

Resolution of the City of Jersey City, N.J.

City Clerk File No. Res. 14.396

Agenda No. 10.5

Approved: JUN 11 2014

TITLE:



RESOLUTION AUTHORIZING THE SETTLEMENT OF THE SUIT OF ARMANDO BERMUDEZ V. CITY OF JERSEY CITY, ET AL.

COUNCIL
following Resolution:

offered and moved adoption of the

NOW, THEREFORE BE IT RESOLVED, by the Municipal Council of the City of Jersey City
that:

WHEREAS, Armando Bermudez having filed suit against the City of Jersey City, et al. in the
Hudson County Superior Court, Docket No.; HUD-L-6817-10; and

WHEREAS, the Complaint alleges that plaintiff sustained a permanent loss of a bodily function
that is substantial due to a dangerous condition on public property of which the City of Jersey City had
notice; and

WHEREAS, the Corporation Counsel has recommended a settlement in the amount of \$60,000
because of the litigation risk involved; and

WHEREAS, plaintiff has agreed to this settlement and will sign all required releases and
stipulation of dismissal; and

WHEREAS, the necessary funds for this settlement are available in the City of Jersey City
Insurance Fund Commission Accounts.

NOW THEREFORE, BE IT RESOLVED by the Municipal Council of the City of Jersey City
that:

1. The Corporation Counsel be authorized to settle this lawsuit for \$60,000.00.
2. The Jersey City Insurance Fund Commission be authorized to issue a check in the amount
of \$60,000.00 payable to plaintiff and his attorney.

I hereby certify that funds for this expenditure are available in the City of Jersey City Insurance
Fund Commission Accounts.

SDC/ew
05/30/14

Peter Soriero, Risk Manager

APPROVED:

APPROVED:

Business Administrator

APPROVED AS TO LEGAL FORM

Corporation Counsel

Certification Required ☐

Not Required ☐

APPROVED 8-0

| RECORD OF COUNCIL VOTE ON FINAL PASSAGE 6.11.14 | | | | | | | | | | | |
|---|-----|-----|------|---------------|--------|-----|------|----------------|-----|-----|------|
| COUNCILPERSON | AYE | NAY | N.V. | COUNCILPERSON | AYE | NAY | N.V. | COUNCILPERSON | AYE | NAY | N.V. |
| GAJEWSKI | ✓ | | | YUN | ✓ | | | RIVERA | ✓ | | |
| RAMCHAL | ✓ | | | OSBORNE | ✓ | | | WATTERMANN | ✓ | | |
| BOGGIANO | ✓ | | | COLEMAN | ABSENT | | | LAVARRO, PRES. | ✓ | | |

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted at a meeting of the Municipal Council of the City of Jersey City N.J.

Rolando R. Lavarro, Jr., President of Council

Robert Byrne, City Clerk

Filing Attorney: Cynthia J. Birkitt, Esq. -NJ Attorney ID: 027071983
LAW OFFICES OF WILLIAM E. STAEHLE
445 South Street - P.O. Box 1938
Morristown, New Jersey 07962-1938
Phone: 973-631-7300
Attorneys for Defendant, English Paving Co., Inc.
Our File No.: 2013020848-H-CJB

FILED

DEC 06 2013

LAWRENCE M. MARON, J.S.C.

Plaintiff(s),

ARMANDO BERMUDEZ

vs.

Defendant(s),

CITY OF JERSEY CITY, et al.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: HUD-L-6817-10

Civil Action

ORDER FOR SUMMARY JUDGMENT

Application having been made to the Court on motion of the Law Office of William E. Staehle, Esq., attorneys for the Defendant, English Paving Co., Inc., for an Order granting English Paving Co., Inc. summary judgment as to the complaint of plaintiffs; and the Court having had the opportunity to review the moving papers and any opposition thereto; and for good cause having been shown;

IT IS ON THIS 6 DAY OF December, 2013;

ORDERED that summary judgment be and same is hereby GRANTED in favor of Defendant, English Paving Co., Inc., dismissing the complaint of plaintiff and any and all other claims and crossclaims against it with prejudice; and it is further

ORDERED that a copy of the within Order be served upon all counsel within 7 days from the date hereof.

☒ Opposed

☐ Not opposed

PAPERS CONSIDERED:

☐ Notice of Motion

☐ Movant's Affidavits

☐ Movant's Briefs

☐ Answering Affidavits

☐ Answering Brief

☐ Cross-Motion

☐ Movant's Reply

☐ Other

HON.

