

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TLMS

FILED

CONNIE HOIDAS and JAMES HOIDAS,)
)
Plaintiffs,)
)
v.)
)
WAL-MART STORES, INC.,)
)
Defendant)
)

JANUARY 13, 2011
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

No. 09 CV 07409
Judge Hibbler
JURY DEMAND

SECOND AMENDED COMPLAINT

NOW COME the Plaintiffs, CONNIE HOIDAS and JAMES HOIDAS, by and through their attorneys, KEITH L. DAVIDSON and GOLDBERG & GOLDBERG, and complaining of the Defendant, WAL-MART STORES, INC., allege as follows:

Count I (Personal Injury action by Plaintiff Connie Hoidas)

1. At all times complained of, Defendant WAL-MART STORES, INC. was and is a corporation organized under the laws of the State of Delaware, licensed to do business in the State of Illinois, and was and still is doing business in Cook County, Illinois.

2. This court has jurisdiction of the action under 28 U.S.C. §§ 1330 and 1332. Venue is proper in this court under 28 U.S.C. §1391.

3. On or about May 30, 2009, Defendant WAL-MART STORES, INC. owned, operated, managed and maintained a place of business, the structures, the land and the premises located at 10260 South Harlem Avenue, Bridgeview, Illinois, 60455. Said premises included a large general merchandise store (“the store”) and parking areas, including a main parking lot (“the parking lot”).

4. At said time and place, Plaintiff CONNIE HOIDAS was lawfully upon said premises.

5. At all times pertinent hereto, it was the duty of Defendant WAL-MART STORES, INC. to exercise a reasonable degree of care and caution in the ownership, operation, management, maintenance and upkeep of said premises for the safety of persons, including Plaintiff CONNIE HOIDAS, who were lawfully on the premises.

6. At all times herein, referred to, it was the duty of Defendant WAL-MART STORES, INC. to exercise a reasonable degree of care and caution in the inspection of their premises whereby they would have or could have discovered and corrected a dangerous pothole that caused plaintiff’s injury.

7. At the aforesaid time and place, Plaintiff CONNIE HOIDAS was severely injured when she was caused to fall by reason of a dangerous pothole that Defendant WAL-MART STORES, INC. allowed to exist in the parking area at and on said premises.

8. At said time and place, notwithstanding the aforesaid duties, Defendant WAL-MART STORES, INC., by and through its agents and/or servants and/or employees, was then and there guilty of one or more of the following acts and/or omissions;

- a. Carelessly and negligently failed to reasonably maintain the parking lot and allowed a dangerous and unsafe condition to exist; and/or
- b. Carelessly and negligently failed to inspect or cause the parking lot to be inspected in a reasonable manner and/or with reasonable frequency so as to discovery pertinent dangers and/or hazards and/or unsafe conditions, including but not limited to said pothole; and/or
- c. Carelessly and negligently failed to post or erect signs or barricades to warn and protect pedestrians against dangerous and/or hazardous conditions which it knew or reasonably should have known about the condition, including but not limited to said pothole.

9. As a direct and proximate result of one or more of the aforesaid wrongful acts and/or omissions of Defendant WAL-MART STORES, INC., plaintiff CONNIE HOIDAS then and there sustained severe and permanent injuries, and was, and will be, hindered and prevented from attending to her usual duties and affairs of life, and has lost,

and will lose, the value of that time as aforementioned. Further, plaintiff CONNIE HOIDAS suffered great pain and anguish, both in mind and body, and will in the future, continue to suffer. Further, Plaintiff CONNIE HOIDAS has expended and became liable for, and will expend and become liable for, large sums of money for medical care and services endeavoring to become healed and cured of her injuries.

WHEREFORE, Plaintiff CONNIE HOIDAS seeks judgment against Defendant WAL-MART STORES, INC. for a sum of compensatory damages in excess of Seventy-Five Thousand (\$75,000.00) dollars, plus costs of this action.

Count II (Loss of Consortium Action by Plaintiff James Hoidas)

Plaintiff JAMES HOIDAS hereby adopts paragraphs 1 through 9 of Count I and then proceeds as follows:

10. At all times pertinent hereto, Plaintiff JAMES HOIDAS was the lawful wedded spouse of Connie Hoidas and, thereby, was and is entitled to her spousal society, companionship and services.

11. As a direct and proximate result of the said negligence of Defendant WAL-MART STORES, INC. and said injuries to plaintiff CONNIE HOIDAS, plaintiff JAMES HOIDAS has been and will continue to be deprived of the spousal society, companionship, and services of Plaintiff CONNIE HOIDAS.

WHEREFORE, Plaintiff JAMES HOIDAS seeks judgment against the Defendant WAL-MART STORES, INC., for a sum of compensatory damages in excess of Seventy-Five Thousand (\$75,000.00) Dollars, plus cost of this action.

