

CASE INFORMATION SHEET
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COUNTY AND COURT:

Pasco County Florida

NAME OF CASE:

MARK JOSEPH SHOPSHEAR and
NANCY JANE SHOPSHEAR,

Plaintiffs,

v.

DOMINO'S PIZZA, LLC; KOSTKA
ENTERPRISE, INC., d/b/a
DOMINO'S PIZZA; and MICHAEL J. CRITCHLOW,

Defendants

CASE DOCKET NO.: 51-2005-CA-1936 **JUDGE:** Stanley R. Mills

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL [full names, firm and city]:

John D. Hooker, Esq.
13610 US Highway 92 East
Dover, FL 33527

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL [full names, firm and city]:

Richard S. Womble, Esq.
Rissman, Barrett, Hurt, Donahue & McLain, P.A.
Orlando, FL
Attorney for Domino's Pizza, LLC

Aram P. Megerian, Esq.
Cole, Scott & Kissane, P.A.
Tampa, FL 33609
Attorney for Kostka Enterprise, Inc. d/b/a Domino's Pizza and
Michael J. Critchlow

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT [at time of accident
or occurrence]:

Mark Shopshear, a 45-year old, heavy duty truck driver.

**FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF
SURVIVORS:**

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

July 14, 2004

CAUSE OF INJURY: [factual description including allegations and
defenses on liability]:

Michael Critchlow was employed by Kostka Enterprise, Inc. d/b/a
Domino's Pizza as a pizza delivery driver. On July 14, 2004, he
was in the course of his employment with Kostka Enterprise. He
was in the process of delivering a pizza when he failed to yield
the right of way while making a left hand turn. As his vehicle
crossed the centerline of a two-lane road, the left front of his
vehicle struck a motorcycle driven by Plaintiff, Mark Shopshear.
Mr. Shopshear was thrown from his motorcycle and sustained
serious bodily injuries.

NATURE OF INJURY [please be specific concerning injuries,
treatment and medical testimony]:

Closed head injury and spinal injury resulting in two fusion
surgeries. Plaintiff suffers from anxiety disorder. Due to his
injuries, Plaintiff uses an electric scooter. He is unable to
walk more than a short distance.

Plaintiff's past medical expenses were \$500,000.

Plaintiff claimed that he is totally disabled. He was unable to
return to work since the accident. Plaintiff's past lost wages
and loss of future earning capacity were substantial. Plaintiff

had been cared for by his wife, but claims that he will need attendant care throughout the rest of his life.

Plaintiff sued Michael Critchlow for negligence and his employer, Kostka Enterprise, Inc. d/b/a Domino's Pizza for vicarious liability for its employee. Plaintiff also sued Domino's Pizza, LLC on a theory of agency. Domino's Pizza, LLC is a Michigan Corporation and is the franchisor. Domino's Pizza, LLC had a franchise agreement with Kostka Enterprise. Kostka Enterprise owns and operates more than seventy Domino's Pizza franchises in the State of Florida.

Judge Stanley Mills ordered, on his own initiative, that trial should be bifurcated so that the issues of negligence, comparative negligence, and agency would be tried first with a second trial, if necessary, to be conducted on the issues of injuries and damages.

Plaintiff argued that Domino's Pizza, LLC had the right to control the operation of the franchises so that the franchises and its drivers should be considered agents of Domino's Pizza, LLC and thus Domino's Pizza, LLC should be vicariously responsible for the alleged negligence of Michael Critchlow.

In support of Plaintiff's arguments on the agency issue, Plaintiff relied on the Franchise Agreement, the Manager's Reference Guide and standards created by Domino's Pizza, LLC. The defense countered by demonstrating that Kostka Enterprise was an independently run business with 70 franchises. Domino's Pizza, LLC contended that it did not have the right to control the day-to-day activities of Kostka Enterprise. The president of Kostka Enterprise testified that he considered his company to be an independent business and that he made all of the business decisions about the company. Domino's Pizza, LLC argued that in order to run a franchise system, the franchisor does need to ensure product uniformity and brand recognition but that those purposes do not overtake the independent decision making of the franchise owners.

PLAINTIFF'S EXPERT WITNESSES [include full name, degree, specialty and city]:

No retained expert witnesses. Plaintiff called Paul Kostka, owner of Kostka Enterprise, Inc. d/b/a Domino's Pizza as a witness in Plaintiff's case.

DEFENDANT'S EXPERT WITNESSES [include full name, degree, specialty and city]:

Joe Devereaux. Mr. Devereaux was anticipated to testify regarding the relationship between the franchisor and the franchisees. After cross-examination of Mr. Kostka, Domino's Pizza, LLC decided that it was unnecessary to call Mr. Devereaux.

CHECK APPROPRIATE SPACE: X Verdict

DATE OF VERDICT:

August 25, 2008

VERDICT:

The jury returned a verdict finding that Kostka Enterprise, Inc. d/b/a Domino's Pizza was not the agent of Domino's Pizza, LLC. The jury found that Michael Critchlow was negligent and that Mark Shopshear was not comparatively negligent. It also found Kostka Enterprise, Inc. vicariously liable for Michael Critchlow's negligence.

COMPARATIVE NEGLIGENCE [if applicable]:

None.

JUDGMENT:

Pending.

DATE OF JUDGMENT:

Pending.

DEFENDANT'S OFFER:

Defendant Domino's Pizza, LLC offered \$5,000 in settlement which Plaintiff rejected.

PLAINTIFF'S DEMAND:

\$42,000,000

ATTORNEY'S COMMENTS:

The second trial on the issue of injuries and damages has not been scheduled. It is presently unknown if Plaintiff will appeal the jury verdict in favor of Domino's Pizza, LLC. Based upon ***Parker v. Domino's Pizza, Inc.***, 695 So. 2d 424 (Fla. 4th DCA 1997), a case also handled by this firm, the issue of agency was properly submitted to the jury. In ***Parker***, the jury also returned a verdict finding that the franchisee was not the agent of Domino's Pizza, LLC.

Submitted By: Richard S. Womble **Date:** September 30, 2008

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Donahue & McLain, P.A.

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