

## Table-Saw Lawsuit Rattles Power-Tool Industry

**E**lectronically activated table-saw braking devices — which can prevent or reduce the severity of injuries by forcefully stopping the rotation of the blade within a few thousandths of a second of any contact between it and the operator's body — have been available for some time now. An Oregon inventor developed a working prototype more than a decade ago and went on to found a company called SawStop that has sold more than 20,000 saws incorporating the feature. Based on input from customers, SawStop claims that its products have prevented 700 finger amputations since coming on the market in 2004. (Those who have not yet seen the device in operation can watch a video demonstration — with a hot dog standing in for a finger — at [sawstop.com/howitworks/videos.php](http://sawstop.com/howitworks/videos.php)).

To date, mainstream tool manufacturers have not marketed competing devices of their own or licensed the existing technology, known as SawStop. But a recent decision by a Massachusetts court could change that.

**Hand in the blade.** The case in question, *Osorio v. One World Technologies*, pitted the former employee of a Malden, Mass., flooring contractor against the parent company of Ryobi power tools. In 2006, Carlos

Osorio suffered permanent injury after running his left hand into the blade of an inexpensive table saw while cutting oak flooring. Because Osorio had little job-site experience, had received little or no training in operating the saw, and was attempting to make a free-hand cut without a rip fence or a guard at the time of the injury, one might conclude that operator error, rather than the saw itself, was primarily to blame for the accident.

The plaintiff's lawyers, however, argued a point of law that states that the degree of user error ceases to be an issue if a product is itself unreasonably dangerous. The saw's manufacturer, they pointed out, knew of the existence of so-called flesh-detecting technology and had consciously chosen not to use it some years before. That failure to act, the lawyers argued, brought an unsafe saw to market and led directly to Osorio's injuries. The jury agreed and, in March of this year, awarded the injured worker \$1.5 million.



In this “under-the-hood” view of a table saw equipped with a SawStop blade brake, the replaceable braking cartridge is visible to the right of the blade. Should the operator's finger — or any conductive material — make contact with the blade, the perforated aluminum brake will be driven against the teeth, stopping the blade and dropping it below the level of the table within 5 milliseconds.

■ NAHB has filed a lawsuit challenging the removal of the “opt-out” provision from the EPA's new lead renovation, repair, and painting rule (RRP). Under the provision, which expired on July 6, renovators were exempted from lead-safe work rules if the homeowner signed a statement verifying that no pregnant women or children under six lived in the home. Elimination of the provision “extends the rule to consumers who need no protection,” NAHB chairman Bob Jones said in a prepared statement. The EPA, however, argues that the change is necessary to protect visiting children, and susceptible residents who move into newly renovated homes.

■ The owners of a California drywall and painting company face up to nine years in prison after pleading no contest to three felony counts of worker's compensation premium fraud, according to the *Ventura County Star*. For nearly a decade, brothers Michael and James Nuciforo had falsely claimed that all of their employees earned an hourly wage of more than \$23. Because worker's comp premiums are based in part on worker experience, which insurers determine by looking at employee wages, that false information allowed the company to effectively cut its premiums in half, an investigator with the state district attorney's office said.

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**Key facts.** The case has drawn widespread attention from builders and woodworkers, but to judge from postings to various online forums, several key aspects are still poorly understood by the public. Many postings, for example, have remarked on the seeming injustice of bringing a lawsuit against the saw manufacturer rather than against the contractor, who apparently failed to provide an inexperienced worker with even the most basic safety training.

In fact, legal action of that sort was never an option. Under workers' compensation law in all 50 states, an employer's insurance pays for all on-the-job injuries, regardless of any carelessness or error on the part of the worker. This arrangement represents one side of what's sometimes called the "compensation bargain," and it's designed to protect injured workers from unscrupulous employers. But the other side of that bargain protects the employers: In a workers' comp claim, the employer is generally immune to any lawsuit for additional damages, even if the injured worker was improperly trained and supervised, or was working in an unsafe environment.

Osorio himself has been accused by many observers of being a greedy opportunist — yet the lawsuit bearing his name wasn't his doing. It was actually initiated by the insurance carrier for Osorio's employer, with the objective of recovering money already paid out in connection with the accident. (An insurer can file such a lawsuit in the name of the injured worker with or without the worker's consent.) If and when Ryobi starts writing checks — the original verdict is currently under appeal — the insurance company will be first in line. Not until it has recovered its costs will the remaining money, if any, flow to Osorio himself.

**Dollars and fingers.** Why should care-

ful woodworkers be required to pay for a safety feature they may not want because incompetent, careless, momentarily distracted, or just plain unlucky woodworkers sometimes cut their fingers off? According to SawStop inventor Stephen Gass, that's the wrong question, because table-saw purchasers are *already* paying for the injuries of the careless and unlucky. "That's how the system works now," he says. "My insurance premiums pay for your severed fingers."

