

## **COURT DOCUMENTS**

IN THE CIRCUIT COURT OF THE FIFTH  
JUDICIAL CIRCUIT OF NEW FLORA, IN  
AND FOR PLANTATION COUNTY.  
CIVIL ACTION

CASE NO.: 2005 CA 004360 AB

GERRY COOK,

Plaintiff,

vs.

CHIPPER PROPERTIES, INC.

Defendant.

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**COMPLAINT FOR DAMAGES**

**COMES NOW** Plaintiff, GERRY COOK, by and through undersigned counsel and sues Defendant CHIPPER PROPERTIES, INC. (hereinafter "CHIPPER") and alleges as follows:

**GENERAL ALLEGATIONS**

1. This is an action for damages, which exceeds FIFTEEN THOUSAND (\$15,000.00) DOLLARS, exclusive of costs and interest.
2. At all times material hereto, Plaintiff, GERRY COOK, was and is a resident of Plantation County, New Flora.
3. At all times material hereto Defendant CHIPPER was and is a New Flora corporation authorized to and doing business in Plantation County, New Flora with its principal place of business at 900 10<sup>th</sup> Street, Plantation County, New Flora.
4. At all times material hereto, Defendant CHIPPER owned and maintained a Jet 3-ton hoist (model #3RS-3-10) (serial #G293403003) (hereinafter referred to as "JET HOIST") which is the subject of this litigation.

5. At all times material hereto, Absolute Dewatering leased and/or rented a building under the possession, care and control of Defendant CHIPPER located at 900 10<sup>th</sup> Street, Plantation County, New Flora.
6. At all times material hereto, Absolute Dewatering leased and/or rented from Defendant CHIPPER, the JET HOIST which is the subject of this litigation.
7. At all times material hereto, Plaintiff GERRY COOK was within the course and scope of employment with Absolute Dewatering located in Plantation County, New Flora.
8. At all times material hereto, Plaintiff GERRY COOK was an invitee on the premises of Defendant CHIPPER.
9. At all times material hereto Plaintiff, GERRY COOK, had the consent and permission of Absolute Dewatering to operate and otherwise utilize the JET HOIST.
10. On or about December 12, 2004 Plaintiff, GERRY COOK, was operating the JET HOIST in a manner that was intended and/or reasonably foreseeable by Defendant when suddenly and without warning the JET HOIST broke dropping a 3,500 pound pump.
11. As a direct and proximate result of the JET PUMP breaking and falling, the Plaintiff sustained serious bodily injury.
12. That on one or more occasions prior to December 12, 2004 Defendant CHIPPER retained the services of Hoist Handling, Inc. for the purpose of repairing and/or maintaining the JET HOIST.
13. At all times material hereto, Defendant CHIPPER leased and/or rented the JET HOIST without conducting proper testing adequate enough to determine whether the JET HOIST would fail as it did under the same and similar intended, foreseeable circumstances.

14. At all times material hereto, Defendant CHIPPER retained control and was responsible for the maintenance of the JET HOIST.
15. That at all times material hereto subsequent to December 12, 2004 the broken portion of the JET HOIST has been under the exclusive care, custody and control of Defendant CHIPPER.

### **COUNT I – NEGLIGENCE OF CHIPPER**

16. Plaintiff re-alleges and incorporates the General Allegations, paragraphs 1-15, as though the same were set forth fully herein.
17. Defendant owed Plaintiff a duty to exercise reasonable care in the repair, refurbishing, inspection, maintenance and testing of the JET HOIST.
18. Defendant had a duty to maintain the premises in a reasonably safe condition.
19. That the aforementioned duties of care on the part of Defendant were non-delegable.
20. Defendant breached the aforementioned duties of care in one or more of the following ways:
  - a. Failed to detect the dangers and problems inherent in the JET HOIST;
  - b. Failed to refurbish, repair, and inspect the JET HOIST and place it in a condition that would provide for its safe use;
  - c. Failed to warn plaintiff that the JET HOIST was in a dangerous condition;
  - d. Failed to choose a maintenance and repair company who possesses the knowledge, skill, experience and available equipment which a reasonable man would realize that such a company must have in order to do the work which he is employed to do without creating unreasonable risk of injury to others;

- e. Failed to exercise reasonable care under all the relevant surrounding circumstances.
21. Defendant's negligence was the direct and proximate cause of the failure, which caused the JET HOIST to break.
  22. Defendant's negligence was the direct and proximate cause of the Plaintiff's injuries.
  23. That as a direct and proximate result of the negligence and carelessness of Defendant as hereinabove alleged, the Plaintiff was permanently injured, suffered bodily injury and resulting pain and suffering, disfigurement and scarring, mental anguish, loss of capacity for the enjoyment of life, expense of medical care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition. The losses are either permanent or continuing, and Plaintiff will suffer the losses in the future.

