

TO THE HONORABLE JUDGE OF SAID COURT:

Intervenors, Maria I. Hernandez, Individually and On Behalf of the Estate of Juan F. Hernandez, Deceased, Deborah Hernandez-Leon, Sandra Hernandez, and Barbara Hernandez-Kinsey, file this Original Petition in Intervention against Defendants and, in support thereof, respectfully show the Court as follows:

I. PLEA IN INTERVENTION

1. Texas Rule of Civil Procedure 60 plainly permits Intervenors to intervene in this matter. Tex. R. Civ. P. 60. It provides that “any party may intervene” in litigation in which it has a sufficient interest. *Mendez v. Brewer*, 626 S.W.2d 498, 499 (Tex. 1982). Accordingly, Texas trial courts have broad discretion in determining whether an intervention should be granted. *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990).

2024-31787 / Court: 295		5/19/2024 12:05 PM Marilyn Burgess - District Clerk Harris County Envelope No. 87893013 By: Joshua Hall Filed: 5/20/2024 12:00 AM
CAUSE NO. _____		
CROSBY WARE,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
SESCO CEMENT, CORP.	§	_____ JUDICIAL DISTRICT
AGRI-SYSTEMS d/b/a ASI INDUSTRIAL,	§	
LAMPSON INTERNATIONAL, LLC,	§	
MCRAY CRANE & RIGGING, INC.,	§	
	§	
Defendants.	§	HARRIS COUNTY, TEXAS
PLAINTIFF'S ORIGINAL PETITION, JURY DEMAND, RULE 193.7 NOTICE, AND APPLICATION FOR TEMPORARY RESTRAINING ORDER <u>AND TEMPORARY INJUNCTION</u>		

2. In this matter, the claims brought by Intervenors provide a concrete example of a case ripe for intervention. Like Plaintiff Crosby Ware, Intervenors’ claims arose from the same occurrence and involve the same Defendants, except Defendant Texan Concrete Enterprise Ready

Mix, Inc., which Plaintiff Crosby Ware cannot sue due to Section 408.001 of the Texas Workers' Compensation Act. Intervenors, on the other hand, are not prohibited from seeking the recovery of exemplary damages from said Defendant and, therefore, name them herein with this petition to intervene in the matter previously filed on behalf of Plaintiff Crosby Ware in the 295th District Court in Harris County, Texas, bearing Cause No. 2024-31787.

II. APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF

3. Intervenors include within their Original Petition this Application for Temporary Restraining Order and Injunctive Relief against Defendants. In support thereof, Intervenors respectfully show this Court as follows:

4. Pursuant to Texas Rule of Civil Procedure 680, Intervenors join in Plaintiff Crosby Ware's application for temporary restraining order and injunctive relief, and ask the Court to issue a temporary restraining order prohibiting Defendants from altering, moving, modifying, reconfiguring, replacing, destroying, or disposing of any equipment that was present at the facility in question on May 16, 2024, including, but not limited to, the subject cranes and rigging equipment, all electronic storage devices and operational logs related to the subject cranes, all appurtenances, weather monitoring devices, tools, machines, permits, documents, and all equipment and appurtenances near and/or involved with the incident in question until Intervenors are given an opportunity to inspect such evidence. This evidence constitutes tangible, relevant evidence materially related to the incident complained of having injured and caused the death of Mr. Hernandez.

5. If Defendants are permitted to change, alter, destroy, or modify any evidence related to this incident, Intervenors will lose their opportunity to inspect the evidence, and will be unable to prosecute these claims, and, as a result, Intervenors will be deprived of adequate remedies

at law. Defendants are incapable of responding in monetary damages if the evidence is not preserved because Intervenor would then have no evidence to demonstrate their alleged wrongful actions. Upon granting this Temporary Restraining Order, Intervenor, if necessary, will post bond.

6. There is no adequate remedy at law available to Intervenor to prevent Defendants from changing, altering, modifying, or destroying evidence, unless this Court grants immediate relief restraining Defendants' conduct.

