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Amusement ride injury results in \$9.9M settlement

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A Lowcountry lawyer has negotiated a \$9.9 million settlement for a client who was injured on an amusement ride last summer.

David B. Yarborough Jr. of the Yarborough Applegate firm in Mount Pleasant said he reached the settlement agreement during a mediation session Aug. 24. The deal included a blanket confidentiality clause that prevents him from disclosing any details about the case that could identify the defendant.

Yarborough's client, a 44-year-old mother of two young boys, was ejected from a "commercial recreational amusement ride" in July 2011 and sustained head trauma which caused her brain to swell, he said.

She went home after the accident with a throbbing headache, but her husband rushed her to the emergency room hours later when she began vomiting and having difficulty speaking. Surgeons had to remove a piece of her skull to allow her brain to expand.

She spent about two months in the hospital and now suffers from frequent seizures, severe mood swings and needs to be watched constantly by a nursing attendant, according to Yarborough.

"While she's talking to you she may burst out laughing or crying or go into a seizure and fall to the ground," he said. "It's the unpredictable nature of her brain injury that makes it so dangerous."



**David B.
Yarborough Jr.**



**William E.
Applegate IV**



**Douglas E.
Jennings**

Yarborough hired a team of private investigators to probe the ride's operation. Working with an off-duty police officer and using laser and radar detection devices, the team determined that the defendant's amusement ride was being operated at twice the manufacturer's recommended top speed of 15 mph.

"It certainly helped to have evidence that the ride was being operated in what we considered to be a reckless manner," he said. "Before that all we had was the word of my client and some friends of hers who were also on the ride."

Despite that evidence, the defendant denied any negligence in the accident and argued that the plaintiff was barred from recovery because she'd signed a risk and liability waiver before boarding the ride.

But Yarborough contended that the waiver was ambiguous and did not explicitly include the ride that had injured his client. And even if the waiver had been inclusive, he asserted that

state law does not allow a release for reckless conduct.

"It's not reasonable for my client to anticipate that the operator of a ride is going to willfully ignore the bright red warning sign printed on the side of the equipment that says

'Do not operate in excess of 15 mph,'" he said.

Both sides agreed to settle the case after a five-hour mediation session headed by Thomas J. Wills of Wills, Massalon & Allen in Charleston. During the session, an owner of the defendant company made an unusual request to have a few minutes alone with the plaintiff and Yarborough.

"We went in without his lawyers and without the mediator or insurance adjuster and he gave the most heartfelt apology that I've ever seen in the 15 years that I've been doing this," Yarborough said. "He wept as he apologized to my client."

Yarborough said the settlement, which exhausted the defendant's available insurance coverage, is a "life-changing amount of money" to the plaintiff and her family. He also added that the defendant continues to operate the ride that injured his client.

"But I doubt that it's being operated in the fashion that it was before," he said.