

1.4 Third-Party Defendant Dalmar Electric, LLC is a Texas limited liability company with its principal place of business in Texas. Service of this pleading will be made through its registered agent, Jeffrey Schroeder at 2754 W. Kiest Blvd., Dallas, Texas 75233.

II.
JURISDICTION AND VENUE

2.1 This *Third-Party Petition* is filed in accordance with the laws of the State of Texas. The Court has jurisdiction over the parties asserted in this lawsuit.

2.2 The damages sought are within the jurisdictional limits of this court. Plaintiff seeks monetary relief in excess of \$250,000 but under \$1,000,000. As required by Texas Rules of Civil Procedure 47, Third-Party Plaintiff PSFI seeks monetary relief from Okon and Dalmar over \$250,000 but under \$1,000,000 in addition to all other relief to which it is entitled.

2.3 Venue is proper in Dallas County, Texas pursuant to Texas Civil Practice & Remedies Code § 15.002(a)(1) because Dallas County is the county in which all or a substantial part of the events or omissions giving rise to the Plaintiff's and the Third-Party Plaintiff's causes of action occurred. Further, pursuant to Texas Civil Practice and Remedies Code § 15.005, Plaintiff has established venue against at least one current Defendant making the venue proper for all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences.

III.
DISCOVERY CONTROL PLAN

3.1 Discovery in this case should occur under a Level 3 discovery control plan.

IV.
PERTINENT FACTS

4.1 This is a personal injury suit brought by Plaintiff Tapia-Silva. Plaintiff alleges on or about April 15, 2020, Plaintiff sustained injury while working on construction of a residential building located at 10228 Woodford Drive, Dallas, Texas 75229 (the "Project").

4.2 According to the Plaintiff's Original Petition, Plaintiff is an electrician and was installing electrical wires in the attic when he unknowingly stepped on an attic access hole that had been covered with a piece of plastic, causing him to fall and suffer injuries. Plaintiff claims that, at all relevant times, Plaintiff was a business invitee, independent contractor, and/or worker of PSFI. He further alleges that PSFI breached its non-delegable duty to make Plaintiff's work area safe and did not make an adequate effort to protect Plaintiff at the time of the incident. Further, he alleges that PSFI owed an additional duty to warn and prepare its business invitee, independent contractor, and/or worker for any hazards associated with its work and failed to do so. Plaintiff filed the following causes of action against Defendant: (1) negligence; (2) vicarious liability; and (3) premises liability.

4.3 Okon Homes ("Okon") was the general contractor of the Project and responsible for the safety of the job site during the Project and coordination of its subcontractors. Okon subcontracted the electrical scope of work to Dalmar Electric, LLC ("Dalmar"). Dalmar is Plaintiff's employer and contracted with Okon on the scope of work that was to be done on the Project. Dalmar is responsible for training its employees, including Plaintiff, to abide by proper safety protocols while on the Project.

4.4 Based on Okon and Dalmar's roles in the underlying Project and litigation, PSFI brings its Third-Party Petition.

V. CAUSES OF ACTION

5.1 PSFI incorporates the pertinent facts explained in Section IV.

OKON HOMES

5.2 PSFI seeks contribution from Third-Party Defendant Okon for Plaintiff's causes of action. While PSFI denies Plaintiff's claims and allegations, in the unlikely event that Plaintiff was to prevail on his claims of negligence, vicarious liability and premises liability, then PSFI is entitled to contribution based the following acts and omissions:

1. In failing to timely inspect the premise in order to discover any dangerous conditions;
2. In failing to timely observe and inspect the premises in order to correct any unsafe practice or condition and thereby protect its business invitees, independent contractors, and/or workers, such as Plaintiff;
3. In failing to provide a safe area for its business invitees, independent contractors, and/or workers in order to avoid injuries;
4. In failing to provide all appropriate equipment which is standard and to take other reasonably necessary measures to help ensure that Plaintiff, and other business invitees, independent contractors, and/or workers, would not experience any foreseeable injuries on the premises;
5. In failing to take any steps to ensure a safe environment and/or safe conditions for business invitees, independent contractors, and/or workers, on the premises, such as Plaintiff;
6. In failing to suspend operations on the premises until the hazardous condition no longer existed;
7. In failing to ensure compliance with the safety policies and procedure, if any;
8. In failing to timely observe and inspect the work-related project in order to correct any unsafe practice or condition and thereby protect its business invitees, independent contractors, and/or works, such as Plaintiff;
9. In failing to maintain a safe work environment and supervise business invitees, independent contractors, and/or workers; and
10. In failing to act as a reasonably prudent person and/or employer would have done under the same or similar circumstances.

