

UNITED STATES BANKRUPTCY COURT <u>Northern</u> DISTRICT OF <u>Illinois</u>		PROOF OF CLAIM
Name of Debtor KMART 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): Florence Dorothy Farewell		<div style="display: flex; flex-direction: column; align-items: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold; font-size: 2em;">FILED</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold;">KENNETH S. GARDNER</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold;">MAILROOM - MM</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold;">MAR 21 2002</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold;">UNITED STATES BANKRUPTCY COURT</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg); font-weight: bold;">NORTHERN DISTRICT OF ILLINOIS</div> </div>
Name and address where notices should be sent: Attorney for Creditor: Edward F. Hoffman 1024 K Street, Lincoln, NE 68508 Telephone number: (402)477-2233		
Account or other number by which creditor identifies debtor: N/A		<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 to you by the court.
Check here <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends		THIS SPACE IS FOR COURT USE ONLY
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 checked="" 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 _____ (date) to _____ (date)		
2. Date debt was incurred: <u>5/21/99</u>		3. If court judgment, date obtained: <u>N/A</u>
4. Total Amount of Claim at Time Case Filed: \$ <u>1,000,000.00</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 of 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 of 11 U.S.C. § 507(a)(____) <small>*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.</small>
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-weight: bold;">3-21-02</div> <div style="font-size: 2em; font-weight: bold;">776 SM</div>
Date 3-11-02	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): Edward F. Hoffman	
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.		

COPY

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

DOROTHY FAREWELL,)	CI NO. CI01-1281
)	
Plaintiff,)	
)	
v.)	AMENDED
)	PETITION
)	(LAW)
KMART CORPORATION, A)	
Michigan Corporation;)	
NT DOR-O-MATIC, INC., a/k/a)	
DOR-O-MATIC, INC., a Illinois)	
Corporation; and AUTOMATIC)	
ENTRANCES, Inc., a Nebraska)	
Corporation)	
Defendants.)	

COMES NOW Dorothy Farewell, Plaintiff in the above captioned case, and files this Petition against the Defendants, Kmart Corporation, a Michigan corporation, NT DOR-O-MATIC, Inc. a/k/a Dor-O-Matic, Inc., a Illinois Corporation and Automatic Entrances, Inc., a Nebraska Corporation, respectfully showing the Court the following:

1. Plaintiff is a resident of Lincoln, Lancaster County, Nebraska, and is subject to the jurisdiction and venue of this Court.
2. Defendant, Kmart Corporation ("Kmart") is a corporation organized and existing under the laws of the state of Michigan and at all times relevant hereto has conducted business and maintained a retail store in Lincoln, Lancaster County, Nebraska.
3. Defendant Automatic Entrances Inc., ("Automatic Entrances") is a corporation organized and existing under the laws of the State of Nebraska and at all times relevant hereto has maintained an office and place of doing business in the state of Nebraska.
4. Defendant NT Dor-O-Matic; Inc. a/k/a Dor-O-Matic, Inc.,-("Dor-O-Matic") is a non-resident corporation, organized and existing under the laws of the State of Illinois. Since at least the early 1970's, Dor-O-Matic has intentionally and purposefully marketed and sold its products, including automatic sliding doors, in the State of Nebraska.
5. At all times relevant hereto, Dor-O-Matic was a manufacturer of power operated sliding glass doors and engaged in the business of designing, building and selling such doors to the general public as ultimate consumers in the State of Nebraska.
6. At all times relevant hereto, Automatic Entrances was the exclusive special agent for

the sale and distribution of Dor-O-Matic products, including power operated sliding glass doors, to the general public in the State of Nebraska.

7. At all times relevant hereto, Automatic Entrances held itself out to the public as being knowledgeable and experienced in the installation, operation, maintenance and repair of power operated sliding glass doors.

8. At all times relevant hereto Automatic Entrances was responsible for the installation, and together with Kmart performed maintenance, repair and inspection of the power operated sliding glass doors at the Kmart Super Store located at Cornhusker Highway and 27th Streets in Lincoln, Lancaster County, Nebraska. Said building is utilized by the general public.

9. At some point prior to May 21, 1999, Dor-O-Matic power operated sliding glass doors were purchased by Kmart and installed by Automatic Entrances at the front, main entrance of the Kmart store located at Cornhusker Highway and 27th Streets in Lincoln, Lancaster County, Nebraska.

10. That both Defendants Kmart and Automatic Entrances on dates uncertain provided maintenance, repair and/or inspection of the automatic doors.

11. On or about May 21, 1999, Plaintiff arrived at the Kmart store and conducted shopping therein. After completing her shopping, Plaintiff attempted to leave the Kmart store through the front, main door. Plaintiff was using a roller walker and walked in a slow manner. When she approached the automatic sliding door, it opened to allow her to exit. As she attempted to move slowly through the open door, it closed unexpectedly, striking her and knocking her to the floor.

12. The impact with the closing door and the fall to the floor caused prolific destructive changes to Plaintiff's right elbow and left ankle. These injuries caused extreme infection, curving and deformity of the left ankle with the need for resulting surgery and the need for constant long-term medical care and treatment. The injuries also caused severe pain and injury to her right elbow resulting in the need for replacement surgery. The injuries caused by the Defendants' negligence have caused the Plaintiff to incur medical expenses to be proven at the time of trial.

13. That at all times relevant ANSI standard A156.10 was in effect.

14. That at all material times Chapter 20 of the Lincoln Municipal Code (LMC), the Uniform Building Code (UBC), and Material testing and Standards regarding power operated doors were in affect.

