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DAILY REPORT

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Douglas County Jury Hits Kroger for \$700K in Slip and Fall Trial

GREG LAND

In what the prevailing lawyer said is a sign that nonmetro venues are becoming more amenable to high-dollar verdicts that would have been rare in the not-so-distant past, a Douglas County jury awarded \$700,000 to an elderly man and his wife for a shoulder injury the man suffered when he slipped in a puddle of water at a Kroger store.

“We think Kroger was relying on the fact that this is Douglas County,” said Atlanta solo Michael Baskin, noting that the defense never offered more than “some nuisance money” to settle the case.

“The barometer is changing in these outlying areas,”



Michael Baskin, Atlanta

JOHN DISNEY/ALM

Baskin said. “We were told by the bailiffs and other courthouse folks that this was one of the highest slip-and-fall verdicts ever in Douglas County.”

Baskin also said the jury was impressed by Kroger’s own

video footage showing that the employee responsible for sweeping the area at the time of the accident was actually bagging groceries.

Because Kroger rejected an offer to settle the case for \$400,000 in 2014, Baskin said

he will seek about \$35,000 in attorney fees and expenses under Georgia's offer of judgment statute. That provision allows a party whose offer to settle is rejected and is later awarded 125 percent or more of that offer, to move for attorney fees from the date of the offer.

Tyrone solo Douglas Wilde, who represents Kroger, said he will file posttrial motions. He also stated "with absolute certainty that there was no fabrication of evidence or conspiracy to cover up anything related to this incident."

According to Baskin and court filings, Freeman Lomax, then 75, was shopping at a Kroger in Lithia Springs when he slipped in a puddle in the produce section in January 2014. He suffered an injury that required surgery to repair a torn rotator cuff.

Baskin filed suit in Douglas County State Court later that year, including a loss of consortium claim for his wife, Patti Lomax, who at the time of the accident was undergoing chemotherapy for cancer.

Lomax also had symptoms of a concussion and still has limited mobility in his arm, Baskin said.

Shortly after filing the suit, Baskin submitted the settlement demand seeking \$275,000 for Lomax and \$125,000 for his wife, which Kroger declined.

During a three-day trial before Judge W. O'Neal Dettmering Jr., Baskin said the most important evidence involved suspicious inspection reports.

"We presented evidence that there had been falsification of inspection documents and a falsified report indicating that the area had been inspected that day," said Baskin. "We proved through Kroger's own videotape that that was a lie."

That evidence was "the big bomb," Baskin said.

"So the question I put before the jury was, 'How could this employee be doing a sweep when we can clearly see her bagging groceries?' They could not provide an answer, but we did," he said.

Kroger's position, Baskin said, was that they did not review

the videotape but relied on the inspection report.

In closing statements, Baskin said he asked for \$400,000 for Lomax and \$200,000 for his wife.

On Feb. 8, the jury took about an hour and half to award Freeman Lomax \$500,000 and Patti Lomax \$200,000.

In conversation afterward, Baskin said it emerged one juror had suffered a torn rotator cuff.

"I think that juror was very influential, and they said they thought \$500,000 was a suitable award," Baskin said.

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