

## PRODUCTS LIABILITY-FINALISTS

# Rumberger Kirk Attorneys Successfully Defend Maker of Sea-Doo Boats

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In 2012, a Duval County woman suffered the amputation of three toes while performing maintenance on a Sea-Doo Jet Boat. She sued the maker, claiming strict liability design defect, negligent design and failure to warn.

After a weeklong jury trial, Scott M. Sarason and Armando G. Hernandez of the Miami office of Rumberger Kirk & Caldwell won a defense verdict in favor of their client, BRP U.S. Inc.

On Jan. 26, 2012, the woman was in her backyard performing maintenance on the boat. At one point she placed her foot under the open engine hatch. She eventually pushed that hatch closed, trapping the foot. It was 30 minutes



Hernandez



Sarason

before help arrived and she was freed.

She lost three toes. She was also diagnosed with neuropathic pain and reflex sympathetic dystrophy, as well as constant pain in her back, hip, knee and leg. Surgeons implanted a spinal cord stimulator to address the pain. Her life care plan costs were in excess of \$1 million.

At trial, the plaintiff argued that BRP knew of the foreseeable risk of injury given the design of the hatch cover but did nothing. She argued that BRP did not include any warnings or instructions on the jetboat, in the owner's manual, or in the safety video. She sought millions of dollars for disfigurement, mental anguish, pain and suffering, and past and future medical expenses.

Sarason and Hernandez responded that the boat was not defective or responsible for the accident. BRP experts explained the development and hundreds of hours of testing that went into the boat's design. The attorneys emphasized that not one other person had ever been injured while using the identical engine hatch design on other Sea-Doo boats. Despite the plaintiff's

attempts to exclude such evidence, the attorneys successfully argued for the admissibility and probative value pertaining to the lack of other accidents.

The attorneys informed the jury that the plaintiff had opened and closed the same engine hatch at least 50 times in the 10-month period prior to the date of the accident without injury. As such, they argued that the plaintiff was solely responsible for her injuries. They further argued that in more than three years since the accident, the plaintiff had continued to regularly use the boat without injury.

Despite a sympathetic plaintiff and testimony from her medical experts, the jury returned a verdict in less than an hour, finding no negligence on the part of BRP and no defect with the jetboat. The plaintiff did not appeal.