

SOUTH CAROLINA LAWYERS WEEKLY

DECEMBER 10, 2018 | VOL. 18, NO. 16 | SCLAWYERSWEEKLY.COM

Teacher, son settle car crash suit for \$6M

■ BY BILL CRESENZO

bcresenzo@sclawyersweekly.com

A South Carolina school teacher and her 12-year-old son who both suffered severe brain injuries as a result of a car wreck have reached a \$6.05 million confidential settlement with the at-fault driver and his employer, their attorney reports.

David Yarborough of Yarborough Applegate in Charleston reported that the 45-year-old woman and her son were driving home from school on a rainy day in December 2016. They were about to turn into their driveway when another vehicle traveling in the opposite direction hydroplaned, crossed the center line and crashed head-on into their car, Yarborough said.

Both mother and son suffered diffuse axonal injuries, where the brain shifts inside the skull upon impact, and the son had facial fractures.

"They both continue to struggle both emotionally and cognitively and will require future medical care throughout their lives," Yarborough said.

The pair sued, claiming negligence against the driver, whom Yarborough said was speeding, and negligent entrustment on the part of his employer.

Yarborough said the loan payments for the driver's vehicle were paid directly from the employer's bank account, and the employer deducted payments from the driver's paycheck. The driver, a landscaper, said he and his boss co-owned the vehicle and that if his employment was terminated before the loan was paid off, he had to give the vehicle back to his boss.

Yarborough said that less than a



Yarborough

week after the landscaper was hired, he was arrested for possession of marijuana and cocaine, which were found inside and just outside of the vehicle.

The landscaper admitted to using marijuana while driving the vehicle, Yarborough said. The employer hired him despite a background check that revealed the driver's extensive criminal history, including previous possession of crack cocaine and marijuana charges.

His employer was informed of subsequent arrest for drug charges, but took no action to fire the driver or take back the vehicle. The crash occurred one week later after the arrest.

The driver admitted he crossed the center line, but blamed bad tires, Yarborough said.

The employer raised several defenses, Yarborough said: that he was simply a guarantor who had no ownership or control of the vehicle and there is no guarantor liability in South Carolina, that the driver was not working at the time of the collision and there was no evidence of alcohol or drug use at the time of the collision, and that even if he co-owned the car negligent entrustment was still inapplicable because the driver had an equal right to it.

As a result, an insurance adjuster initially assigned only a nuisance value to the case.

"We knew we didn't have title or insurance in the employer's name, so we cobbled together a wall of oth-

SETTLEMENT - AUTOMOBILE ACCIDENT

Amount: \$6.05 million (\$4 million from employer personal liability policy, \$2 million UIM policy limits, and \$50,000 policy limits from at-fault driver)

Injuries: Diffuse axonal injuries to the brain, facial injuries

Case name: Withheld

Court: Withheld

Date of Settlement: Oct. 30

Plaintiffs' Attorney: David Yarborough of Yarborough Applegate in Charleston

Defendants' attorneys: Withheld

er evidence from small stones—language from the financing documents, payments being debited from the employer's bank account, and the alleged agreement that employee had to return vehicle if he was terminated before it was paid off—to establish control or co-ownership," Yarborough said. "Ultimately, they were convinced of our theory."

Details about the case, including the names of the parties involved and their attorneys, were withheld subject to a confidentiality agreement.

Follow Bill Cresenzo on Twitter @bcresenzosclw