

TUESDAY, FEBRUARY 13, 2018

# DAILY REPORT

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## Cobb Jury Hits Defense With \$2.7M Verdict for Low-Speed Crash

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A COBB COUNTY jury awarded \$2.7 million to a man injured in a low-speed car accident, brushing aside the defense's claims that the plaintiff's neck surgery was unnecessary.

Plaintiff Art Smith was only 31 at the time of the accident but had undergone prior treatment for neck injuries several years earlier because of another wreck and work-related strain.

"Our position was that the question for the jury was whether he had a painful cervical neck injury before the wreck. The law is that, if he did not, they have to compensate you," said Matthew Cook, who tried the case with wife and law partner Kate Cook of Gainesville's Cook Law Group.

"We said it's same thing as if you knock down an 83-year-old grandmother and say, 'You should have been tougher.'"



JOHN DISNEY/ALM

**Matt (left) and Kate Cook of Cook Law Group, Gainesville, Georgia, represented a man who sued for injuries in a 4 mph collision at a stoplight in Kennesaw.**

The highest defense offer to settle pretrial was for \$450,000, he said.

"Defense counsel told us they thought that was a very generous offer and that they really wanted to try the

case," said Kate Cook. "Matt and I had not tried anything recently, so we decided to accommodate them."

Defense attorneys Michael Kendall and Samantha Mandell

of Douglasville's Kendall Law group did not reply to requests for comment.

According to Matt Cook, court filings and a plaintiff's summary, the wreck occurred in 2011 in Kennesaw when Smith and defendant John Bishop were both stopped a traffic light.

Bishop, who was driving a Ford F-150 pickup truck, "said he wasn't paying attention and, when he saw traffic start to move out of his peripheral vision, he rolled into Art," Cook said.

"He said he never even touched the gas."

Smith's Toyota Camry sustained \$1,400 in damage, but—after telling an investigating officer he was OK—drove away. A data recorder in the Toyota indicated it was traveling about 4 mph when the crash happened.

Cook said the pickup belonging to Bailey's employer, White Oak Landscape Co., was undamaged. Bailey was cited for following too close.

Smith began to experience stiffness in his neck later that day and went to an emergency room. He tried physical therapy, but an MRI revealed herniated discs. He underwent a cervical fusion eight months after the accident.

Smith, a tractor-trailer driver, was out of work for five months. He has returned to work but still needs pain management, chiropractic and acupuncture therapy. He is likely to need more surgery, his filings said.

Smith's lawyers sent a demand letter in 2013 "for what we thought was the \$1 million policy limit" of White Oak's Donegal Insurance Group coverage, Cook said.

"Despite the fact that we asked for their coverage limits and they're supposed to respond to discovery requests, we only found out six years later there was \$7 million available," Cook said.



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—Kate Cook,  
Cook Law Group, Gainesville

The insurer responded with a \$75,000 offer, and Smith sued in Cobb County State Court.

Mediation before Tom Harper of Bay Mediation & Arbitration Services failed, and trial began Jan. 29 before Judge Carl Bowers

Cook said the defense struck three black jurors during jury selection

"We represented an African-American client in a predominantly white venue, and we believed these strikes were biased," Cook said.

The Cooks challenged the strikes as violations of the U.S. Supreme Court's 1986 decision in *Batson v. Kentucky*, 476 U.S. 790, which held jurors may not be excluded based solely on racial grounds.

Bowers ruled that two of the jurors must be placed on the panel.

During a five-day trial, Cook said the defense relied on two experts: accident reconstructionist Kelly Kennett and Columbus orthopedic surgeon Thomas Walsh.

Kennett testified that the accident's impact was similar to what one might experience on a carnival ride but didn't say it could not have caused Smith's injuries, the Cooks said.

Walsh, who the jury was told received \$40,000 for his testimony, said Smith was exaggerating his injuries and did not need surgery, testimony that was "completely discredited" by Smith's MRI and medical records.

"We didn't have any experts," said Cook, who relied on Smith's treating orthopedic surgeon, Lee Kelley of Peachtree Orthopedics, and physical rehabilitation specialist Anantha Kamath of Dallas, Georgia.

Cook said he closed by asking for between \$1.7 million to \$2.7 million in damages.

In conversation afterward, he said jurors were complimentary toward the plaintiff's witnesses, and "did not have any faith" in defense expert Walsh. 