7. Therefore, in light of the immediate and irreparable injury, loss, and damage described above, Intervenor pray that this Court issue a Temporary Restraining Order immediately, without a hearing, preventing Defendants from continuing repairing and cleaning the property in question in any manner whatsoever for fourteen (14) days. In the alternative, Intervenor respectfully request and pray that this Court set their Application for Temporary Restraining Order and Injunctive Relief for hearing and, after such hearing, temporarily enjoin Defendants as requested herein.

III. DISCOVERY CONTROL PLAN

8. Intervenor intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 because this suit is not governed by Texas Rules of Civil Procedure 190.2 or 190.4.

IV. PARTIES AND SERVICE

9. Intervenor Maria I. Hernandez is a resident of Harris County, Texas, and may be served through her attorneys of record: C. Chad Pinkerton, Samuel Kinne, and Joe De Leon at The Pinkerton Law Firm, PLLC, 2 Riverway, Suite 1020, Houston, Texas 77056. Intervenor Maria I.

Hernandez brings this lawsuit in her capacity as the surviving spouse of Juan F. Hernandez, Deceased, and on behalf of his Estate.

10. Intervenor Deborah Hernandez-Leon, a surviving child of Juan F. Hernandez, Deceased, is a resident of Harris County, Texas, and may be served through her attorneys of record: C. Chad Pinkerton, Samuel Kinne, and Joe De Leon at The Pinkerton Law Firm, PLLC, 2 Riverway, Suite 1020, Houston, Texas 77056.

11. Intervenor Sandra Hernandez, a surviving child of Juan F. Hernandez, Deceased, is a resident of Chicago, Illinois, and may be served through her attorneys of record: C. Chad Pinkerton, Samuel Kinne, and Joe De Leon at The Pinkerton Law Firm, PLLC, 2 Riverway, Suite 1020, Houston, Texas 77056.

12. Intervenor Barbara Hernandez-Kinsey, a surviving child of Juan F. Hernandez, Deceased, is a resident of Harris County, Texas, and may be served through her attorneys of record: C. Chad Pinkerton, Samuel Kinne, and Joe De Leon at The Pinkerton Law Firm, PLLC, 2 Riverway, Suite 1020, Houston, Texas 77056.

13. Defendant Sesco Cement, Corp. (“Defendant Sesco”) is a domestic for-profit corporation doing business in the State of Texas with its principal place of business in Harris County at the following address: 7300 Wingate Street, Houston, Texas 77011. Defendant Sesco may be served via its registered agent, Mark A. Counts, at 1403 N Thompson Street, Conroe, Texas 77301. *Citation is requested at this time.*

14. Defendant Texan Concrete Enterprise Ready Mix, Inc. (“Defendant Texan Concrete”) is a domestic for-profit corporation doing business in the State of Texas with its principal place of business in Harris County at the following address: 6001 Homestead Road,

Houston, Texas 77028. Defendant Texan Concrete may be served via its registered agent, Dinesh Patel, at 6001 Homestead Road, Houston, Texas 77028. *Citation is requested at this time.*

15. Defendant Agri-Systems d/b/a ASI Industrial (“Defendant ASI Industrial”) is a foreign for-profit corporation doing business in the State of Texas on a continuous and systematic basis. Defendant ASI Industrial may be served via its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, at 211 E 7th Street, Suite 620, Austin, Texas 78701. *Citation is requested at this time.*

16. Defendant Lampson International, LLC (“Defendant Lampson”) is a foreign limited liability company doing business in the State of Texas on a continuous and systematic basis. Defendant Lampson may be served via its registered agent, Buddy A. Davidson, at 8820 Highway 35 South, Liverpool, Texas 77577. *Citation is requested at this time.*

17. Defendant McRay Crane & Rigging, Inc. (“Defendant McRay Crane”) is a domestic for-profit corporation doing business in the State of Texas with its principal place of business in Harris County at the following address: 8431 Mosley Road, Houston, Texas 77075. Defendant McRay Crane may be served via its registered agent, Vickie L. McRay, at 7001 Easthaven, Building C, Houston, Texas 77017. *Citation is requested at this time.*

V. MISNOMER/ALTER EGO

18. In the event any party is misnamed or not included herein, Intervenor contend that such was a “misidentification” or “misnomer” and/or that such party is/was an “alter ego” of a party named herein. To that extent, Intervenor assert the alter ego doctrine and contend that all existing “corporate veils” should be pierced in the interests of justice to hold accountable all those who failed to operate their business(es) in accordance with customary terms and measures.

