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'The public deserves to know'

Home Depot told to release some injury records



Rachel Elliott: She was injured in a Marietta Home Depot store when a cart used to transport large rolls of carpet turned over on her.

By Jim Level
STAFF WRITER

The Home Depot Inc., which has steadfastly refused to disclose how many customers are being injured in its 1,500-plus stores, may soon be forced to publicly reveal some information about customer injuries.

Judge David Darden of the State Court of Cobb County has ordered the country's second-largest retailer to turn over a portion of the records it maintains on accidents in its stores to the attorney representing a woman who was

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*Figure includes Sam's Club
Source: Public Access to Court Electronic Records (PACER)

Personal injury lawsuits hit Home Depot

By Jim Level
STAFF WRITER

Darlene Gardner was standing in the aisle of a Home Depot store in Silver Spring, Md., on Sept. 15, 2000, when, according to court records, a box fell off a shelf and struck her on the left side of the head, knocking her into the store's shelving.

She and her husband, Judge Wendell Gardner of the Superior Court of the District of Columbia, sued the company for \$850,000, citing permanent damages to her head, neck and left knee, which required surgery.

The Gardners' lawsuit is one of about 235 filed against the company

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Home Depot told to release records

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injured in a Home Depot store in Marietta four years ago. The woman, Rachel Elliott, is suing the company over the accident.

Her attorney, Matthew Flournoy, said he intends to make the information public. The disclosure will provide information about injuries and deaths in the carpet departments of Home Depot stores from June 1994 to June 1999.

"I think the public deserves to know," said Flournoy, a partner in the Marietta law firm of Flournoy, Morgan & Schmatmeyer LLP. "We will finally get a peek into what is happening in those stores."

A spokesman for Home Depot (NYSE: HD) declined to comment on the ruling, citing a company policy against discussing litigation.

Out of sight

Home Depot has released information about customer injuries to attorneys in previous lawsuits, but the information was protected from public disclosure by confidentiality agreements. The last time information about accidents in the stores was publicly disclosed, during a lawsuit against the company filed in 1999, there were 185 injuries reported each week during 1998.

Published reports show that at least four customers have been killed in the stores during the past four years, most recently in May when a 6-year-old boy was crushed by patio doors that fell on him in a South Texas store.

Elliott was injured June 16, 1999, in the Home Depot store at 4101 Roswell Road in Marietta, not far from Home Depot's headquarters, when a cart used to transport large rolls of carpet turned over on her while a Home Depot employee was operating a machine that turned a carpet display. The rotating rolls of carpet hit the cart and pushed it onto Elliott.

"It happened in the blink of an eye," she said in an interview. "I was in shock."

The cart landed on her right leg and forced her to the ground. She landed in a sitting position, damaging her lower spine. She has since had surgery on her back and her medical bills are nearing \$50,000, she said. She remains mostly restricted to her house and she hasn't known a day without pain since the accident, she said.

"I went through that door in excellent shape," she said. "Now, I feel like I went to sleep at 59 and woke up at 63."

Elliott was 59 years old at the time of the accident and recently retired from her job at the Dobbins Air Reserve Base in Marietta. She jogged regularly and took aerobics classes.

Flournoy said he asked the judge to force Home Depot to release information about accidents in its stores after waiting 14 months for the company to voluntarily comply with his request for the information. Home Depot had refused to provide the information, claiming it was confidential because it would reveal trade secrets and provide an unfair advantage to competitors. Flournoy had refused to sign the confidentiality agreement that would keep the information secret.

Darden disagreed with Home Depot and ordered the company to release the information without the protection of a confidentiality agreement.

Steve Rasak, a Los Angeles attorney who sued Home Depot in 1999 after the

death of a customer in the company's Santa Monica, Calif., store, described Darden's ruling as a "precedent" that will be cited by other attorneys who are trying to overcome the formidable task of getting information about injuries in the stores from the company.

"They have to stop hiding," Rasak said. "They have to answer the question of whether their stores are safe or not."