The Consumer Product Safety Commission (CPSC) has fairly solid numbers on such injuries, based on a statistical sampling of reports from hospital emergency rooms. In 2009, for example, the agency found that table saws were responsible for about 34,000 emergency-room visits, including about 4,000 finger amputations.

Like all statistics, of course, those numbers can be spun one way or the other. The Power Tool Institute (PTI), for example, which strongly opposes the mandatory use of flesh-detecting technology, maintains that the CPSC figures are greatly inflated, although it declines to cite injury figures of its own or issue public statements of any kind. ("We will not speak on the record because of pending litigation," PTI spokesperson Susan Young told *JLC*.) The SawStop website, on the other hand, alludes to 60,000 "medically treated" injuries annually, which includes injuries — many of them presumably minor — treated in doctor's offices, clinics, and other nonhospital locations.

**What's reasonable?** Like many product-safety cases, *Osorio v. One World Technologies* is basically a dispute about how much money a manufacturer might reasonably be expected to spend in order to make a product safer. The actual dollar figure will vary with the cost of the safety feature and the potential cost and

■ Luxury boiler rooms are emerging as a new status symbol among well-heeled homeowners, according to a recent article in the *Wall Street Journal*. The story described a 100-square-foot utility room containing \$70,000 worth of equipment, much of it devoted to an active solar-thermal array that the homeowner described as looking "like the Star Trek Enterprise. It's really a little focal point, and a sign of pride." A mechanical contractor who worked on the project noted that "the mechanical room is now like the wine room or the library ... If you are spending money on that stuff, you want to show it off."

■ The future of an innovative green-energy financing program authorized by 22 states is in doubt after the country's two largest mortgage lenders issued guidelines that restrict homeowner participation. Under the so-called Property Assessed Clean Energy Program, or PACE, cities and local governments issue municipal bonds and use the proceeds to make loans to property owners for energy-efficiency improvements. The loans are then paid back through a property tax assessment that remains with the home even if it's sold to a new owner. But in July, Fannie Mae and Freddie Mac announced they would not accept the PACE liens, which would take precedence over the mortgage if a homeowner defaulted. The California attorney general's office has filed suit, requesting that a federal court declare that participation in the program does not violate the standards of either government-chartered lender.

severity of any injuries that might result from its absence, but the law assumes that most people — and more to the point, most jurors — know what “reasonable” is when they see it.

Inconveniently for Ryobi, the cost figures for flesh-detecting technology cited during the trial were quite low. Stephen Gass, who testified as an expert witness, put the retail price at about \$150 per saw. Included in that price is the \$70 cost of a single brake cartridge, which — along with the saw blade — must be replaced each time the device is activated. The \$150 figure, Gass explains, is a high estimate based on his company’s experience manufacturing relatively small numbers of high-end saws, and could probably be lowered significantly by a high-volume manufacturer.

Another expert witness, testifying for the defense, claimed that a different braking design under development could add a mere \$55 to the price of a new saw. That competing design stems from a joint venture launched in 2003 by a half-dozen major saw manufacturers who have been working to come up with an industry alternative to the SawStop device.

**Only a beginning.** Although the Osorio decision doesn’t set a legal precedent, it does provide some insight into how other juries are likely to rule in future cases elsewhere. And there are bound to be many such cases. According to George Carpinello, a lawyer with the law firm Boies, Schiller, and Flexner, which represented the plaintiff in the Osorio trial, the firm is now preparing “about sixty” additional suits against saw manufacturers. As in the Osorio case, Carpinello says, “we’re working with several insurance companies who have decided that they’re paying out too much money on these kinds of claims.”

If the pattern set by the original case

holds up and juries in other states start handing out damage awards to insurers, tool manufacturers may find themselves in a difficult bind: Rather than continue to pay costly damages for each new injury, they’ll be under heavy pressure to add their own flesh-detecting technology to their products. That no such device — outside of the SawStop — is currently available strikes George Carpinello as preposterous. “How is it that a lone inventor working in his garage can go from an idea to a functioning prototype in a month, but Bosch, Ryobi, Stanley Bostitch, Black & Decker, and Hitachi can pool their resources and come up with nothing?” he asks.

But even if the manufacturers’ joint venture does eventually yield a workable safety device, bringing it to market will almost certainly lead to a long and costly legal battle with SawStop, which holds dozens of basic patents for flesh-sensing technology. Barring complete victory in such a legal wrangle, the saw manufacturers would likely have to pay for licensed use of some of SawStop’s patents.

**Bitter pill.** For now, manufacturers may have no choice but to use the SawStop product and pay its owners a licensing fee. According to Gass, that fee would be in the range of 3 percent to 8 percent of the wholesale price of any SawStop-enabled product. The arrangement would be a bitter pill for the tool manufacturers to swallow, since they have spent more than a decade unanimously refusing to enter into any licensing agreement.

Inventor Stephen Gass is both understanding of their plight and unapologetic about his desire to profit from it. “We’ve said all along that our intention was to license the technology to everyone who wants it,” he says. “And we’ve tried to patent everything that we could to prevent them from using it without a license from us.” — *Jon Vara*