

SOUTH CAROLINA LAWYERS WEEKLY

OCTOBER 24, 2016 I VOL. 16, NO. 9 I SCLAWYERSWEEKLY.COM I \$8.00 PER COPY

School fight leads to bad faith claim, \$3 million settlement

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A case stemming from a school fight that could have potentially been resolved for a \$100,000 homeowners' insurance policy instead was settled for \$3 million, an attorney for the plaintiff has reported.

Many facts of the case have been withheld pursuant to a confidentiality agreement, but David Yarborough of Yarborough Applegate in Charleston said that the teenage plaintiff, John Doe, was seriously injured when his head struck the concrete during an altercation at school. Doe suffered, among other injuries, a mild traumatic brain injury and sued the "Smith" family for negligently causing the injuries.

Yarborough said the bodily injury coverage portion of the Smiths' homeowners' policy would "arguably" have covered his client's claim (he listed \$89,000 in medical bills), but that when the family took the lawsuit to its local insurance agent, rather than forwarding the lawsuit to the claims department, the agent told the parents to call an 800 number and report the claim themselves.

The lawsuit was not timely answered, Yarborough said, and an entry of default led to more than \$5.1 million in judgments against the Smiths.

"After judgments were entered against the Smith family, they each assigned to Doe all rights, claims and causes of actions then possessed by them against Smith's insurance company and agent for mishandling of the lawsuit in the underlying lawsuit," Yarborough wrote in an email.

Yarborough said that counsel for the insurance company knew about the default entry months before the judgment was entered and never took any



David Yarborough



Lydia Applegate



Douglas E. Jennings

SETTLEMENT REPORT

NEGLIGENCE/BAD FAITH

Amount: \$3 million

Injuries alleged: Mild traumatic brain injury

Case name: Confidential

Court: Confidential

Case No.: Confidential

Mediator: Tom Wills of Charleston

Date of award: Sept. 6

Attorneys for plaintiff: David Yarborough Jr., Lydia Applegate and Douglas Jennings of Yarborough Applegate in Charleston

Attorneys for defendant: Confidential

action to protect its insured.

"This information elevated the case from one of simple carelessness on behalf of the agent to one of egregious bad faith on the part of the insurance company."

Doe sued the agent and the insurance company, alleging negligence, bad faith, breach of contract, and negligent misrepresentation, alleging that the agent had a duty to file the claim with the claims department and that the insurance company had a duty to investigate and defend the lawsuit and protect its insureds.

In the bad faith case, Yarborough said, the insurance company contended

that there was no coverage because the Does failed to call the claims department as the agent had instructed and because the underlying assault was excluded by the policy because it was an intentional act and because Smith was convicted of a crime as a result.

Yarborough said that the insurance company withheld emails and refused to produce its in-house lawyer and corporate representative for deposition. But days after being court-ordered to do so, he said, the case was settled for \$3 million at its second mediation.

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