



# SawStop Table Saw Litigation: Three Key Takeaways for the Product Liability Practitioner

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**A**sk any woodworker to name the most dangerous tool in a typical shop, and you're likely to get the same response—the table saw. In the United States alone, there are reportedly 65,000 table saw accidents annually.<sup>1</sup> That translates into one accident every nine minutes.

One of the reasons a table saw is so dangerous is its propensity to “kickback.”



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The saw's circular blade spins toward the operator. As a result, the teeth at the back of the blade are moving in an upward direction. An operator must take care to prevent the board from

contacting the rising teeth in the rear as the board moves through the saw. Should that happen, the saw can violently throw the board back toward the operator and push the operator's hands into the spinning blade.

## SawStop Table Saws

In 2004, a new table saw manufacturer entered the market. SawStop (a Tualatin-based company founded by local patent attorney Steven Gass, Ph.D.) had designed a table saw with “flesh-sensing technology” that can stop a table saw blade in five milliseconds—fast enough to turn an amputation into a harmless nick. Here's how it works: SawStop's saws apply a small amount of electric current to the blade of the saw. That current is continuously monitored by electronics in the saw. If the saw detects a change in this current (as would occur if a hand or other body part came into contact with

the blade), an aluminum brake at the bottom of the blade is engaged, stopping the blade virtually instantaneously. Using the brake destroys the replaceable brake and blade, but prevents a serious injury.<sup>3</sup>

SawStop's brake system reportedly is covered by over 50 different patents.<sup>4</sup> Several years before SawStop developed and started selling its own table saws, it invited other table saw manufacturers to license its brake system.<sup>5</sup> To date, no other table saw manufacturer has done so, and SawStop's current willingness to license its technology is now less clear.<sup>6</sup>

In October 2011, the Consumer Products Safety Commission (CPSC) announced proposed rulemaking to address table saw safety, but its timeline for completing that process is unknown.<sup>7</sup> The CPSC has reportedly commented that a “flesh detection device” is likely to be a key provision.<sup>8</sup> In 2012, SawStop supported legislation in California requiring flesh-sensing technology in new table saws sold starting in 2015, but the bill died in the senate.<sup>9</sup>

SawStop's safety technology comes at a price. SawStop's least expensive saw retails for \$1,599, and its most expensive model can exceed \$5,000.<sup>10</sup> In comparison, the least expensive table saw currently sold by Home Depot retails for \$129, and the big-box retailer offers 13 models under \$500.<sup>11</sup>

## Osorio v. Ryobi

In 2005, construction worker Carlos Osorio severely injured his left hand while using a Ryobi table saw purchased for \$179 from Home Depot.<sup>12</sup> Reportedly, Osorio was pushing a piece of hardwood flooring through the saw when he felt chattering

and vibration.<sup>13</sup> Osorio pushed the board harder into the saw, causing his left hand to slip into the blade.

Prior to the incident, the saw's blade guard and rip fence had been removed.<sup>14</sup> A rip fence keeps the wood properly aligned as it passes through the saw, reducing the risk of a kickback. The chattering and vibration Osorio felt was likely due to the missing rip fence, and was likely a precursor to a kickback.

In 2006, Osorio sued Ryobi, claiming the saw was defectively designed, in part, because it failed to incorporate the patented SawStop flesh-sensing technology. At trial, Osorio called Dr. Gass, who testified that Ryobi had been given an opportunity to license the SawStop technology in 2000 before SawStop launched its own line of saws.<sup>15</sup> Dr. Gass testified that Ryobi could have incorporated the SawStop safety technology for “less than \$150.”

After an eight-day trial, the jury found in favor of Osorio, awarding him \$1.5 million in damages. The jury found Osorio was 35 percent responsible for his injuries, but that finding was effectively nullified by the jury's additional finding that Ryobi breached its implied warranty of merchantability.<sup>16</sup>

## Stollings v. Ryobi

Following *Osorio*, Ryobi obtained a defense verdict in a similar lawsuit tried in Illinois in August 2012.<sup>17</sup> Plaintiff Brandon Stollings amputated multiple fingers in a serious kickback. Stollings contended the saw was defective, in part, because it did not incorporate flesh-sensing technology.

Stollings appealed, and the Seventh Circuit reversed on the basis that Ryobi's

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counsel had improperly argued that Dr. Gass and plaintiff’s counsel were in a “joint venture” to force saw makers to license the SawStop Technology.<sup>18</sup> The jury learned that Dr. Gass had worked on over 90 table saw lawsuits with Stollings’ counsel, and that he did not charge for his time serving as an expert witness promoting his technology. The case remains pending in the Northern District of Illinois.