L. Maron
LAWRENCE M. MARON, J.S.C., J.S.C.

For The Reasons Set Forth
in the attached Findings of
Fact and conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Bermudez v. City of Jersey City

Docket: L-6817-10

Motion Returnable: 12/6/13

Relief Requested: Motion for Summary Judgment by Defendant, English Paving

FACTS

- This case arises out of an alleged trip and fall accident.
- Plaintiff alleges that he tripped on the conduit and raised concrete base that had been installed in connection with a Jersey City “streetscaping” project.
- The project involved moving and installing traffic signals.
- Plaintiff brought suit against the City of Jersey City and other Defendants.
- English Paving is recorded as being scheduled to perform work in March, 2008.
- English Paving, via its office manager, Ms. Lori Inglese Stark, certifies that no such work occurred.
- Discovery ended on August 22, 2013.
- Trial is scheduled for January 13, 2014.

MOVANT’S ARGUMENT

- Summary judgment is appropriate because English Paving did no work at the subject site and therefore, cannot owe a duty to Plaintiff.

OPPOSITION ARGUMENT

- Co-Defendant, JEN Electric, Inc., submitted a two-page letter in opposition.
- JEN Electric’s opposition relies solely on this Court’s October 25, 2013 Order and opinion denying its motion for summary judgment as to Plaintiff, along with the motion of Co-Defendant, Faigon Electric.

ANALYSIS

Defendant, English Paving, requests that this Court grant summary judgment in its favor on the basis that it owed no duty to Plaintiff and cannot be held liable for negligence.

The standard for summary judgment is set forth in R. 4:46-2, and has been clarified by the New Jersey Supreme Court in Brill v. The Guardian Life Ins. Co. of America, 142 N.J. 520 (1995). An order for summary judgment "shall be rendered if the pleadings...show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). In Brill, the New Jersey Supreme Court held that:

Whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged dispute in favor of the non-moving party.

Brill, 142 N.J. at 540. On a motion for summary judgment, the judge's function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. Id.

It is well settled that "a trial court should not grant summary judgment when the matter is not ripe for such consideration, such as when discovery has not yet been completed. See Salomon v. Eli Lilly & Co., 98 N.J. 58 (1984). The court should afford "every litigant who has a bona fide cause of action or defense the opportunity for full exposure of his case." Oslacky v. Borough of River Edge, 319 N.J. Super. 79, 87 (App.Div.1999) (quoting Velantzas v. Colgate-Palmolive Co. Inc., 109 N.J. 189, 193 (1988)).

Summary judgment should not be granted where adjudication of such motion would constitute what essentially results in a trial by affidavits on issue of fact. Shanley & Fischer, P.C. v. Sissleman, 251 N.J. Super. 200 (App. Div. 1987).

Moreover, if a party fails to comply procedurally when opposing such a motion, the failure to comply with the rule will not justify a grant of the motion, based on the assumption that the movant's statement of material facts is true, when the record as a whole clearly shows a material dispute. Legan v. Jersey City Bd. Of Education, 399 N.J. Super. 329, 367 (App. Div. 2008) aff'd in part and rev'd in part on other grds, 198 N.J. 557 (2009).

It is fundamental that a case sounding in negligence requires a showing of a duty, a breach of that duty and foreseeable resulting injury proximately caused by the breach. Anderson v. Sammy Redd and Assoc., 278 N.J. Super. 50, 56 (App. Div.), certif. denied, 139 N.J. 441 (1995). To establish a prima facie case of negligence, a plaintiff must establish: "(1) a duty of care owed to plaintiff by defendant, (2) a breach of that duty by defendant, (3) proximate cause, and (4) actual damages." Meier v. D'Ambrose, 419 N.J. Super. 439, 444 (App. Div.) certif. denied, 208 N.J. 370 (2011).

"Although in many cases a duty of care can arise simply from the determination of the foreseeability of harm, usually 'more is needed' to find such a duty,' that more being the value judgment, based on an analysis of public policy, that the actor owed the injured party a duty of reasonable care." Carvahlo v. Toll Bros. and Developers, 143 N.J. 565, 573 (1996). "Negligence is a fact which must shown and which will not be presumed." Long v. Landy, 35 N.J. 44, 54 (1961). Ultimately, "the mere showing of an accident causing the injuries sued upon is not alone sufficient to authorize an inference of negligence." Vander Groef v. Great Atl. & Pac. Tea Co., 32 N.J. Super. 365, 370 (App. Div. 1954).

