

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF ILLINOIS **PROOF OF CLAIM**

Name of Debtor: K-MART CORPORATION Case Number: 02-02474

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property): DENNIS M^C KINNIE, A MINOR CHILD.

Name and address where notices should be sent: LAW OFFICE OF WENDELL N. DAVIS JR., 15565 NORTHLAND DRIVE, STE. 506 WEST SOUTHFIELD, MICHIGAN (48075)

Telephone number: 248-569-0951

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check box if you have never received any notices from the bankruptcy court in this case.

Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor: CIRCUIT COURT FOR THE COUNTY OF WAYNE-CASE NO-01-143116 NO.

Check here if this claim replaces a previously filed claim, dated: _____ amends _____

1. Basis for Claim

Goods sold

Services performed

Money loaned

Personal injury/wrongful death

Taxes

Other _____

Retiree benefits as defined in 11 U.S.C. § 1114(a)

Wages, salaries, and compensation (fill out below)

Your SS #: _____

Unpaid compensation for services performed from _____ to _____ (date) (date)

2. Date debt was incurred: _____ **3. If court judgment, date obtained:** _____

4. Total Amount of Claim at Time Case Filed: \$ 35,000.00

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.

Check this box if your claim is secured by collateral (including right of setoff).

Brief Description of Collateral: UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF ILLINOIS

Real Estate Motor Vehicle Other _____

Value of Collateral: \$ _____

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KENNETH S. GARDNER, CLERK TEAM - B

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____

6. Unsecured Priority Claim.

Check this box if you have an unsecured priority claim

Amount entitled to priority \$ _____

Specify the priority of the claim:

Wages, salaries, or commissions (up to \$4,300)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).

Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).

Up to \$1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).

Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).

Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).

*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

3-5-02
429 SM

Date: 02-19-02 Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): Wendell Davis Jr.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

In the Matter of:

K-MART CORPORATION,

Debtor,

Case No. 02-02474

Hon. Susan Pierson-Sonderby

-v-

DENNIS McKINNIE,
a Minor Child,

Creditor

3rd Judicial Circuit Court

Case No. 01-143116-NO

CERTIFICATE OF SERVICE

The undersigned certifies that on **MARCH 1, 2002**, a copy of Creditor's **Form B10 - Proof of Claim; Pending Civil Action Wayne County Circuit Court Case No. 01-143116-NO Complaint and Jury Demand**; and this **PROOF OF SERVICE** was served upon the **HONORABLE SUSAN PIERSON-SONDERBY**, U.S. Bankruptcy Court Judge at 219 South Dearborn Street, Chicago, IL 60604; and attorney for Debtor K-Mart, MR. **JOHN WILLIAM BUTLER, JR.** at 333 W. Wacker Drive, Chicago, IL 60606, by:

 X U.S. Mail



Clarice Thomas

Law Offices
WENDELL N. DAVIS, JR. & ASSOCIATES
15565 Northland Drive - Suite 506 West
Southfield, Michigan 48075
Facsimile (248) 569-0442
Telephone (248) 569-0351

JURY FEE PAID

THIS DATE:

DEC 20 2001

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
WAYNE COUNTY - CIVIL DIVISION

DENNIS McKINNIE, a minor, and
JULIA McKINNIE, as Next Friend,

Plaintiffs,

01-143116 NO 12/20/2001
JDCI: SUSAN BIEKE NEILSON
MCKINNIE DENNIS
vs
KMART INC

01 DEC 20 PM 1 54

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge.


WENDELL N. DAVIS, JR. (P27470)

v

K-MART, INC.,
a Michigan corporation,

Defendant.

WENDELL N. DAVIS, JR. & ASSOCIATES

By: WENDELL N. DAVIS, JR. (P27470)

Attorney for Plaintiff

15565 Northland Drive - Suite 506-West

Southfield, MI 48075

(248) 569-0351

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

NOW COMES the Plaintiff, DENNIS McKINNIE, a minor, and JULIA McKINNIE, as Next Friend, through their attorney, WENDELL N. DAVIS, JR. & ASSOCIATES, by WENDELL N. DAVIS, JR., and for their Complaint, state as follows:

JURISDICTION

1. At all times mentioned in this Complaint, the Plaintiffs were and are individuals residing in the City of Detroit, County of Wayne, State of Michigan.

