

UNITED STATES BANKRUPTCY COURT <u>Northern</u> DISTRICT OF <u>Illinois</u>		PROOF OF CLAIM
Name of Debtor K-Mart Corporation	Case Number 02-B024711-2474	<div style="writing-mode: vertical-rl; transform: rotate(180deg);"> FILED UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF ILLINOIS MAR 26 2002 KENNETH S. GARDNER MAILROOM - MM </div>
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): Patty Hörning	<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 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 n/a	
Name and address where notices should be sent: Goldberg & Weigand, LLP 250 Barnstable Road Hyannis, MA 02601 Telephone number. 508-775-9099		
Account or other number by which creditor identifies debtor: File# 200005015050001		Check here <input type="checkbox"/> replaces a previously filed claim, dated: <u>n/a</u> <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 _____ <div style="float: right;"> <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 _____ <div style="display: flex; justify-content: space-between; width: 100%;"> (date) (date) </div> </div>		
2. Date debt was incurred: <u>5/10/00</u>		3. If court judgment, date obtained: <u>n/a</u>
4. Total Amount of Claim at Time Case Filed: \$ <u>27,442 medical & pain & suffering</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: \$ _____ <div style="text-align: right;">n/a</div> 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 \$ _____ n/a 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-family: cursive;"> KR 909 3/26/02 </div>
Date 3/17/02	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): Blair E. Weigand, Esq.	
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.		

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197 PORTLAND ST.
BOSTON, MA 02114
TEL. (617) 227-5066

February 22, 2001

G. Jones
Kmart Customer Service Unit
P. O. Box 5058
Troy, MI 48007-5058

RE: Our Client: Patty Horning
Your Insured: K-Mart Store #7766
Date of Loss: 5/10/00
Tax ID No.: 043139853

MEMORANDUM OFFERED FOR SETTLEMENT PURPOSES ONLY

Dear Ms. Jones:

As you know, the undersigned and the Law Firm of Goldberg & Associates represent Ms. Patty Horning with regard to the severe and disabling personal injuries that she sustained on or about May 10, 2000, due to the negligence of your insured, K-Mart Store # 7766. It should be clearly understood at the outset that this letter is written solely for the purpose of settlement and is therefore expressly written without prejudice.

BACKGROUND

Patty Horning is a sixty-seven year old woman who presently resides in Sandwich, Massachusetts. Ms. Horning had no prior injuries or medical problems that in any way restricted her active lifestyle and work schedule. Since the date of the accident, Patty has been prevented from engaging in activities of daily living including, but not limited to, cleaning her home and carrying objects and has been prevented from engaging in many leisure activities such as going on outings with her family. She has suffered as a result of the accident from knee and arm pain along with back pain and hip pain. She has been advised to concentrate on her posture and to pay particular attention to her body mechanics in order to avoid re-injury and has been instructed to perform daily exercises. Patty Horning's **daily pain and aggravation** are constant reminders of this unfortunate event in her life.

ACCIDENT/LIABILITY

On or about May 10, 2000 Ms. Horning was shopping in K-Mart Store # 7766. She had rounded a corner when she tripped as a result of packing material that was left in the aisle by your insured. Ms. Horning was caused to catch her foot in this packing tape and fell into a shelf severely injuring herself.

PHOTOGRAPHS

With this demand package, you will find three photographs of Patty Horning as she looked after the operation that involved her hip replacement. The three photographs show the three-foot scar which Ms. Horning has been left with as a result of the hip replacement.

(Please see three photographs found herewith , **Exhibit No. 1**)

MEDICAL TREATMENT

1. John Lewis Medical Center
2 Jan Sebastain Way
Sandwich, MA 02563

On May 10, 2000 Ms. Horning reported to John Lewis Medical Center for examination of her injuries. The doctor's notes of that day indicated that Patty presented with injuries to her left thumb, left hip, left arm and a bruise to her scalp. Upon examination the doctor found her left forearm tender and swollen and her left knee swollen and tender. The doctor order x-rays of her left knee, left forearm and left hand. The radiology report, done by Dr. James Condon, indicated that in her left knee there was joint space narrowing in the medial compartment with degenerative spurring there and eburnation as well as spurring of the intercondylar spines. In the view of the left hand the doctor noted some degenerative changes at the base of the first metacarpal.

On May 23, 2000 Ms. Horning reported back to John Lewis Medical Center. The doctor's notes of that day indicated that Patty was still complaining of a tender left knee and hip.

(Please see office notes of John Lewis Medical Center found herewith, **Exhibit No. 2**)

2. Sports Medicine Brookline
830 Boylston Street
Brookline, MA 02167

On July 18, 2000, Ms. Horning reported to Sports Medicine Brookline for examination. The notes of Dr. Henry Toczykowski indicated that Patty was complaining of pain over the right side of her back, which radiates into the area of the superior aspect of the hip and down around into the groin. Upon examination the doctor reported that with extension of the back Patty gets a sharp shooting pain into the right flank and hip area, down into the anterior aspect of the hip.