The question "whether a person owes a duty of reasonable care toward another turns on whether the imposition of such a duty satisfies an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy." Monaco v. Hartz Mt. Corp., 178 N.J. 401, 840 A.2d 822 (2004).

In the instant matter, English Paving asserts that it did not perform any work at the subject location and, therefore, cannot owe a duty to Plaintiff. The March 29, 2008 One Call document indicates that English Paving was scheduled to perform excavating work near the location of the accident. However, Ms. Stark, the office manager for English Paving, certifies that English Paving did not perform any work at the subject location and did not retain any other contractor to perform work at the subject location. The One Call document indicates that the work scheduled to be performed was to install "Drainage/Concrete Work". No other evidence links English Paving to the accident site.

JEN Electric opposed this motion. JEN's submission does not contain a statement of responding material facts or its own statement of material facts. R. 4:46-2(b). Nevertheless, JEN's submission was considered pursuant to Legan, supra, 399 N.J. Super. at 367.

JEN Electric asserts that English Paving's motion must be denied for the same reasons its motion was denied on October 25, 2013. The Court does not agree.

JEN Electric's motion was denied, as to Plaintiff's claims, because there were issues of material fact in the motion record that indicated JEN Electric may have been involved at the accident site as a contractor. There was deposition testimony that indicated JEN Electric had a contract with the city and that JEN Electric, pursuant to that contract, may have done the work or contracted out the work about which Plaintiff complains. Moreover, there was testimony from former Co-Defendants that JEN called them about working at the accident site prior to the accident. Additionally, there were permits bearing JEN Electric's name. JEN Electric, in opposition, asserted that it worked at a different location. JEN Electric asked the Court, on a motion for summary judgment, to make a credibility determination and conduct a trial by affidavit, which is impermissible. Shanley & Fischer, P.C. v. Sissleman, 251 N.J. Super. 200 (App. Div. 1987). Accordingly, its motion was denied as to Plaintiff's claims. Faigon Electric's motion was, similarly, denied because of conflicting evidence regarding its presence at the site.

Here, there is no such competing testimony or evidence. This motion is akin to the motion for summary judgment this Court granted on September 27, 2013 in favor of Foggia Contracting, with the support of JEN Electric. The Court is presented with the affidavit of Ms. Stark, which indicates that the "One Call" document does not pertain to the site of Plaintiff's accident. The Court is not directed to any other evidence or testimony that indicates English Paving worked at the location or contacted others to work at the location. There is no permit, as there was in the motion record pertaining to Faigon Electric's motion. There is no competing testimony, as was present in the motion record pertaining to JEN Electric's motion.

At Oral argument, counsel for JEN Electric asserted that JEN should be given an opportunity at trial to argue as to English Paving's involvement at the accident site. In response, counsel for English Paving argued that discovery in this matter ended on August 22, 2013, trial is scheduled for January 13, 2014, and no discovery has been produced that should keep English Paving in this case. The Court was not made aware of any motions to either adjourn the trial or re-open discovery.

Therefore, there are no issues of material fact presented by the motion record before the Court that could inculcate Defendant, English Paving. Discovery in this matter has ended and trial is scheduled for January 13, 2014. Defendant, English Paving certifies that it did no work at the location of the accident. The One Call document, alone, does not give rise to an issue of material fact.

CONCLUSION

In conclusion, based on the motion record, the Court finds that English Paving owed no duty to Plaintiff. Accordingly, the English Paving's motion for summary judgment is GRANTED.

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement"), dated this 28th day of February, 2014, is made by and between Armando Bermudez (hereinafter referred to as "Plaintiff") and his attorneys, on the one hand, and City of Jersey City (hereinafter "Jersey City"), and Jen Electric, Inc. (hereinafter "JEL"), and 26 Journal Square Associates, LLC & Knightbridge Properties Corp. (hereinafter "26 Journal Square"), and Faigon Electric, Inc. (hereinafter "Faigon"), and their affiliates, members, subsidiaries, insurers, attorneys, and current and former employees, officers, managers, councils, boards, trustees, directors, pension plans, employee benefit plans, health plans, severance plans, insurers, agents, representatives, and successors and assigns (hereinafter individually referred to as "Defendant" and collectively referred to as "Defendants"), on the other hand (individually, each a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, Plaintiff contends that he tripped and fell on a sidewalk adjacent to 26 Journal Square in Jersey City, New Jersey on January 8, 2009 (hereinafter, the "Incident").

