

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

Danieli Corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 13C-03-126 JRJ
	)	
ArcelorMittal LaPlace, LLC,	)	
formerly known as and/or successor in interest	)	
to Bayou Steel Corporation,	)	
	)	
Defendant.	)	

**ORDER**

**AND NOW TO WIT**, this 6th day of August, 2013, the Court having heard and duly considered the parties' Cross Motions for Judgment on the Pleadings, **IT APPEARS THAT**:

1. On June 19, 2001, Plaintiff Danieli Corporation ("Danieli") and Bayou Steel ("Bayou") entered into a settlement agreement to resolve a lawsuit Bayou filed against Danieli in the United States District Court for the Eastern District of Louisiana in 1999 (the "Settlement Agreement").<sup>1</sup> Pursuant to the Settlement Agreement, Bayou agreed to indemnify, defend and hold harmless Danieli.
2. On August 27, 2004, a former Bayou employee, Melvin Batiste, sustained an employment-related injury. On September 28, 2005, Batiste (and several other plaintiffs) filed suit against Danieli and Bayou in Louisiana state court to recover damages for personal injuries.<sup>2</sup>

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<sup>1</sup> See Complaint ("Compl.") ¶ 12 and Settlement Agreement attached as Exh. B to the Complaint. [Trans. ID 50889260].

<sup>2</sup> C.A. No. 2:05-cv-04417-KDE-KWR (the "*Batiste* Litigation"). Bayou was served with a copy of the Petition for Damages on November 9, 2005. Compl. ¶ 18.

3. Danieli retained counsel and actively participated in and defended against the *Batiste* litigation beginning in 2005.<sup>3</sup> At no time from 2005 to February 2012, did ArcelorMittal LaPlace, LLP, (“ArcelorMittal”), the successor in interest to Bayou,<sup>4</sup> participate or assist in Danieli’s defense in the *Batiste* litigation, and Danieli did not seek ArcelorMittal’s assistance.<sup>5</sup>
4. On February 14, 2012, seven years after the *Batiste* Litigation commenced, Danieli demanded that ArcelorMittal indemnify, defend and hold harmless Danieli for all claims asserted in the *Batiste* litigation pursuant to the Settlement Agreement.<sup>6</sup>
5. ArcelorMittal rejected Danieli’s demand, advising Danieli that its demand was untimely and ineffectual pursuant to the express terms of the Settlement Agreement.<sup>7</sup> Specifically, ArcelorMittal’s counsel quoted that portion of Paragraph 10 of the Settlement Agreement which states that indemnification is expressly conditioned on Danieli providing ArcelorMittal with notice of any claim for indemnification within 10 days of Danieli’s receipt of that claim.<sup>8</sup>
6. Pursuant to the express terms of the Settlement Agreement, Bayou’s obligation to indemnify Danieli is expressly conditioned upon Danieli satisfying three requirements: (1) notifying ArcelorMittal of the claim in writing within 10 days of receiving the claim; **and** (2) providing ArcelorMittal the opportunity to participate in Danieli’s defense; **and** (3) cooperating with ArcelorMittal and its insurer.<sup>9</sup>

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<sup>3</sup> See Compl. ¶ 22.

<sup>4</sup> As the successor in interest to Bayou, ArcelorMittal is obligated to honor all agreements entered into by Bayou prior to ArcelorMittal’s acquisition of Bayou in June, 2008. Complaint ¶¶ 5, 7-8.

<sup>5</sup> See ArcelorMittal Lapalce, LLP’s Cross Motion for Judgment on the Pleadings (“AML Motion”) at ¶ 4. [Trans. ID 52851067].

<sup>6</sup> Compl. ¶ 27.

<sup>7</sup> *Id.* at ¶ 28.

<sup>8</sup> See AML Motion at ¶¶ 6, 7; Settlement Agreement at ¶ 10.

<sup>9</sup> See Settlement Agreement at ¶¶ 10, 20.

7. The Court may enter a judgment on the pleadings “where no material issue of fact exists and where the moving party is entitled to judgment as a matter of law.”<sup>10</sup> On cross-motions for judgment on the pleadings, “the court must accept as true all of the non-moving party’s well-pleaded factual allegations and draw all reasonable inferences in favor of the non-moving party.”<sup>11</sup>
8. The fact that ArcelorMittal was aware of the *Batiste* litigation, and was aware Danieli was also a defendant in the *Batiste* Litigation, does not relieve Danieli of the express, unambiguous contractual obligations it agreed to in the Settlement Agreement.<sup>12</sup>
9. Danieli failed to provide the notice expressly required by the express terms of the Settlement Agreement,<sup>13</sup> and Danieli did not take action, as required by the Settlement Agreement, to seek defense assistance or indemnification, until seven years after the *Batiste* litigation was initiated. Because Danieli did not comply with the express terms of

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<sup>10</sup> *OSI Sys. v. Instrumentarium Corp.*, 892 A.2d 1086, 1090 (Del. Ch. 2006).

<sup>11</sup> *Id.*

<sup>12</sup> To enforce an express contractual indemnification provision, an indemnitee must provide an indemnitor with “proper notice” and “an adequate opportunity to undertake its duty to defend.” *Pike Creek Chiropractic Ctr., P.A. v. Robinson*, 637 A.2d 418, 423 (Del. 1994). In this case, “proper notice” is expressly defined by the language of the Settlement Agreement that was negotiated and agreed to by Danieli and Bayou. *See, e.g., Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 2012 WL 3201139, at \* 11 (Del. Ch. Aug. 7, 2012) (noting that plaintiff was required to satisfy the “proper contractual notice” requirements set forth in the operative agreement). *See also Prudential Ins. Co. of Am. v. Barclays Bank PLC*, 2013 WL 221995, at \* 3 (D.N.J. Jan. 22, 2013) (holding no right to indemnification where indemnitee failed to provide notice as required by contract). Even if the indemnitor is aware of indemnifiable claims against an indemnitee, the indemnitor is still entitled to “an unequivocal, certain and explicit demand to undertake the defense thereof” before a duty to indemnify attaches. *Purvis v. Hartford Accident & Indem. Co.*, 877 P.2d 827, 830 (Ariz. Ct. App. 1994). Danieli’s reliance on *Brown v. Church Ins. Co.*, C.A. No. 02C-06-196 (Mar. 24, 2005) and *Harleysville, Ins. Co. v. Church Ins. Co.*, 892 A.2d 356 (Del. 2005) is misplaced. Those cases involved notice provided by an insured to an insurer and insurance contracts which are subject to specialized insurance laws. *See Fed. Home Loan Mortg. Corp. v. Scottsdale Ins. Co.*, 316 F.3d 431, 444 (3d. Cir. 2003) (“Although insurance policies are contractual in nature, they are not ordinary agreements; they are contracts of adhesion and, as such, are subject to special rules of interpretation.”)

<sup>13</sup> Danieli concedes that Danieli did not notify ArcelorMittal of the claim in writing, but argues that because ArcelorMittal was aware of the *Batiste* Litigation (as a party to the litigation) Danieli was relieved of its express obligation under the Settlement Agreement to provide the requisite notice.

paragraph 10 of the Settlement Agreement, it is not entitled to indemnification or defense costs in the *Batiste* Litigation.<sup>14</sup>

**WHEREFORE, IT IS HEREBY ORDERED THAT** Danieli's Cross Motion for Judgment on the Pleadings is **DENIED** and Arcelormittal's Cross Motion for Judgment on the Pleadings is **GRANTED**.

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Jurden, J.

cc: Prothonotary – Original

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<sup>14</sup> See *Supra*, note 14.