

\$2,600,000

## Fall at a Retail Store **PREMISES LIABILITY**

**FACTS:** Marissa Herrera, 11 years old, was with her family shopping at a clothing store for back to school clothes. While walking from the fitting room to the cashier, she stepped on a loose clothing tag on the floor which caused her to slip and fall. She was taken by the paramedics to a nearby hospital. X-rays indicated that she had a pre-existing congenital condition called Slipped Capital Femoral Epiphysis (SCFE). As a result of her SCFE, her left hip joint slipped and was unstable. Marissa underwent surgery on her left hip wherein cannulated screws were used to pin her hip in proper position. Over the next 7 years, Marissa developed significant problems with her left hip and underwent two major surgeries including her hip being dislocated and realigned with multiple pins and screws. She is now 20 years old and her left leg is shorter than right leg and she walks with a limp.

**CONTENTIONS:** Plaintiff contended that the clothing store knew it was going to be an extremely busy day since it was the day before school started for the local school district. The store had a policy where they would assign employees to “recovery” in their store and their sole job was to pick up any debris on the floor. Plaintiff contended that no one had been assigned to recovery on the day of the accident. Plaintiff relied on *Ortega v. Kmart* wherein the failure to inspect the premises within a reasonable period of time prior to the accident establishes an inference that the defective condition existed long enough for a reasonable person exercising ordinary care to have discovered it. Defendant claimed that their employees were constantly walking the store and checking for any debris on the floor and therefore one of the store employees would have been in the area of the tag on the floor shortly before the accident. Defendant also contended that Plaintiff did not slip on the tag but rather her pre-existing SCFE caused her hip joint to slip out of place on its own and the tag on the floor played no role with regard to her fall. Defendant also claimed that Plaintiff’s mother was negligent for not seeking medical treatment for her daughter’s pre-existing hip condition before the incident since a simple x-ray of the hip would have caused Plaintiff to immediately have surgery to pin her hip in place before it slipped out of place on its own.

**INJURIES:** Injury to left hip resulting in a leg length discrepancy and premature degenerative arthritis in the hip requiring future total hip replacement surgery.

**HERRERA v. CLOTHING STORE**  
**CASE NUMBER:** CONFIDENTIAL  
RIVERSIDE COUNTY SUPERIOR COURT