



\$565,000 Recovery for Laborer



WORKPLACE SAFETY

Laborer Hurt by Saw, Said Boss Removed Guard

Settlement: \$565,000

Franco v. LeCann, 32592/08 (4/9/2012)

Suffolk Supreme: Justice Arthur Pitts

Plaintiff Attorney: Thomas Keegan of Keegan & Keegan, Ross & Rosner in Patchogue

Defense Attorney: Scott Cacciabauda of Robert Tusa in Hauppauge

Facts & Allegations: On June 29, 2007, plaintiff Alber Franco, 24, a laborer, worked at a residence in East Quogue. He was replacing a door, necessitating his use of a table saw. During the course of the task, the saw's blade severed three of Franco's fingers.

Franco sued the home's owners, Mirelle and Raymond LeCann, alleging the defendants negligently failed to provide a safe workplace.

Franco claimed Raymond LeCann had removed a guard shielding the saw's blade. He contended the guard's removal exposed about 4 inches of the blade. He claimed LeCann provided the saw. Franco's safety expert submitted a report opining LeCann violated state law and Occupational Safety and Health Administration regulations regarding workplace safety.

LeCann contended he had provided adequate instruction regarding the saw's use, claiming Franco had been told to use a long plastic "feather" to push wood through the area of the saw's blade, rather than using his hands. Defense counsel contended Franco ignored LeCann's instructions and assumed the risk of the resultant injury.

LeCann also contended Franco was not a paid employee but a volunteer worker helping renovate a home for a gravely ill person. He claimed, in all other regards, Franco had merely been assisting him with the day-to-day upkeep of several homes. LeCann also claimed he was not present when the accident occurred and, as such, defense counsel contended LeCann was not controlling Franco's work.

In response, Franco's counsel noted Franco had been performing repairs, minor construction tasks and yard work for LeCann for some 18 months before the accident. He also noted Franco had been paid on a per diem basis. He further noted LeCann had not procured Workers' Compensation insurance. As such, if Franco were an employee of LeCann, defense counsel would not have been legally permitted to present defenses based on comparative negligence and assumption of risk.

Injuries/Damages: Franco sustained traumatic amputations of his right, nondominant hand's thumb and third and fourth fingers. The thumb was reattached, but it cannot be bent or rotated.

Franco sought recovery of his past medical expenses and damages for past and future pain and suffering.

Result: The parties negotiated a pretrial settlement. The defendants' insurer agreed to pay \$565,000, comprised of \$65,000 for Franco's medical expenses and \$500,000 for pain and suffering.



Courtesy of the [New York Law Journal](#)