

CASE INFORMATION SHEET
FLORIDA LEGAL PERIODICALS, INC.
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COUNTY AND COURT:

Federal, United States Middle District of Florida (Tampa)

NAME OF CASE:

Alvaro Mendez-Garcia v. Galaxie Corporation v. Nanotec Metals, Inc.

CASE DOCKET NO.: 8:10-cv-00788-T-24-EAJ **JUDGE:** Susan C. Bucklew

PLAINTIFF ATTORNEY:

Kevin Woods, Esquire
HARMON, WOODS, PARKER, HENDRICKS & ABRUNZO, P.A.
110 N. 11th Street
Tampa, FL 33602

DEFENDANT/THIRD-PARTY PLAINTIFF ATTORNEY:

Ed Longosz, Esquire ECKERT, SEAMANS, CHERINS & MELLOTT, LLC 1717 Pennsylvania Avenue, N.W. Suite 1200 Washington, D.C. 20006	Howard Scholl, Esquire COLE, SCOTT & KISSANE P.A. 4301 W. Boyscout Blvd. Suite 400 Tampa, FL 33607
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THIRD-PARTY DEFENDANT ATTORNEY

Paul B. Fulmer III, Esquire
RISSMAN, BARRETT, HURT,
DONAHUE & McCLAIN, P.A.
1 N. Dale Mabry Hwy.
11th Floor
Tampa, FL 33609

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

Alvaro Mendez-Garcia is a 30 year-old, Hispanic male. He was employed with Nanotec Metals, Inc. as a general laborer. Nanotec is responsible for making an aluminum boron carbide composite metal for the storage of spent nuclear fuel.

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

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

The accident occurred at approximately 9:30 a.m. on March 6, 2009 at the Nanotec Metals, Inc. facility located in Lakeland, Florida.

CAUSE OF INJURY:

Mr. Mendez-Garcia was working near a HERR VOSS Roll Leveler, the purpose of which is to flatten metal sheets. Metal sheets were placed in a hot oven. As the metal sheets came out of the oven, Mr. Mendez-Garcia, using large tongs and wearing a large oven mitten, would pull the metal from the oven and transfer it to a roller table. He would then move the hot metal into the roll leveler for the flattening process.

While transferring a hot sheet of metal into the roll leveler, he would try to wipe off as much debris (metal shavings) as possible. In doing so, he got his left hand stuck in the front pinch rollers.

NATURE OF INJURY:

Plaintiff's injury to his left hand was at multiple levels. The injury included a crush injury, de-gloving, metacarpal fracture at the index and middle finger knuckles, and 2d and 3d degree burns.

Over the course of two-weeks, Mr. Mendez-Garcia had five surgeries performed on his hand. Ultimately, all five fingers were removed along with a majority of the skin and muscle in the palm. The result was a distal left hand amputation.

Plaintiff was ultimately fitted with a prosthetic.

PLAINTIFF'S EXPERT WITNESSES:

1. Stephen Durham, Ph.D.
DEITER, STEPHENS & DURHAM
100 N. Tampa Street
Suite 2410
Tampa, FL 33602

Economist

2. Jerry L. Puswell, Ph.D.
2035 Mulligan Drive
Colorado Springs, CO 80920

Manufacturer & Safety Engineer

3. Michael Shahnasarian, Ph.D.
11019 N. Dale Mabry Hwy.
Tampa, FL 33618

Vocational Rehabilitation

4. Edwin Melendez, M.D.
2509 W. Crest Avenue
Suite 2
Tampa, FL 33614

Treating Physician/Orthopedic Hand Surgeon

DEFENDANT, GALAXIE'S EXPERT WITNESSES:

1. Robert Belsole, M.D.
USF Health
2 Tampa General Circle
Tampa, FL 33608

Orthopedic Hand Surgeon

2. Steven Cooley
908 Riverside Drive
Suite 240
Palmetto, FL 34221

Vocational Rehabilitation

3. William H. Daley, III
88 Trap Falls Road
Shelton, CT 06484

Professional Engineer

**DEFENDANT/THIRD-PARTY PLAINTIFF,
NANOTEC METAL, INC.'S EXPERT WITNESSES**

1. Donald Fournier, Jr.
FORENSIC ENGINEERING TECHNOLOGIES, LLC
255 Premara Blvd.
Suite 128
Lake Mary, FL 32746

Professional Engineer

SUMMARY JUDGMENT:

Summary Judgment was granted by Judge Bucklew in favor of Nanotec Metals, Inc. on November 3, 2011.

