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\$2.79M Slip-Fall Verdict Against Kroger Stands

Ga. Supreme Court unanimously denies petition for certiorari from Kroger; record judgment stands

Katheryn Hayes Tucker, Daily Report

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Michael Neff said the Kroger case verdict has been listed as the largest in Georgia history against a grocery store for a slip-and-fall. “Companies need to be held accountable,” he said. *Rebecca Breyer*

The Georgia Supreme Court has unanimously denied a petition for certiorari from the Kroger Co., allowing a \$2.79 million slip-and-fall verdict to stand.

"Corporate responsibility for safety is important, and companies need to be held accountable," said plaintiffs' attorney Michael Neff. He noted that CaseMetrix.com

has listed the verdict as the largest in Georgia history against a grocery store for a slip-and-fall case.

Neff's client is a hairstylist who said she slipped on a clear liquid near the flowers in a Kroger store in 2008, injuring her knees and wrist. The wrist didn't heal, developing instead into a disabling pain syndrome, according to the lawsuit. A jury in Gwinnett County State Court in 2012 awarded Melanie Schoenhoff \$2,640,000 on claims of disabling pain and \$1.7 million in lifetime medical costs and lost wages. The jurors awarded her husband Steve \$150,000 for loss of consortium.

Kroger took the case to the Georgia Court of Appeals, contending that Judge John Doran Jr. erred by not granting the company's motion for a directed verdict. The company argued it was entitled to a directed verdict because the plaintiffs failed to show Kroger had "actual or constructive knowledge" of the spilled water.

The court affirmed the trial judge's decision to deny the directed verdict in a 6-1 decision, indicating that the initial three-judge panel on the case could not come to a unanimous conclusion. Judge Carla Wong McMillian wrote for the majority, joined by Chief Judge Herbert Phipps, Presiding Judge Sara Doyle and Judges Stephen Dillard, Christopher McFadden and Michael Boggs. Presiding Judge Gary Andrews dissented.

"We decide this case under the overarching principle that the granting of a directed verdict is a grave matter," McMillian wrote for the majority. She cited as support a 2001 case involving the same company, *Kroger v. Strickland*, 248 Ga. App 613. That decision said, "In directing a verdict, the trial court takes the case away from the jury and substitutes its own judgment."

Andrews argued that there was no evidence to support the plaintiffs' claim that Kroger had knowledge of the spill that caused the accident. "By denying Kroger's motion for a directed verdict on this basis, the trial court erroneously allowed the jury to speculate or guess that Kroger had constructive knowledge of the liquid on the floor prior to the slip and fall," Andrews wrote.

After the trial, Kroger switched lawyers from Douglas Wilde of Tyrone to Matthew Moffett of Gray, Rust, St. Amand, Moffett & Brieske, who handled the appeal.

"We are disappointed that our Supreme Court did not take the case," Moffett said in an emailed statement. "We agree with dissenting Judge Andrews who correctly opined that jurors should not speculate or guess to render a verdict, which is what they had to do in this case when Kroger's motion for directed verdict was denied.

There was no evidence that Kroger had any actual knowledge of the liquid on the floor before the slip and fall.

"Further, because the plaintiff admitted that the clear liquid in which she slipped and fell was not visible against the white floor as she approached it, as a matter of law, there was no reasonable basis for the jury to find that Kroger had constructive knowledge on the basis that its employee, working 25 feet away from the liquid, could have easily seen and removed it prior to the slip and fall," Moffett's statement continued.

"Although Kroger had no burden at trial to produce evidence to demonstrate its lack of constructive knowledge of the liquid on the floor, the trial court essentially imposed that burden upon Kroger by denying the motion for directed verdict. As the appellate court decision seems to agree with the imposition of this burden, which we believe is contrary to Georgia law, we petitioned the Supreme Court to review the case and make a correction."

The case is *Kroger v. Schoenhoff*, No. A13A1247.

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