

NEWS

Plaintiff Gets \$495K in Case That Should Have Been an Insurance Adjuster's Dream

Middletown attorney Nate Baber helped secure a \$495,000 settlement for a young client whose right leg was injured playing a game at church.

By Robert Storage

An attorney for a plaintiff with no permanent injuries clinched a nearly half-million-dollar settlement for his client.

Five videos and numerous photographs showing a 6-year-old boy in pain and suffering from injuries sustained during a game at a Bible chapel helped propel the defense to pay a \$495,000 settlement, according to plaintiffs counsel.

Those videos showed the boy limping, using a walker and having his father help him up a flight of stairs, said plaintiffs counsel **Nate Baber**.

Baber said the videos were essential in telling the boy's story,



Groton Bible Chapel, Groton.

because there were no permanent injuries suffered following the incident at the Groton Bible Chapel in April 2019,

The boy's mother took one initial video and then made additional recordings with the help of a professional videographer over a period of several months at the urging of counsel, Baber said.

"They were some pretty dramatic videos. They showed his early recovery following the injury," Baber said Wednesday. "They showed his father carrying him upstairs, the boy using a walker, and the traumatic pain he had doing daily activities."

Those videos did the trick and forced the hand of the defense

to pay the settlement on April 1, Baber said. Probate Court approved the settlement Tuesday. The settlement is being set up in a trust for the boy, Baber said.

Baber, a partner with Aeton Law Partners in Middletown, said having no permanent injuries could have caused a problem in the case. But that is where the videos came in, he said.

“There were no permanent injuries. Every insurance adjuster will say, ‘What are the permanent injuries?’” Well, there were none. But there were videos and testimony of the boy in its place playing up the pain and suffering,” Baber said.

The boy, now 8, suffered a complete separation of his femur bone, above the right knee, Baber said. The incident occurred during a game of freeze tag after school at the chapel.

According to the [amended lawsuit](#) filed in August 2020 in New London Superior Court, the boy was injured when he made contact with counselor and defendant

Brandon Smith, who fell on top of the boy’s right leg during the game. The Groton Bible Chapel is also listed as a defendant.

The boy had two surgeries, his attorney said.

The lawsuit says Smith was negligent for several reasons, including failing to “keep a reasonable and proper lookout for plaintiff” and failing to “call out or give a timely warning of the impending fall.”

After filing the lawsuit against Smith and the chapel, Baber said he learned that Smith had immunity. “He had immunity through the Volunteer Protection Act, a federal law that has, as its goal, the increase of volunteerism,” Baber said.

Suing a bible chapel also had its obstacles, Baber said,

“It became hard because suing a church is also not easy. So, we became creative and were just about to file an amended complaint saying the bible chapel was operating an unlicensed child care center and had to comply

with certain regulations,” Baber said.

Baber said that amended complaint was never filed, although it was shown to the defense, which settled soon after, he said.

Representing the defense was Carla Varriale of Segal, McCambridge, Singer & Mahoney in New York City. Varriale didn’t respond to a request for comment Wednesday.

But in court pleadings the defense says the boy was negligent for his own injury in that “he failed to be attentive to his surroundings,” and “was distracted and failed to pay attention to the ongoing game in which he was engaged, although he knew or should have known that without paying attention he could suffer injury.”

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