Intervenors will accordingly seek damages from any individual business-owner-defendant who forfeited the typical corporate or business protections afforded to such entity.

VI. REQUEST PURSUANT TO RULE 28

19. In the event that any Defendant is conducting business pursuant to a trade name or assumed name, then this suit is brought against said Defendant pursuant to the terms of Rule 28 of the Texas Rules of Civil Procedure, and Intervenors demand that, upon answering the Petition, said Defendant answer in their correct legal and/or assumed name(s).

VII. JURISDICTION AND VENUE

20. The Court has subject matter jurisdiction over this matter as the amount in controversy is within the jurisdictional limits of this Court. Tex. Gov. Code § 24.007(b).

21. The Court has personal jurisdiction over Defendant Sesco, Defendant Texan Concrete, and Defendant McRay Crane because each is a Texas corporation with its principal place of business in Harris County (see ¶¶ 13-14, 17, *supra*). With regard to Defendant ASI Industrial and Defendant Lampson, personal jurisdiction remains proper because each engaged in acts that constitute doing business in Texas within the meaning of Tex. Civ. Prac. & Rem. Code § 17.042.

22. In accordance with Tex. Civ. Prac. & Rem. Code § 15.002(a)(1), venue is proper in Harris County, Texas because all or a substantial part of the events or omissions giving rise to Intervenors' claims occurred therein. Venue in Harris County, Texas, is also proper because it is the county where Defendant Sesco, Defendant Texan Concrete, and Defendant McRay Crane maintain their principal offices. Tex. Civ. Prac. & Rem. Code § 15.002(a)(3).

VIII. FACTS

23. This survival and wrongful death action arises from the horrific and preventable death of Juan Francisco Hernandez (“Decedent” or “Mr. Hernandez”), a loving husband, father,

and grandfather who, on May 16, 2024, tragically lost his life after his work truck was crushed by a collapsing crane at a cement terminal in Houston, Texas due to, among other things, Defendants' negligence and gross negligence.



24. As already alleged, Defendants seek to escape liability and responsibility by making the excuse of “force of nature” or “act of God.” Those claims are unjustified and unsupportable by the law. Defendants chose to continue working despite knowing, at all relevant times, that severe thunderstorms were forecasted in the Greater Houston Area. In doing so, Defendants purposefully chose profits over safety. Because of those actions, one man was severely injured, and another man lost his life.

25. Thus, at all relevant times, with conditions reasonably foreseeable by Defendants, Defendants could have prevented any injury-producing incident at the worksite in question by

simply following known severe weather protocols and removing workers from the immediate danger zone. OSHA requires such. Texas labor laws require such. Industry safety guidelines and standards require such. Defendants ignored all of the foregoing—leaving hard-working men in the zone of danger to “keep a schedule” and “prevent financial loss.”

26. Specifically, eighteen (18) hours before the incident in question (*i.e.*, at around 12:47 a.m. on May 16, 2024), the National Weather Service issued its first of many warnings, forecasting an “enhanced risk” of “severe thunderstorms” moving through the Houston area later that day in the afternoon and evening. This warning, however, was dismissed by Defendants, who proceeded with business as usual while inexcusably failing to create and circulate a safety plan for all workers should the weather become as dangerous as predicted by myriad reports.

