

HO, HO, OH NO!  
AVOIDING HOLIDAY DISPLAY INJURIES

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During any holiday season, one of the best ways for a retail business to attract customers is to assemble displays, both of popular products and of holiday scenes. Arguably the most popular time for such displays is the Christmas shopping season, which seems to begin earlier every year. However, inherent in the creation of such displays is a bowl full of potential liability. As consumers are focused more on finding bargains and admiring displays and less on their own safety, holiday displays can turn “Black Friday” into “Black and Blue Friday.”<sup>1</sup>

A business owes its customers, as business invitees, a duty of reasonable care. The retailer is under an affirmative duty to protect a business visitor not only against known dangers but also against those which might be discovered with reasonable care.<sup>2</sup> Thus, all holiday displays must be in a reasonably safe condition. Generally, to recover for injury caused by a display, a consumer must show that either a dangerous condition existed as a result of the retailer’s negligence, or that it existed for such a length of time that the retailer knew or reasonably should have known or discovered its existence and failed to use ordinary care to remove or rectify the dangerous condition.<sup>3</sup>

Retailers must be especially careful in regards to displays during the busy Christmas holiday season, when employees may not have time to keep an eye on displays

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<sup>1</sup> While this article focuses on Christmas-related displays, liability for injury caused by a display extends to any holiday display, be it Christmas, Halloween, or even non-holiday displays.

<sup>2</sup> See, e.g., Emge v. Hogosky, 712 A.2d 315 (Pa. Super. 1998).

<sup>3</sup> Goodwin v. Wal-Mart Stores, Inc., 2001 Ark. App. LEXIS 78 (Ark. Ct. App. 2001).

that could lead to injury. Customers often go through displays to pick a particular item, and may not reassemble the display into perfect order, leaving boxes or product in the aisles. If another customer comes along and trips over the box or product, the retailer may be found responsible.<sup>4</sup> If the product display itself falls upon a customer, the retailer can be liable.<sup>5</sup> This liability also can extend to stray electrical cords used to demonstrate products or illuminate Christmas lights, strings, bands, or other product packaging materials.<sup>6</sup>

Christmas trees are one of the most popular displays during the holiday season. However, they pose quite a danger if not monitored. Branches can strike customers, ornaments can fall off, and customers can trip on light cords or tree skirts, all leading to potential liability.<sup>7</sup> Any display that could lead to a slippery condition or otherwise cause a fall is another potential basis for liability.<sup>8</sup> Another trouble area is found where larger products are assembled for demonstration. If the product collapses and causes injury to the consumer, the retailer may be hit with liability.<sup>9</sup> In a scene straight out of *A Christmas Story*, potential liability exists where a child falls off of a slide after visiting Santa Claus.<sup>10</sup> Retailers must also ensure that there is enough room between displays so as to not block traffic; otherwise they may be liable for injuries sustained if the displays are too close together to allow safe passage.

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<sup>4</sup> See, e.g., Venter v. Wal-Mart Stores, Inc., 1997 U.S. Dist. LEXIS 3167 (M.D. Fla. 1997).

<sup>5</sup> Smith v. Toys “R” Us, Inc., 754 So.2d 209 (La. 1999).

<sup>6</sup> See, e.g., Tomlin v. Wal-Mart Stores, Inc., 100 S.W.3d 57 (Ark. Ct. App. 2003).

<sup>7</sup> See, e.g., H.E.B. Food Stores, Inc. v. Warncke, 444 S.W.2d 954 (Tex. App. 1969); White v. Great Atlantic & Pacific Tea Co., 257 So.2d 513 (Miss. 1972); Baker v. Continental Ins. Co., 244 So.2d 84 (La. Ct. App. 1971).

<sup>8</sup> Wal-Mart Stores, Inc. v. Regions Bank Trust Dep’t, 69 S.W.3d 20 (Ark. 2002) (liquid from Christmas snow globe display).

<sup>9</sup> Kubiak v. Wal-Mart Stores, Inc., 725 N.E.2d 334 (Ohio Ct. App. 1999).

<sup>10</sup> Rummel v. Louisville Shopping Center, Inc., 436 S.W.2d 529 (Ky. 1968).

So what can be done to avoid injury to consumers while still allowing retailers to construct displays to attract customers and show off products? First, displays need ample space to allow customers to navigate. Second, unless displays are demonstrative, i.e., where customers are invited to “try me,” a “Please Don’t Touch” sign should be used. Moreover, even if a product is assembled or displayed with the intent that it is to be demonstrated or tested by a customer, consider requiring customers to seek assistance with the testing.

Popular products, and those “must have” items should not be displayed in such a manner as to pose a risk of the product or display collapsing on a customer. Products should not be stacked so high that the average consumer cannot reach the top, nor should products be intermingled in a manner that necessitates digging through a display. This can lead not only to display collapse, but also to stray product in the aisles, leading to trips and stumbles.

One court has suggested that retailers should hire extra employees for the holiday season to “zone” or inspect display areas on a regular basis, to pick up stray product or clean up any spills or breaks.<sup>11</sup> Having employees available to monitor displays and assist customers in reaching products lessens the likelihood of a display causing injury.

These suggestions apply equally well to decorative displays. Christmas trees and other decorative displays should be spaced far enough apart for easy navigation. Leaving enough space for two customers between such displays decreases the possibility of branches striking customers, ornaments coming loose and breaking on the floor, or otherwise leading to injuries. Electrical cords should be kept out of customer pathways, or otherwise made completely conspicuous via use of signs and/or brightly colored tape.

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<sup>11</sup> Davis v. Wal-Mart Stores, Inc., 751 So.2d 357 (La. Ct. App. 2000), *rev’d* 774 So.2d 84 (La. 2000).

The Christmas shopping season is an extremely busy time for retailers, and customers are not always mindful of potential dangers associated with holiday displays. By following the suggestions offered above, which are by no means exhaustive, and which are no more than common sense, retailers still can utilize attractive Christmas displays, while lessening the potential for injury to their customers.

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