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November 13, 1973

Mr. John D. Royse
Box 113
Grand Forks, North Dakota 58201

Dear Mr. Royse:

This letter is in reply to your communication to Chairman Richard O. Simpson, dated October 23, 1973, concerning an incident in which you were injured after walking into a plate glass window. You specifically inquired as to whether the Commission believed a court finding that the use of non-safety glazed glass was negligence in and of itself would be of precedential value in aiding the American people in States with no safety glazing legislation.

While we understand your purpose in asking for our advice, we are unable to respond to this question. It is the Commission's policy that it should not become involved in private litigation, even to the extent of commenting on the precedential value of a lawsuit. Further, we do not feel it is proper to respond when our answer might be the determining factor as to whether you will bring legal action against another party.

For your information the Commission has granted a petition to commence a proceeding for the issuance of a consumer product safety rule for architectural glass. Proceedings to develop such a rule will commence in the near future.

Sincerely,

Michael A. Brown
General Counsel

AHSchoem:mli:11/13/73 Control No. 1489

cc: S. Dunn
A. Schoem
GC Files
GC Chron

ADVISORY OPINION

Box 113
Grand Forks, N.D. 58201
October 23, 1973

RECEIVED
OFFICE OF THE SECRETARY
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r. Richmond O. Simpson, Chairman
onsumer Product Safety Commission
ashington, D.C. 20207

ar Mr. Simpson,

In June, 1969 I walked into a plate glass window in a "hazardous cation" as defined in the Model Safety Glazing Bill i.e. a glass panel jacent to (and the same size, nature and appearance as) the usual ans of egress and ingress. In addition the panel, a replacement for e broken in a similar accident, had not been marked with the customary pe and in addition a glass wall immediately adjacent to this exit ld distracting advertisements of the storeswares.

This is a K-Mart store. As you are aware they are mainly responsible r S.S. Kresge attaining the position as the fourth largest retailer in e U.S. They are located in many states and are of identical construc- on - mainly glass - in regard to walls and entrance. North Dakota is e of the 22 remaining states which has no safety glazing legislation. e case is very good. K-Mart has no witnesses and cannot locate anyone rking at the store in 1969 to give testimony. The panel, adjacent to a ries of similar in appearance doorways, is the classic "hazardous loca- on".

s the permanent scar which I received is not usually visible and am informed the climate here does not seem correct for what I regard claims of mental shock and mentaldistress(continuing for several urs afterward because of no provision for adequate emergency care ter medical treatment) it seems representation by a state bar member re is unlikely because while negligence may be proved, damages would so slight that the attorney's contingency fee would do little more an cover his overhead. Actually, in pursuing this case for the last arand making two round trips from California I have spent over $2500 expenses and am facing bankruptcy because of overdue payments on lls.

There is however a possibility of a representation by a senior law hool student under Legal Aid which still would not help me financially t might establish negligence - not or not only because someone forgot tape the window or place a barrier before it but negligence at the me of construction in 1963(when HEW was already warning of the danger of ate glass) or certainly at the time of replacing this glass. That is, precedent might be established in a state without safety glazing legis- tion stating that the installation of non-safety glass in a recognized azardous location" is, in and of itself, negligent. Thus the Model fety Glazing Bill might be brought in by the back door as a court prec- ent. It would not secure my financial future but might help many ousands of other people who would be killed, dismembered or disfigured til such a time as the climate was right for formal passage of such gislation.

ADVISORY OPINION

I am a disabled veteran and have had the time in the past to help others without payment in a minor way as a consumer advocate. I would be willing to spend another 5 weeks here if winning the case would establish an important precedent that would help the people. I doubt I would be for a judgement of a few hundred dollars.

Time is now of the essence. Only within the last few days have I digested enough information from publications from your office and others to realize how important such a precedent could be. Only today did I completely realize how little my chances for a judgement would be or even obtaining a lawyer to work for sucha small judgement. Tomor I meet withlegal aid. Therefore a decision must be made within the week.

THEREFORE, may I ask you? Do you feel such a precedent would be helpful? Would the existence of such a precedent cause insurance companies to advise or require large corporations presently using non-safety glass in hazardous locations to replace it?I am not asking for help with or advice on my personal problem. I simply would like to know if your legal department feels that such a precedent, if accomplished, would help the American people in states with no safety glazing legislation.

The case comes to First Judicial District Court in Grand Forks, N.D. the first week in December.As it is near the end of the month and I have little time and less money, I believe you and the gentlemen to whom I am sending photostats are large enough to overlook what might be otherwise regarded as a discourtesy and to regard this letter in the same way you might regard an individually typed and addressed communication.

I believe the time is right and the climate right for such a decision after a decade of consumer progress and especially after the events of the last year in Washington. I believe the town is right Grand Forks is an urban center of 40,000 for the surrounding farm belt The people possess a high standard of morality and a strong sense of individuality and fair play.As far as I know, Judge Bakken would be fair and impartial. I believe I have a suitably strong case to prove negligence(if not all damages claimed) and the defense has a very weak case.Such a combination of circumstances may not soon occur again

I do not ask you to comment on my case. I merely ask, assuming my analysis is correct, and such a precedent forthcoming, is it worth working for?

If your reply is important enough to yourself to call, I may be reached at: 701 774-5373 Ex. 36, most often in the mid-afternoon or night but with a 24-hr message service. We are on CDT until Oct 28 and then CST. Otherwise I may be reached at the above mailing address. Arrangements are such here that any return calls must be collect, at least until after November 1.

I again apologize that all the facts did not become known to me until today and for having to request an individual with your responsibilities for an immediate reply(if you so choose).

However, if such a decision could affect the live of the 250,000 americans injured annually by non-safety glass in hazardous locations, or even those in North Dakota and surrounding states, perhaps it is not too great an imposition. In any case, you have my most sincere thanks for your interest and consideration.

Very truly yours,

JOHN D. ROYSE

cc: Director
National Bureau of Standards
U.S. Department of Commerce
Washington, D.C. 20234

Mr. John T. Malarky
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Pittsburg, PA 15222

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