

Missouri Lawyers

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WEEKLY

■ \$950,862 ARBITRATION AWARD

Worker receives nearly \$1M after losing fingers

WORKERS' COMPENSATION

- **Breakdown and distribution of total value:** 2008 hardship award, \$10,809; \$77,090 in paid medical costs; \$12,736 in total/temporary disability; \$203,000 lump sum payment; \$647,226 in Medicare set aside
- **Venue:** Missouri Division of Workers' Compensation
- **Case Number/Date:** 04-002393/Jan. 12, 2017
- **Caption:** Renaldo Dominguez vs. Home Depot, Inc.
- **Plaintiff's Attorney:** Mark Cantor, Cantor Injury Law, St. Louis
- **Defendant's Attorney:** Amanda Miranda, Early & Miranda, St. Louis
- **Judge:** Linda J. Wenman
- **First Pretrial Demand:** \$74,364
- **First Demand Detail:** Claimant demanded 110 percent disability rating for each finger, 15 percent disability for the body as a whole, disfigurement and additional medical and psychological
- **First Pretrial Offer:** \$15,000
- **First Offer Detail:** Insurer offered 45 percent disability rating for the thumb, 80 percent for the index and middle fingers and 75 percent for the ring finger.
- **Last Offer:** \$151,558
- **Plaintiff's Experts:** Dr. Bruce Berwald, Berwald Surgical-Medical, Bridgeton (internal medicine); Dr. Stacey Smith, St. Louis (psychiatry); Dr. Richard Katz, St. Louis (physical medicine); Dr. Paul Glaser, St. Louis (psychiatry); Dr. Paul Packman, St. Louis (psychiatry); Matthew Ruengert, St. Louis (prosthetics); Dr. Charles Nathan, St. Louis (plastic surgery)
- **Defendant's Experts:** Dr. Paul Manske, Washington University, St. Louis (orthopedic medicine); Dr. Wayne Stillings, St. Louis (psychiatry); Dr. Charles Goldfarb, Washington University, St. Louis (orthopedic medicine-hand surgeon); Fred Schaumberg, St. Louis (prosthetics)
- **Insurance:** American Home Assurance (for Home Depot)

BY ALAN SCHER ZAGIER

Special to Missouri Lawyers Media

A former Home Depot employee who initially received a pair of much smaller awards for losing four fingers while at work has settled a long-running workers' compensation case against the company for nearly \$1 million.

The January 2004 workplace accident occurred when a customer's shopping cart bumped Reynaldo Dominguez while he was using a radial-arm saw at the Ellisville Home Depot in west St. Louis County. Dominguez, then 26, was a lumber freight-team supervisor who was unable to read or write. The affected fingers all were severed from his left hand.

The employer's insurer initially refused to settle the case for more than \$15,000, said plaintiff's attorney Mark Cantor. The settlement reached in January 2017 consists of a \$203,000 lump-sum payment representing permanent total disability benefits of the body as a whole, minus attorney fees and a Medicare set-aside of \$647,226.

The company's insurer agreed to pay Dominguez just over \$100,000 – but not without a struggle, Cantor said.

The insurer's physician concluded the case involved only disability of the affected fingers, but Cantor countered that Dominguez

suffered significant psychological damage from the trauma.

"The case involved various disputes over the employer's failure to provide disability benefits (and) medical care and failure to produce documents and witnesses in discovery," he said.

Attorneys representing the insurer did not respond to several requests for comment.

With his severed fingers on ice, Dominguez was flown from a St. Louis-area hospital to a transplant center in Louisville, Kentucky, where his left ring finger was reattached. Complications from the injury led to that finger being amputated in 2008.

Dominguez was released from medical treatment in 2005 and instructed to return to work with a therapeutic glove to protect the injured hand. Cantor said he filed a motion for hardship setting to compel the employer to provide his client with the glove. But Home Depot subsequently "renege[d] on this agreement" and failed to pay appropriate temporary total disability benefits, including benefits for a one-month period from February to March 2005, Cantor said.

The employer also declined to pay temporary partial benefits after his client's limitations forced him to leave Home Depot and take a lower-paying job, Cantor said.

In August 2008, after Cantor



Mark Cantor

filed a second hardship motion, Dominguez was awarded \$10,809 representing past benefits, and Home Depot agreed to pay benefits from that point forward. The employer also was ordered to provide the additional medical and psychiatric care Dominguez needed.

In 2012, a temporary award by an administrative law judge awarded Dominguez another \$43,250 due to the employer's failure to provide medical and psychiatric care and unpaid disability benefits for various periods between 2008 and 2012.

The judge cited Home Depot for providing "little to no effective psychiatric care or pain management" and for "ignoring or overruling its own authorized treating physicians." The judge also noted that three vocational experts found the claimant to be unemployable.

Including the earlier payments, the total settlement exceeds \$950,000. mo