

*FJVR/JT&T* Reference Number: 09/2002

- (I) **JOEL TUITT & ALGEAN TUITT, his wife vs. HOWMEDICA OSTEONICS CORP.** (United States District Court, Southern District of Florida, Miami-Dade Division)

**COUNTY/DOCKET #/JUDGE:** Miami-Dade / 01-1410 CIU / Shelby Highsmith

**PLAINTIFF(S) ATTORNEY(S):** Jonathan R. Friedland and Daryl Merl of Merl, Burstyn & Associates, Miami

**DEFENDANT(S) ATTORNEY(S):** James Murray of Fowler, White, et al., Miami, Ralph Campillo of Sedgwick, Delert, et al., Los Angeles, CA

**AGE/SEX/OCCUPATION OF PLAINTIFF:** 48 / M / Disabled

**CAUSE OF INJURY:** *Product Liability/Knee Prosthesis.* On May 16, 1999, Plaintiff Joel Tuit received a partial left knee prosthetic device. Plaintiff alleged that the device broke apart inside Plaintiff's left knee requiring removal of the product on October 24, 2000. Plaintiff alleged that Defendant, Howmedica Osteonics, was negligent in the manufacture, design, sterilization, packaging, and oxidation of the device. Plaintiff further alleged that because the device was manufactured and sterilized in September 1993, it remained on the shelf for over five years in violation of Defendant's shelf life policy. Defendant denied Plaintiff's allegations and maintained that the October 2000 surgery was necessitated by factors unrelated to the prosthesis and that Plaintiff is in essentially the same condition as he would have been had he had a total knee prosthesis originally implanted. This case was tried on negligence and strict liability.

**NATURE OF INJURY:** Plaintiff underwent total knee replacement eighteen months after the initial surgery rather than approximately eight to ten years later. Plaintiff alleged aggravated right knee problems leading to additional left and right knee surgeries. Dr. Levitt was Plaintiff's treating physician.

**EXPERT WITNESSES:**

**PLAINTIFF'S:**

Richard Levitt, M.D., Orthopedic Surgery, Coral Gables (video depo)  
Robert Rose, Materials & Science Engineer, Boston, MA  
Christian Otrajki, M.D., Pathology, Miami  
Michael Thorpe, M.D., Radiology, Miami

**DEFENDANT'S:**

Stephen Wender, M.D., Orthopedic Surgery, Miami  
Stephen Li, Materials & Science Engineer, Sarasota

**VERDICT:** \$225,000 for Plaintiffs on May 17, 2002 (\$172,000 - economic damages; \$53,000 - non-economic damages).

**EDITOR'S NOTE:** The jury found negligence on the part of Defendant which was a legal cause of damage to Plaintiff, but found that the prosthetic knee device was not defective when implanted. Defendant offered \$185,000; Plaintiff demanded \$250,000.

**PLAINTIFF'S ATTORNEY'S COMMENTS:** Defendant filed a Motion for New Trial based on the theory of an inconsistent verdict.

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QUESTION:

1. Location/city of incident: \_\_\_\_\_