

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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SARA GREEN,

VERIFIED BILL  
OF PARTICULARS

plaintiffs,

-against-

Index No.  
113843/08

ASHLEY STEWART, INC.

defendants

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Plaintiff, by her attorneys Zuller & Bondy, LLP,  
as and for her verified bill of particulars in response to  
the demands of the defendant alleges, upon information and  
belief, as follows:

1. The subject accident occurred on April 28,  
2006 at approximately 6:30 P.M.

2. The subject occurred at the Ashley Stewart  
Women's Apparel clothing store at 216 West 125<sup>th</sup> Street,  
main selling floor. A three-tiered table displaying tops  
was positioned next to racks of hanging garments and  
protruded into the aisle. For additional details, inquire  
at deposition.

3. Plaintiff was caused to trip on account of the lowest of three table tiers which was closest to the floor and protruded further than the ones above. The table was placed in an area of the selling floor dense with merchandise, obstructing plaintiff's view.

It will be claimed that the defendant, by its servants, agents, and/or employees was negligent, careless, reckless and remiss in failing to properly own, operate, manage, maintain, and control the main selling floor in defendant's 125<sup>th</sup> Manhattan store on which defendant placed and maintained, in a cluttered area densely packed with merchandize for sale, a three-tiered display table whose lowest tier, closest to the floor, protruded further than the ones above, making for a tripping hazard to those shopping in the vicinity; in creating and permitting to exist a dangerous and hazardous floor condition; in causing to be placed in a dangerous location the three-tiered display table as aforesaid, without warning to shoppers and passersby; in positioning a three-tiered display table in a densely packed selling area with edges that protruded unequally, the lowest, and closest to the floor, protruding further than the ones above, making for a trap and trap-like

tripping hazard; creating an unsafe and hazardous walking surface; in failing to space apart the said display table from racks of hanging clothing items, allowing for a clear and unobstructed view of the lowest of the three tiers, closest to the floor, which extended further out than the ones above and made for a tripping hazard; in failing to take proper and adequate measures to periodically inspect the condition of the floors, display tables, racks and in the main selling floor common area to see whether they remained reasonably positioned to afford shoppers a safe, unobstructed and clear walking path as they strolled the store; in failing to properly light the selling area nearest the said display table to give shoppers the best chance of noticing that the lowest tier protruded further than the ones above and made for a potential tripping hazard as they walked by; in failing to properly and adequately warn persons entering the area of the said display table of its dimensions and the extent to which its shelves or tiers protruded onto the selling floor or, by the table's construction and design, deceived shoppers into presuming the three tiers or shelves of the table were of uniform size and that the edges extended a uniform distance; in failing to properly and safely position the said display table in an open and obvious area, uncluttered, and unobstructed

by other merchandise offered for sale, which made the edges of its lowest tier difficult to see; in failing the position the said display table against a wall, or in some other, safer location than the middle of the selling floor where it remained at the time of plaintiff's accident; in utilizing and setting down on the main selling floor area, poorly lighted and surrounded by racks of hanging merchandise, a three-tiered table whose lowest shelf or tier, nearest the floor, was not easily seen and protruded further than the ones above, making for a tripping hazard; in failing to take proper account of the pedestrian traffic on the selling floor and ensure shoppers with a safe path and walkway, unhindered and unobstructed by protruding shelves and tiers of display tables; in causing a nuisance like condition to exist on the main selling floor of defendant's 125<sup>th</sup> Street, Manhattan store; in inviting persons, and workers entering the building to walk over and upon the floor which defendant, by its servants, agents, and/or employees caused, knew or should have known, had become unsafe and hazardous due to conditions as aforesaid; in permitting, allowing, causing and suffering the said main selling floor, and the display tables, racks and shelves positioned there, to be negligently, carelessly and cursorily organized, set down, and placed as aforesaid, rendering the area hazardous and

dangerous for shoppers and others trying to make their way across; and defendant, by its servants, agents, and/or employees was otherwise careless and negligent in the premises.

4. It will be requested at any trial of this action that the Court take judicial notice of any and all statutes, ordinances, rules, laws and regulations which defendant may have violated in the premises.

