

**PREMISES LIABILITY****Store—Dangerous Condition—Notice****Fence panel fell down in Home Depot, striking customer on leg****VERDICT****\$5,275****CASE**Ernest (Jim) Grosskopf v. Home Depot USA, Inc.,
No. 26-30173**COURT**

Superior Court of Napa County, Napa, CA

JUDGE

Rodney Stone

DATE**05/23/2006****PLAINTIFF****ATTORNEY(S)**David B. Burnett, Law Offices of David B.
Burnett, Morgan Hill, CA**DEFENSE****ATTORNEY(S)**

Paul Caleo, Burnham Brown, Oakland, CA

FACTS & ALLEGATIONS On Oct. 10, 2003, plaintiff Ernest Grosskopf, 55, a director at a surgery center, and his wife were in a Home Depot store located at 225 Soscol Avenue in Napa. While they were waiting for an employee to cut some plywood for them, another customer knocked over a 6-by-8-foot Redwood fence panel and struck Grosskopf. The panel, which had been leaning against some shelving before it fell, hit Grosskopf on the back of his left thigh and knocked him forward onto the ground.

Grosskopf sued Home Depot, Atlanta, under a theory of premises liability. He alleged that a large wooden fence panel propped against a shelf constituted a dangerous condition.

Home Depot's attorney contended that it had no notice of a dangerous condition. Defense counsel argued that even if a Home Depot employee, such as the one cutting plywood, knew about the condition, such notice was not necessarily imputed to Home Depot. Also, Home Depot blamed the customer who actually knocked over the fence panel, contending that he was mostly responsible or, at the very least, 50% responsible for the accident.

INJURIES/DAMAGES Grosskopf claimed to have sustained a severe contusion and hematoma to the back of his left thigh as well as a significant medial meniscus tear in his left knee. His treating surgeon also diagnosed his left knee with osteoarthritis, which he claimed was caused by the accident. He underwent arthroscopic surgery, and his surgeon testified that his arthritis was so severe that he may require a complete knee replacement within eight to 10 years. In addition, said the surgeon, the procedure may have to be performed at least twice over his lifetime. Grosskopf denied having any knee problems before the accident.

Grosskopf claimed \$12,142 in past medical expenses, an unspecified amount for future medical expenses, \$3,695 in past lost wages and

\$66,285 in labor costs for home renovation projects that he alleged he would have completed himself but for his injuries. He also sought pain and suffering damages at a rate of \$22,000 per year for the rest of his life, for a total of \$539,000.

Home Depot argued that the only injury Grosskopf suffered from the accident was a severe cut and bruise, and that the medical meniscus tear and osteoarthritic condition were not caused by his fall in Home Depot. The defense's orthopedic expert opined that Grosskopf had chondrocalcinosis in his right knee before the accident and that the condition flared up after it. The expert further contended that Grosskopf experienced no left knee pain until more than four months after the fall. Defense counsel also called the emergency room doctor and nurses who treated Grosskopf the day of the accident, who testified that he did not injure his left knee in the accident.

The defense also denied that Grosskopf had proved with any degree of medical probability that he would require any future knee replacement surgery. Accordingly, defense counsel told the jury that Grosskopf was entitled to no more than \$7,500 to \$10,000 in connection with the contusion and bruise to the back of his thigh.

VERDICT INFORMATION The jury found Home Depot was liable but awarded Grosskopf only \$5,275.

ERNEST (JIM)**GROSSKOPF**\$3,832 Personal Injury Past Medical Cost
\$1,443 Personal Injury Past Lost Earnings
Capability**DEMAND**

\$200,000;

OFFER

\$17,500 (CCP 998)

TRIAL LENGTHTrial Length 4 days;
Trial Deliberation: 3.5 hours.**PLAINTIFF****EXPERT(S)**George Tischenko M.D., Orthopedic Surgery,
Walnut Creek, CA**DEFENSE****EXPERT(S)**Terence McDonnell M.D., Orthopedic Surgery,
Berkeley, CA

POST-TRIAL Plaintiff's motion for new trial was denied. Defendant's motion to reduce the verdict based on a successful CCP 998 offer was granted and verdict reduced to \$2305.15.