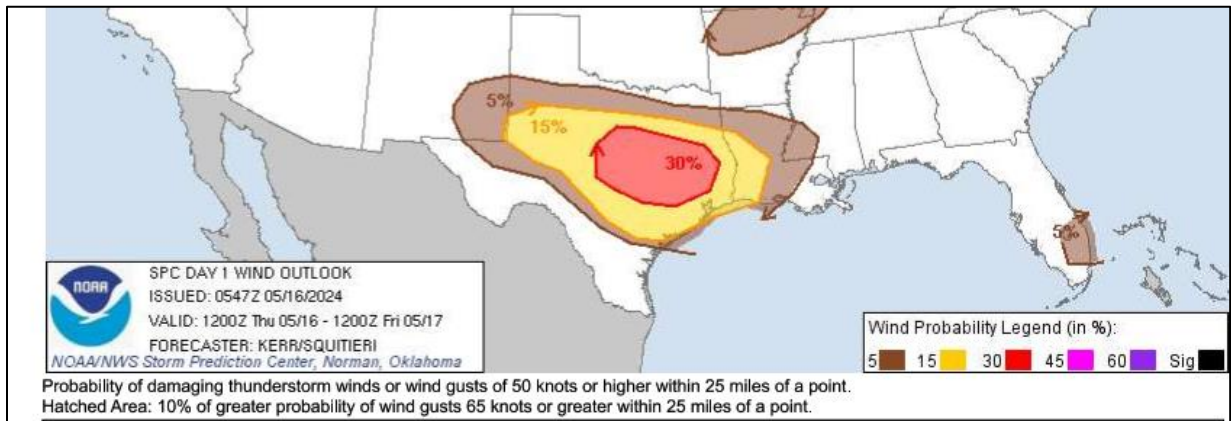
1247 AM CDT Thu May 16 2024

Valid 161200Z - 171200Z

...THERE IS AN ENHANCED RISK OF SEVERE THUNDERSTORMS LATE THIS AFTERNOON AND EVENING ACROSS PARTS OF CENTRAL AND SOUTHEAST TEXAS...

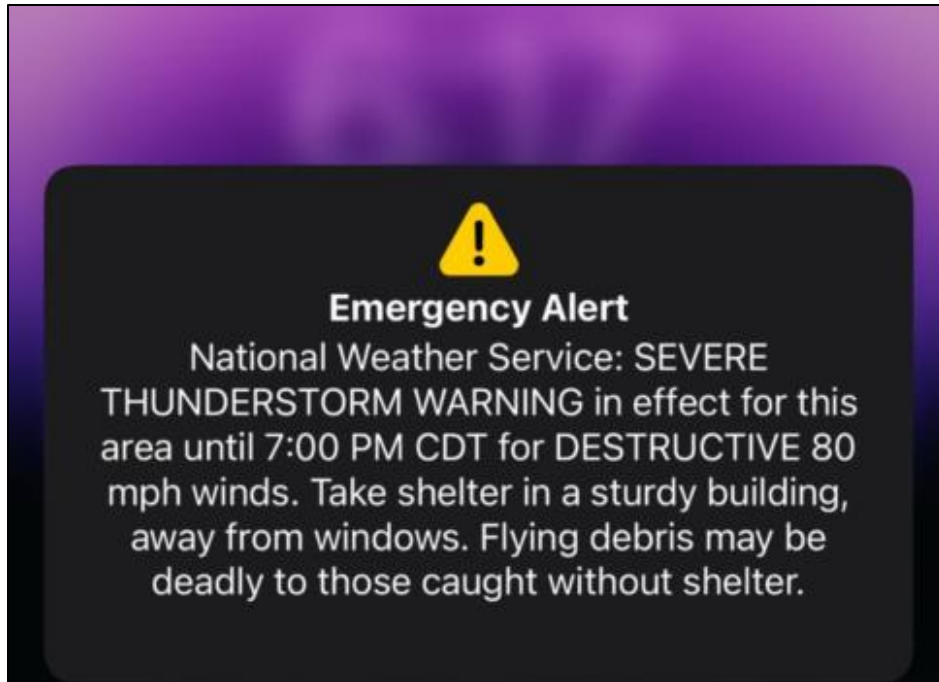
...SUMMARY...

Thunderstorms posing a risk for severe hail and wind may become fairly numerous across parts of central and southeastern Texas this afternoon into tonight. A couple of tornadoes are also possible, and an organized cluster of storms might eventually evolve by late evening, accompanied by a more substantive risk for damaging wind gusts.