5. Both actual and constructive notice will be claimed. It is not known which of defendant's servants, agents, and/or employees, apart from "Petronella", "Ebony", and security guard "Rodriguez" positioned, know of, observed, or possessed actual notice of how and where the three-tiered display table was placed on the selling floor, in the midst of various other hanging merchandise. This placement made the edges of the table difficult to see, particularly those of the lowest tier, which was closest to the floor and protruded further than the ones above. The names of such persons in charge of maintaining, inspecting, placing, positioning, displaying, organizing, and offering merchandise within the defendant's store shall be provided, if known, at the conclusion of discovery.

Constructive notice will also be claimed.

The aforementioned condition of the floor area, made hazardous by the careless, thoughtless, foolhardy, unsafe and negligent placement of the three-tiered display table on the main selling floor, remained so continually for not less than two weeks before plaintiff tripped and fell.

6. As a result of her slip and fall accident the right-handed plaintiff SARA GREEN sustained the following injuries:

Full thickness tears of the supraspinatus and infraspinatus tendons, right shoulder, with tendon retraction to the level of the glenohumeral joint; high grade partial tear of the subscapularis tendon; large glenohumeral joint effusion; complete tear of the long head of the biceps tendon; full thickness tear of the rotator cuff, right shoulder with impingement; muscle atrophy; severe impingement syndrome; acromioclavicular arthrosis; supraspinatus tendinosis; subacromial and subdeltoid bursitis; AC arthrosis and subacromial spurring; arthroscopic surgery of the right shoulder on June 15, 2006 at Beth Israel Hospital, First Avenue at 16<sup>th</sup> Street, New

York, NY with arthroscopic rotator cuff repair, arthroscopic debridement, resection of coraco-acromial ligament and resection of the undersurface of the outer end of the clavicle; tenderness to shoulder palpation; limitation and restriction of various shoulder and upper arm motions, portions of which are verily believed to be permanent; positive Speeds test; weakness in the right shoulder and arm, a portion of which is believed to be permanent; limited range of motion in right shoulder and arm, portions of which are verily believed to be permanent; limitation of use and swelling of the right arm; strength diminution in right shoulder and arm; labral tearing; right arm and shoulder intermittent pain with all activity; tenderness in medial and lateral aspects of the right arm; weakness and instability of right shoulder and arm; chronic aching; tenderness of right arm to palpation; permanent scarring at operative site; limitation and restriction of right arm and shoulder motions, portions of which are verily believed to be permanent; significant weakness and residual loss of motion and strength in right arm and shoulder, believed to be permanent; anxiety; mental anguish, apprehensiveness, and difficulty sleeping.

Said injuries directly affected the skin,

bones, tendons, muscles, capillaries, arteries, veins, and other soft tissues in and about the site of said right arm and shoulder and radiated sympathetic pains to other parts of the body. That based upon a reasonable degree of medical certainty the injuries and their effects are permanent in nature and plaintiff is expected to require additional medical care on account of anticipated complications, like osteoporosis and traumatic arthritis, the dates of which will be furnished as they become known.

7. All injuries to plaintiff's right arm and back are believed to be permanent and productive of varying degrees of disability.

8. Improper demand as to prior injuries; inquire at deposition.

Plaintiff was initially treated on the day following her trip and fall accident at the St. Luke's Hospital emergency room. There was follow-up with Tarek Mardam-Bey, M.D., 1090 Amsterdam Avenue, New York, NY and shoulder surgery by Steven F. Harwin, M.D., 910 Park Avenue, New York, NY at Beth Israel Hospital on June 15, 2006 as aforesaid.



9. As a result of the accident plaintiff was confined to her home for a total of 62 days, 12 of which were spent in bed. (approx.)

10. See No. 9.

11. See No. 9.

12. Plaintiff was retired from the NYC Department of Housing, Preservation and Development at the time of this accident. There is no claim for lost earnings.

13. Inapplicable.

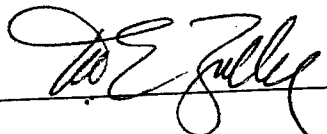
14. Special damages as follows:

Physicians.....	\$12,500+ approx.
Medications.....	500+
MRI/X-rays.....	2,000+
Hospital.....	6,500+ approx.

15. Plaintiff SARA GREEN was born on October 14, 1937, bears social security number 499-34-9135 and resides at 270 Convent Avenue, apt. 6C, New York, NY 10031.

Dated: New York, N.Y.  
December 23, 2008

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