

The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

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Statewide Jury Verdict Coverage - Published Monthly

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Unbiased and Independently Researched Jury Verdict Results

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Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts in Alabama including circuit, presiding judge, parties, case number, attorneys and results.

Medical Negligence - The plaintiff suffered a facet fracture in a stop sign crash – then at the hospital, a radiologist was blamed for missing the fracture, the undiagnosed facet injury leaving the plaintiff a permanent paraplegic – in this suit, plaintiff sued the driver, her own UIM carrier and the radiologist

Cox v. Agee et al, 04-0627

Plaintiff: David H. Marsh, Nat Bryan and Susan Silvernail, *Marsh Rickard & Bryan*, Birmingham

Defense: Thomas H. Keene and William S. Haynes, *Rushton Stakely Johnston & Garrett*, Montgomery for Agee and Alabama Imaging (the radiologist)

J. Lee Ryals, *Slaten & O'Connor*, Montgomery for Warner estate (auto tortfeasor)

T. Randall Lyons, *Webster Henry & Lyons*, Auburn for State Farm (UIM)

Verdict: \$6,000,000 for plaintiffs jointly and severally against all defendants

Circuit: Lee, 8-11-06

Judge: Jacob A. Walker

There was a serious stop sign crash in Lee County on 5-20-04. It occurred as Linda Warner ran a stop sign and crashed into a vehicle driven by Jack Cox. Warner died in the crash.

Key to this case, his wife, Claire, then age 79, was badly hurt. She was taken from the scene to the ER at East Alabama Medical Center. Her obvious initial injuries included a fractured sternum, a bruised heart and dislocated joints in her hand. There was also an apparent soft-tissue cervical injury.

At the hospital for two days, a radiologist, Michelle Agee, read a CT scan of Claire's spine – she confirmed the soft-tissue injury. Claire was released from the hospital with a soft collar. What Agee had missed was a facet fracture at C4-5 – in the soft-collar, Claire drove 350 miles to her home in Jacksonville, FL.

Just after arriving home, Claire's spine subluxed and her spinal cord was damaged. Despite a repair attempt in

the Mayo Clinic in Jacksonville, Claire is now a permanent quadriplegic. Her life care plan was quantified by LuRae Ahrendt, Norcross, GA. A day in the life video was also produced which showed the effects of this injury upon Claire. [Jack was also hurt in this crash, but his injuries were minor as compared to his wife – he settled before trial.]

In this lawsuit, Claire and her husband (a consortium claim) targeted three defendants. The first was Warner – that claim was simple, Warner's negligence in causing the crash setting off the injury cascade. Similarly, she sought UIM coverage from her carrier, State Farm. Both Warner and the insurer admitted fault – however it was their defense that the totality of Claire's injuries were not related to their negligence. Warner had \$20,000 limits, State Farm being responsible for the next \$230,000.

That then went to the third and primary claim in this lawsuit. Claire alleged negligence by Agee in misreading the CT scan and missing the facet fracture. A radiologist, Dr. Nancy Major, Raleigh, NC, identified both the error and that it led to an unstable spine and the resulting quadriplegia. Also for Claire was Dr. John Heller, Orthopedics, Atlanta, GA – it was his testimony that the facet fracture was clearly evident and that had it been detected, steps could have been taken to stabilize her spine and prevent this injury.

Agee defended that while the fracture might have missed, there was no evidence Claire's spine was unstable and the use of a c-collar was reasonable. A defense expert was Dr. Michael Gorum, Neurology, Columbus, MS.

The jury's verdict was assessed against all three defendants. Claire took a general award of \$5.5 million, the jury valuing her husband's consortium interest at \$500,000. The verdict totaled \$6,000,000. Before a judgment could be entered, the matter was dismissed as settled.