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Jury awards surgeon \$3.9 million

Wal-Mart ordered to pay damages to doctor who tripped in Sam's Club parking lot.

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KALAMAZOO GAZETTE

A Kalamazoo County Circuit jury awarded an injured heart surgeon \$3.9 million dollars in damages Thursday in a trip-and-fall lawsuit against retail giant Wal-Mart Stores Inc.

Charles Butler, 54, of Kalamazoo, alleged that his spinal cord was damaged when he tripped over an extension to a commercial barbecue grill while carrying a bulk package of paper towels in the parking lot of Sam's Club, 665 Mall Drive in Portage.

The fall left Butler, the former director of cardiac surgery for Bronson Methodist Hospital, with cervical central cord syndrome. The illness causes his hands to shake uncontrollably and has halted his 20-year medical career.

After nearly five hours of deliberating, the six-person jury found Wal-Mart, which owns Sam's Club, 75 percent at fault for Butler's injuries and decided that the doctor was 25 percent to blame for the accident. Their split in



Charles Butler

blame reduced Butler's damages from an initial high of \$5.2 million.

The amount is one of the largest ever awarded by a Kalamazoo County Circuit Court jury. The largest share of the verdict - \$4 million - was assessed against Wal-Mart because of economic loss Butler is expected to suffer for the remainder of his work life.

The jury, which voted 5-to-1 in favor of the doctor, awarded much smaller damages for his pain and suffering, mental anguish, humiliation and embarrassment.

"I believe what I'm pleased about is the jury recognized that that was a dangerous condition and that (the barbecue grill) shouldn't have been there in the first place," said Steven Weston, one of Butler's

attorneys.

But Weston also is preparing for what could be a challenge to the verdict from Wal-Mart.

The retail giant can raise various legal issues to reduce the award. Butler is receiving disability insurance for his fall and a judge could reduce his jury award as a result of a civil law that bars a plaintiff from being compensated twice for any injury.

But Weston also can ask a judge to increase the jury's award in liability areas such as pain and suffering and mental anguish.

"You can't compensate the man for what he has lost," said Weston. "How do you put a value on this?"

Jeffrey Sherbow, a Troy attorney representing Wal-Mart, said that he may appeal the jury's verdict. He also said that the issue of collateral sources may help reduce the jury's award.

"I'm disappointed I wasn't able to establish ... a lack of negligence on the part of Sam's Club," Sherbow said.

Butler, who declined to comment on the award, was embraced by juror Tammy Danger of Richland after the verdict was announced. Danger wished Butler well, telling him she understood the severity of his depression and emotional loss.

"I really wanted to tell you how I felt," said Danger, addressing Butler and his wife, Penny. "Four million wasn't enough."

Please see **BUTLER, A2**

BUTLER

From Page A1

Danger would have given Butler \$11 million, a figure his attorneys mentioned during the trial. She said that Butler could have saved many more lives during the 10 to 15 additional years his attorneys say he planned to work.

The 28-year-old mother of two also wanted Wal-Mart to be held responsible for a greater percentage of the blame, but she said other jurors disagreed.

Some jurors wanted Wal-Mart to receive only 70 percent of the blame and wanted Butler to receive nothing for future mental

anguish and pain and suffering.

"I think people don't understand what clinical depression is," said Danger. "I honestly feel if they had any concept of what depression is that you live with it, that you die with it, that you don't just get over it. You don't just wake up in the morning and suddenly feel better because the trial is over."

She also offered some suggestions for Wal-Mart.

The store should have kept the barbecue grill attended and located in the back of its parking lot in a well-defined area.

"It's a parking lot," Danger said. "You park cars in it. You don't park barbecues in it or it would be a barbecue lot."