WHEREAS, Plaintiff has instituted an action against Defendants in the Superior Court of New Jersey, Law Division, Hudson County, captioned Armando Bermudez v City of Jersey City, et als, Docket No. HUD-L-6817-10, (the "Lawsuit"), arising out of the Incident; and

WHEREAS, the Parties have asserted certain counterclaims and cross-claims against each other in the Lawsuit; and

WHEREAS, the Parties have reached an agreement to settle, compromise and resolve the Lawsuit, including all counterclaims and cross-claims; and

WHEREAS, the terms of this Agreement are the products of mutual negotiation and compromise between the Parties; and

WHEREAS, the Parties have settled the Lawsuit without admissions of liability, responsibility or fault and pursuant to the terms and conditions set forth herein; and

WHEREAS, the Parties to this settlement have considered Medicare's interests in arriving at the terms of this settlement, and this settlement does not represent an attempt to shift the responsibility to Medicare for payment of medical expenses related to the above-referenced matter; and

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the Parties agree as follows:

1. SETTLEMENT PAYMENTS. Within thirty (30) days of receipt by counsel for all the Parties of (i) this Agreement fully executed by all the Parties, and (ii) a Stipulation of Dismissal With Prejudice, in the form annexed hereto as Exhibit A, signed by counsel for all the Parties, the following payments shall be made (the "Settlement Payment"):

- A. JEI shall pay Plaintiff the sum of \$62,500.00.
- B. Jersey City shall pay Plaintiff the sum of \$60,000.00, subject to approval, as required by law, of the Municipal Council of the City of Jersey City.
- C. 26 Journal Square shall pay Plaintiff the sum of \$15,000.00.
- D. Faigon shall pay Plaintiff the sum of \$12,500.00.

The Stipulation of Dismissal With Prejudice shall be filed with the Court by counsel for Plaintiff, and shall provide a "Filed" copy to counsel for the Parties.

2. TAXES. Plaintiff shall be solely responsible for, and is legally bound to make payment of, any taxes determined to be due and owing (including penalties and interest related thereto) by him to any federal, state, local, or regional taxing authority as a result of the Settlement Payment. Plaintiff understands that Defendants have not made, and it does not rely upon, any representations regarding the tax treatment of the sums paid pursuant to this

Agreement. Moreover, Plaintiff agrees to indemnify and hold Defendants harmless in the event that any governmental taxing authority asserts against Defendants any claim for unpaid taxes, failure to withhold taxes, penalties, or interest based upon the payment of the Settlement

Payment. *Notwithstanding the foregoing, all amounts payable pursuant to this Release constitute damages on account of personal physical injuries or physical sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended. (mag) 5/5/14*

3. NO JOINT AND SEVERAL LIABILITY. The portion of the Settlement Payment referred to in paragraph 1(A), shall be the sole responsibility of JEI. No other Defendant shall be responsible for all or any part of the settlement payment to be made by JEI pursuant to paragraph 1(A).

The portion of the Settlement Payment referred to in paragraph 1(B), shall be the sole responsibility of Jersey City. No other Defendant shall be responsible for all or any part of the settlement payment to be made by Jersey City pursuant to paragraph 1(B).

The portion of the Settlement Payment referred to in paragraph 1(C), shall be the sole responsibility of 26 Journal Square. No other Defendant shall be responsible for all or any part of the settlement payment to be made by 26 Journal Square pursuant to paragraph 1(C).

The portion of the Settlement Payment referred to in paragraph 1(D), shall be the sole responsibility of Faigon. No other Defendant shall be responsible for all or any part of the settlement payment to be made by Faigon pursuant to paragraph 1(D).

4. NO ADMISSION OF LIABILITY. The Parties hereto acknowledge that the Settlement Payment made by Defendants is a compromise of the disputed Lawsuit, and that nothing in this Agreement shall be construed as an admission of liability by Defendants.

5. PLAINTIFF'S REPRESENTATIONS REGARDING MEDICARE. Plaintiff represents that he is not a Medicare recipient and has not applied for or received any Medicare benefits. None of Plaintiff's medical bills, costs or expenses related to any injuries sustained in the Incident were paid through Medicare. Plaintiff has fully recovered from any injuries he

D. Partial Invalidity. If any provision of this Agreement or any portion of any provision of this Agreement is declared null and void or unenforceable by any court having jurisdiction, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect.

E. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns of each Party. No assignment or delegation of the obligations hereunder shall be made by any Party without the prior written consent of the other Parties.

