



# VERDICTSEARCH

## TEXAS

### VERDICT *of the* WEEK

#### PRODUCTS LIABILITY

**Design Defect — Motor Vehicle — Truck**

## Driver's hand crushed by concrete truck's rotating drum

**VERDICT (P)**      **\$999,500**

**CASE**                Devin Finke v. Continental Equipment Mfg. Company, No. 2002-34962  
**COURT**             Harris County District Court, 113th, TX  
**JUDGE**             Patricia Hancock  
**DATE**                3/19/2004

**PLAINTIFF**  
**ATTORNEY(S)**    Joe B. Stephens, The Stephens Law Firm, Houston, TX

**DEFENSE**  
**ATTORNEY(S)**    Marc J. Wojciechowski, Wojciechowski & Associates, Houston, TX

**FACTS & ALLEGATIONS** On July 15, 2000, plaintiff Devin Finke, 39, a concrete truck driver, was washing his truck by standing on a "wash rack" built on the side of the truck. The rubber glove on Finke's left hand was pulled into an unguarded "pinch point" between the rotating concrete drum and the steel rollover bar at the top of the truck. His hand was severely crushed. The accident occurred in Houston.

Finke sued the manufacturer of the truck, Continental Equipment Mfg. Co., Houston, asserting products liability, alleging that the truck was defectively designed with a dangerous, unguarded "pinch point" only seven inches from the wash rack. Finke contended that Continental Equipment knew how to design a safer product because they sold other trucks with a safer clearance between the rotating drum and the rollbar.

Continental Equipment maintained that Finke was at fault for the accident, arguing that Finke had failed to heed the signs on the truck and language in the owner's manual that warned of the danger of getting a hand caught by the rotating drum. The manufacturer also claimed that Finke failed to pay attention while performing his work.

**INJURIES/DAMAGES** *crush injury, hand; reflex sympathetic dystrophy*

Finke's left hand was severely crushed, but not broken. He developed reflex sympathetic dystrophy (RSD), a nerve disorder, in his hand and arm. Finke contended that the RSD is a permanent injury and will cause him lifelong pain, as there is no known cure. The plaintiff's counsel reported that when the jury examined his client's hand, the RSD caused his hand to perspire so profusely that sweat was dripping off his palm into the jury box.

Finke has not worked since the accident, relying on his workers' compensation checks to support his sons, ages 12 and 14.

The defense contested the severity of Finke's injury and argued that he could return to gainful employment. The defense counsel reported that Finke requested future earnings of approximately \$600,000.

**RESULT** The jury found that the concrete truck was 51% and Finke was 49% responsible for causing the accident. The jury found damages of \$999,500.

Finke's compensatory damages after the responsibility reduction were \$489,755. The court also awarded Finke \$30,041 in prejudgment interest for a total of \$519,796, plus post-judgment interest and court costs.

The plaintiff's counsel reported that if the defendant pays the verdict, the workers' compensation checks and Finke's right to future medical assistance will be cut off. The counsel also reported that the jury said that it paid no attention to comments by the defense lawyer that Finke could find work if he wanted.

**D. FINKE**                \$229,500 past medical costs  
                               \$380,000 future medical costs  
                               \$50,000 past physical impairment  
                               \$50,000 future physical impairment  
                               \$160,000 past lost earnings  
                               \$80,000 future lost earnings  
                               \$50,000 past pain and suffering  
                               \$999,500

**DEMAND**                \$955,000  
**OFFER**                    \$30,000

**TRIAL DETAILS**        Trial Length: 4 days  
                               Jury Poll: 11-1

**PLAINTIFF**  
**EXPERT(S)**            Tom Grubbs, mechanical, Houston, TX  
                               Eric Rothenberg, M.D., hand surgery, Houston, TX

**DEFENSE**  
**EXPERT(S)**            Frank Loeffler, mechanical, Houston, TX (non-testifying)

**POST-TRIAL** The defense filed a motion for JNOV.

—B. K. Silva