Count III (Willful and Wanton Misconduct Action by Plaintiff Connie Hoidas)

Plaintiff CONNIE HOIDAS hereby adopts paragraphs 1 through 7 of Count I and then proceeds as follows:

8. On and long before May 30, 2009, approximately 5 to 6 thousand transactions took place each day at the store by several thousand customers who entered and departed the store each day. The customers who patronized the store were of all ages and a wide range of physical conditions, and the vast majority of them came to and departed the store in motor vehicles.

9. The parking lot was located in front of the store and occupied approximately 250,000 square feet and included thousands of parking spaces.

10. A two-way driveway which bordered the front of the store was situated between the parking lot and the store and was the primary means of ingress and egress from the parking lot to and from the public highways surrounding the store.

11. Every person proceeding between the parking lot and the store had to cross said driveway, and said driveway was also used by patrons of the store to embark and disembark motor vehicles and to load and unload motor vehicles with items that were purchased from or being returned to the store.

12. Long prior and leading up to the time on May 30, 2009 when Plaintiff was injured, Defendant WAL-MART STORES, INC. failed to establish and implement any policies or protocols to timely identify and repair or guard pedestrians against any potholes or depressions which had developed in the parking lot from freezing and thawing cycles. Specifically, Defendant WAL-MART STORES, INC. failed to, among other things, establish and implement any policies or protocols in respect to: a) who, if anyone, among its employees was primarily responsible, or had any responsibility at all, to inspect the parking lot to identify potholes and depressions; or b), who, among its employees, was primarily responsible, or had any responsibility at all, to repair or procure the repair of potholes or depressions or to post or erect signs or barricades to warn and protect pedestrians against potholes and depressions; or c), where and under what circumstances signs or barricades needed to be posted or erected to warn and protect pedestrians against potholes and depressions or from where and how signs or barricades for this purpose could timely be obtained; or d), the need for payment to be withheld from pavement contractors until after their repair work was inspected and found satisfactory by Defendant WAL-MART STORES, INC.

13. The pothole that caused Plaintiff CONNIE HOIDAS to fall and be injured on May 30, 2009, and one or more others like it, were located in the disabled parking area directly in front of the entrance to this store. They had been there for several weeks and, in all probability, since at least mid-April 2009. They presented an enhanced danger to pedestrians proceeding from the parking lot toward the entrance of the store, over and above the dangers they presented to all pedestrians, because they bordered said driveway. Thereby, they foreseeably forced those pedestrians to look for and concentrate their

attention on motor vehicles that might be or were using the driveway before attempting to cross the driveway safely and enter the store.

14. The last repair work undertaken on potholes and depressions in the parking lot was completed on March 3, 2009 by an independent pavement contractor and included repair of potholes and depressions in the vicinity of the pothole that caused plaintiff CONNIE HOIDAS to fall and be injured on May 30, 2009 and also one or more other potholes that were present on that date next to said driveway. However, Defendant WAL-MART STORES, INC. fully paid the pavement contractor without first inspecting the repair work to determine whether it had been completed properly.

15. In light of the severity and longevity of these potholes and their proximity to the front entrance to the store, it was impossible for these potholes not to have been noticed or for the danger they presented not to have been appreciated by the manager and by many or all of the seven full time assistant managers of Defendant WAL-MART STORES, INC. who worked at the store. Yet, Defendant WAL-MART STORES, INC. failed to document and report the presence of these potholes or to have them repaired or to post and erect signs or barricades to warn and protect pedestrians against them—even though each and all of these measures could have been accomplished rapidly and inexpensively.

16. Defendant WAL-MART STORES, INC. willfully and wantonly and in reckless disregard or conscious indifference to the danger presented to the patrons of the store, acted or failed to act in one or more of the ways hereinbefore alleged.

17. As a direct and proximate result of one or more of the aforesaid wrongful acts and/or omissions of Defendant WAL-MART STORES, INC., plaintiff CONNIE

HOIDAS then and there sustained severe and permanent injuries, and was, and will be, hindered and prevented from attending to her usual duties and affairs of life, and has lost, and will lose, the value of that time as aforementioned. Further, plaintiff CONNIE HOIDAS suffered great pain and anguish, both in mind and body, and will in the future, continue to suffer. Further, Plaintiff CONNIE HOIDAS has expended and became liable for, and will expend and become liable for, large sums of money for medical care and services endeavoring to become healed and cured of her injuries.

WHEREFORE, Plaintiff CONNIE HOIDAS seeks judgment against Defendant WAL-MART STORES, INC. for a sum of compensatory damages in excess of Seventy-Five Thousand (\$75,000.00) dollars, and for a sum of punitive damages that is fair and just, plus costs of this action.

Respectfully Submitted

/s/ Keith L. Davidson
One of the Attorneys for the Plaintiffs

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