

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2005

WAL-MART STORES, INC.,
Appellant,

v.

MICHAEL JOHN BUFALO, as Personal Representative
of the Estate of **MARYANN DEGENNARO**,
Appellee.

No. 4D04-4580

[August 24, 2005]

PER CURIAM.

As the appellee concedes, the lower court erred when it granted a new trial on damages alone, in this slip-and-fall case, without first granting a motion for additur. See *Waxman v. Truman*, 792 So. 2d 657 (Fla. 4th DCA 2001); § 768.74, Fla. Stat. (2004). Before a new trial on damages can be awarded, section 768.74, Florida Statutes, requires the trial court to “review the amount of such award to determine if such amount is excessive or inadequate” and if so, the court “**shall** order a remittitur or additur, as the case may be.” § 768.74(1), (2), Fla. Stat. In the instant case, the trial court denied a motion for additur but granted a motion for new trial on damages alone. This was error.

We reverse the order granting the new trial on damages alone and remand for further proceedings.

Reversed and Remanded.

GUNTHER, WARNER and TAYLOR, JJ., concur.

* * *

Appeal and cross-appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; J. Leonard Fleet, Judge; L.T. Case No. 01-019659 CACE (08).

Maritza Peña and Michael Rotunno of Marlow, Connell, Valerius, Abrams, Adler, Newman & Lewis, Coral Gables, for appellant.

No brief filed for appellee.

Not final until disposition of timely filed motion for rehearing.