

Nelson & Dahle, P.C.

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DISTRICT COURT

VERDICT: Defense, water slide "push," neck/brain.

A 9-3 Big Timber jury found that Fun-N-Sun was not negligent in connection with injuries claimed by Tammy Cozzens in a waterslide incident.

Cozzens, 32, and her husband Michael were riding the "Old Faceful" slide at the Big Timber Waterslide Park 7/4/98. She claimed that an attendant pushed them causing them to be out of control and strike her head inside a tunnel. She claimed neck and mild traumatic brain injury. All doctors had diagnosed mild TBI on the basis of her report of head trauma. The ER physician found no bump, bruise, or tenderness in the head. Defendant disputed that she had sustained an injury, and asserted that the ride was incapable of producing speeds sufficient to produce injury. It contended that she had not been pushed, but in any event due to hydrodynamic drag, a push could not cause increased speed 227' down the slide in the second tunnel.

Judge Swandal excluded a waiver which Defendant required patrons to sign.

Plaintiffs' experts: neuropsychologists David Gumm, Billings (deposed) and Joseph McElhinny, Billings (deposed), neurologist Lowell Quenemoen, Billings (deposed); ER physician Jean Ellis, Billings (deposed); chiropractor Jerry Stanley, Miles City (deposed).

Defendant's expert: biophysicist John Jurist, Billings (deposed).

Demand, none; offer at mediation with prior counsel for both sides, \$35,000, offer in 2004, \$25,000, final offer, 0. Jury request, \$37,000 specials plus general damages; jury suggestion, none.

Jury deliberated 2 hours 3rd day.

Cozzens v. Fun-N-Sun, Sweet Grass 00-03, 2/24/05. Stephen Mackey (Towe, Ball, Enright, Mackey & Sommerfeld), Billings, for Cozzens; Randall Nelson (Nelson & Dahle), Billings, for Fun-N-Sun.

