
HAPLESS HARVEST

NEGOTIATION

Information for Plaintiff Jan Hapless

During your many years of shopping at the Harvest Plenty grocery store, you never dreamed that you would someday sue them for serious injuries in a fall there, and its financial, physical, and emotional consequences. Divorced about two years before the accident, you are now 35 years old. Convinced that your life will never be normal again, you feel yourself becoming more angry and bitter.

On the recommendation of a friend, you retained an attorney to represent you. The representation agreement provides for a 33% contingency fee on any settlement or trial award, plus expenses advanced by the firm during litigation (expert fees, court costs, etc.). When your lawyer's letter to Harvest Plenty elicited no response, your lawyer filed suit on your behalf. The complaint charged Harvest Plenty with negligence in the maintenance and operation of the store, unsafe conditions and management practices, and failure to warn, and sought a nice round \$1million in damages, including expenses, pain and suffering, and diminished quality of life.

The information below includes what you had explained to your lawyer as well as what you have learned over the last several months of litigation.

About what happened at Harvest Plenty

You had not noticed the carrot juice spill in the aisle before you slipped and fell in it. You had heard a commotion at a grocery cart farther down the aisle a few minutes before the fall. You remembered only that a mother yelled angrily at her young son and another woman seemed to be involved in the loud conversation. You didn't pay attention to what was said and didn't look over at them. You try to be sensitive to parents' embarrassment when people watch their squabbles with toddlers in a store. It's only respectful to look the other way. You remembered and testified on deposition that the entire aisle (indeed much of the store) was poorly lit and dirty, with food bits and sticky spots. The aisle was cluttered with inventory and displays. You remember walking along and reading a recipe card from a tofu display in the aisle just before slipping on the carrot juice.

You know the mother and the other customer in the aisle have been deposed; you have read their depositions. They testified that when the child spilled the carrot juice bottle on the floor, it caused a loud commotion. The child screamed and his mom shrieked. The other woman, five feet away, yelled "watch it" as the carrot juice splashed up on her skirt. Both customers said carrot juice was clearly visible and large. But of course, that's because they looked down when the spill happened.

You remember and testified that a store employee rushed over to you after the fall. He immediately apologized: saying "I'm so sorry, I should have gotten this!" as you lay on the floor writhing in pain. The other witnesses remember the employee coming to assist and



confirmed that he “apologized and said something like that.” Isn’t that enough to show it’s the store’s fault? It’s also true that the juice aisle was over-stocked, with bottles pushed right to the front of each shelf. They were too easy to knock off and onto the floor, and that’s what happened.

About your injuries

You badly injured your knee and the back in the fall. The whole scene was humiliating, and the pain was excruciating.

You were taken by ambulance to the hospital. The emergency room report focused mainly on your knee, which was badly sprained and showed strained ligaments. You were complaining most about the knee because the pain there was so intense. Still, you could feel even then that your back was also injured from twisting to catch yourself in the fall. You weren’t so worried about it initially because you thought you knew how to treat your back, as you had in the past.

You largely agree with your doctor’s report that the knee was mostly healed within two weeks after the accident. However, your back kept getting worse and worse, so that by the time the knee was healed, you couldn’t get up without pain. You spent an additional two weeks flat on your back. When physical therapy didn’t help, you went in for back surgery. The total recovery period after the fall was four months.

You and your lawyer both know that Harvest Plenty will claim you had a pre-existing back condition that was not directly affected by the fall, and that you should only collect damages for a sprained knee. While you had some minor back trouble in the past, there had been no symptoms for at least two years. After the last incident, you had lost some weight and carefully followed the instructions of the physical therapist and personal trainer at the Jim. In fact, within the month or so before this fall, you had embarked on a more ambitious weight training regimen, proving that her back troubles were behind you. You secretly wonder if that was pushing it too far.

Financial burdens

You have long been employed as a senior restaurant manager in an upscale pasta grille restaurant. While you never regularly wait tables or tend bar, you are on your feet a great deal. To move service along, you have to be ready to fill in on just about any job. Your salary is \$60,000 per year, or \$5,000 per month. Out of work for four months after the fall, you lost \$20,000 in income.

Your lawyer explained that in litigation lingo, “special damages” in your case are \$62,500 plus ongoing physical therapy. These include the lost wages, plus medical costs covered by your medical insurer: \$1,500 for the emergency room visit, \$1,000 for follow knee treatment, and \$40,000 for your back treatment – the surgery, follow-up care, and physical therapy thus far.

Out-of-pocket, you will have lost \$23,000: \$20,000 in lost wages plus \$1,800 for ongoing physical therapy (not covered by insurance), and \$1,200 for house cleaning (when you couldn't).

The numbers don't tell the full story. You were embarrassed when you had to borrow money from your parents to pay the mortgage in the last month before you returned to work. That's Harvest Plenty's fault too.

Added to financial consequences is your reduced employment capacity. Though the surgery was mostly successful, you can feel that your back will never be as it was. Continuing pain aside, your diminished physical strength and mobility have real costs. Since returning to work at the restaurant, it's been either painful or impossible for you to fill in for waitstaff or bartenders as in the past. That affects which shifts you are eligible to cover. You could not handle any other job that requires heavier lifting.

Quality of life

Work aside, you cannot play any sports or lift weights. You had just started back into the dating scene before the accident. Now you fear never being having a normal relationship again because of these injuries. You will suffer from this for the rest of your life.

About the possibility of settlement

Your lawyer contacted you recently and asked to meet to talk about possible settlement. You are not eager to settle, especially if that would be good for Harvest Plenty. You have a friend who suffered a back injury (and other traumas) when hit by a rock star's tour bus and collected a small fortune. That's why the \$1million demand in the original complaint made sense to you. At the very least, it should have scared Harvest Plenty into paying attention to your claim and the harm they've caused. In an early discussion, your lawyer had said you might get \$250,000 at trial, but even that doesn't account for the way you feel about this whole thing.

You believe the delay in the case has been caused by the defendant and its insurer, to create financial pressure for you to settle more cheaply. You were upset by opposing counsel's style at the depositions, as he tried to suggest that you were a malingerer or a liar.

You want Harvest Plenty to pay for the way they've damaged your life. Settling feels like selling out. You want to tell the story about what happened, about how unsafe that store is, and how unfeeling Harvest Plenty was to its loyal customer. You are adamant that Harvest Plenty should be taught a lesson, so no one else falls and suffers serious injuries there.

You are willing to listen to your lawyer's legal analysis and advice, if you feel the lawyer understands what this accident has meant for your life, takes you seriously, and would fight for what's best for you.