

EXPERT AFFIDAVIT



Marilyn Farrell, County Clerk

**EF2018-8**

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Clerk: LAR

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Expert  
Affidavit

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Our File: 115409-01

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF GREENE

-----x  
 THOMAS ALFELD and BETHANY ALFELD,

Plaintiffs,

AFFIDAVIT

-against-

Index No.: 18-0008

APEX TOOL GROUP, LLC and HOME DEPOT  
 U.S.A., INC.,

Defendants.

-----x  
 STATE OF NEW JERSEY:

: ss:

COUNTY OF BERGEN :

Neal A. Growney, P.E. being duly sworn, deposes and says:

I have been retained by the plaintiff to provide expert analysis concerning an accident involving Thomas Alfeld.

I maintain an office at 265 Steves Lane Franklin Lakes, NJ 07417.

I authored a report dated January 29, 2020, a copy of which is annexed as Exhibit A. This report should be considered by this Court along with the contents of this affidavit.

The opinions set forth in my report and in this affidavit are rendered within a reasonable degree of scientific and mechanical engineering certainty.

My curriculum vitae is annexed as Exhibit B.

As set forth in my report, it is my opinion within a

reasonable degree of scientific and mechanical engineering certainty that the defendants created and marketed a product containing a manufacturing defect which was the proximate cause of Thomas Alfeld's incident and resulting injuries.

It is also my opinion within a reasonable degree of mechanical engineering certainty that the defendant failed to properly warn potential consumers including those frequenting the Home Depot including the plaintiff concerning the risks and dangers associated with the foreseeable uses of the product in question.

In subsection 2 of my report I detailed the information that I reviewed in analyzing this case.

By history, this incident occurred on January 9, 2017 at approximately 4:00 p.m. On that day the plaintiff Thomas Alfeld was working on an interior staircase at 144 Crystal Point Road in Cairo, New York. As a result of this incident Mr. Alfeld sustained serious injuries to his left eye.

At the end of the day on January 9, 2017, Mr. Alfeld began cleaning up the jobsite. He observed a pin nail poking through the floor above an area where he had previously nailed cove molding. Mr. Alfeld was at approximately eye level with the second-floor landing. He reached forward with both arms at shoulder height. Mr. Alfeld had the cutter pliers which are the subject of this litigation in his right hand. It is this

product which I opine was defective from a manufacturing point of view. Also, the product conveyed improper warnings.

The palm of his right hand faced downward and the cutter plier jaws/blades pointed to the left. Alfeld's left hand was cupped and hovering just above the cutter pliers, and the nail he was attempting to cut. He squeezed the plier handle to cut off the protruding nail. He immediately felt something pop and something protrude into his left eye. One of the cutter plier jaws/blades had broken off of the product and the broken piece flew into his left eye. Liquid immediately leaked out of Alfeld's left eye. He was caused to have his left eye removed.

The cutter pliers involved in this incident was a Crescent Low Profile Flush Cut™ 4" 102 mm, diagonal cutter, miniature wire cutter.

My discussion of the events commence at paragraph 5.0 et al. of my report. My opinions are set forth at 6.0 et al. in my report. Specifically, I opine that

6.1 The incident Crescent cutter pliers contained a manufacturing defect that caused its cutting jaw to break.

6.2 Had this Crescent cutter pliers not been defectively manufactured, it is unlikely that its jaw would have broken when Alfeld attempted to cut a 23 AWG pin nail with it, the broken jaw would not have been ejected, struck and injured Mr. Alfeld's eye. Hand-held, metal-cutting blade tools have been

successfully manufactured for decades prior to this Crescent cutting pliers' blade breaking. I am familiar with and experienced in the methods, processes and materials utilized in such metal-cutting blade tools manufacture. Defects in such products can be due to any deviation in the grade of material, the quality of material, material contamination, improper grinding, finishing, improper heat treatment, such as the wrong heating temperature, the wrong heating medium, the rate of quench, quenching medium, and tempering process, either individually or in combination. This description is more in depth than my report Section 6.2.

6.3 A substantial cause of Alfeld's injury was the defectively manufactured incident Crescent cutter pliers.

6.4 The design of the incident Crescent cutter pliers is defective as it fails to adequately warn of the dangerous hazards associated with its use.

6.5 Apex's failure to adequately warn of the dangerous hazards associated with this Crescent cutter pliers use was a cause of Alfeld's injuries.

It is acknowledged that the plaintiff was not wearing safety goggles at the time of the accident. It is understood that this was required by the product warnings. However, this does not eliminate the fact that the product was defective for the reasons set forth above and that the warnings were

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