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From the January 15, 2001 North Carolina Lawyers Weekly.

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Verdicts & Settlements

Negligence/Auto

Carpet Cleaner Van Hit Child Pedestrian -- Brain Injury -- \$2.99 Million Settlement

Brief Statement of Claim: Piedmont Steam operates as a franchisee of Stanley Steemer in the carpet and upholstery cleaning business.

D.J. Miller, a six-year-old pedestrian, was struck by a Stanley Steemer Carpet Cleaner van and suffered a brain injury and other physician injuries. The van was owned by Piedmont Steam and driven by its employee, John Spero.

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At the time of the wreck, D.J., his 10-year-old sister and a friend were returning home after delivering a birthday invitation to a friend's house in the neighborhood.

According to plaintiff's counsel, D.J.'s sister had just crossed the street, and D.J. attempted to follow. He entered

the roadway, then hesitated before crossing.

According to plaintiff's counsel, defendant Spero saw D.J. hesitate, but assumed that D.J. would not continue to cross, and he continued driving as he otherwise would have in the absence of a child in the roadway.

D.J. continued across the street, was struck by the van, rendering him unconscious.

After extensive inpatient and outpatient rehabilitation, D.J. attends public school, primarily in a special education classroom.

Plaintiffs D.J. Miller and his parents contended that Spero was negligent in that: he drove at a speed greater than the 35 m.p.h. limited and 25 m.p.h. cautionary speed limit; failed to keep a proper lookout; failed to warn D.J. of his presence by blowing his horn; and failed to stop the van prior to striking D.J.

The plaintiffs also contended that Piedmont Steam was vicariously liable as Spero's employer,

and that Stanley Steemer International was vicariously liable for its franchisee on agency principles.

Defendant Stanley Steemer International claimed that it wasn't vicariously liable. All defendants claimed that Spero was confronted with a sudden emergency when D.J. darted out in front of the van, and that he was driving in a careful and prudent manner.

All defendants also claimed that D.J.'s parents were negligent in allowing him to play near and cross a busy street during rush hour without proper supervision, thereby barring any recovery on their behalf.

Principal Injuries (in order of severity): Traumatic brain injury resulting in post-traumatic seizures and cognitive, emotional and behavioral problems; right frontal hematoma; displaced fracture of the right clavicle; right orbital roof fracture; bilateral heel cord strictures

Special Damages: Past medical expenses: not claimed by parents due to allegations of contributory negligence and desire for all proceeds to go to child's benefit, according to plaintiffs' counsel.

Net present value of life care plan ranged from \$5,841,956 to \$11,026,165. Estimated net present value of future lost wages: \$912,730.

Tried or settled: Mediation with defendants Piedmont Steam and Spero on Nov. 9, 2000. Case ultimately settled for policy limits.

County where tried or settled: Mecklenburg

Case Name and number: *Miller v. Piedmont Steam et al* (98 CvS 6771)

Date Concluded: Case settled on Nov. 16, 2000.

Franchisor Stanley Steemer International Inc. was dismissed from the case on Jan. 14, 1999 on grounds it didn't have sufficient rights of control over Piedmont Steam to be held vicariously liable.

The dismissal was affirmed by Appeals Court on April 18, 2000 (see April 24, 2000 Lawyers Weekly). The Supreme Court denied discretionary review on Aug. 24, 2000.

Name of Mediator: Robert Kirby

Amount: Total settlement: \$2,999,900 (\$3 million liability insurance limits minus \$100 previously paid for property damage to a mailbox) on behalf of Piedmont Steam and Spero.

The settlement included an initial lump sum payment of \$1.2 million, with the balance being structured by the purchase of an annuity by defendants' liability carrier.

Insurance Carrier: Westfield Insurance Company of Ohio

Expert Witnesses and areas of expertise: n/a

Attorneys for plaintiffs: Karen M. Rabenau and Donald R. Strickland of Twiggs, Abrams, Strickland & Trehy, P.A., Raleigh; William C. Trosch of Conrad, Trosch & Kemmy, P.A., Charlotte

Other Useful Info: n/a

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