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Verdicts & Settlements

Negligence/Auto

Truck Struck Child Walking To School — Driver Pled Fifth Amendment — Contrib Defense Struck — \$9.5 Million Mediated Settlement

Brief Statement of Claim: Daniel Wooten, who was 16 years old at the time, was struck by a Waste Industries garbage truck while he was walking home from school on Feb. 9, 1998.

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Daniel, through his guardian ad litem and Archie Wooten, filed a lawsuit to recover their damages against Waste Industries, the owner of the truck, L.J.R. Investments and Robert Lee Gunter, the driver of the truck. The plaintiffs' claims were based on the negligent operation of the truck by Robert Gunter.

The defendants denied liability and asserted contributory negligence, contending that Daniel was negligently walking with his back to

traffic.

Although there were conflicting eyewitness reports regarding the direction in which Daniel was walking, the plaintiffs contended that he was facing traffic and that, even if he had his back to traffic, he was not negligent because it was impractical and unsafe to walk on the other side of the road, which had no shoulder and would have required Daniel to walk in the roadway.

Principal Injuries (in order of severity): Traumatic brain injury, a traumatic partial amputation of his right foot which was subsequently reattached at Duke, right tibia and fibula fractures, right knee dislocation and fragmentation, left tibial plateau fracture, left knee fracture and joint disruption, left femoral fracture, fractured left sinus, fractured left orbit, right orbital fracture, fractured right sinus, liver laceration, kidney laceration, and other less severe physical injuries.

Daniel was in a coma at Duke Medical Center for approximately one month followed by in-patient rehabilitation for an additional seven months.

Special Damages: Daniel's total medical expenses were approximately \$780,000 and his

projected loss of income was approximately \$900,000.

Tried or settled: Settled at mediation while case on appeal.

County where tried or settled: Durham

Case Name and number: *Archie Wooten and William S. Mills, Guardian ad litem for Daniel E. Wooten, Plaintiffs v. Waste Industries, Inc., LJR Investments, and Robert Lee Gunter* (Durham County Superior Court; 98 CvS 1078)

Date Concluded: Sept. 13, 2000

Name of Judge: Settlement approved by Durham County Senior Resident Judge Orlando Hudson. The mediator was Jim Billings.

Amount: The case was settled for a net present value of \$9.5 million, which included a lump sum cash payment plus a structured settlement.

Insurance Carrier: Ohio Casualty

Expert Witnesses and areas of expertise: Ann Neulicht, Ph.D., life care planner; J. Finley Lee, Ph.D., economist. The plaintiffs relied solely on Daniel's treating medical care providers to establish injuries, care and treatment of those injuries and his future medical needs.

Attorneys for plaintiffs: William J. Thomas II and Jay H. Ferguson of Thomas, Ferguson & Charns, LLP, Durham, and Donald R. Strickland of Twiggs, Abrams, Strickland and Trehly, P.A., Raleigh

Other Useful Info: The defendant driver pled the Fifth Amendment and refused to testify about how the accident happened.

The plaintiffs contended that the defendant driver could not refuse to testify and continue to maintain the defense of contributory negligence. They filed a motion to strike the contrib defense which was granted. The defendants appealed this ruling.

However, all parties agreed to continue discovery while the case was on appeal and agreed to mediation of the case.

Plaintiffs' counsel relied predominantly on a mediation videotape of eyewitnesses to the accident and Daniel's key medical care providers to present their case at mediation, which ultimately led to a settlement.

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