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WENDELL N. DAVIS, JR. & ASSOCIATES
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2. The Defendant, K-Mart, Inc. (hereinafter Defendant), is a Michigan corporation and is a licensed retailer doing business in the City of Dearborn, County of Wayne, State of Michigan.

3. The amount in controversy exceeds Twenty-Five Thousand Dollars (\$25,000.00) exclusive of interest and cost.

COUNT I - PREMISES LIABILITY

4. On or about 9-5-01 and prior thereto, the Defendant hereto maintained and operated a retail business located at Mercury Drive and Ford Roads, Dearborn, Michigan, in the County of Wayne, which is open to the public and that through advertising and by implication, the Defendant, through its agents, employees and officers, systematically invites members of the public onto said premises for the financial gain of said Defendant hereto.

5. At all times set forth, Defendant owed a duty to the Plaintiff minor, upon entering onto Defendant's premises, to maintain its floor and its premises in a safe condition free from danger, to exercise reasonable care to eliminate any objects or liquids on its floor surfaces that may cause a person to slip and fall, and such duty further required that reasonable and appropriate measures, in light of existing circumstances, be taken to remove said dangerous conditions, and to warn invitees like the Plaintiff of such dangerous condition.

6. Nevertheless, in total disregard of said duties, the Defendant, at the time set forth, breached same in the following respects:

- a. To take such actions and measures as a reasonable and prudent person would have in the same or similar circumstances including that of a retail store open to the public inviting members of the public thereon;
- b. To police and inspect said premises for dangers and defects thereon including spilled liquids from its floor surfaces; and
- c. To remove, remedy and alleviate all dangerous and defective conditions thereon; to warn members of the public, including Plaintiff hereto, of any such dangers therein existing.

7. The Defendant, by and through its agents, employees and officers, on or about 9-5-01, at approximately 2:00 p.m., and immediately prior thereto, did fail in all of such duties in respect to the Plaintiff.

8. On 9-05-01, at approximately 2:00 p.m., Plaintiffs entered the premises of Defendant

K-Mart's store, and were walking down an aisle when the minor Plaintiff slipped on upon some liquid lying upon the floor and that constituted a danger to Defendant's invitees.

9. The Defendant, through its respective agents, employees, servants and officers, failed to take such actions as a reasonable and prudent person would have in the same or similar circumstance, including but not limited to, the following particulars:

- a. Failure to maintain a reasonable safe premises free of unreasonably dangerous conditions therein;
- b. Failure to inspect the premises and thereupon remove the dangerous and defective conditions therein by slippery conditions;
- c. Failure to warn members of the public, including Plaintiff, with signs or other effective means of such dangerous and defective conditions;
- d. Use of unreasonable slippery floor surfaces;
- e. Failure to use proper materials and allowing slippery liquids to exist in a dangerous manner;
- f. Failure to use ordinary care for the Plaintiff's safety; and
- g. Failure to exercise reasonable care for Plaintiff's safety in the circumstances.

10. As a proximate result of the negligence of the Defendant hereto, through its agents, servants, employees and officers, the minor Plaintiff, after being invited onto said premise and walking in a reasonable and prudent fashion within said premises, slipped and fell on some liquid on the floor surface that constituted a dangerous condition, causing Plaintiff to soar into the air and fall upon the floor and which the Defendant, its agents, servants, employees and officers knew or in the exercise of reasonable care should have known existed, thereby causing injuries and damages to be sustained by the Plaintiff.

11. As a result of the negligence of the Defendant hereto, through its agents, servants, employees and officers, the minor Plaintiff has sustained injuries and damages including, but not limited to, treatment by doctors and medical personnel for injury to his body including his head, dorsal and lumber regions, and medical expenses, disability, pain and suffering, mental distress, anxiety and humiliation, loss of joys, pleasure and vitalities of life and the same damages are of a

continuing nature.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs demands judgment against the Defendant for whatever amount to be determined as reasonable by the trier of fact together with interest, costs, and attorney fees, to be taxed thereon.

COUNT II

WILLFUL WANTON NEGLIGENCE

12. The Plaintiff hereby incorporates, realleges and adopts by reference as if more fully stated, paragraphs one through twelve herein above.

