

UNITED STATES BANKRUPTCY COURT <u>NORTHERN</u> DISTRICT OF <u>ILLINOIS</u>		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): Susan King and William King		<input type="checkbox"/> 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. <input checked="" type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent you by the court.
Name and address where notices should be sent: Thomas C. Sciarabone, Esq. Klatsky & Klatsky 320 Broad Street Red Bank, New Jersey 07701 Telephone Number: (732) 741-3200		
Account or other number by which creditor identifies debtor:		Check here <input type="checkbox"/> replaces if this claim a previously filed claim, dated: _____ <input type="checkbox"/> amends
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input checked="" type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)
2. Date debt was incurred: December 21, 2001		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: \$ <u>30,000.00</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> 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. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* 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). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/04 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. <div style="font-size: 2em; font-family: cursive;">3/20/02 ML</div> <div style="font-size: 2em; font-family: cursive;">708</div> <div style="text-align: right; font-size: 1.2em; opacity: 0.5;"> RECEIVED BANKRUPTCY </div>
Date 3-14-02	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach a copy of power of attorney, if any): <div style="font-size: 1.5em; font-family: cursive;">Thomas C. Sciarabone Esq.</div>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

EXPLANATION OF CLAIM

Claimant, Susan King, was injured on December 23, 1999, while shopping at the K-Mart store located in Hazlet, New Jersey. While in the seasonal aisle, Susan King had to get a shirt box for her Christmas wrapping. As she started to pick up the box, the shelf above her catapulted out, the items on the shelf went flying and the shelf hit her on the head. The shelf bounced off Susan King's head and she braced her body in order to catch the shelf above her head. Items continued to fall off and hit Susan King in the head as this was happening.

As a result of the accident, Susan King sustained the following injuries:

- a. Traumatic iritis and traumatic conjunctivitis involving the left eye with an oculomotor motor dysfunction syndrome causing some stress myopia as well as poor ability to use her eyes in a teaming and efficient manner, periorbital hemorrhage about the left upper eyelid and light sensitivity;
- b. Herniated disk at C6-7 with radiculopathy;
- c. Cervical strain/sprain; and
- d. Posterior cervical headaches and post traumatic migraine syndrome.

On January 21, 2000, Susan King filed a lawsuit against K-Mart in the Superior Court of New Jersey, Law Division, Monmouth County. Susan King's husband, William King was also named as a Plaintiff in the suit filed against K-Mart and asserted a Per Quod Claim. The matter was assigned Docket No. MON-L-461-00. A copy of the complaint filed against K-Mart by Susan King and William King is attached hereto at **Exhibit A**.

On December 21, 2001, Susan King and William King accepted K-Mart's \$30,000.00 settlement offer. (See letter dated December 21, 2001, advising Michael J. Leegan, Esq., counsel for K-Mart, that Susan King and William King agreed to accept K-Mart's \$30,000.00 settlement offer attached hereto at **Exhibit B**.) Thereafter, on January 4, 2002, a release signed by Susan King and William King along with a stipulation of dismissal were forwarded to Mr. Leegan under cover of a letter dated January 4, 2002. (Copies of the letter dated January 4, 2002, the release signed by Susan King and William King, and the stipulation of dismissal with prejudice are attached hereto at **Exhibit C**.)

K-Mart did not pay the \$30,000.00 settlement prior to filing bankruptcy.

KLATSKY & KLATSKY,
Attorneys for Susan King and William King

By: 

Thomas C. Sciarrabone, Esq.

Dated: March 14, 2002

EXHIBIT A

KLATSKY & KLATSKY
320 Broad Street
P.O. Box 8819
Red Bank, NJ 07701
Phone: (732) 741-3200
Fax: (732) 758-0799
Attorneys for Plaintiff
File No.: 12,139

COPY REC'D & FILED

JAN 21 2000

OFFICE OF THE SUPERIOR COURT
BY WILLIAM W. CARPENTER
MONMOUTH COUNTY CLERK

SUSAN KING and WILLIAM KING	:	SUPERIOR COURT OF NEW JERSEY
	:	MONMOUTH COUNTY : LAW DIVISION
	:	DOCKET NO.: L - 461-00
Plaintiffs,	:	<u>Civil Action</u>
	:	
v.	:	COMPLAINT, JURY DEMAND.
	:	TRIAL COUNSEL DESIGNATION
K-MART,	:	AND R. 4:5-1 CERTIFICATION
	:	
Defendant.	:	

Plaintiffs, Susan King and William King, residing at 605 Holmdel Road, Hazlet, County of Monmouth, New Jersey, by way of complaint against the defendant, state as follows:

FIRST COUNT

1. On or about December 23, 1999, the defendant, K-Mart, either owned, operated, managed, maintained or controlled the K-Mart Department Store, located at 3010 State Highway No. 35 in Hazlet, New Jersey.
2. On or about December 23, 1999, the plaintiff, Susan King, was a customer at the K-Mart Department Store, located at 3010 State Highway No. 35 in Hazlet, New Jersey, and was struck by a shelf which collapsed.
3. It was the duty of the defendant, K-Mart, to exercise ordinary care and caution in the ownership, management, maintenance and control of the said premises.
4. Not regarding the duty as aforesaid, the defendant, K-Mart, was guilty of one or more of the following negligent, careless and/or reckless acts or omissions:

- A. Negligently, carelessly and/or recklessly failed to properly inspect the said shelf;
- B. Negligently, carelessly and/or recklessly allowed the said shelf to become and remain in a broken or otherwise defective condition;
- C. Negligently, carelessly and/or recklessly failed to repair the said shelf; and
- D. Negligently, carelessly and/or recklessly failed to give timely and sufficient warning of the broken or otherwise defective condition of the said shelf.

5. As a direct and proximate result of the aforesaid negligence, carelessness and /or recklessness of the defendant, K-Mart, the plaintiff, Susan King, sustained severe bodily and psychological injuries causing permanent disability and permanent loss of bodily function, has incurred and in the future will incur substantial expenses for the treatment and care of said bodily and psychological injuries, has been disabled and unable to perform her usual functions, has been caused and in the future will be caused great pain and suffering, has been and will in the future be caused to refrain from her normal pursuits and activities, has been and will in the future be caused to lose wages, and in other ways has been caused to incur damages.

WHEREFORE, the plaintiff, Susan King, demands judgment against the defendant, K-Mart, for damages, interest, costs of suit and reasonable attorneys' fees.

SECOND COUNT

1. The plaintiffs repeat and reiterate each and every allegation contained in the First Count of the Complaint as if set forth at length herein in its entirety.
2. Plaintiff, William King, is and was the spouse of plaintiff, Susan King, at the time of the subject accident.
3. As a direct and proximate result of the facts set forth above, plaintiff, William King,

has been and will be deprived of the love, affection, advice, companionship, services, consortium, financial contributions and other related spousal activities and services of the injured plaintiff, Susan King.

WHEREFORE, the plaintiff, William King, demands judgment against the defendant, K-Mart, for damages, interests, costs of suit and reasonable attorneys' fees.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the Rules of Court, Thomas C. Sciarrabone, Esq., is hereby designated as trial counsel in this matter.

R. 4:5-1 CERTIFICATION

The undersigned hereby certifies that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no other action or arbitration is contemplated at this time. I am not aware of any other party who should be joined in the within action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment

KLATSKY & KLATSKY
Attorneys for Plaintiffs

By: 

Thomas C. Sciarrabone, Esq.

Dated: January 20, 2000

EXHIBIT B

WILLIAM I. KLATSKY (1908-1978)
ALAN M. KLATSKY
STEVEN B. KLATSKY
(N.J. AND WASH. D.C. BAR)
FRED M. KLATSKY*
(N.J. AND GA BAR)
THOMAS C. SCIARRABONE
DAVID J. DE FILLIPPO
AMY P. BURR
*CERTIFIED BY THE SUPREME COURT OF NEW JERSEY
AS A CIVIL TRIAL ATTORNEY

Klatsky & Klatsky
Counsellors at Law

EST. 1935

KLATSKY BUILDING
320 BROAD STREET
P.O. BOX 8819
RED BANK, N.J. 07701
TEL. (732) 741-3200
FAX (732) 758-0799
IN REPLY REFER TO FILE NO.
12139

December 21, 2001

VIA FAX AND MAIL

Michael J. Leegan, Esq.
Hack, Piro, O'Day, Merklinger,
Wallace & McKenna
30 Columbia Turnpike
P.O. Box 941
Florham Park, NJ 07932-0941

Re: KING. V. K-MART
Your File No. 12L-99.042233

Dear Mr. Leegan:

This is to confirm that my clients, Susan King and William King, accept K-Mart's \$30,000.00 settlement offer. I will forward closing papers to you in the near future.

Thank you for giving this matter your attention.

Very truly yours,

KLATSKY & KLATSKY

Thomas C. Sciarrabone, Ext. 214

TCS/ms

cc: Susan and William King

EXHIBIT C

WILLIAM I. KLATSKY (1908-1978)
ALAN M. KLATSKY
STEVEN B. KLATSKY
(N.J. AND WASH. D.C. BAR)
FRED M. KLATSKY*
(N.J. AND GA BAR)
THOMAS C. SCIARRABONE
DAVID J. DE FILLIPPO
AMY P. BURR
*CERTIFIED BY THE SUPREME COURT OF NEW JERSEY
AS A CIVIL TRIAL ATTORNEY

Klatsky & Klatsky
Counsellors at Law

EST. 1935

KLATSKY BUILDING
320 BROAD STREET
P.O. BOX 8819
RED BANK, N.J. 07701
TEL. (732) 741-3200
FAX (732) 758-0799
IN REPLY REFER TO FILE NO.
12139

January 4, 2002

Michael J. Leegan. Esq.
Hack, Piro, O'Day, Merklinger,
Wallace & McKenna
30 Columbia Turnpike
P.O. Box 941
Florham Park, NJ 07932-0941

Re: KING. V. K-MART
Your File No. 12L-99.042233

Dear Mr. Leegan:

Enclosed please find a release and a stipulation of dismissal with prejudice. Please hold the enclosed documents in escrow until I acknowledge receipt of the settlement check in this matter. Also, please forward to me a copy of the stipulation of dismissal marked "filed" upon your receipt of same.