27. As the storm grew in size and strength throughout the day, the National Weather Service issued a trio of alerts (a Tornado Watch, a Flood Warning, and a Flood Watch) around 4:30 p.m. Less than two hours later, between 6:14 p.m. and 6:17 p.m., the National Weather Service would then issue Tornado and Severe Thunderstorm Warnings, encouraging people to “take shelter” due to “flying debris” and “destructive 80 mph winds.” These warnings, like the one before, would also be dismissed by Defendants.





28. By 6:26 p.m., according to KHOU 11’s Chief Meteorologist David Paul, 113 mph wind gusts were recorded in the Spring Branch area of Houston, knocking down transmission lines and trees. These hurricane-force winds would then reach Downtown Houston around 6:32 p.m. and, eventually, 7300 Wingate Street, Houston, Texas 77011—the premises owned, maintained, managed, occupied, and/or otherwise under the control of Defendant Sesco and Defendant ASI Industrial (“Defendant Sesco’s Cement Terminal”)—around 6:30 p.m.

29. However, even after this thunderstorm reached Defendant Sesco’s Cement Terminal, operations related to the construction of large storage tanks/silos continued until disaster struck. The decision to continue, upon information and belief, was made by Defendant ASI Industrial who, at all relevant times, was the general contractor selected by Defendant Sesco to facilitate and oversee construction operations at Defendant Sesco’s Cement Terminal, including, but not limited to, vetting, hiring, and supervising all subcontractors working thereon. Together, Defendant Sesco and Defendant ASI Industrial retained and exercised actual control over safety

on the project and undertook duties to ensure that the worksite was free from all recognized hazards and that all operations performed thereon were conducted safely.

30. Upon further information and belief, Defendant Sesco and Defendant ASI Industrial disregarded warnings about the imminent thunderstorm because it sought to continue its efforts of delivering and pouring the concrete.¹ Any interruption in pouring at this point would delay completion and increase costs if any initially placed concrete began “setting” before the next batch was added.² Thus, to avoid these delays and added expenditures, Defendant ASI Industrial’s Project Manager, Dylan Palmiotto, upon approval from Defendant Sesco, notified all subcontractors that, despite the weather, work would continue unless otherwise stated. As a result, Defendant Texan Concrete, a company subcontracted by Defendant ASI Industrial with a history of placing customer satisfaction over employee safety, sent Mr. Hernandez to deliver its high-performance ready mixed concrete to Defendant Sesco’s Cement Terminal.³ There, Mr. Hernandez, who at all relevant times was acting within the course and scope of his employment with Defendant Texan Concrete, would, unfortunately, be crushed by a collapsing crane as he

¹ Reports indicate the pouring of concrete began days before this incident. That job was continuous—day and night. Workers worked in two shifts, a day shift and a night shift, to ensure that concrete was delivered and poured in a continuous and uninterrupted fashion.

² A delay could create what is referred to as a “cold joint.” Cold joints form when two concrete surfaces do not properly adhere to one another. However, cold joints are a common occurrence and are easily repaired. But repairing such costs time and money. That was something Defendants would not tolerate; time and money were much more important than exercising good judgment and common-sense for safety purposes.

³ Defendant Texan Concrete had an absolute, non-delegable duty to protect its employees. Defendant Texan Concrete chose to send Mr. Hernandez into harm’s way to satisfy the wishes of its customers. That decision cost a good man his life. Even more disturbing, Texan Concrete had a history of sending workers into dangerous storm conditions prior to this event whereby workers objected but were threatened with their employment should they not comply.

weathered strong winds and heavy rain in his work truck while waiting to unload within in the zone of danger as ordered and instructed by Defendants.⁴



31. Upon further information and belief, the collapsed crane, including any attached rigging equipment, was owned, operated, or otherwise under the control of Defendant Lampson and Defendant McCray Crane. Defendant ASI Industrial had subcontracted with these companies to provide rigging equipment and services to Defendant SESCO's Cement Terminal. Upon further information and belief, in providing such equipment and services, including large/heavy cranes and crane operators, Defendant Lampson and Defendant McCray Crane retained and exercised actual control over safety on the project and undertook duties to ensure that the worksite was free from all recognized hazards and that all operations performed thereon were conducted safely.

