

AVERY MCDANIEL, P.C.
ATTORNEY AT LAW
800 West Weatherford Street
Fort Worth, Texas 76102



5/11 called left message
5/17 called left message
5/18 " " "
u/1

Telephone (817) 810-9500

Facsimile (817) 882-8444

March 20, 2001

Silvana C. Romero
Cambridge Integrated Services Group, Inc.
P. O. Box 970
Birmingham, MI 48012

Certified Mail
Return Receipt Requested
No. 7099 3220 0001 8451 7093

Re: Claimant: Oralia Soto
Your Insured: Kmart #7734 - Arlington, Texas
Date of Incident: July 3, 2000
Your File #: 248205

Dear Ms. Romero:

This settlement brochure is presented in an attempt to compromise and settle the dispute between the parties. The statements contained herein are statements of counsel only and may not be used for any purpose at any trial of this cause. It may not be used as evidence in whole or in part by any person or entity and may not be offered as an exhibit or mentioned at the trial.

The Defendant and Insurance Adjuster of the Defendant and the counsel, if any, for the Defendant agree to the above by continuing to read this brochure. If not agreeable, this brochure and all enclosures are to be returned, unread, to the Plaintiff's counsel without reading further.

In an effort to fully explore the possibilities of a reasonable compromise settlement, without further litigation, and conclude this claim within the prescribed time limitations set forth in this letter, we enclose herein for your consideration damages and liability information.

The Damages Information includes physicians, medical bills, and medical reports and records of injuries and treatment from the date of claimant's injury to the present. In addition, we have generally described common law damages, including, but not limited to, physical pain, mental anguish, and physical impairment, etc., for the claimant.

The Liability Information includes a description of the incident and allegations of tortfeasor's negligence.

We shall appreciate your prompt and reasonable offer of settlement after reviewing the following information:

Description of Claimant:

The claimant is twenty-seven year old female who was in the advanced stages of pregnancy (approximately 7.5 months) at the time of the incident.

Description of the Incident:

The slip and fall incident occurred on July 3, 2000, at the Kmart Store #7734, in the City of Arlington, Tarrant County, Texas. The claimant was a customer inside the store premises. Ms. Soto had walked toward a waste-bin to discard some garbage and, as she turned to resume her shopping she slipped and fell backward landing on her back on the wet tile floor. There were no signs warning the claimant of the dangerous condition of the slick, wet tile floor.

Negligent Conduct of Tortfeasor:

- 1) Failure to adequately maintain the floors of the store.
- 2) Failure to inspect the floor of the premises in order to prevent the dangerous condition created by liquid on the floor.
- 3) Failure to remove/clean the liquid from the tile floor, when they knew, or should have known of the dangerous condition created by the liquid on the floor.
- 4) Failure to warn the claimant of the liquid on tile floor near the waste bins of the store.

Liability of Claim:

The liability is clear-cut in the CLAIMANT'S favor.

Injuries: Back

Medical Treatment:

(See Medical Records and reports attached hereto)

Medical Specials:

<u>Medical Providers</u>	<u>Dates/From/To</u>	<u>Amount</u>
Rural Metro Ambulance	07/03/2000	\$ 573.00
Medical Center of Arlington	07/03/2000 to 07/04/2000	786.98
Questcare Medical Services	07/03/2000	155.00
Dr. Frank Greenberg	09/25/2000 to 01/17/2001	<u>3,342.00</u>
TOTAL		\$4,856.98

(A copy of the Medical Bills are attached hereto)

Total Out-of-Pocket Specials:

Past Medical	\$ 4,856.98
Future Medical	++++
Past and Future Loss of Earning Capacity	++++
TOTAL	\$ 4,856.98

Additional Damages for Claimant:

1) The claimant has sustained loss of earning capacity (past and future). In *Walmart Stores, Inc. v. Cordova*, 856 S.W.2d 768, 770 (Tex.App - ElPaso 1993, no writ), the Court held that "recovery for loss of earning capacity is not recovery of actual earnings but rather is recovery for the loss of capacity to earn money. *Armellini Express Lines of Florida, Inc. v. Ansley*, 605 S.W.2d 297, 312 (Tex.App. - Corpus Christi 1980, writ ref'd n.r.e.). As a result, recovery for loss of earning capacity does not require an injured party to have been working at the time of the injury. The injured party, however, is required to introduce sufficient evidence which enables the jury to reasonably measure earning capacity prior to the injury." In the *Cordova* case, the plaintiff had worked for a year prior to the accident. She had to quit her job due to medical problems; additionally, she had a desire to stay home in order to care for her son. However, she had a prior earning history from which the jury "could base an intelligent answer regarding Cordova's loss of earning capacity." The importance of this case is that unemployed matrons in the household who are injured have a compensable loss for the loss of earning capacity as opposed to the loss of earning.

