

FRANCISCO STAGG vs. COMMODORE MACHINE, CO.

Docket No.: 03-07912 CA 32; FJVR Reference No. 07:3-42

Verdict Date: **October** 17, 2006; Publication Date: **March** 2007

TOPIC: Worksite Accident - Product Liability - Styrofoam Food Container Machine - Arm Drawn into Machine

RESULT: \$ 218,872 for Plaintiff. (verdict)

(\$ 89,000 - past medical expenses; \$ 20,000 - present value of future medical expenses [over 5 years]; \$ 13,312 - past lost earnings; \$ 66,560 - present value of future lost earning ability [over 5 years]; \$ 15,000 - past pain and suffering; \$ 15,000 - future pain and suffering).

Plaintiff's Negligence: 75%; Defendant's Negligence: 25%

STATE: Florida

COUNTY: Miami-Dade

JUDGE: Sarah Zabel

PLAINTIFF PROFILE: Age: 32
Sex: Male
Occupation: Machine Operator

PLAINTIFF ATTORNEY: Camilo K. Salas, III, New Orleans, LA; James M. Walker, Miami

DEFENDANT ATTORNEY: Jack D. **Luks** and Orestes Perez of **Luks, Santaniello**, et al., Ft. Lauderdale

CAUSE OF INJURY: On May 30, 2002, Plaintiff, an employee of Automated Plastics Group Industry in Miami, was operating an extruding machine (which manufactures Styrofoam food containers) when his arm was drawn into rollers associated with the machine's take-off unit. Plaintiff alleged that: (1) the machine was defective; (2) the machine was unreasonably dangerous; (3) the machine contained inadequate warnings; (4) Defendant failed to properly train Plaintiff in the use of the machine; (5) Defendant failed to warn Plaintiff of its inherent dangers; (6) Defendant provided an unsafe machine that violated OSHA and ANSI standards; and (7) the machine failed to contain basic, industry recognized warnings, safety guards, and turnoff switches, which would have been reasonable and appropriate. Plaintiff further alleged that even if he had operated the machine differently than instructed, it was a foreseeable misuse of the machine. Defendant claimed that Plaintiff was properly trained and the machine was safe if used properly.

NATURE OF INJURY: Multi-level crushing injuries to right dominant arm; lack of forearm rotation; extensive heterotopic ossification to radial head and neck; insertion

of metal plate to forearm following skin graft to right elbow contracture; right arm deformity; post-traumatic stress syndrome; depression. Plaintiff underwent four surgeries and has 100% loss of function. Future surgeries for additional ossification and deformity are recommended.

PLAINTIFF EXPERT WITNESSES: E. Smith Reed, P.E., Engineer, Hanover, NH
Kenneth W. Clarkson, Ph.,D., Economics, Miami
Patricia Davis, M.D., Orthopedic Hand Therapy, Miami
Patrick W. Owens, M.D., Orthopedic Surgery, Miami
Mary Ishii, Psy.D., Clinical Psychology, Miami
Richard Rozencawig, M.D., Orthopedic Surgery, Miami

EDITOR'S NOTE: The jury found that the machine was not defective when sold and, if so, was not a legal cause of damage to Plaintiff. Plaintiff demanded \$ 1,000,000 and asked the jury for \$ 3,768,000 (\$ 678,000 in specials; \$ 3,000,000 in pain and suffering). After set-offs the net verdict was \$ 21,115. Defendant was entitled to a \$ 1,120,000 set-off for a prior settlement and therefore Plaintiff took nothing under the judgment.

PLAINTIFF'S ATTORNEY COMMENTS: Camilo Salas: Defendant's insurer had guaranteed a minimum additional payment of \$ 1,000,000 to Plaintiff, which was then paid. In total Plaintiff recovered \$ 2,220,000.