⁴ It would have taken mere minutes to relocate the cement trucks off-site, away from the danger zone. However, to order the cement trucks to relocate would have cost hours of productive work time. Hence, work time, which equates to money in the construction business, was chosen over safety. Despicable behavior, considering the dangerous conditions on site included two 600+ foot cranes, which are known to collapse in severe weather conditions such as thunderstorms and high winds.

Unfortunately, upon information and belief, neither inspected, secured, nor maintained the crane and rigging equipment in question, including, but not limited to, the large/heavy crane that crushed Mr. Hernandez, which, at all relevant times, was equipped with a meter designed to provide crane operators and other onsite safety personnel with real-time data to ensure safe crane operations and prohibit its use in high wind conditions.⁵

32. Mr. Hernandez leaves behind a wife and three children. He was a loving, kind, and caring husband, father, and provider for his family. Mr. Hernandez was in overall good health at the time of his premature death at age 72. He is and will always be greatly missed by Intervenors who were robbed of a full life with their husband/father/grandfather.

33. Defendants' conduct, as described herein, was a direct and proximate cause of Mr. Hernandez's injuries and untimely death through no fault of his own. As a result, Intervenors are entitled to recover all significant general and special damages and, therefore, bring all claims and seek to recover all damages available to them under the law.

34. All portions of this factual summary are incorporated below.

IX. CAUSE OF ACTION: NEGLIGENCE
(DEFENDANTS SESCO, ASI INDUSTRIAL, LAMPSON, AND MCRAY CRANE)

35. Intervenors incorporate by reference all prior allegations contained herein and allege that Defendants' negligence directly and proximately caused the incident wherein Mr. Hernandez sustained personal injuries and lost his life.

⁵ Another prohibited use of said cranes includes active use without taking proper safety precautions during a thunderstorm. Inherent to thunderstorms is lightning. These particular cranes extended some 600+ feet into the air, creating two lightning rods. Upon information and belief, one crane was potentially struck by lightning at or around the time of the incident. Leaving workers in this type of danger zone equates to an intentional and conscious disregard for human life.

36. At all relevant times, Defendants owed a duty to exercise the degree of care that a company of ordinary prudence would use to avoid harm to others, like Mr. Hernandez, under circumstances similar to those described herein, including, but not limited to, the furnishing of a safe worksite.

37. Upon information and belief, Defendants breached the duty of care owed to Mr. Hernandez by, among other things: **(1)** failing to provide a safe work worksite; **(2)** failing to perform crane and construction operations and equipment inspections/maintenance in a safe, reasonable, and prudent manner; **(3)** failing to provide appropriate job and safety-related supervision; **(4)** failing to complete required job hazard analyses and pre-work safety meetings; **(5)** failing to maintain, follow, or enforce policies and procedures for safe crane and construction operations and equipment inspections/maintenance; **(6)** failing to warn of a known danger; **(7)** allowing work to continue under known, unsafe conditions; **(8)** intentionally rushing work to completion despite knowing it created a workplace hazard; **(9)** improperly instructing and controlling the work of other workers and providing unsafe instructions; **(10)** consciously disregarding the safety of others by not stopping work before the start of forecasted “severe” inclement weather and, therefore, creating foreseeably unsafe and hazardous work conditions; **(11)** failing to properly train workers and on-site safety personnel; **(12)** failing to properly supervise workers and on-site safety personnel; **(13)** failing to secure the crane; **(14)** failing to comply or ensure compliance with all safety laws, rules, regulations, standards, best practices, procedures, specifications, manuals, and policies, including, but not limited to, those of federal, state and local governments, the Occupational Safety & Health Administration (“OSHA”), and applicable industry and trade associations; **(15)** failing to monitor weather conditions; **(16)** failing to properly conduct rigging operations or ensure appropriate weather conditions for use of cranes; **(17)**

expressly or tacitly approving or acquiescing to preventable unsafe working conditions at Defendant SESCO's Cement Terminal; (18) negligently implementing an informal policy or standard practice in direct contravention of existing formal policies or procedures, which unreasonably increased the probability and severity of injuries occurring at Defendant SESCO's Cement Terminal; (19) failing to recognize and repair or remediate a known, unsafe work condition without providing adequate workplace education and warning(s); and (20) undertaking and/or assuming a duty to make safe a dangerous condition or conditions on the premises and failing to exercise reasonable care in doing so.