The doctor planned on giving her an MRI and indicated that she may have a herniated nucleus pulposus in the lower extremity at the L3-4 level.

(Please see office notes of Sports Medicine Brookline found herewith, **Exhibit No. 3**)

3. Boston Spinal Imaging
1 Brookline Place
Brookline, MA 02446

On July 24, 2000, Ms. Horning reported for her MRI at Boston Spinal Imaging. The radiology report, done by Dr. Harvey Levine, indicated that there were varying degrees of decreased T2 intensity in all of the discs due to degenerative change. **At T10-11 there is marked disc space narrowing and diffuse disc bulging and ridging. There was disc herniations to either side of the midline, indenting the dural sac. There was narrowing of the lateral recesses bilaterally.**

At T11-12 there was anterior ridging. At L1-2 there was disc space narrowing and diffuse disc bulging and ridging. **At L2-3 there was disc space narrowing and diffuse disc bulging and ridging. There was a compromise of the spinal canal.**

At L3-4 there was disc space narrowing and diffuse ridging, greatest laterally of the left. At L4-5 there was disc space narrowing and asymmetric ridging.

The doctor's overall impression was that Ms. Horning had disc herniations to either side of the midline at T10-11.

(Please see radiology report of Boston Spine Clinics found herewith, **Exhibit No. 4**)

4. Falmouth Hospital
Ter Huen Dr.
Falmouth, MA 02540

On July 14, 2000, Ms. Horning reported the Falmouth Hospital Emergency Room. The records of that day indicated that Ms. Horning presented complaining of back pain and muscle spasm. Patty was seen by Dr. W. Bowers who indicated that upon examination there was dull radiating back pain with decreased range of motion and muscle spasm. **The radiology report of that day indicated that there was diffuse and severe degenerative disc disease with a compression fracture of T7.**

(Please see Records and Radiology Report of Falmouth Hospital found herewith,
Exhibit No. 5)

5. New England Baptist Hospital
125 Parker Hill Avenue
Boston, MA 02120

On September 29, 2000, Ms. Horning reported to New England Baptist Hospital for x-rays of her pelvis and left hip. The radiology report indicated advanced osteoarthritis at the hip with marked cartilage space loss, most pronounced superolaterally, subchondral sclerosis and spur formation. Note was made of a bone island in the left femoral shaft. On the right, there was moderate to advanced degenerative changes at the hip.

In addition, Patty underwent a physical therapy pre-admission evaluation. The evaluation form indicated that she complained of left hip, neck pain and right knee pain.

On October 18, 2000 Ms. Horning reported to New England Baptist Hospital for surgery. The procedure that was to performed was left total hip replacement arthroplasty utilizing Osteonics PSL 56 mm acetabular component with 10 degrees polyethylene liner, and Howmedical meridian stem, with 0 degrees head.

The operative notes of the surgery indicated that an incision was made at the lateral aspect of the hip joint, carried from the point approximately 2 fingerbreadths below the greater trochanter to across the greater trochanter to the intersection of the anterosuperior iliac spine on the posterior aspect of the greater trochanter. The gluteus muscle was then split exposing the short external rotators. The hip was internally rotated. The patient had the short external rotators removed with electrocautery around the greater trochanter down to the lesser trochanter. The capsule was then isolated. A capsulectomy was performed. This allowed the femoral head to be dislocated. It was noted to have severe degenerative joint disease and utilizing a meridian stem as a template, the neck angle was identified and the neck was cut with an oscillating saw, as well as the posterior aspect of the neck towards the greater torchanter.

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Osteophytic spurs were removed from the posterior aspect of the acetabulum. The hip was impacted into place with being 56 mm cup with three cluster holes superiorly. A single screw was first drilled and a depth gauge was utilized and a 40 mm screw was then placed. The hip was sequentially reamed to accept a meridian 13 type of stem. The 0 neck was placed and excellent stability was felt to have been achieved. The wound was irrigated and sutures were applied. Dry, sterile dressings were applied to the wound with a compressive dressing to the hip respectively.

Physical therapy was started in the hospital. Ms. Horning was given exercises to perform which did cause her some pain. She complained of pain in her left hip and some nausea along with dizziness.

On October 21, 2000, Ms. Horning was discharged from New England Baptist Hospital. The discharge summary indicated that Ms. Horning was to be discharged to Jordan Rehabilitation to continue her physical therapy.

