

# Girl injured at basketball practices settles lawsuit against sports facility

## Gym's metal walls lacked padding underneath basketball goals

### \$6.9M damages alleged

The family of a 14-year-old student athlete settled its lawsuit against the girls' coach, her school, and the gym where she was injured during basketball practice. The terms of the settlement were confidential.

Cathy Patrick's 14-year-old daughter, Katie Patrick, was rushed to McCune-Brooks Hospital in Carthage, Mo., on Nov. 19, 2002, after striking her head on an unprotected, unpadded metal wall during a high school basketball practice in Sarcoxie, Mo. Although the initial emergency

room, X-rays and CT scans were negative, Patrick continued to complain of severe headaches, dizziness and nausea over the next several months.

After numerous trips to emergency rooms, pediatric neurologists, and a local neuropsychologist, Patrick was referred by her family physician to the Mayo Clinic in Rochester, Minn. Patrick's physicians, both locally and at Mayo, diagnosed her as sustaining a traumatic brain injury.

On April 26, 2004, a personal injury lawsuit was filed on behalf of Patrick. The lawsuit named the First Baptist Church of

Sarcoxie, Sarcoxie R-II School District and Chad Harris as defendants. According to the petition, Patrick was practicing with her high school girls' basketball team in the First Baptist Church gymnasium when the injury occurred. The Sarcoxie R-II School District had leased the First Baptist Church's gymnasium for high school curricular and extracurricular sporting activities. This included the girls' basketball team practice, coached by Chad Harris. The petition alleged that the defendants were negligent for failing to maintain wall padding underneath the basketball goals in the gymnasium.

The First Baptist Church's gymnasium was built next door to the Sarcoxie High School. The church's building committee acted as the general contractor, which maintained control over all stages of the building's development, including design. Although the church building committee had been advised by the Missouri Baptist Convention to hire professional architects and general contractors for the project, the church opted not to hire such professionals. The building committee did not design or install padding on the walls underneath the basketball goals in the gymnasium.

In July 2001, the Sarcoxie R-II school district entered into a lease agreement with the church to use the church gymnasium for high school basketball and volleyball practices, and to use the gymnasium during PE classes. The lease agreement failed to state specifically who was responsible for maintaining the premises in a safe condition, free from dangerous conditions. However, witnesses for both the school and church testified that they had a joint responsibility to make sure that the premises were safe for use by the student athletes. Witnesses for both the school and church also testified that there were discussions from the onset of the lease agreement that padding should be installed over the metal walls underneath the basketball goals.

Defendants argued there was no general duty to have padding installed on the walls underneath the basketball goals in the gymnasium. They contended that under the circumstances wall padding was not required and that any earlier discussions concerning the installation of wall padding was only extra-precautionary. Alternatively, the defendants claimed that, if there was indeed a duty to protect student athletes, the other defendant had undertaken the responsibility to ensure the pads were installed. Testimony conflicted as to who agreed to install the wall padding and when it was to be installed. Harris argued he had no duty to ensure the safety of the premises and that if there was a duty he was immune from liability pursuant to the public duty doctrine.

The defendants also contested Patrick's injuries, pointing out her injuries were confirmed only by subjective complaints. The defendants questioned the plaintiff's expert neuro-radiologist's methodology and interpretation of a PET scan, which were consid-

ered with brain injury. The defendants retained their own expert neuropsychologist, who conducted a Rule 60 medical evaluation of plaintiff. After the examination, the defense expert questioned the severity of Patrick's injuries and suggested that they were being exaggerated by "motivational or psychological factors." The defense expert said the plaintiff's neuropsychological test results were inconsistent and unreliable. He also said Patrick's treating physicians overstated her damages.

The plaintiffs' biomechanical engineering expert performed an on-site inspection and hardness characteristic testing of the unpadded versus padded portions of the walls underneath the basketball goals and determined that had padding been on the wall underneath the basketball goal where Patrick struck her head on Nov. 19, 2002, (padding identical to the padding that was later installed by the defendants), Patrick's head would not have struck the wall with sufficient rotational forces to suffer even a mild traumatic brain injury.

### Facts of the case

**Type of Action:** Premises liability/sports facility injury

**Type of Injury:** Mild traumatic brain injury

**Court/Case Number/Date:** Jasper County/04CV681250/Jan. 11, 2006

**Caption:** Cathy Patrick, et al. v. First Baptist Church of Sarcoxie and Sarcoxie R-II School District and Chad Harris

**Judge, Jury or ADR:** Settlement

**Name of Judge:** Jon A. Dermott

**Verdict or Settlement:** Confidential settlement

**Special Damages:** \$108,704.69 for past medical; \$2,920,825 for future loss of earnings; and \$4,784,409 for future life care costs

**Allocation of Fault:** N/A

**Last Offer:** N/A

**Attorney for Plaintiff:** Aaron W. Smith and Christopher A. Wright, The Herstewe Law Firm, P.C., Joplin, Mo.

**Insurance Carrier:** Kemper Insurance Co.

**Plaintiff's Experts:** Todd L. Seidler, Ph.D. (sports facility administration, design, planning, management and safety); Albuquerque, N.M.; Herb Appenzeller, Ed.D. (sports facility administration and safety); Summerfield, N.C.; Mariusz Zietewski, Ph.D. (biomechanical engineering); Fargo, N.D.; Joseph C. Wu, M.D. (neuro-radiology, specializing in PET scan); Irvine, Calif.; Robert Vooght, (life care planning); Virginia Beach, Va.; and John Ward, Ph.D. (economics); Prairie Village, Kan.

**Defendant's Experts:** George "Brick" Johnstone, Ph.D. (neuropsychology); Columbia, Mo.

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