

February 28, 2011

## **Broken Promises in Slip & Fall Accidents May Result in Punitive Damages in New Mexico**

Slip and fall accidents are very common. Though they sound trivial and are often mocked, they sometimes lead to serious injuries. On occasion, these injuries are not apparent at the time of the accident. For instance, a torn rotator cuff or torn meniscus may at first appear as just a sore shoulder or knee.

Stores businesses will often take advantage of the latent injuries by offering to settle cheap on the spot literally offering as little as \$100 to clear the aisle and to be on your way. For those that accept the money and sign a release, there is little that can be done to undo the financial harm of what often turns out to be a highly inadvisable decision.

Then there are those stores and businesses that will in an effort to get an injured person on his or her way offer to pay the person's medical expenses. In fact, this promise is quite common. Almost as common it seems is a later refusal to honor the promise to pay medical expense. And though there is little help for those in the first situation, there is very real and significant relief for those in the second.

In New Mexico, a breach of a promise to cover medical expenses carries with it the possibility of punitive damages. The 1989 New Mexico Supreme Court case of *Romero v. Mervyn's* found that failure to uphold the promise constituted a "breach of the implied covenant of good faith and fair dealing." The Court noted that the "stonewalling" in these cases "goes beyond the mere breach of contract. It offends accepted notions of business ethics" justifying the award of punitive damages.

The facts of *Romero* are remarkable. Ms. Romero was actually injured by another patron with no relationship to the store. In addition, it appeared that the other patron intentionally harmed Ms. Romero so that there was little that Mervyn's could have done to prevent the injuries. Had Mervyn's stopped there, there would likely have been no liability. However, Mervyn's in a magnanimous but empty gesture offered to pay Romero's medical expenses. In the end, the medical expenses were \$2041.00. Mervyn's was ordered to pay the medical expenses plus \$25,000 in punitive damages.

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The amount of the punitive damages was not great. However, the fact that it was 10 times greater than compensatory damages makes the case important. These damages could add up in the case of torn rotator cuff, torn MCL/ACL, broken wrist which are among the most common slip and fall injuries.

Despite the law established in *Romero*, the practice of renegeing on the initial promise to pay medical expenses is still quite common. For anyone involved in a slip and fall accident at a store or business, it is extremely important to document the promise to pay at the time of the accident or as soon thereafter as possible. This grows more difficult with time. And you guessed it, those that would make and break a promise to pay medical expenses will likewise deny the promise was ever made.

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