

Advice to Attorneys:

Choosing a Falling Merchandise Expert



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With concernable frequency, warehouse stores and other large-layout stores (hereafter, big-box stores) experience incidents of falling merchandise. The results include personal injuries, ranging in severity from the recoverable, to the lasting, to the fatal.

The big-box stores' business model is based on cost-savings and operational efficiencies stemming from onsite, overhead storage of merchandise. That such storage is performed within a high-traffic retail environment establishes the potential for accidents, triggering law suits.

Even attorneys who are experienced in premises liability need to regard falling merchandise in big-box stores as a specialized subset of that area of law. That regard is additionally needed for attorneys who practice more generally in personal injury.

All retailers are under a duty to exercise ordinary care in maintaining their establishments safe for all invitees, as well as for all others who legally are on the premises. In meeting that duty, big-box stores must affirmatively manage what distinguishes them from other types of retailers.

That distinction, as aforementioned, is the exposure of customers to the overhead storage of merchandise. The associated danger is inherent and reasonably foreseeable, as a consequence of the size and weight of the merchandise and the height from which it falls. It is, therefore, the responsibility of a big-box store to eliminate, or at least minimize, the danger with adequate policies, procedures, and training.

The adequacy of policies, procedures, and training, along with their effects, if any, on a given incident of falling merchandise constitute the crux of opposing arguments. In that capacity, whether for the Plaintiff or the Defense, the right expert will prove to be a valuable asset.

There are no federal safety standards that are specifically devised for falling merchandise. OSHA regulations, for example, address safety from the standpoint of employees. Standards and regulations that apply to retailers, including big-box stores, cover such matters as slip-and-fall, local fire codes, and premises security. Those holding themselves out as experts in those areas are sometimes retained for falling merchandise cases. Such is often done by default, hoping that a reputed expert in premises liability will be accepted by the court for a falling merchandise case.

Any expert, regardless of credentials, will be targeted by the opposing side, in an effort to disqualify, or at least diminish the credibility, of that expert. The opposing side's task is made easier when the expert is more a generalist than a specialist, or is a specialist, but not in an area relevant to a given litigation. Such an expert will prove to be more a liability than an asset.

The challenge to finding the right expert stems from the hybrid nature of big-box stores: their essentially being retail warehouses. By logic, the best-fit expert is one with a background, training, and experience, not only in retailing but also in warehousing. With that capability, the expert will know which standards and practices of the latter are applicable to the former.

I, Sterling Anthony, CPP, am that expert. I have had consulting projects with major retailers regarding floor lay-out, customer traffic mapping, aisle displays, shelf displays, and safety protocols for customers and employees. I have had consulting projects involving warehouse safety, wherein I have developed safety policies, procedures, and training manuals. I also have performed multiple audits of warehouses, domestically and abroad.

I have applied my credentials to a variety of falling merchandise cases. Within that scope, I've applied principles from retailing and from warehousing to the fact patterns. As an important part of those efforts, I have evaluated the employee manuals of various big-box stores. My opinions have been supported by cogent arguments. As a result, my work never is conclusory, nor does it ever cross the line into legal conclusions.

When retained by Plaintiff, I bring a familiarity with the causes of action and their elements, specifically the theories of strict liability, negligence, and failure-to-warn. When retained by Defendant, I bring a familiarity with the affirmative defenses to each of the aforementioned. I carry no preference for, nor bias against, neither Plaintiff nor Defendant. Regardless of which side retains, I subscribe to the same code of ethics, emphasizing diligence and forthrightness.

I assist throughout discovery, both in analyzing case materials and in suggesting what should be requested. I assist in the composing of questions for depositions. I am an accomplished communicator, in the written and spoken word. As for testimony, I've effectively delivered in depositions and at trial, in state and federal courts.

With all due respect, I request any attorney seeking an expert in a falling merchandise case to contact me.

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