

Missouri Lawyers

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WEEKLY

■ \$400,000 SETTLEMENT

Corkscrew company settles over eye injury

PRODUCT LIABILITY

■ **Venue:** U.S. District Court for the Eastern District of Missouri

■ **Case Number/Date:** 4:13-cv-01173 /Aug. 24, 2015

■ **Judge:** John Bodenhausen

■ **Plaintiff's Experts:** Jahan Rasty, Lubbock, Texas, (engineering); Dr. Sean Edelstein, St. Louis, (ophthalmology); Dr. Levent Akduman, St. Louis, (ophthalmology); Julie Dekinder, St. Louis, (optometry)

■ **Insurer:** Hartford

■ **Caption:** Wendy Gauntt v. Metrokane Inc.

■ **Plaintiff's Attorney:** Donald Schlappizzi, Schlappizzi Attorneys at Law, St. Louis

■ **Defendant's Attorneys:** Peter Westhoff, the Law Offices of Patricia M. Caragher, St. Louis (for Metrokane)

By DAVID BAUGHER

Special to Missouri Lawyers Media

A woman who sustained severe eye injuries while removing a corkscrew component from its packaging will be compensated with a \$400,000 settlement from the manufacturer.

"It was incumbent upon us to establish, I think rather convincingly, that the way they sold it was really not acceptable to the public," said Donald L. Schlappizzi of Schlappizzi Attorneys at Law. "She might have been able to get it out without getting hurt but there was always that opportunity to be injured."

Wendy Gauntt, represented by Schlappizzi, purchased the three-component Vertical Rabbit Corkscrew in April 2012. Gauntt was attempting to extricate a spare spiral piece from packaging when the spiral was ejected from its plastic tray, hitting her in the face and lodging in her eye.

The incident resulted in the need for a corneal transplant and a lensectomy resulting in partial restoration of sight in the affected eye.

The other pieces of the corkscrew were held in place with tie-downs



Donald Schlappizzi

but the extra spiral was housed in a molded plastic cavity called a "friction" fit, Schlappizzi said. Unable to remove it with her fingers due to its snug position, the plaintiff attempted to force it free with an implement.

"The whole concept of this case was that they designed this package giving the extra spiral without any means of getting it out without prying it out," he said.

Schlappizzi said his case was buoyed significantly by video from testing by an engineering expert from Texas who attempted the same procedure and got similar results.

"Nobody [there] could extricate it with their fingers," he said. "He then put a face mask shield on and began the extraction process. It actually hit his face shield one time and every other time it would pop out elsewhere. It was clear the design and the way they packaged this extra piece that was supposed to go with the set was dangerous because you couldn't get it out without prying it out."

The package contained no instructions or warnings regarding removal of the component, Schlappizzi said.

He said negotiations with the de-

fendant Metrokane Inc., had been difficult due in part to the company's sale during the process but eventually a settlement was reached.

"Trying to find the people involved in the actual production of it was difficult because the company had been sold and some of the active people involved in it weren't there anymore," he said.

Schlappizzi also initially filed suit against Pollen Design Group, which had been involved in the creation of the packaging but ultimately found they bore no responsibility for the aspect of the packaging at issue in the matter. They were dropped from the case and were not a party to the eventual settlement.

"They didn't have anything to do with designing how the component parts were restrained," he said.

Schlappizzi said that his client's consistent testimony helped bolster the strength of his

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Donald Schlappizzi, plaintiff's attorney

case.

"She's a lovely person," he said. "She's very persuasive and all the medical records dovetailed so it was clear. She always told the same story every time somebody asked her what happened."

Peter Westhoff of the Law Offices of Patricia M. Caragher, which Schlappizzi listed as representing Metrokane, did not respond to a message requesting comment. Kevin Clancy of Lewis & Gellen, which represented Pollen, declined to comment on the matter. MO