Thank you for your courtesies throughout this matter.

Very truly yours,

KLATSKY & KLATSKY

Thomas C. Sciarrabone, Ext. 214

TCS/ms

cc: Susan and William King

RELEASE

This Release, dated _____, 2002, is given

BY the Releasor(s)

Susan King and William King

referred to as "T",

TO

Kmart Corporation

referred to as "You".

If more than one person signs this Release, "T" shall mean each person who signs this release.

1. **Release.** I release and give up any and all claims and rights which I may have against you. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from anything which has happened up to now. I specifically release the following claims:

Any and all claims arising from an accident involving a collapsed shelf which occurred on December 23, 1999, at the K-Mart store in Hazlet, New Jersey, including any and all claims I asserted in a lawsuit filed in the Superior Court of New Jersey, Law Division, Monmouth County, known as Susan King and William King v. K-Mart, Docket No. MON-L-461-00.

2. **Payment.** I have been paid a total of \$30,000.00, in full payment for making this Release. I agree that I will not seek anything further including any other payment from you.

3. **Who is Bound.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

4. **Signatures.** I understand and agree to the terms of this Release. If this Release is made by a corporation its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

..... Susan King (Seal)
Susan King
..... William King (Seal)
William King

STATE OF NEW JERSEY, COUNTY OF MONMOUTH
I CERTIFY that on JANUARY 4th, 2002,

SS.:

Susan King and William King personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.

Prepared by: (Print signer's name below signature)

.....
Thomas C. Sciarabone, Esq.

.....
(Print name and title below signature)
Notary Public

Mary Ann Carroll
Notary Public, State of New Jersey
My Appointment Expires June 19, 2003

KLATSKY & KLATSKY
320 Broad Street - P.O. Box 8819
Red Bank, NJ 07701
Phone: (732) 741-3200 - Fax: (732) 758-0799
Attorneys for Plaintiff
File No.: 12139

SUSAN KING and WILLIAM KING,

Plaintiffs,

v.

K-MART,

Defendant.

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY : LAW DIVISION
DOCKET NO.: MON-L-461-00

Civil Action

STIPULATION OF DISMISSAL
WITH PREJUDICE

The matter in difference in the above-entitled action having been amicably adjusted by and between the parties, it is hereby stipulated and agreed that the same be and it is hereby dismissed with prejudice and without costs against either party.

KLATSKY & KLATSKY
Attorney for Plaintiff

MICHAEL J. LEEGAN, ESQ.
HACK, PIRO, O'DAY, MERKLINGER,
WALLACE & MCKENNA
Attorneys for Defendant, Kmart Corporation
(Improperly pled as K-Mart)

By: 
Thomas C. Sciarabone, Esq.

By: _____
Michael J. Leegan, Esq.

Date: 1/4/02

Date: _____

WILLIAM I. KLATSKY (1908-1978)
ALAN M. KLATSKY
STEVEN B. KLATSKY
(N.J. AND WASH. D.C. BAR)
FRED M. KLATSKY*
(N.J. AND GA BAR)
THOMAS C. SCIARRABONE
DAVID J. DE FILLIPPO
AMY P. BURR
*CERTIFIED BY THE SUPREME COURT OF NEW JERSEY
AS A CIVIL TRIAL ATTORNEY

Klatsky & Klatsky
Counsellors at Law

EST. 1935

KLATSKY BUILDING
320 BROAD STREET
P.O. BOX 8819
RED BANK, N.J. 07701
TEL. (732) 741-3200
FAX (732) 758-0799
IN REPLY REFER TO FILE NO.
12139

March 18, 2002

K-Mart Corporation
c/o Trumbull Services
PO Box 426
Windsor, Connecticut 06095

Re: In re K-Mart Corporation
Case No. 02-02474

Dear Sir or Madam:

On behalf of my clients, Susan King and William King, I am enclosing for filing an original and one copy of a proof of claim in connection with the above referenced matter. Please return a date-stamped copy of the proof of claim to me in the enclosed envelope.

Thank you for your courtesies in connection with this matter.

Very truly yours,

KLATSKY & KLATSKY



Thomas C. Sciarrabone, Esq.
Ext. 214

Enclosure
TCS/ms

cc: Susan and William King