

Page Printed From:

<https://www.law.com/dailyreportonline/2024/05/13/not-too-much-court-of-appeals-upholds-1m-nominal-damages-award-in-walmart-slip-and-fall/>



NOT FOR REPRINT

NEWS

## Not Too Much: Court of Appeals Upholds \$1M Nominal Damages Award in Walmart Slip-and-Fall

“Even if the evidence presented at trial would authorize a greater or lesser award than that actually made, we will not disturb the award ‘unless it is so flagrant as to shock the conscience,’” the court opined.

May 13, 2024 at 05:15 PM

Civil Appeals



Alex Anteau



### What You Need to Know

- Walmart appealed a \$1 million verdict in a Gwinnett County slip-and-fall, arguing it was too much for a nominal damages award.
- The plaintiff-appellees, however, argued that the verdict amount needs to be contextualized with the other facts of the case.
- Ultimately, the appellate court agreed.

The Georgia Court of Appeals has determined that \$1 million is not too much for a nominal damages jury award, as argued by Walmart, represented by [Jack Reiter](#) of GrayRobinson, in a Gwinnett County slip-and-fall case [at oral argument](#) in December 2023.

The court’s disposition, issued May 10 and authored by Judge [Trenton Brown](#), reflects Presiding Judge [Stephen Dillard](#) and Senior Judge [Andrew Fuller](#)’s expressions of reluctance to go back and alter jury verdicts during oral argument.

Brown’s first prong of analysis began with giving deference to the jury court and trial judge, concluding that, “Even if the evidence presented at trial would authorize a greater or lesser award than that actually made, we will not disturb the award ‘unless it is so flagrant as to shock the conscience.’”

He also noted: “As to the amount, Leverette sought \$5,596,168 in damages and the jury awarded her \$1,000,000—less than one-fifth of the amount requested.” This reflected the plaintiff-appellee’s argument that previous case law compares the nominal award relative to the claimed actual damages, and if the nominal award varies too much, the courts start to say it’s excessive when Dillard asked them what an extreme award could be.

“We believe the affirmance of the verdict, and the trial court’s order refusing to disturb it, was the clear right outcome under well-established Georgia law,” said plaintiff-appellee counsel [Max Thelen](#) of Ashby Thelen Lowry. “It is gratifying to see the Court of Appeals agree.”

At oral argument, Reiter, arguing for Walmart, contended, “[The verdict] simply cannot be a million dollars on its face. It demonstrates an inherent bias, prejudice or an award based on sympathy,” and the defendant-appellant pointed out that while the plaintiff asked the jury for medical damages, all they awarded was the nominal damages sum, despite the plaintiffs not asking for nominal damages.

At first, Dillard said he was inclined to agree with the appellants, remarking, “[My gut reaction was] that seems like a lot of money for nominal damages. But then when I actually read [the plaintiff-appellee’s] brief and started getting into some of the precedent ... why couldn’t the award simply be a reflection of [the jury saying]: ‘We don’t know how to but based on the totality of everything we heard as a jury, we’re going to give this award under nominal damages based on that very specific definition’?”

Reiter was not available for comment at the time of publication and it is unclear if the defendant-appellants plan on seeking certiorari.

The case is *Walmart v. Leverette*, No. [A24A0115](#), in the Georgia Court of Appeals

Read the opinion below.

FOURTH DIVISION  
DILLARD, P. J.,  
BROWN and PADGETT, JJ.

NOTICE: Motions for reconsideration must be physically received in our clerk’s office within ten days of the date of decision to be deemed timely filed.

May 10, 2024

In the Court of Appeals of Georgia

A24A0115. WALMART STORES EAST, LP v. LEVERETTE.

BROWN, Judge.

Bettie Leverette sued Walmart Stores East, LP (“Walmart”), seeking damages for future medical expenses and past and present pain and suffering, after two Walmart employees moving a heavy load with a pallet jack ran into Leverette. The jury

#### RELATED STORIES

[\*\*‘What If the Jury Awarded \\$1B?’: Ga. Appellate Court Weighs Maximum for Nominal Damages\*\*](#)

[\*\*Was \\$15M Too Much?: Defendants Argue for New Trial in Macon-Bibb Medical Malpractice Appeal\*\*](#)

[\*\*‘Not Something You See Often’: How Butler Kahn Bucked Conventional Wisdom to Win a \\$28M Verdict\*\*](#)

# **'I Don't Know If I Buy That': Judge Hesitant to Attribute Fee Award to Arbitrator 'Misconduct'**

NOT FOR REPRINT

---

Copyright © 2024 ALM Global, LLC. All Rights Reserved.