

# Head injury yields \$1.1 million settlement

## Boy fell off cliff during field trip

A boy who suffered a brain injury during a school field trip hiking accident settled his Cole County case for \$1.1 million.

The plaintiff, Jesse C. Rodriguez Jr., was 13 years old and in seventh grade on May 11, 2005, when he went on a field trip with a group of 70 students to Ha Ha Tonka State Park in Camdenton. Four of the five defendants — three teachers, Dana Ilgenfritz, Shaun Fisher and Michelle Vernon, and one school staff member, Terry Atteberry — went on the field trip to supervise the children.

According to Chad Lucas, Rodriguez's Kansas City attorney, Rodriguez was hiking the park's Island Trail with Atteberry and Ilgenfritz and 35 other students when he slipped and fell more than 30 feet off a cliff. Bruce Farmer, one of the attorneys for the defendants, said that there were only about 25 students on the Island Trail at the time of the incident.

"[The case] was hard in that we never really were able to pin down from talking to the kids what exactly happened on top of the cliff," Lucas said.

According to Lucas, no supervisors were around when Rodriguez fell. He said Atteberry was leading the group and yelled back to Ilgenfritz, asking whether the group should go on when they came across a big hole in the trail. "Instead of stopping before the hole, [Atteberry] decided to help the kids one by one, and after that they would stop and figure out if they would continue on this path," Lucas said.

"As she was standing in the hole, she realizes that the kids past the hole are not stopping, and she yells out for them to stop but at this point has no idea where all the kids are," Lucas said. "She admitted

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### PERSONAL INJURY/NEGLIGENCE

■ **Court:** Cole County Circuit Court

■ **Case Number/Date:** 05AC-CC00756 / Jun. 19, 2008

■ **Judge:** Richard Callahan

■ **Plaintiffs' Experts:** Dr. William L. Bainbridge, St. Augustine, Fla. (field trip planning and supervision); Dr. Terry Winkler, Springfield (future medical needs); Wilbur Swearingin, Springfield (vocational rehabilitation); Dr. Gregory W. Hornig, Kansas City (neurosurgery/physical harms); Dr. George Johnston, Columbia (neuropsychology-cognitive harms); John Ward, Prairie Village, Kan. (economist)

■ **Defendants' Experts:** Sidney Doerhoff, St. Elizabeth (school district superintendent); Leonard Koziol, Chicago (neuropsychologist)

■ **Caption:** Jesse Rodriguez, Jesse C. Rodriguez Jr. v. Terry Atteberry, Dana Ilgenfritz, Shaun Fisher, Michelle Vernon, Charles Huff



Lucas

Farmer

■ **Plaintiffs' Attorneys:** Chad C. Lucas and Mark J. Evans, Evans & Kuhlman, Kansas City

■ **Defendants' Attorneys:** Bruce Farmer and Robert J. Buckley, Oliver Walker Wilson, Columbia; Douglas Harpool, Balrd, Lightner, Millsap & Harpool, Springfield

that she didn't know if [Rodriguez] heard her say that."

Rodriguez suffered multiple injuries including a traumatic brain injury. A helicopter took him to St. John's Hospital in Springfield, where he underwent an emergency craniotomy to relieve pressure from the swelling of his brain.

According to Lucas, three months later, Rodriguez had surgery to replace the skull flap, which had been removed during the emergency craniotomy. As a result of the second surgery, Rodriguez was left with an obvious deformity of his head.

Lucas said Rodriguez suffered serious cognitive and physical impairments from the brain injury, including significant

memory difficulty.

"[He] was able to return to school but suffered an IQ decrease of approximately 30 points and went from an honors student making mostly A's, to an average student making A's, B's and C's with an occasional D or F," Lucas said.

"Explaining his head injury to the jury was hard because he had a sunken-in skull but did talk and act fairly normal," Lucas said. "[His] doctors testified that he made a remarkable recovery from when the injury started, but if you are around him for awhile, his problems are apparent."

Rodriguez and the other plaintiff in his case, Jesse Rodriguez Sr., his father, claimed the adults on the field trip failed

to adequately supervise the boy on the trail. They claimed the adults were negligent because they were not familiar with the trail or its hazards, allowed the students to get ahead of them and out of their sight, and did not turn the group around after recognizing that the trail was becoming too treacherous to proceed.

The Rodriguez family argued that the supervisors were negligent in planning which trails to hike and which trails were suitable for a large group of middle school children. They claimed the defendants failed to take advantage of free guided tours offered by the park and failed to obtain or review one of the free trail maps available throughout the park.

The Rodriguezes also claimed that these failures violated school district policy regarding the supervision of children on field trips. Finally, they claimed that the superintendent and final defendant in the case, Charles Huff, failed to implement procedures and policies regarding the safe planning and supervision of field trips.

The defendants argued that the younger Rodriguez had been told to stay with the group on more than one occasion and had failed to follow the instructions of the adults on the field trip. They claimed that his injuries did not significantly affect his cognitive or physical abilities, grades, ability to attend college, or vocational abilities.

After the three days of trial, the case settled for \$1.1 million. The plaintiffs' only remaining witness to testify was their economist.

Lucas said he thought it was a good compromise in the case.

"Obviously there are risks on both sides," he said, "and there was a chance the jury could have proportioned some fault to [Rodriguez] for not listening to the teachers."

— Kyle Lewis