38. Defendants' negligence was a direct and proximate cause of Mr. Hernandez's injuries and untimely death through no fault of his own and Intervenor's resulting general and special damages. Accordingly, Intervenor is entitled to all damages afforded to them under the law within the jurisdictional limits of this Court.

**X. CAUSE OF ACTION: GROSS NEGLIGENCE (COMMON LAW AND BY STATUTE)
(ALL DEFENDANTS)**

39. Intervenor incorporates by reference all prior allegations contained herein and alleges gross negligence against Defendants.

40. At all relevant times, Defendants' actions were grossly negligent, in that, when viewed objectively from their standpoint(s) at the time of the incident in question, their actions were negligent and involved an extreme degree of risk considering the then-existing probability and magnitude of potential harm to others, like Mr. Hernandez, who could be seriously harmed and killed under circumstances similar to those described herein.

41. Upon information and belief, Defendants engaged in grossly negligent acts or omissions with actual, subjective awareness of the risk(s) involved but proceeded with complete and reckless disregard for and with willful, wanton, and actual conscious indifference to the rights,

safety, and welfare of others, including Mr. Hernandez, by, among other things: (1) failing to provide a safe worksite; (2) failing to perform crane and construction operations and equipment inspections/maintenance in a safe, reasonable, and prudent manner; (3) failing to provide appropriate job and safety-related supervision; (4) failing to complete required job hazard analyses and pre-work safety meetings; (5) failing to maintain, follow, or enforce policies and procedures for safe crane and construction operations and equipment inspections/maintenance; (6) failing to warn of a known danger; (7) allowing work to continue under known, unsafe conditions; (8) intentionally rushing work to completion despite knowing it created a workplace hazard; (9) improperly instructing and controlling the work of other workers and providing unsafe instructions; (10) consciously disregarding the safety of others by not stopping work before the start of forecasted “severe” inclement weather and, therefore, creating unsafe and hazardous work conditions; (11) failing to properly train workers and on-site safety personnel; (12) failing to properly supervise workers and on-site safety personnel; (13) failing to secure the crane; (14) failing to comply or ensure compliance with all safety laws, rules, regulations, standards, best practices, procedures, specifications, manuals, and policies, including, but not limited to, those of federal, state and local governments, the Occupational Safety & Health Administration (“OSHA”), and applicable industry and trade associations; (15) failing to monitor weather conditions; (16) failing to properly conduct rigging operations or ensure appropriate weather conditions for use of cranes; (17) expressly or tacitly approving or acquiescing to unsafe working conditions they had the authority to correct at Defendant SESCO’s Cement Terminal; (18) negligently implementing an informal policy or standard practice in direct contravention of existing formal policies or procedures, which unreasonably increased the probability and severity of injuries occurring at Defendant SESCO’s Cement Terminal; (19) failing to recognize and repair or remediate a known,

unsafe work condition without providing adequate workplace education and warning(s); and (20) undertaking and/or assuming a duty to make safe a dangerous condition or conditions on the premises and failing to exercise reasonable care in doing so.

42. Defendants' gross negligence was a direct and proximate cause of the incident in question and Intervenor's resulting damages. Accordingly, Intervenor is entitled to punitive and/or exemplary damages, including potentially "uncapped" punitive damages.

XI. CAUSE OF ACTION: PREMISES LIABILITY (COMMON LAW AND BY STATUTE)
(DEFENDANTS SESCO AND ASI INDUSTRIAL)

43. In the alternative, without waiving any above cause of action, Intervenor incorporates by reference all prior allegations contained herein and alleges a premises liability claim against Defendant SESCO and Defendant ASI INDUSTRIAL.