**WHEREFORE** the Plaintiff, GERRY COOK demands judgment for damages against Defendant for compensatory damages which are in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00), together with costs of this action, and Plaintiff further demands trial by jury in this cause.

LAVAL, BLUE, RONE & MULLIS, P.A.  
750 South Dixie Highway  
Bocaire, New Flora 30002

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SHANE D. MULLIS  
NEW FLORA BAR NO.: 957175

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**ANSWER AND AFFIRMATIVE DEFENSES**

**COMES NOW** Defendant, CHIPPER PROPERTIES, INC. by and through undersigned counsel and answers Plaintiff's Complaint as follows:

**GENERAL ALLEGATIONS**

1. Admitted to the extent that Plaintiff has properly pled the jurisdiction of this Court, denied to the extent that Plaintiff has suffered damages which exceed FIFTEEN THOUSAND (\$15,000.00) DOLLARS, exclusive of costs and interest.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Without knowledge, therefore denied.

10. Denied.
11. Denied.
12. Denied.
13. Denied.
14. Denied.
15. Denied.

**COUNT I – NEGLIGENCE OF CHIPPER**

16. Admitted or denied as more specifically stated above.
17. Denied.
18. Denied.
19. Denied.
20. Denied.
21. Denied.
22. Denied.
23. Denied

**AFFIRMATIVE DEFENSES**

1. As for its First Affirmative Defense, Defendant avers that at all times material hereto, the sole and proximate cause of the Plaintiffs' alleged damage was Plaintiff's own negligence. In the alternative, Plaintiff was comparatively negligent in causing any damage which might have been sustained, thereby reducing Plaintiff's recovery by the percentage of Plaintiff's own negligence.

2. As for its Second Affirmative Defense, Defendant avers that any dangerous condition that caused Plaintiff's alleged injuries was open and obvious, therefore no duty to warn existed.
3. As for its Third Affirmative Defense, Defendant avers that the sole and proximate cause of Plaintiff's injuries was the negligence of third parties not under the control of Defendant. More specifically, Defendant avers that Hoist Handling, Inc. was negligent in the repair and maintenance of the subject JET HOIST.

Hodgkins and Small, P.A.

210 South Marion Highway  
Bocaire, New Flora 31003

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JAMES SMALL  
NEW FLORA BAR NO.: 852389

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**PRE-TRIAL ORDER**

The Court hereby enters this Pre-trial Order for the purpose of simplification and clarification of the issues to be tried.

**IT IS HEREBY ORDERED** as follows:

1. The trial shall be conducted in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Evidence.
2. The Plaintiff and Defendant shall be represented by teams consisting of two trial attorneys, each of whom shall conduct one direct examination, one cross examination, and either an opening statement or closing argument.
3. Plaintiff must call Gerry Cook and Logan Stein as witnesses. Defendant must call Leigh Flounders and Rian Green. No other witnesses shall be permitted to give testimony. No rebuttal witnesses will be permitted.
4. Male and female pronouns, names, etc. are interchangeable. Each side shall have a total of 80 minutes for opening statement, direct and cross

examination, closing argument, and argument of motions and objections.

5. Questions about the rules or the facts in this case must be in writing and received by ATLA no later than 5:00 p.m., EST, on January 2, 2006.  
Facsimile transmissions are permissible.
6. Any document appended to the background information or annexed to the deposition of a witness may be enlarged and used at trial. No other documents or objects may be used by counsel as real or demonstrative evidence, except that a blackboard or similar item may be used by counsel during trial provided the writing had not been prepared in advance of trial. Blackboards, easels, chalkboards, overhead projectors, etc., will not be provided by ATLA or the regional hosts.
7. No trial briefs are to be submitted.
8. Jurisdiction and venue are proper in this Court.
9. The controlling law is set forth in the attached selected jury instructions.  
These selected jury instructions may be referred to in closing argument.
10. The case will be bifurcated with separate trials on liability and damages.  
This portion of the trial will decide the issue of liability alone. The issue of damages shall be determined at a later date. No evidence of the amount of damages shall be admitted in this trial of liability.
11. Leigh Flounders and Logan Stein are accepted by this Court as experts and may render expert opinions upon a proper foundation having first been laid. Experts may testify about and use anything contained in the exhibits and documents attached to this package.

The Background Information is correct and factual. Both parties have stipulated as such for any purpose, including Motions for Directed Verdict.

13. All witnesses have read and are familiar with the deposition testimony, statements and the information contained within the Exhibits.
14. Each party is required to follow the Outline for Trial.

15. The Statute of Limitations defense is not available to the Defendant.

**SO ORDERED** this 1st day of December, 2005

Honorable Samuel D. Moon  
U.S. Circuit Judge