joye Law Firm began pursuing a claim against the corporation that owned the store and stocked the shelf and the corporation that manufactured the shelving unit.

Upon the completion of the Joye Law Firm's initial investigation regarding the cause of the falling merchandise, the corporate

defendants requested that a pre-suit mediation be held in an effort to settle the claim. Based on the Joye Law Firm's past experience in handling falling merchandise cases and premises liability cases in general, the firm agreed to participate in the voluntary mediation.

In preparation for the mediation, the Joye Law Firm obtained various necessary materials – medical records, medical bills, x-rays, surgical

reports, physical impairment evaluations, corporate policy manuals, industry standards, scene photographs, and photographs and videos depicting the hardship the injury caused David and his family – to further strengthen the claim. "At the mediation, we knew the cause of the falling merchandise, the law regarding this type of case, and the science applicable to falling objects to illustrate why these types of cases result in such serious injuries," said McCool. Scientific evidence is important in various types of cases, especially in falling merchandise cases. The lessons learned in high school physics establish that as an object falls, it gains momentum and leads to a force of impact of 1,200 pounds or more when a 10 pound object falls 10 feet.

(Continued on next page)



Photo of cast gives the reader an idea of the extensive injuries.

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Last Chance! (Social Security Disability)

Barbara Ayers has always been a hard worker. After graduating from high school, she worked for many years as a cashier and a manufacturing supervisor. Ms. Ayers last worked in 2001 due to her ongoing severe medical impairments consisting of fibromyalgia, depression, chronic fatigue syndrome, chronic left knee pain and insomnia. In order to recover Social Security disability benefits, a person must have generally worked five out of the last ten years. This is what the Social Security Administration calls being "fully insured". The meaning of being "fully insured" is that you have to have worked recently and long enough to be qualified for Social Security disability benefits. Ms. Ayers's last insured date was March of 2003, which meant that if she did not get approved for disability benefits on her most recent claim, she would no longer be insured to apply for benefits in the future unless she went back to work and obtained the required amount of work credits to become fully insured. Ms. Ayers applied for benefits in April of 2005 and was denied in May of 2005. "It was just so frustrating to know that I physically could not do the things that I normally could, and to know that I have paid for these benefits, and to feel that there would be no way for me to get them. That is why I am so happy that I hired the Joye Law Firm to help me with my case," said Ms. Ayers.

Matt Jackson, the Joye Law Firm's Social Security disability attorney, immediately took steps to appeal the decision denying Ms. Ayers her benefits, by filing a Request for Reconsideration in July of 2005, prior to the sixty (60) day deadline. In August of 2005, Ms. Ayers received another denial from the Social Security Administration, which is very common when a Request for

Reconsideration is made. "At the initial application stage, the denial rate across the United States is over 70%. The next step in the process is to file a motion for reconsideration. The denial rate across the United States for a motion for reconsideration is well over 90% percent. Once you are denied on your motion for reconsideration, that is when you can hire a lawyer to request a hearing in front of an administrative federal law judge. This is the best opportunity the client has to reverse a denial," said Mr. Jackson. After the denial of the reconsideration request, Mr. Jackson again acted immediately and filed a request for a hearing before an administrative law judge on August 18, 2005. After a six-month waiting period, a hearing was finally scheduled for January of 2006

"Mr. Jackson scheduled a pre-hearing conference with me to go over the issues in my case and to help me be comfortable when appearing before the federal judge," said Ms. Ayers. During the hearing, the judge reviewed all of the medical evidence in Ms. Ayers' exhibit file and additional medical evidence that was gathered by Mr. Jackson. The judge also listened to Ms. Ayers testify about how her medical condition affects her daily life. In February of 2006, the administrative law judge issued a fully favorable decision, approving Ms. Ayers for Social Security disability benefits. "It meant the world to me to know that I was not alone in this struggle, and that someone was willing to come forward and help me obtain the benefits I so desperately needed," said Ms. Ayers.

"It is always a pleasure helping someone in need, and in this instance I felt great about the result given that this would have been the last chance for Ms. Ayers to obtain benefits without having to undergo some significant hardship trying to work in her current condition in order to re-apply for Social Security disability," stated Mr. Jackson. "I look forward to helping many more people in the future who find themselves in this situation."

Should you have any questions regarding your rights to Social Security disability benefits, please do not hesitate to contact Matt Jackson at 843-725-7141 or his dedicated and



Pictured Above: JLF Social Security Disability Team, attorney Matt Jackson and paralegal, Lori Mitchum

"Attention Shoppers"

(Continued from page 1)

The Joye Law Firm's extensive pre-suit investigation, preparation, and knowledge enabled the Joye Law Firm to settle the claim at mediation. At the respective requests of the corporate defendants, the terms of the large settlement are confidential.

