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From the April 24, 2000 North Carolina Lawyers Weekly.

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Opinion Digest

Tort/Negligence

Respondent Superior - Franchise - No Agency Relationship - Personal Injury - Pedestrian

Where the defendant-franchisor did not maintain day-to-day control over the operations of the defendant-franchisee, and where the defendants expressly agreed that neither would be the agent of the other, the franchisee was not the agent of the franchisor.

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Summary judgment for the franchisor affirmed.

A six-year-old pedestrian was struck by a Stanley Steemer Van owned by defendant Piedmont Steam Co., Inc. (Piedmont). The plaintiffs sued the driver, Piedmont, and Stanley Steemer International, Inc. The trial court granted summary judgment for Stanley Steemer.

Piedmont was a Stanley Steemer franchisee. Among other things, the franchise agreement required Piedmont to obtain Stanley Steemer approval of the appearance of the trucks used in the business, allowed Stanley Steemer to inspect machines and equipment, and obligated Piedmont to carry a specified level of liability insurance coverage with a carrier approved by Stanley Steemer. The agreement also expressly stated that neither party was an agent for the other.

"A franchisor is vicariously liable for the tortious acts of its franchisee when an agency relationship exists and the acts are committed within the scope of the agent's authority. Agency arises when parties manifest consent that one shall act on behalf of the other and subject to his control.... Vicarious liability arises from the right of supervision and control."

"Under the agreement, Steemer ... was authorized to make period inspections of Piedmont and its records. Steemer prescribed standards regarding the attire and appearance of Piedmont's employees and the condition of its equipment." Although Stanley Steemer's standards were detailed, they served the purpose of requiring the franchisee to maintain the business in a clean, attractive, safe and orderly manner.

"Steemer's involvement in the operations of Piedmont functioned largely to ensure uniform service and public good will toward the corporation and did not, therefore, give rise to an agency relationship."

"Steemer retained no control over the hiring, firing, or supervision of Piedmont personnel." In the event of a breach of the agreement, "Steemer could either terminate the agreement or terminate Piedmont's exclusivity.... The remedies available to Steemer did not allow it to interfere in the day-to-day operations of Piedmont with the minor exception that Steemer could obtain adequate insurance if Piedmont failed to do so.... No agency relationship arises when one party requires another to maintain liability insurance."

The plaintiffs allege that the six-year-old's injuries "arose from negligent operation of a motor vehicle. However, Steemer did not train or test the drivers employed by Piedmont, nor did it require that the drivers have a good driving record or meet any other standards. We conclude that Steemer did not maintain control over the operators of the Piedmont vehicles or the manner in which they operated vehicles owned by Piedmont and registered in its name."

While Stanley Steemer had a measure of control over Piedmont operations, this control was not sufficient to establish an agency relationship.

Affirmed.

Miller v. Piedmont Steam Co. (Lawyers Weekly No. 0-07-0555, 10 pp.) (Timmons-Goodson, J.)
Appealed from Superior Court, Mecklenburg County, Noble, J.

[See accompanying story](#)

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