

■ \$500,000 VERDICT

Shopper hit in head with box wins jury verdict

PERSONAL INJURY

■ **Venue:** Cass County Circuit Court

■ **Case Number/Date:** 15CA-CC00266/Nov. 30, 2018

■ **Judge:** Michael Wagner

■ **Last Pretrial Demand:** \$480,000

■ **Last Pretrial Offer:** \$40,000

■ **Defendant's Expert:** Dr. Dale Halkafer, Springfield (neuropsychology)

■ **Caption:** Patricia and Thomas Kilcourse v. Hy-Vee Inc.

■ **Plaintiffs' Attorneys:** Grant L. Davis and Wes Shumate, Davis, Bethune & Jones, Kansas City

■ **Defendant's Attorneys:** Jeffery A. Kennard and Brendan M. Quinn, Schamhorst Ast Kennard Griffin, Kansas City

By ALAN SCHER ZAGIER

Special to Missouri Lawyers Media

A Cass County jury awarded \$500,000 to a woman who was hit in the back of the head by a 20-pound box at a grocery store.

Patricia "Page" Kilcourse and her husband, Thomas, sued Iowa-based Hy-Vee Inc. in December 2015, six months after a box containing foam storage pads fell from a loaded cart while she was shopping at its store.

According to the suit, Kilcourse suffered a traumatic

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Wes Shumate, Kansas City plaintiff's attorney

brain injury that caused short-term memory loss, severe, "persistent and debilitating" headaches, light sensitivity and other complications.

"They call it 'mild' traumatic brain injury," said Kansas City plaintiff's attorney Wes Shumate, who represented Kilcourse, 58. "But it's only mild if it's not your brain. This really altered the path of her and her family's lives."

A security camera video of the incident shows Kilcourse, with her back turned and walking alongside her daughter, being sideswiped by the box as a store employee attempted to maneuver the loaded cart in the opposite direction. The two women were rounding a tight corner as Kilcourse's daughter pulled a shopping cart.

The employee, identified by Shumate as the produce manager, is then seen swiftly walking away from Kilcourse, while another employee hurries to check on the injured customer.

After a four-day trial, the jury deliberated for just under three hours before delivering its verdict. Shortly before trial, the defense admitted to negligence, which shifted the courtroom focus to the extent of Kilcourse's injury and her subsequent care, Shumate said. Attorneys for Hy-Vee did not respond to requests for comment.

Shumate acknowledged that his client had "lots of gaps in treatment" after the accident as she saw a succession of concussion specialists and neurologists. Questions were also raised about whether her neck and lower-back pain were connected to a previous injury, he said.

"It was a challenge to explain that there is very little treatment for mild [traumatic] brain injuries," added Grant Davis, lead plaintiff's counsel. "That's why she had so few medical treatments."

Kilcourse and her daughter, both avid swimmers at the time, had stopped at the store on their way to a morning workout to buy post-swim snacks, according to their attorney. ■