**Key Takeaways**

Although to date only *Osorio* and *Stollings* have been tried, there are a large number of similar table saw cases pending across the country. These SawStop cases offer three key takeaways for practitioners:

**1. The old adage of safety in numbers may not hold true.** In the more than 10 years in which SawStop technology has been available, no other manufacturer has licensed SawStop’s technology or offered a competing version. With over 20 different manufacturers currently manufacturing table saws, one would think that offering “industry standard” safety features would form a solid foundation for a successful defense. However, as cases like *Osorio* demonstrate, whether industry standard defenses carry the day will turn on the individual views of the juries deciding these cases. Practitioners would be wise to assess at the outset the safety features that *all* competitors in the market are using, and begin developing—early on—the manufacturer’s explanation as to why it selected a given safety feature set.

**2. Juries may hold defendants to a higher standard than “unreasonably dangerous.”** Under ORS 30.920, imposition of strict products liability requires a showing that the product was “unreasonably dangerous.” Establishing the opposite (that a product is reasonably safe) should thus entitle a defendant to a complete defense. Did the *Osorio* jury effectively conclude that every table saw available on the market other than SawStop is unreasonably dangerous? Or was it simply persuaded that the saw could

have been made safer, which is arguably a lesser showing? Obviously, technologies like SawStop won’t change the instructions juries are given, and juries are presumed to follow the law, but the predicament the defense lawyer faces is obvious. When the plaintiff establishes that the defendant could have built a better mousetrap, how best does defense counsel persuade the jury to refocus on the “unreasonably dangerous” standard?

**3. Defense arguments based on cost may not sell.** One of the more interesting aspects of *Osorio* is that the jury faulted Ryobi for failing to include a safety feature that would have nearly doubled the cost of the saw. Add two zeroes and change the saw to a car, and you’re looking at an \$18,000 car claimed to be defective for failing to incorporate an available safety technology that adds \$15,000 to the price. The counter-argument is that \$150 is a small price to pay to protect fingers from arguably the most dangerous tool in the woodshop.

**Final Thoughts**

The lessons to be learned from the SawStop litigation extend far beyond table saws into virtually all manner of product liability cases. Auto manufacturers are a prime example. Are manufacturers exposing themselves to claims by choosing not to incorporate available safety technologies like back-up cameras, automatic braking, and blind spot detection? Is it enough to offer those safety features only in higher-end trims or expensive optional equipment groups, as opposed to making them standard equipment?

While there are no easy answers to any of these questions, the SawStop litigation provides fascinating insight into some of the challenges faced by lawyers defending product liability cases.

**Endnotes**

- 1 SawStop. (2013). The Facts. Retrieved from <http://www.sawstop.com/why-sawstop/accident-victims>
- 2 SawStop. (2013). How it All Began. Retrieved from <http://www.sawstop.com/company/about>

- 3 SawStop. In Wikipedia. Retrieved May 12, 2014, from <http://en.wikipedia.org/wiki/SawStop>
- 4 *Id.*
- 5 *Id.*
- 6 *Santella v. Grizzly Industrial, Inc.*, 286 FRD 478, 482 (D Or 2012).
- 7 United States Consumer Product Safety Division. (October 17, 2011). CPSC Announces ANPR for Table Saws to Address Serious Hand and Finger Injuries. Retrieved from <http://www.cpsc.gov/en/Newsroom/News-Releases/2012/CPSC-Announces-ANPR-for-Table-Saws-to-Address-Serious-Hand-and-Finger-Injuries/>
- 8 Woodworking Network. (September 21, 2012). California Drops Table Saw Safety Rule Back in CPSC’s Court. Retrieved at <http://www.woodworkingnetwork.com/wood-blogs/rich-christianson/Table-Saw-Safety-Rule-Drops-from-California-Back-to-CPSCs-Court-170679966.html#sthash.pgfmajdC.iHvSdA60.dpbs>
- 9 *Id.*
- 10 SawStop. (2013). Contractor Saw. Retrieved at <http://www.sawstop.com/table-saws/by-model/contractor-saw#build-price>
- 11 <http://www.homedepot.com/>
- 12 *Osorio v. One World Technologies, Inc.*, 659 F3d 81, 83 (1st Cir 2011).
- 13 Fine Woodworking. (2014). More Details on the Carlos Osorios Tablesaw Lawsuit. Retrieved at <http://www.finewoodworking.com/item/26939/more-details-on-the-carlos-osorio-tablesaw-lawsuit>
- 14 *Osorio*, 659 F3d at 91.
- 15 *Id.* at 83.
- 16 Oregon’s comparative fault statutes, ORS 31.600 et seq., apply only to tort-based liability, and have no impact on damages awarded on warranty claims.
- 17 *Stollings v. Ryobi Technologies, Inc.*, 725 F3d 753, 756 (7th Cir 2013).
- 18 *Id.*