

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

Orange County Circuit Court

NAME OF CASE:

Ricky Pelzer and Rebecca Pelzer, his wife, Plaintiffs v. Fly & Form, Inc., Defendant

CASE DOCKET NO.: 05-CA-10866 **JUDGE:** Cynthia Z. MacKinnon

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

Christopher Morrison, Esquire
Pratt & Morrison, P.A.
1215 Louisiana Avenue
Suite 200
Winter Park, FL 32789

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

Vance R. Dawson, Esquire
John P. Daly, Esquire
Rissman, Barrett, Hurt, Donahue & McLain, P.A.
201 E. Pine Street
15th Floor
Orlando, FL 32801

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

At the time of the alleged incident, Plaintiff, Ricky Pelzer, was a 35 year old self employed welder and semi-professional football player. His wife, Rebecca Pelzer, age 40, brought a loss of consortium claim.

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

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

October 27, 2005, while working on a high rise construction site in Downtown Orlando.

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

On October 27, 2005, Mr. Pelzer was injured while working as a welder on the Solaire at the Plaza project, a high rise condominium under construction in Downtown Orlando. At the time of the accident, Mr. Pelzer was working in a stairwell on the third floor. While welding stairs, Mr. Pelzer was struck in his upper back by a falling 4"x4"x16' piece of lumbar.

Plaintiffs' theory was that the 4"x4" had fallen down the stairwell from an unguarded opening six floors above. Plaintiffs alleged that Fly & Form, one of the subcontractors on the Solaire project, had been working in the area from where the 4"x4" had fallen, and had been grossly negligent in failing to cover the stairwell opening. Plaintiffs further alleged that one or more of the Fly & Form crew members had dropped the 4"x4" down the stair well opening. The 4"x4" fell several stories and ultimately struck plaintiff.

Fly & Form denied liability. Fly & Form argued that it had covered the stairwell opening prior to commencing work. Fly & Form also argued that the 4"x4" that struck Mr. Pelzer was of a different type of wood than that which Fly & Form customarily used. Finally, Fly & Form argued that the general contractor had been negligent for failing to install safety netting in the stair well above where Mr. Pelzer had been working.

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

Following the accident, Mr. Pelzer was taken to Orlando Regional Medical Center and hospitalized for four days. He was diagnosed with fractures of the right ribs, scapula and thoracic vertebrae.

After his discharge from the hospital, Mr. Pelzer received conservative care and treatment by Dr. Scott McFadden. When Mr. Pelzer's condition did not improve, Dr. McFadden referred him to Dr. Dean Cole, a trauma specialist.

Dr. Cole diagnosed fractures of the ribs, collar bone and shoulder blade, and significant soft tissue injuries. Dr. Cole also diagnosed "degloving," in the area of the right shoulder and trapezius. Dr. Cole explained that while Mr. Pelzer's outer skin was intact, the muscle, tendon and ligament tissue beneath the skin had died as a result of the impact from the falling lumber.

Dr. Cole performed surgery on Mr. Pelzer on November 12, 2005. The surgery consisted of a repair of the acromion, rotator cuff and scapula. Dr. Cole explained that the scapula had been broken into multiple fragments and had to be put together with a plate and screws. He also used a plate to repair Mr. Pelzer's acromion joint.

Mr. Pelzer made an extremely good recovery after surgery. On cross examination, Dr. Cole testified that Mr. Pelzer could perform any work or physical activity he desired without medical restriction. However, Dr. Cole noted that Mr. Pelzer would be limited because of loss of strength and motion in the right shoulder.

As a result of his injuries, Mr. Pelzer alleged that he had lost earnings in the past and would continue to lose earnings as he was no longer able to perform the physical tasks associated with welding. In addition, he alleged that he was no longer able to play semi professional football, although he admitted that he had made only nominal money doing this in the past.

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

J. Dean Cole, M.D.
2501 N. Orange Avenue
Orlando, FL 32804

Scott McFadden, M.D.
7975 Lake Underhill Road
Orlando, FL 32822

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

None.

CHECK APPROPRIATE SPACE: x Verdict

DATE OF VERDICT: February 27, 2009

VERDICT AMOUNT [provide components of itemized verdict/settlement]:

For Defendant

COMPARATIVE NEGLIGENCE [if applicable]: N/A

JUDGMENT: For Defendant

DATE OF JUDGMENT: March 22, 2009

DEFENDANT'S OFFER: \$30,000 to Ricky Pelzer
 \$ 5,000 to Rebecca Pelzer

PLAINTIFF'S DEMAND: \$1,000,000

ATTORNEY'S COMMENTS:

Because Mr. Pelzer and Fly & Form were subcontractors on the same construction project, Plaintiffs were required to prove gross negligence on the part of Fly & Form in order to overcome the horizontal immunity provision of Florida Statute §440.10(1)(e). Fly & Form argued as a matter of law that its conduct did not meet this standard; however, Judge MacKinnon denied Fly & Form's motions for summary judgment and directed verdict on this issue.

Following the defense verdict, Fly & Form moved for costs and attorney's fees pursuant to its proposals for settlement. On August 6, 2009, the trial court entered orders awarding costs and attorney's fees against Plaintiffs and in favor of Fly & Form totaling \$61,345.

Submitted By: John P. Daly Date: December 7, 2009

Firm: Rissman, Barrett, Hurt,
Donahue & McLain, P.A.

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