
HAPLESS HARVEST MEDIATION

General and Confidential Information for Total Insurance's Claims Adjuster and/or Harvest Plenty's Business Representative(s)

General Information

Plaintiff Jan Hapless was injured while shopping at Defendant Harvest Plenty's health-oriented grocery store, which is part of its national chain. While walking down an aisle, Jan Hapless slipped on spilled carrot juice and then fell against the shelves and backwards, sustaining serious injuries. Ms. Hapless sued Harvest Plenty for negligence, alleging it knew or should have known of juice spill. The complaint also states that, whether or not the store was on notice, its aisle was unsafe due to poor lighting, distracting displays, excessive clutter, dirt, and over-packed shelves. According to the complaint, those conditions made it difficult for Jan to see the floor and may have caused the juice spill itself. Harvest Plenty denies any notice of the spill maintaining that it occurred moments before when a five-year old in a shopping cart knocked a juice bottle off a shelf. It claims the lighting was adequate and the juice on the floor was visible to anyone paying attention.

The complaint seeks \$1 million in medical and other expenses, lost income, damages for pain and suffering, loss of income earning capacity, and loss of quality of life and future enjoyment. Some discovery has taken place: Documents have been produced including insurance coverage and medical records. Jan and other witnesses in the aisle that day have been deposed.

Based on Jan's deposition and medical records, the "special damages" portion of the claim totals \$65,500, including: \$20,000 in lost wages, \$42,500 in medical costs, \$1,800 for future estimated physical therapy sessions, and \$1,200 paid for house-cleaning (when Jan was unable to do so).

Harvest Plenty's insurer retained local counsel at a reputable insurance defense firm. Jan is represented by a well-respected attorney in a firm specializing in plaintiffs' work.

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Total Insurance company will be the payor on this claim, covering at least lawyer's fees plus any settlement or verdict amount. In the end, that will cost Harvest Plenty in the form of increased premiums. Under its insurance contract with Total, Harvest Plenty retains authority to approve or disapprove any settlement amount. The policy limits are \$250,000 per occurrence.

[For the purposes of this exercise, you may take on the role of Total Insurer's Representative or Harvest Plenty's business representative, or both as a merged client personality.]



You are outraged that the plaintiff is asking Harvest Plenty to pay for Jan's long existing and serious back problem. It's clear from the emergency room that Jan sprained his knee in carrot juice fall, nothing more. The emergency room notes simply say "may have twisted back in fall." But all the emergency room examinations and x-rays, and Jan's report of pain referred to the knee injury, which turned out to be a bad sprain, and strain on the ligaments, not a tear or a break.

Now that you have seen the full medical record, you are certain that Jan's back had been a serious problem before. Your private investigator has been asking questions at Jan's health club, and suspects that Jan had failed to "take it easy" just before this incident. While you don't have specifics, one of the health club managers observed that Jan had "really been pumping iron" since a recent divorce. (You know from the records that Jan is thirty-five years old, recently divorced with no children.)

Based upon the deposition, you know Jan largely agrees with the doctor's report that the knee sprain was mostly healed within two weeks after the accident. Jan claims that the back injury was obvious right after he got up from the carrot juice fall, but then kept getting worse and worse. By the time the knee was healed, Jan couldn't get up without pain and was forced to spend an additional two weeks on his back. When physical therapy didn't help, Jan went in for back surgery, with a recovery period of 4 months. You have serious concerns about whether Jan is being truthful, and your lawyer tried (unsuccessfully) to shake Jan's story on deposition.

You know that Jan is employed as a senior restaurant manager in an upscale pasta grille restaurant. Given that Jan doesn't wait tables or tend bar, you don't believe missing four months of work was really necessary. Couldn't Jan have worked on crutches, or sitting in an ergonomic chair? However, you know that Jan is claiming special damages of \$62,500, based upon a four-month salary loss of \$5,000 per month, the \$1,500 cost of emergency room treatment, \$1,000 in additional care for the knee, and \$40,000 in back treatment and surgery. Jan claims that physical therapy visits will continue once a month for \$150 per visit, for at least another year.

Regarding issues of liability

You don't think Harvest Plenty should have to pay for customers who walk around in a fog or can't seem to stand still while reading labels. You know Jan will testify that the carrot juice wasn't so visible down the aisle. Jan did acknowledge having noticed some commotion at the cart approximately 20 feet down the aisle, a few minutes earlier. Jan recalled that a mother sounded quite angry at her young son, and at one point took out a tissue to wipe his face. The lawyer has deposed the mother as well as another customer in the aisle. They will testify that when the child spilled the carrot juice all over the floor, the incident was very loud. The child screamed. His mom yelled. The woman down the aisle spoke sharply, yelling "watch it" as the juice splashed up to her skirt. There wasn't time to get someone to clean it up. Jan slipped very shortly thereafter.



From Harvest Plenty's perspective, one potential concern is that there had been several other spills in that aisle over the past few days, as the juices were stacked rather precariously. This was due to a bad combination of an inexperienced juice department manager (who supervised the stacking) and an overzealous brand manager, eager for more display. The plaintiff's lawyer hasn't discovered this yet, but surely might before trial. You aren't sure if you mentioned it to your lawyer.

No matter the condition of the display, this case is about an unruly five-year-old who kept reaching to touch the juices, and the spacey customer, who didn't pay any attention to what was happening in the aisle.

About settlement

In your view, it's a nuisance value case, because you don't think you should have to pay for the plaintiff's back problems. At this point, you wouldn't authorize more than \$15,000 in the case, and you would make an opening offer of \$5,000. Based a cursory read of the file when it first came in, Total Insurance put an initial reserve of \$20,000 on this claim.

You recognize that your lawyer may see it differently. You are open to the lawyer's legal analysis and settlement value recommendation if, and only if, they make sense and if you believe lawyer is zealously representing Harvest Plenty's and its insurer's interests. You do plan to press the lawyer for an estimate of his fees and any expert fees anticipated for litigation.

If you become convinced that settlement at a higher number makes sense, you or the lawyer would present the analysis to a Total Insurance committee. It's not uncommon for an initial reserve to be increased based on more complete presentation on liability and damages after some discovery in a case.

One additional problem involves the people. You suspect the plaintiff may be lying or may have even slipped on purpose, looking for the money. If so, you don't want to pay a nickel. Even if the plaintiff didn't slip on purpose, it may have been an opportunity to have long-needed back surgery and time off. You bet that plaintiff's counsel is the real problem for having pumped up the value of the case.