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\$5M verdict in deck collapse

Gwinnett jury holds landlord firm responsible for woman's death because it failed to inspect for defects

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THE FAMILY OF a woman who died after the outside deck of her house collapsed beneath her won a \$5 million verdict against her landlord from a Gwinnett County jury Monday.

The plaintiffs argued that the landlord, Georgia Marketing & Leasing, was responsible for the death of Tammy Cowart because the company never ordered an inspection that would have revealed the deck was nailed to the house instead of bolted as required by building codes.

Cowart, a 35-year-old stay-at-home mother of four, was sitting on a plastic chair on the deck July 6, 2008, when the deck broke away from the house and she fell about 3 or 4 feet to the ground, said her family's attorney, John Mabrey. Cowart suffered a bulging disc, bruises and neck pain, and she died two days later from complications from prescribed pain medications. Her doctors weren't sued.

"The deck was defective, no question about it. If the defendants had had an inspector look for



ZACHARY D. PORTER

John Mabrey, left, and S.K. Rod Dixon argued that the landlord's failure to inspect a home's deck led to a woman's death. "The deck was defective, no question about it," Mabrey said.

structural defects, it would have easily been discovered," Mabrey said. "The defendants made an assumption that the building inspection had been done."

In addition to the \$5 million verdict on the wrongful death claim, the jury awarded an additional \$50,000 verdict against the leasing company and its owners, Cain Harris

and Jaime Robledo, for damages incurred before Cowart died.

The jury of 10 women and two men put a high value on Cowart's life even though she wasn't earning an income, Mabrey said. He had requested a range of between \$7 million and \$10 million during his closing argument.

"They recognized the value to society of women who are not employed outside the home," he said.

Defense attorney Weymon Forrester of Forrester & Brim in Gainesville, Ga., couldn't be reached for comment.

The defense portion of the pretrial order states, "It is undisputed that the deck was nailed to the house and not bolted. This was a latent 'defect.' Due to the configuration of the deck this defect was not visible, and the Defendants were unaware of it. Under all these circumstances, it is denied that the incident was caused by the negligence of any of the Defendants."

Testimony from an expert witness, building inspector Joe Davidson, showed the jury that an inspection would have exposed the defect and that the landlords were negligent, said S.K. Rod Dixon of Dixon Mills, co-counsel for the plaintiffs.

"Their whole story was that they assumed the deck and the home were safe, but they never asked anyone. They never checked," Dixon said.

The accident happened after Cowart and her family had returned to their home in Lula, Ga., after a Fourth of July weekend away, Mabrey said. The family had rented the three-bedroom, two-bathroom house for nearly two years.

Cowart was taken to the emergency room at Northeast Georgia Medical Center and

prescribed mild pain medications, according to the pretrial order. The next day, Cowart visited her psychiatrist for a previously scheduled appointment, and he prescribed additional medications.

Later that day, the hospital asked Cowart to return for additional testing after a radiologist found an abnormality on her cervical spine CT scan. Because the pain medication she had initially received didn't relieve her pain, she was prescribed stronger drugs, including Percocet and a higher dose of Ibuprofen. Her husband found her dead in her bed the next morning.

An autopsy found that the medications combined to cause respiratory depression and death, Mabrey said.

When members of Cowart's family took the stand, the jury was able to see that she was "a very special lady" who took care of a child with autism and was a good mother to all of her children, who are now between 9 and 19 years old, Mabrey said.

The manufactured home they leased had been built in 2002, and Georgia Marketing & Leasing bought it shortly afterward. Another family had lived in the house before the Cowart family moved in in 2006.

Cross-examination of the defendants helped persuade the jury that they hadn't acted as responsible landlords, Dixon said.

During Robledo's testimony, he said he didn't know who attached the deck to the home, whether it was the original home owner, the renter or even Superman, Dixon said.

"During closing, I told the jury that this guy wasn't taking this whole process seriously. How seriously could he have been taking it when he blamed Superman? I

turned to them and asked, 'Who was responsible for this; was it Batman?'" Dixon said. "The jurors got it. It wasn't meant to be a funny comment. It was a comment on how he comported himself."

The defense tried to shift blame to the original builder of the deck, the doctors and Cowart, Mabrey said.

Forrester questioned whether the doctors were negligent and whether Cowart took the medications correctly, Mabrey said.

"All the way up until trial, the defendants were contending that various non-parties were responsible, but before trial they withdrew those contentions," he said.

The jury deliberated about 7 hours on Friday and Monday before reaching its verdict, Mabrey said. The trial, before Gwinnett County Superior Court Senior Judge Fred Bishop Jr., lasted six days and started Dec. 10.

The jury didn't apportion fault to Cowart or any other parties besides Georgia Marketing & Leasing for the wrongful death claim, Dixon said.

The verdict should be recoverable, he said. The defendants were insured by State Farm, and they owned between 40 and 50 homes for lease at the time of the accident, Dixon said.

The claim was brought by Cowart's ex-husband, John Harden, who was the administrator of her estate, along with her husband, Lee Cowart, on behalf of her children.

The case is **Harden v. Georgia Marketing & Leasing**, No. 11-A-07297-1. 