F. Waiver. The waiver by any Party of a breach by any other Party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Any waiver by a Party of a breach shall be effective only if made in writing and duly executed by the Party alleged to have waived the breach.

G. Sense and Circumstance. All references made and all pronouns used herein shall be construed in the singular or plural, and in such gender as the sense and circumstances require.

H. Governing Law. This Agreement shall be interpreted and enforced pursuant to the laws of the State of New Jersey.

I. Choice of Forum. Any action pertaining to this Agreement shall be commenced and prosecuted in the state or federal courts in New Jersey.

J. No Third Party Beneficiary. The provisions of this Agreement are intended solely to resolve disputed claims among the Parties. This Agreement does not and is not intended to create any rights or benefits for any Third Party. No Third Party shall have any legally enforceable rights or benefits under this Agreement.

K. Voluntary Execution. This Agreement is executed voluntarily by Plaintiff without duress or undue influence on the part, or on behalf of, any of the Defendants.

N. Enforcement- Attorneys' Fees. The prevailing Party in any action to enforce this Agreement or for breach of this Agreement shall be entitled to recover, in addition to any equitable or legal relief, its attorneys' fees and costs relating to such action.

O. Paragraph Headings. The paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, Plaintiff has caused this Agreement to be executed on the date(s) indicated below his signature.

ARMANDO BERMUDEZ

Dated: 03/21/2014

STATE OF NEW JERSEY

SS:

COUNTY OF HUDSON

I certify that on 3/21, 2014, Armando Bermudez personally came before me and acknowledged under oath, to my satisfaction, that he (a) is named in and personally signed this document, and (2) signed, sealed and delivered this document as his act and deed.

Notary

ANJULI RUIZ
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 12/31/2018

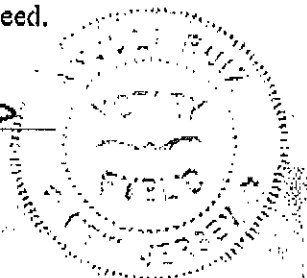


EXHIBIT A


Established 1911

* * * CHILD SUPPORT JUDGMENT SEARCH * * *
NEW JERSEY SUPERIOR COURT

643-4666-20

RE: 231704

CERTIFIED TO:

GINARTE, O'DWYER, WINOGRAD &
LARACUENTE, ESQS
400 MARKET ST
NEWARK NJ 07105-

SIGNATURE INFORMATION SOLUTIONS LLC HEREBY CERTIFIES THAT IT HAS SEARCHED THE INDEX OF THE CIVIL JUDGMENT AND ORDER DOCKET OF THE SUPERIOR COURT OF NEW JERSEY AND DOES NOT FIND REMAINING UNSATISFIED OF RECORD THEREIN A JUDGMENT FOR CHILD SUPPORT PURSUANT TO N.J.S.A. 2A:17-56.23(B) EXCEPT AS SET FORTH BELOW AGAINST:

FROM TO

ARMANDO RERMUDEZ

09-01-1992 05-01-2014

SSN: XXX-XX-7222

*** Name is CLEAR ***

DATED 05-01-2014
TIME 08:45 AM

FEES: \$ 10.00
TAX: \$ 0.00
TOTAL: \$ 10.00

CJ14-125-04000 125 0884125 01

CHARLES JONES SEARCH
PROVIDED BY
SIGNATURE INFORMATION SOLUTIONS
P.O. BOX 8488
TRENTON, NJ 08650

Form W-9
(Rev. August 2013)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Name (as shown on your income tax return)
Ginarte O'Dwyer Gonzalez Gallardo & Winograd, LLP

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:
☐ Individual/sole proprietor ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate
☒ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) **P**
☐ Other (see instructions) ▶

Exemptions (see instructions):
Exempt payee code (if any) _____
Exemption from FATCA reporting code (if any) _____

Address (number, street, and apt. or suite no.)
400 Market Street
City, state, and ZIP code
Newark, New Jersey 07105

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note, if the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

| | | | | | | | |
|--|--|--|---|--|--|--|--|
| | | | - | | | | |
|--|--|--|---|--|--|--|--|

Employer identification number


| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 2 | 2 | - | 3 | 1 | 4 | 1 | 5 | 9 | 4 |
|---|---|---|---|---|---|---|---|---|---|

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Signature Here Signature of U.S. person ▶  Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on irs.gov for information about Form W-9, at www.irs.gov/w9. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding. If you are a U.S. exempt payee, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.