5.3 PSFI hereby denies any responsibility for the accident in question and the alleged damages of Plaintiff, if any. As general contractor, Okon maintained control of the Project and was in charge of coordinating its subcontractors and maintaining a safe work site. This responsibility includes warning any contractors of potentially hazardous conditions and areas of the Project that are unfinished. To the extent that Plaintiff contends that PSFI failed to maintain a safe work site, PSFI contends that the duty is Okon's, not PSFI's.

5.4 If Plaintiff's contentions prove true, then Okon is liable to PSFI for all or a part of the Plaintiff's claims, causes of action, and damages. PSFI is entitled to contribution from Okon in accordance with Chapter 32 and Chapter 33 of the Texas Civil Practice and Remedies Code. PSFI's damages include, but are not limited to, the amounts it is required to pay Plaintiff in judgment or settlement as well as its costs of defense such as attorney's fees and expenses.

DALMAR ELECTRIC, LLC

5.5 PSFI seeks contribution from Third-Party Defendant Dalmar for Plaintiff's causes of action. While PSFI denies Plaintiff's claims and allegations, in the unlikely event that Plaintiff was to prevail on his claims of negligence, vicarious liability and premises liability, then PSFI is entitled to contribution based the following acts and omissions:

1. Mr. Tapia-Silva walked across the attic opening which he observed to be unfinished;
2. Mr. Tapia-Silva failed to maintain a proper lookout and take precautionary measures while walking across the attic which he knew to be unfinished;
3. Mr. Tapia-Silva entered the construction site unannounced; and
4. Mr. Tapia-Silva otherwise failed to use due care as required by law.
5. Failing to properly train Mr. Tapia-Silva in proper safety procedures;
6. Failing to properly supervise Mr. Tapia-Silva; and
7. Otherwise failing to use due care and operate as would a reasonably prudent subcontractor in the same or similar circumstances as is required by law.

5.6 If Plaintiff's contentions prove true, then Dalmar is liable to PSFI for all or a part of the Plaintiff's claims, causes of action, and damages. PSFI is entitled to contribution from Dalmar in accordance with Chapter 32 and Chapter 33 of the Texas Civil Practice and Remedies Code. Moreover, to the extent the Court determines that workers' compensation is the remedy for this incident, PSFI is entitled to contribution for all amounts paid by worker's compensation, or should

have been paid in the event that Dalmar failed to procure workers' compensation. PSFI's damages include, but are not limited to, the amounts it is required to pay Plaintiff in judgment or settlement as well as its costs of defense such as attorney's fees and expenses.

VI.
JURY DEMAND

6.1 In accordance with Rule 216 of the Texas Rules of Civil Procedure, Defendant/Third-Party Plaintiff Performance Spray Foam, Inc. demands a trial by jury.

VII.
REQUEST FOR DISCLOSURE

7.1 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Third-Party Defendant Okon Homes and Dalmar Electric, LLC are requested to disclose the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure.

VIII.
PRAYER

8.1 Defendant/Third-Party Plaintiff Performance Spray Foam, Inc. prays that Plaintiff Jose Tapia-Silva take nothing by this suit, that Defendant/Third-Party Plaintiff Performance Spray Foam, Inc. recover from Third-Party Defendants Okon Homes and Dalmar Electric, LLC all damages sought through this *Third-Party Petition* and its amendments or supplements if any, that Performance Spray Foam, Inc. recover its attorney's fees, expert fees, court costs, defense costs, and expenses, and for such other and further relief, both general and special, at law and in equity, to which PSFI may show itself justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Rhonda J. Thompson

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**ATTORNEYS FOR DEFENDANT/THIRD-
PARTY PLAINTIFF PSFI**

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2021, a true and correct copy of the foregoing document was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

Paul Hornung
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Automated Certificate of eService

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Linda Coyle on behalf of Rhonda Thompson
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Status as of 9/21/2021 4:15 PM CST

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