Rasak got an order from a California judge similar to that obtained by Flournoy in the Elliott case, but the company settled Rasak's case before the deadline for providing the information, he said. Rasak was one of the few attorneys who refused to sign a confidentiality agreement with the company, which would have prevented him from revealing the \$900,000 settlement he made with the company. He continues to consult with lawyers who represent customers injured in the stores.

"The judge is saying that public safety matters and he had the backbone to do what was right," Rasak said. "Other attorneys throughout the nation will be paying attention."

Rasak said he refused to sign a confidentiality agreement because he wanted people to know about the dangers in the stores.

"If Home Depot's stores are safe, the information the company collects on accidents in the stores will prove it and discourage future lawsuits, he said. If the stores aren't safe, the company has to admit it and make the necessary changes, he said.

Flournoy said representatives of Home Depot have discussed settling the Elliott case since the judge's order but no agreement has been reached. On July 16, he says, he received a letter from an attorney representing the company asking for a "settlement demand."

"It's premature," he said. "If they make me an offer, I'll take it to my clients. Right now, they haven't offered a penny."

Daniel Cohen, an attorney in The Lakin Law Firm of Wood River, Ill., said Home Depot agreed to accept a judgment of \$1 million against the company last year to avoid publicly releasing internal information about accidents in the stores. Cohen's client, Gary Simpson, sued the company after he was injured when an employee removing a bathroom vanity from an upper shelf dropped it on Simpson.

"There was no way Home Depot was going to allow the release of that information," Cohen said. "It would have been available to attorneys all over the country and they weren't going to let that happen."

Accident draws a crowd

Flournoy said he wants a jury trial for Elliott because he believes he can get a verdict from a jury that will be larger than any settlement the company will offer. He is betting jurors will be as outraged over the way the company responded to the accident as he is.

Elliott said the employee pulled the cart off her while other employees and customers gathered around. She asked the employees not to lift her but one of them ordered the others to put her in a wheelchair that was in the store and take her to a back room.

"I had drawn a crowd," she said. "They wanted me off the floor and out of sight."

She remained in the back room for almost an hour before she was loaded into

Federal lawsuits

Personal Injury lawsuits filed against Home Depot in federal courts since 2001.



Through July 11

Source: Public Access to Court Electronic Records (PACER), an electronic public access service that allows users to obtain case and docket information from federal appellate, district and bankruptcy courts, and from the U.S. Party/Case Index. Not all federal courts participate in the database. Courts not included are the Alaska District Court, Arkansas Western District Court, Idaho District Court, Maryland District Court, New Mexico District Court and Pennsylvania Middle District Court.

an employee's car and taken to a nearby walk-in medical clinic. The doctor at the clinic examined her in the car and ordered her to a hospital emergency room, she said.

Elliott said she didn't want the employees to move her after the accident. She wanted someone to call an ambulance but the employees refused, she said. She wanted them to call her personal doctor but they refused. A man that appeared to her to be the store manager told her he was following company policy, which required him to transport her to the nearest medical facility, she said.

"He cited policy with every other breath," she said.

After the accident, one of the employees asked her if she still wanted to buy the items she had put into her cart when she first entered the store.

"They humiliated me," she said. "It was bizarre."

Someone from Home Depot called her the next day and asked for her prognosis, she said. She described her injuries and told him that she had contacted her attorney, she said.

"He hung up on me," she said. "I haven't talked to anybody at the company since."

Home Depot settled another lawsuit earlier this year that was filed by a customer who was injured in the carpet department of a store in Kenner, La., court records show.

Anthony Hunt claimed he was shopping in the store when a carpet display unit fell and hit him on the back, knocking him to the ground and causing "serious and permanent" injuries, according to the lawsuit he filed in December 2001.

The terms of the settlement are sealed by a confidentiality agreement that was filed April 30 in U.S. District Court for the Eastern District of Louisiana in New Orleans. Hunt's attorney, Gino Rendeiro of New Orleans, declined to discuss the case.

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