The incident involving young David Graves illustrates the dangers associated with corporations not paying enough attention to store safety. From a lack of trained personnel to insufficient or non-existent safety policy and procedures, shoppers at big-box retail stores are exposed to an especially high risk of severe injury due to

the size of the items on display and the high levels at which the items are displayed. When these items fall, broken limbs, spinal injuries, and traumatic brain injuries are a likely result. It is the aim of the Joye Law Firm that hard work in representing clients like David will send the message to corporations that safety must come before profit.

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New Workers' Compensation Bill Is Harmful To State

***The insurance industry proposal is bad for businesses
and would be devastating to workers.***

Published: Friday, October 20, 2006
By Jason D. Porter, Guest Editor

My daddy wore his knee out driving a truck. He always wanted me to make my living behind a desk, so I studied hard. I am a trial lawyer, and the majority of my practice is spent representing injured workers before the South Carolina Workers' Compensation Commission. I have a job because insurance companies that provide workers' compensation coverage often refuse to treat people right.

The insurance industry is the most powerful machine in America, and insurance companies are now pushing a bill they say will "reform" workers' compensation in South Carolina. In effect, the new bill guts the power of our workers' compensation courts and takes away the rights of injured workers with no benefit to the business community.

The bill is part of the insurance industry's five-step plan to fatten themselves at the expense of all South Carolina:

- Step 1: Raise premiums on employers to generate more income for insurance companies.
- Step 2: Blame injured workers, causing tension between employers and employees.
- Step 3: Propose legislation limiting workers' benefits.
- Step 4: Lobby to persuade voters and politicians to pass said legislation.
- Step 5: Count their money and begin making plans for next year's premium hikes.

In short, charge employers more and pay workers less!

Insurance companies say they want to get trial lawyers out of workers' compensation. They could easily do that if they would just pay injured workers the full value of their claims. If insurance companies paid even 80 percent of what the law says, no injured worker would hire me and pay me a 33 percent fee. But insurance companies routinely deny claims that should be paid, driving injured workers to my door.

When you examine workers' compensation in South Carolina, it's

clear that we need insurance reform. New laws should be passed to increase workers' benefits and punish insurance companies that improperly deny or delay claims.

Did you know that if a 40-hour-per-week worker is killed on the job in South Carolina, his or her family will receive only between \$84,000 and \$250,000 as compensation for their loss? That's it. Is your life worth more than that? Who would trade the life of a spouse, child or parent for such a pittance?

Did you know that if the same worker gets a leg torn off in a machine, he or she will receive between \$24,000 and \$110,000? That's it. What rational person would trade a limb for that amount of money? I wouldn't, and both of my legs are skinny.

By the way, if you lose your life or limb on the job, don't expect to get a check the next day. The longer the insurance company can delay payment, the more interest they make off of your money. Often, delay in medical care worsens the injured worker's condition and lengthens his or her time out of work. Insurance companies find countless ways to delay payment, driving up the costs of the entire system.

Did you know that when you get hurt on the job, the insurance company picks the doctor? That's right, you must go to their doctor and not the family doctor who knows you and has treated you for years. Worse, the "reform" bill will require the workers' compensation judge to award only what the insurance company's hand-picked doctor says. As a result, insurance companies are setting themselves up as the judge and jury, and they don't want you to have a lawyer.

The insurance companies' "reform" bill is harmful to the South Carolina economy and should insult your sense of fairness and justice. All this may sound like a squabble between insurance companies and trial lawyers. But the trial lawyers and the insurance companies do not drive this state's economy. Small business owners and their workers are the ones who do the working and paying and living and dying in our communities. Is it too much to have them work and pay and live and die without being continually robbed by the insurance industry?

The workers' compensation "reform" bill that insurance companies are touting is bad for business, particularly small business, and it is devastating for workers. Encourage your representative or senator to defend our state from the insurance industry's assault and its attempts to erode employer-employee relations in South Carolina.

HARRELL ELECTED TO CLAIMANTS' ATTORNEYS' ASSOCIATION EXECUTIVE COMMITTEE

Ken Harrell, the head of the Joye Law Firm's Workers' Compensation/Social Security Disability Department, has been elected to the Executive Committee of the Association of South Carolina Claimants' Attorneys for Workers' Compensation for a term which will run through 2009. This association has been active in working with the South Carolina legislature to protect the rights of injured workers from the attacks which have been made on the same. Harrell was elected to the executive committee at the association's annual conference in Asheville in early November. The association hosted several South Carolina legislators and judges at this meeting.

Harrell was also a featured speaker at the South Carolina Workers' Compensation Educational Association's Annual Conference in October. Harrell was one of only two attorneys for injured workers who appeared on the program and he spoke on recent appellate decisions affecting the rights of South Carolina workers who sustain shoulder injuries. The conference was attended by over 500 persons involved in our state's workers' compensation system, including commissioners, judges, claim representatives, doctors, defense attorneys, and claimants' attorneys.

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