

**TORTS: TRACTOR TRAILER/PICKUP TRUCK COLLISION; COMPARATIVE NEGLIGENCE; WRONGFUL DEATH: SETTLEMENT**

**John D. Fleet, et. al. vs. Miller Bros. Co., Inc., et. al.**

**U.S. District Court Civil Action File No. 1:00-CV-0385**

**Date of Settlement: April 13, 2000**

Settlement of \$2.8 million for the wrongful deaths of two minor children allegedly occasioned by the negligent operation of a tractor trailer truck.

On December 12, 1999, Plaintiff John D. Fleet was driving a pickup truck on United States Interstate Highway 75 ("I-75") in Clayton County, Georgia, in which his three minor children, ages 10, 7 and 5, were front seat passengers. A tractor trailer truck, operated by Defendant Miller Bros. Co., Inc., was being driven in an adjacent lane of travel to the rear of Plaintiff's vehicle. Plaintiffs contended that at a point about one mile north of the intersection of I-75 with Georgia State Road 54, the tractor trailer truck moved into Plaintiff's lane of travel, to the rear of Plaintiff's vehicle, and struck an automobile which was behind Plaintiff's truck, causing the automobile to lose control and slam into a nearby guardrail, and then careen into the rear of Plaintiff's vehicle, resulting in a loss of control and a complete overturn of Plaintiff's truck, which came to rest against the median concrete retaining wall. Plaintiff and his youngest son remained in the vehicle and were relatively unharmed, but Plaintiff's two oldest children, who were unbelted, were thrown through the passenger window, landing about 40 feet away, and were both pronounced dead at the scene.

The passenger in the automobile that struck the Plaintiff's vehicle, and the driver of an automobile to its rear, contended that the tractor trailer truck had initiated the incident by improperly changing lanes. However, the driver for Miller Bros. Co., Inc., and several other witnesses were adamant that the tractor trailer truck never changed lanes, and that the automobile had improperly

changed lanes and made contact with the tractor trailer truck, thus precipitating this tragedy. The investigating police performed a thorough analysis of this incident, including a reconstruction at the wrecker yard in order to match up assorted dents and paint scrapes on the various vehicles, but the conflicting witness statements could not be reconciled. Plaintiffs and Defendants both retained professional engineers to perform reconstructions of the incident, and after interviewing the witnesses and investigating police, examining the vehicles involved, and travelling to Utah for an examination of the tractor trailer truck, which had been removed to company headquarters after the collisions, they reached differing conclusions as to how the collision occurred.

Plaintiffs, the divorced parents of the two deceased children, sought damages for their wrongful deaths, as well as on behalf of their respective Estates for the terror and anguish they experienced prior to death. Plaintiff John D. Fleet also sought damages for his own personal injuries and for the emotional agony he suffered watching his two children die. Defendants not only denied responsibility for the incident, but contended that the deaths were occasioned by the failure of Plaintiff John D. Fleet to employ the seatbelts in his truck, which would have prevented their ejection and subsequent deaths. While O.C.G.A. §40-8-76.1(d) provides that a failure of an occupant of a motor vehicle to wear a seat safety belt shall not be considered as evidence of negligence, causation or used to diminish damages in a vehicular incident, a jury would have been aware from the facts of the incident that Plaintiff's truck could not properly accommodate four front seat passengers, and that the two children who died were thrown from the vehicle, so must have been unbelted. Defendants also contended that English vs. First Augusta, Ltd., 614 F. Supp. 1406 (S.D. Ga., 1985), and similar decisions, which hold that parents owe a duty to care for children who are so young and immature that they cannot care for themselves, would support the admissibility of this evidence. Defendants further asserted that the contributory negligence of Plaintiff John D. Fleet,

while not defeating a recovery on behalf of his former wife, would authorize a jury to reduce or eliminate any award to him, citing Matthews vs. Douberly, 207 Ga. App. 578, 428 SE2d 588 (1993).

Although there are few Georgia cases involving seven figure verdicts or settlements for the death of a child of tender years, the outstanding character and personality of these two minor children were instrumental in establishing the value of this case. Such was demonstrated by videotape interviews of their teachers and athletic coaches in Florida, where they had resided with their mother, photographs and videotapes of their social and athletic activities throughout their young lives, and evidence of the dedication of a flagpole in their honor at the park where they had often played baseball, and a memorial at their elementary school. The funeral registry, noting that in excess of 400 people had attended their funeral, and several newspaper clippings concerning their deaths, also reflected the impact they had made on their local community.

The case was settled for \$2.8 million after a full day of mediation.

[Plaintiffs were represented by ATLA and GTLA members, William C. Lanham and Clark H. McGehee, of Atlanta, Georgia, and by ATLA and AFTL member Stanley Bruce Powell of Niceville, Florida.]