15. That at all times relevant hereto the automatic doors were in an unsafe condition in that they pose an unreasonable risk of harm to those that walk slowly such as the aged, infirmed, and the very young.

COUNT ONE
Kmart - Negligence

16. Plaintiff hereby incorporates and adopts by reference paragraphs 1 through 15 of this Petition as if fully set forth herein.

17. Plaintiff, Dorothy Farewell was an invitee on the premises maintained by Kmart. As such Kmart owed to her a duty to exercise reasonable care in keeping it's premises, including the automatic doors, in a safe condition for the following reasons:

- a. Kmart knew of the unsafe condition of the automatic doors, or by the exercise of reasonable care, should have discovered the condition;
- b. Kmart knew or should have realized that the condition of the doors involved an unreasonable risk of harm to Plaintiff;
- c. Kmart knew or should have expected that Plaintiff would not have discovered or realized the condition of the doors and the danger it created, or would fail to protect herself from this danger;

18. The proximate cause of the aforesaid incident was the negligence of Kmart as follows:

- a. Acceptance and use of the automatic doors, the condition of which Kmart knew or should have known posed an unreasonable risk of harm to those that walk slowly;
- b. Faulty inspection of the door's operation, the unsafe condition of which Kmart knew or should have known posed an unreasonable risk to those that walk slowly;
- c. Faulty maintenance and repair of the automatic doors, the unsafe condition of which Kmart knew or should have known posed an unreasonable risk to those that walk slowly, and,
- d. Failure to adequately warn of the unsafe condition of which Kmart knew or should have known posed an unreasonable risk to those that walk slowly.
- e. Failure to comply with the requirements and standards in effect for power operated sliding doors under the LMC and UBC and Standards.

19. As a direct and proximate result of Kmart's negligence, unmixed with any fault of Plaintiff, Dorothy Farewell has suffered the injuries and incurred the damages set forth above. Plaintiff is therefore entitled to recover from Kmart both special and general compensatory damages

and such further relief as the Court deems appropriate.

COUNT TWO

Automatic Entrances - Negligence

20. Plaintiff hereby incorporates and adopts by reference paragraphs 1 through 19 of her Petition as if fully set forth herein.

21. That Defendant Automatic Entrances knew or reasonably should have known that the automatic sliding glass doors would be used by the general public and in particular, by the aged, infirmed, and very young who would move through the doors at a slow pace.

22. That the automatic doors closed on Plaintiff as a result of Automatic Entrances's fault, negligence and carelessness, and that of their agents, servants and/or employees.

23. That as the sellers/installers of said automatic doors in the State of Nebraska, Defendant Automatic Entrances had a duty to warn users such as Plaintiff that there was a risk of injury due to being struck by the doors.

24. That as the installer and provider of maintenance, repair and inspection of the automatic doors, Defendant Automatic Entrances had a duty to properly install, maintain, repair and inspect said doors.

25. That the proximate cause of the injuries to Plaintiff was the negligent actions of the Defendant Automatic Entrances in the following respects, to wit:

- a. Automatic Entrances negligently and carelessly failed to provide adequate warning reasonably designed and intended to alert users of the automatic doors inadequacies and defects.
- b. That Defendant Automatic Entrances negligently installed the automatic doors by failing to properly test and evaluate the performance of said doors and to ascertain the inadequacies and defects in said doors.
- c. That defendant Automatic Entrances performed faulty inspection, repair and maintenance of the automatic doors.

26. As a direct and proximate result of Automatic Entrance's negligence, unmixed with any fault of the Plaintiff, Dorothy Farewell has suffered the injuries and incurred the damages set forth above. Plaintiff is therefore entitled to recover from Automatic Entrances both special and general compensatory damages.

COUNT THREE
Dor-O-Matic - Design Defect

27. Plaintiff hereby incorporates and adopts by reference paragraphs 1 through 25 of her Petition as if fully set forth herein.

28. While engaged in the design, manufacture and sale of power operated sliding glass doors, Dor-O-Matic, either directly or through Automatic Entrances, its exclusive special agent in the State of Nebraska, sold power operated sliding glass doors for installation in the Super-Kmart store building located in Lincoln, Lancaster County, Nebraska.

29. Defendant Dor-O-Matic placed the automatic doors on the market in Nebraska for sale and use and knew, or in the exercise of reasonable care, should have known, that the product would be used by consumers without inspection for defects.

30. That the automatic doors were in a defective condition when they were placed on the market in Nebraska and when they left Defendant Dor-O-Matic's possession.

31. That at the time that the automatic sliding glass doors were installed in the Kmart building they were not the best technology reasonably available.

32. That the proximate cause of Plaintiff's injuries was the defective condition of the doors, said doors were in a defective condition in that:

- a. The motion sensor which controlled operation of the door was incapable of detecting Plaintiff's slow movement.
- b. The photoelectric beams designed to hold the door open when a person was within the threshold of the door did not provide adequate coverage of the door opening area;
- c. There were no adequate warnings reasonably designed and intended to alert persons such as Plaintiff of the doors inadequacies and defects.
- d. The doors did not comply with ANSI standard A156.10, said standard having been adopted by Defendant Dor-O-Matic.

33. That the doors were being used by Plaintiff in a way and for the general purpose for which they were designed and intended.

34. That due to the aforementioned defective conditions, the automatic sliding doors were unreasonably dangerous to users in that they were dangerous to an extent beyond that which would be contemplated by the ordinary consumer who uses said doors, with the ordinary knowledge common to the community as to the door's characteristics.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of July, 2001, a true and correct copy of Plaintiff's Amended Petition was served on the following by United States Mail, sufficient postage prepaid:

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CLINE WILLIAMS
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