(Please see operative reports, nurses' notes and discharge summary of New England Baptist Hospital found herewith, **Exhibit No. 6**)

TOTAL MEDICAL BILLS

<u>Provider</u>	<u>Dates of Service</u>	<u>Amount</u>
John Lewis Medical Center	5/23/00;5/10/00	\$369.00
Falmouth Hospital	7/14/00	\$565.00
Boston Imaging Associates	7/24/00	\$330.00
Dr. Henry Toczyłowski	7/18/00	\$180.00
New England Baptist Hospital	9/29/00;10/9/00;10/18/00; 10/19/00;10/20/00;10/21/00, 10/27/00. 10/28/00	23,968.09
Healthwise	10/26/00;11/22/00	\$195.52

TOTAL MEDICAL EXPENSES: \$25,607.61

(See Medical Bills, attached hereto and marked **Exhibit "7"**.)

EXHIBITS

Attached to this Settlement Memorandum are the following Exhibits:

1. Three photographs of Ms. Horning;
2. Office Notes of John Lewis Medical Center;
3. Office Notes of Sports Medicine Brookline;
4. Radiology Report of Boston Spine Clinics;
5. Emergency Room Records and Radiology Report of Falmouth Hospital;
6. Records of New England Baptist Hospital;
7. Medical Bills.

CONCLUSION AND DEMAND

Your insured is clearly liable for the accident and resulting severe personal injuries sustained by Patty Horning. Over the course of 52 weeks and continuing, Ms. Horning suffered a period of total disability, followed by a period of partial disability. As a result of the accident she was required to undergo numerous medical treatment sessions. Ms. Horning was severely hindered as a result of her injuries from engaging in activities of daily living including, but not limited to, cleaning her home and was prevented from engaging in leisure activities such as going on outings with her family. Patty Horning has suffered immensely and will continue to suffer as a result of the negligence of your insured.

PLAINTIFF HEREBY DEMANDS THE SUM OF THREE HUNDRED TWENTY FIVE THOUSAND (\$325,000.00) DOLLARS AS SETTLEMENT IN FULL.

This specific settlement figure represents a full and final settlement of this case. THIS DEMAND IS MADE WITHOUT PREJUDICE TO ANY OF PLAINTIFF'S RIGHTS AND WILL REMAIN OUTSTANDING FOURTEEN (14) DAYS FROM RECEIPT OF THIS DEMAND.

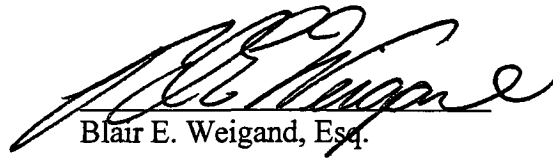
The information contained within this settlement memorandum is submitted for the purposes of settlement only. This memorandum may in no way be used in the defense of this case, as an admission against the plaintiff, against any interest of the plaintiff or in any other manner.

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Once you have had the opportunity to review this memorandum, kindly contact me so that we can discuss a possible resolution of this matter, or so that I can take any necessary steps to assert my client's rights and protect her interests.

I await your response.

Very truly yours,
GOLDBERG & ASSOCIATES



Blair E. Weigand, Esq.

BEW/lh
Attachments
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

POWER OF ATTORNEY

I, Mrs. Patty A. Horning, of 18 Hilltop Dr., Sandwich, MA, 02563, hereby constitute and appoint the law firm of Goldberg & Associates of 250 Barnstable Road, Hyannis, MA 02601 true and lawful attorneys for me in my stead to perform the following acts in connection with my claim and for personal injuries sustained on or about May 10, 2000.

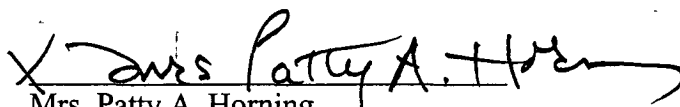
1. Endorse and deposit in the Client's Fund Account all checks and drafts payable to me in full or partial settlement of my claim and for Personal Injury Protection benefits.
2. Pay all outstanding medical bills incurred by me in connection with my injuries from the settlement proceeds directly to the medical care providers who rendered the services.
3. Pay all necessary costs and expenses arising out of the handling of this claim including, but not limited to investigation, court costs, subpoenas, photography, depositions, expert consultations and witnesses from the settlement proceeds and attorney.
4. Pay counsel fee to my attorney and the net client recovery to me from any settlement proceeds or court awards in accordance with my fee agreement in this matter.
5. Request all funds, awards and settlements to be sent to Goldberg & Associates, Attorneys at Law, 250 Barnstable Road, Hyannis, MA 02601.

Hereby granting unto my said Attorney full power and authority to act as aforesaid as fully and effectually as I might do personally.

I do hereby ratify and confirm all that my said attorney shall lawfully do, or cause to be done by virtue hereof, the LIMITED POWER OF ATTORNEY is specifically intended to be a durable power of attorney under the provisions of Massachusetts General law, Chapter 201B.

This Limited Power of Attorney shall not be affected by the subsequent disability or incapacity of us.

IN WITNESS WHEREOF, I hereunto set my hand and seal this 12th day of May 2000.

X 
Mrs. Patty A. Horning

Date