2) The claimant has suffered physical pain as demonstrated by the type injury and necessary care, medications, and therapy.

3) The claimant has suffered mental anguish because of the nature of the incident and resulting injuries and treatment. Mental Anguish is not a legal term, but one of ordinary significance and meaning, and should not be defined for the jury. *Troitti v. K. Mart*, 686 S.W.2d 593 (Tex 1985). Mental anguish maybe inferred from the nature and extend of the injury. It includes a mental sensation of pain resulting from painful emotions. It includes contemplation of one's changed physical condition (61 S.W.2d 978), or one's fear of possible paralysis resulting from injury or treatment 142 S.W.2d 379. It includes heightened emotional injury beyond ordinary physical pain; it encompasses keen or sharp mental suffering, a high degree of pain of the mind. Mental anguish includes mental suffering apart from physical pain, which includes worry, injury to feelings, wounded pride, concern, fear, embarrassment, and despondency and depressions, anxiety, tension, migraine headaches, etc. (see 30 SW2nd 497). It also includes humiliation, mortification, fright, and apprehension, as to the effects of injury and nervousness (see 365 SW2nd 260).

4) The claimant may need future medical care and treatment and is subject to being re-injured much more easily. Medical expenses mean the expenses for the medical and the hospital

care to be received by the claimant for treatment of injuries sustained by her as a result of the occurrence in question, based on reasonable medical probability. The claimant is not required to establish the future medical consequences of her injury by expert medical testimony grounded on reasonable medical probability (see 762 SW2nd 314).

5) The claimant has sustained permanent physical impairment, which is defined as impairment beyond loss of earning capacity or mere pain and suffering to an extent that it produces a separate and distinct loss for which claimant should be compensated. See 603 SW2nd 242 where claimant could not mow the lawn because of the injury and an award was suggested for physical impairment: Recovery for physical impairment is sometimes defined as recovery for loss of enjoyment of life. The term encompasses the loss of the claimant's former lifestyle, including the loss of the ability to play sports, enjoy music and art, and have a normal social life (see 560 SW2nd 751).

6) The claimant has sustained loss of travel expenses commuting to doctors. (See 545 SW2nd 279 / Tex Civ. Ap.- Waco 1977, no writ) Transportation expenses incurred in relation to medical treatment are recoverable.

7) The claimant is owed the legal rate of pre-judgment interest due on the damage claim to date. The interest starts six (6) months after notice of injury or suit is filed and is figured at not less than ten per cent (10%) per annum (see Texas Revised Civil Statute, Article 5069-1.05, ss 6 Vernon's Supp.).

Time Limit:

Since we have furnished you with all of the pertinent information we have assembled concerning the injuries and special damages, and we feel certain that you will have completed your investigation of the facts, we think it reasonable to establish a time during which we can either settle the case or proceed with the lawsuit.

We believe that a reasonable time period would be within two weeks of date of this letter. Accordingly, we have calendared this matter to file suit in the event that a settlement has not been reached.

Demand:

We are willing to settle now because:

- 1) Advantage of immediate vs. eventual use of the money;
- 2) Avoidance of further expense of litigation; and
- 3) Interest in putting an immediate end to negotiation.

In an effort to achieve an amicable settlement and conclude this case, we will recommend a settlement of \$20,000.00.

We look forward to hearing from you in this regard.

Cordially,

Avery McDaniel
Avery McDaniel

AM:jb
Attachments

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only: No Insurance Coverage Provided)

Article Sent To:

David Bullard
BIRMINGHAM, MI 35202

Postage \$ 2.86

UNIT ID: 0116

Certified Fee 1.90

Return Receipt Fee (Endorsement Required) 1.50

Postmark Here

Restricted Delivery Fee (Endorsement Required)

Clerk: KMCKWG

Total Postage & Fees \$ 6.26

03/22/01

Na Silvana C. Romero
Str Cambridge Integrated Services Group
Ch P. O. Box 970
PS Birmingham, MI 48012

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Silvana C. Romero
Cambridge Integrated Services Group
P. O. Box 970
Birmingham, MI 48012

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) *DAVID BULLARD* B. Date of Delivery *3-26-01*
C. Signature *x David Bullard* Agent
 Addressee
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Copy from service label)

7099 3220 0001 8451