13. The Defendant hereto, through its agents, servants, employees and officers, knew of the dangerous condition of the floor at said premises which required the exercise of ordinary care and diligence to prevent injury to the Plaintiff.

14. The Defendant hereto, through its agents, employees, servants and officers, each had at its disposal the means to provide the ordinary care and diligence to avert the protruding and dangerous condition of said floor, which known condition was apparent to cause injury to the minor Plaintiff.


15. As a proximate result of the willful and wanton negligence of the Defendant hereto, through its agents, servants, employees and officers, the Plaintiff, after being invited onto said premises and walking in a reasonable and prudent fashion after entry onto said premises, slipped and fell on some liquid objects on the floor surface that constituted a dangerous condition, causing Plaintiff to fall upon the floor, which the Defendants, through their agents, servants, employees and officers, caused, knew or should have known, was a dangerous condition, thereby causing injuries and damages to be sustained by the Plaintiff.

16. As a proximate result of the willful wanton negligence of the Defendants hereto, through its agents, servants, employees and officers, the minor Plaintiff has sustained injuries and damages including, but not limited to, treatment by doctors and medical personnel, for injury to his body, including his right foot and ankle and knee, and for medical expenses, disability, pain and suffering, mental distress, anxiety and humiliation, loss of joys, pleasure and vitalities of life, and the same damages are of a continuing nature.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs demands judgment against the Defendant for whatever amount to be determined as reasonable by the trier of fact, together with interest, cost and attorney fees, to be taxed thereon.

Respectfully submitted,
WENDELL N. DAVIS, JR. & ASSOCIATES

By: 
WENDELL N. DAVIS, JR. (P27470)
Attorney for Plaintiff
15565 Northland Dr. - Suite 506 West
Southfield, Michigan 48075
(248) 569-0351

Dated: December 19, 2001

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
WAYNE COUNTY - CIVIL DIVISION

**DENNIS McKINNIE, a minor, and
JULIA McKINNIE, as Next Friend,**

Plaintiffs,

Case No. NO

v

**K-MART, INC.,
a Michigan corporation,**

Defendant.

WENDELL N. DAVIS, JR. & ASSOCIATES
By: **WENDELL N. DAVIS, JR. (P27470)**
Attorney for Plaintiff
15565 Northland Drive - Suite 506-West
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JURY DEMAND

NOW COMES the Plaintiff, DENNIS McKINNIE, a minor, and JULIA McKINNIE, as Next

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Friend, through their attorney, WENDELL N. DAVIS, JR. & ASSOCIATES, by WENDELL N. DAVIS, JR., hereby demand trial by jury.

Respectfully submitted,
WENDELL N. DAVIS, JR. & ASSOCIATES

By: 
WENDELL N. DAVIS, JR. (P27470)
Attorney for Plaintiff
15565 Northland Dr. - Suite 506 West
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01-143116 NO 12/20/2001
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There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge.

v


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a Michigan corporation,

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By: WENDELL N. DAVIS, JR. (P27470)

Attorney for Plaintiff

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Respectfully submitted,
WENDELL N. DAVIS, JR. & ASSOCIATES

By: 
WENDELL N. DAVIS, JR. (P27470)
Attorney for Plaintiff
15565 Northland Dr. - Suite 506 West
Southfield, Michigan 48075
(248) 569-0351

Dated: December 19, 2001

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IN THE THIRD JUDICIAL CIRCUIT COURT
WAYNE COUNTY - CIVIL DIVISION

**DENNIS McKINNIE, a minor, and
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WENDELL N. DAVIS, JR. & ASSOCIATES

By: WENDELL N. DAVIS, JR. (P27470)

Attorney for Plaintiff

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JURY DEMAND

NOW COMES the Plaintiff, DENNIS McKINNIE, a minor, and JULIA McKINNIE, as Next

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Friend, through their attorney, WENDELL N. DAVIS, JR. & ASSOCIATES, by WENDELL N. DAVIS, JR., hereby demand trial by jury.

Respectfully submitted,
WENDELL N. DAVIS, JR. & ASSOCIATES

By: 
WENDELL N. DAVIS, JR. (P27470)
Attorney for Plaintiff
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Dated: December 19, 2001

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