FINAL SUMMARY JUDGMENT:

December 6, 2011.

PLAINTIFF'S DEMAND:

Plaintiff sought \$3,000,000 at mediation, but filed no proposal for settlement against Galaxie Corporation or Nanotec Metals, Inc.

NANOTEC METALS, INC.'S OFFER:

May 2, 2011 - \$15,000 Proposal for Settlement to Third-party Plaintiff, Galaxie Corporation.

ATTORNEY'S COMMENTS:

Galaxie Corporation is an international reseller of metal working equipment. Galaxie sold a Herr Voss roll leveler to Nanotec Metals which Nanotec used to flatten metal to make containers which hold spent nuclear fuel. The only relationship between Galaxie and Nanotec is that of seller and buyer.

Plaintiff, Mendez-Garcia, filed a one-count Complaint against Galaxie Corporation alleging pure negligence. Plaintiff alleged that Galaxie knowingly sold a machine without proper safety guards. Galaxie brought a third-party claim against Nanotec Metals, Inc. alleging breach of contract, negligence and common law indemnification/contribution.

Foremost, Galaxie was seeking indemnification pursuant to an alleged contract provision entitled "Buyer Assumption Of Risk And Indemnification Of Seller" which was contained in Supplementary Terms And Conditions Of Sale. The Supplementary Terms And Conditions Of Sale were attached to the invoice that Galaxie gave to Nanotec Metals, Inc. when Nanotec purchased the roll leveler from the Galaxie warehouse.

Galaxie moved for summary judgment against Nanotec arguing that the parties entered into an enforceable sales contract, which was governed by Michigan law, and that the contract validly and unambiguously required Nanotec to indemnify Galaxie against damages stemming from Galaxie's negligence that resulted in the injury to Mendez-Garcia. Nanotec moved for summary judgment against Galaxie Corporation contending that the parties did not enter into an enforceable sales contract, and that Florida law governed. Further, even if there were a contract, Nanotec had no obligation to indemnify Galaxie for Galaxie's own negligence because the assumption of risk and indemnification language did not clearly and expressly state that Nanotec agreed to indemnify Galaxie for its own wrongful acts.

Under both Florida and Michigan law, even if the trial court were to assume that there was an enforceable contract, any contract which purportedly indemnifies one against the consequences of his or her own negligence is subject to strict construction and will not be so construed unless it clearly appears that it was intended to cover the indemnity's own negligence. Unless the intention is unequivocally expressed in the plainest of words, the law will consider that the parties

did not undertake to indemnify one against the consequences of his own negligence.

Upon full review of the assumption of risk and indemnification provision, the trial court held that regardless of whether there was an enforceable sales contract, that there was no clear or unequivocal language in the provision that Nanotec intended to indemnify Galaxie, for Galaxie's own negligence to third-parties.

Galaxie also argued common-law indemnification; however, the trial court held that there was no special relationship between Galaxie and Nanotec and thus, Galaxie was not vicariously liable for Nanotec in any way.

Nanotec argued in its motion for summary judgment that Galaxie's count alleging negligence against Nanotec was nothing more than another veiled attempt at indemnity. Nanotec also argued that the contribution claim could not exist as Florida law no longer supports joint and several liability.

The trial court held that Galaxie's third-party claims against Nanotec for negligence and contribution were procedurally improper and, therefore, failed as a matter of law.

Submitted Paul B. Fulmer III
By:

Date: December 27, 2011

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