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FULTON COUNTY DAILY REPORT

## COLLAPSE OF KMART DISPLAY LEADS TO \$2.8M JURY AWARDS



FILE PHOTO



**Matthew C. Flournoy, above, and Jesse E. Barrow III, right, were the attorneys for a 45-year-old woman hit by a tall display cage containing plastic balls. The incident happened in a Kmart store in the Augusta area.**



**TRISHA RENAUD**  
*Senior Reporter*

A metal display cage full of plastic balls that toppled over onto a shopper has cost Kmart nearly \$2.8 million.

A Cobb State Court jury last week awarded a Savannah woman \$2,567,548 for injuries sustained in 1991 when the cage toppled over on her while shopping at an Augusta area Kmart.

In addition to the award to Elizabeth Capilos, 45, the jury awarded her husband, Father Nicholas Capilos, a Greek Orthodox priest, \$210,900 for loss of consortium. *Capilos v. Kmart Corp.*, 96A-5531-5 (Cobb St. Feb. 25, 1994).

Kmart counsel F. Earl Wiggers of Atlanta, who tried the case with Robert J. Kiser of Kiser & Associates, says he was "thunder-

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# COBB JURY AWARDS \$2.6 MILLION TO SAVANNAH WOMAN FOR KMART INJURIES

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struck" by the verdict.

The winning plaintiffs' lawyers, Matthew C. Flournoy of Marietta's Flournoy & Gentry and sole practitioner Jesse E. Barrow III of Atlanta, say any notion that the verdict resulted from a runaway jury would be wrong, because this jury carefully analyzed the evidence of Capilos' injuries.

Capilos, according to Flournoy, was looking at curtains with her children and husband in the Kmart June 12, 1991, when an

8-foot, 9-inch metal cage fell on her from behind.

Capilos initially didn't believe she was hurt but later developed severe neck and spine problems that required three surgeries, the removal of a disc and fusion of bones on her neck, Flournoy says.

As a result, Capilos could no longer do her household work without help, he says, nor could she participate in sports she had previously enjoyed, including swimming and field hockey.

The suit was originally filed in Columbia County but was dismissed and

refiled in Cobb, where Kmart's agent for service of process is located.

Kmart took a "hard-line attitude," Flournoy says, and offered \$45,000 to settle the case the week before trial, a figure Wiggers confirms.

The company had hinted at pre-trial sessions that either Capilos' children or

condition in her back, Wiggers says, which had been exacerbated—but not caused—by the accident.

The issue in dispute was not that Capilos was at fault, he says: "The problem was dollars."

Trial began Feb. 22 before Cobb State Court Judge Robert E. McDuff. The

jury deliberated nearly three hours before returning a verdict Feb. 25, according to Flournoy.

Barrow says the plaintiffs' lawyers suggested award sums to the jury but says their chart itemized only costs, not damages.

**As a result of her injuries, Elizabeth Capilos could no longer do her household work without help, her lawyer says, nor could she participate in sports she had previously enjoyed, including swimming and field hockey.**

an unknown person may have knocked over the cage, Flournoy says, then admitted at the beginning of trial that the metal brackets anchoring the cage were not in place.

Wiggers says the defense did not contend at trial that the children or an unknown person was responsible for the toppling cage. Kmart did admit that, had the cage been properly anchored as store personnel thought it was, it would not have fallen.

The store's main defense was that Capilos had a pre-existing degenerative

They argued that these were costs that would have to be imposed on someone, and that someone should not be the Capiloses.

The jury stuck closely to the amounts the plaintiffs' lawyers suggested on costs but doubled the sum for past pain and suffering, Flournoy says.

Punitive damages were not sought.

Wiggers, a sole practitioner, says his client has not yet decided whether to appeal. □

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