

#2 THIRD PARTY PETITION AND MOTION FOR LEAVE

David Moron purchased a riding lawn mower from Home Depot. David was elated with his purchase, brought his mower home, and began mowing the grass. David was so excited about the purchase that he did not check the yard for debris prior to mowing. A rock was picked up by the mower, the guard over the mower's discharge became detached from the mower without warning. The rock was then hurled out of the mower at high velocity and injured his next door neighbor Paul Plaintiff, who was also out mowing his yard.

Failure
to provide
adequate
warning/
instructions

Paul sued David for the injuries he sustained from the rock that was hurled from David's mower. As discovery progressed it was determined that the guard on the mower's discharge was not designed correctly. As a result of this design defect, it was possible for the guard to become detached and hit with enough force. At the time the manufacturer did not issue a recall as they were hoping as long as people would insure there was no debris in their yard, it would not be an issue. During the discovery process, it has been determined there have been a number of complaints filed with the Consumer Products Safety Commission over this design defect.

Failure to
provide
adequate
warning

You are working for a law firm that has been hired by David's homeowner's insurance to handle the liability claim arising from this incident. Your supervising attorney has assigned you to prepare a third party petition against the lawn mower's manufacturer. Please note it has been more than thirty days since we answered the lawsuit. Your attorney thinks it is necessary to file a motion for leave, but wants you to check the applicable provision in the rules of civil procedure. Prepare a third party petition (make up the name of the lawn mower manufacturer) and prepare a motion for leave if necessary and submit to the dropbox.