44. At all relevant times, Mr. Hernandez was an invitee on the property owned, maintained, managed, occupied, and/or otherwise under the control of Defendant SESCO and Defendant ASI INDUSTRIAL while an unreasonably dangerous condition existed, which, based on information and belief, arose from the individual or collective negligent/grossly negligent acts and/or omissions of Defendants as described herein and in paragraphs 35 through 42, *supra*, and exposed Mr. Hernandez to an unreasonable risk of harm.

45. Intervenor further alleges that Defendant SESCO and Defendant ASI INDUSTRIAL knew or reasonably should have known about the unreasonably dangerous condition on its premises after reasonable inspection because it created the same after, among other things, consciously deciding to disregard the safety of others, including Mr. Hernandez, by not stopping work before the start of forecasted "severe" inclement weather. Thus, at all relevant times, Defendant SESCO and Defendant ASI INDUSTRIAL knew of such a dangerous condition or dangerous conditions and (1) could have taken corrective action in a timely manner or (2) provided proper warnings to Mr.

Hernandez. Unfortunately, Defendant Sesco and Defendant ASI Industrial, by and through their respective vice-principals, employees, agents, servants, and representatives, failed to do so and, therefore, wholly breached their duties owed to Mr. Hernandez as an invitee.

46. Intervenors sustained severe personal injuries and damages as a direct and proximate cause of these breached duties and, therefore, seek to recover all damages within the jurisdictional limits of this Court.

XII. VICARIOUS LIABILITY

47. Intervenors incorporate by reference all prior allegations contained herein and contend that Defendants are legally responsible to Intervenors for the negligent and/or grossly negligent conduct of its vice-principals, employees, agents, servants, and representatives under a theory of *respondeat superior*, agency, or for delegating non-delegable duties. Such vice-principals, employees, agents, servants, and representatives were at all times material agents, ostensible agents, servants, or employees of Defendants and acting within the course and scope of their respective agency, servitude, or employment. As a result, Defendants should be held vicariously liable for the negligence and/or gross negligence of its respective vice-principals, employees, agents, servants, and representatives, all of which directly and proximately caused the injuries and damages set forth herein.

XIII. DAMAGES

48. Intervenors suffered personal injuries and personal loss.⁶ Intervenors seek to recover all general and special damages sustained in the past and that, in all reasonable probability,

⁶ Upon information and belief, Mr. Hernandez was not initially killed in the incident, as reports indicate he momentarily held on to life before succumbing to his injuries. Intervenors seek all damages for such on behalf of Mr. Hernandez and his Estate for his pain and suffering before death.

will be sustained in the future as a direct and proximate result of the incident, including, but not limited to:

- a. Past and future pain and suffering;
- b. Past and future mental anguish;
- c. Past and future medical expenses;
- d. Past and future loss of earning capacity;
- e. Past and future physical disfigurement;
- f. Past and future loss of household services;
- g. Past and future loss of consortium and love and affection;
- h. Burial expenses;
- i. Past and future loss of financial support;
- j. Past and future economic damages; and
- k. Any other damages available under statutory or common law.

XIV. CONDITIONS PRECEDENT

49. All conditions precedent, if any, for imposing liability upon Defendants and allowing Intervenors to recover have been performed or have occurred.

XV. JURY DEMAND

50. Intervenors demand a trial by jury on all issues so triable and respectfully object to a trial by Zoom. The appropriate jury fee will be tendered upon the filing of this lawsuit.

XVI. REQUIRED DISCLOSURES

51. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants must disclose the information or material described therein within the required timeline.

XVII. PRAYER FOR RELIEF

52. **WHEREFORE, PREMISES CONSIDERED**, Intervenor respectfully request and pray that Defendants be cited to appear and answer herein, and that, upon a final hearing thereof, Intervenor recover damages within the jurisdictional limits of this Court, together with all pre-and-post-judgment interest at the highest rate as allowed by law, costs of Court, and for all such other and further relief to which Intervenor may be justly entitled by law and equity as supported by evidence, including, but not limited to:

- a. Past and future pain and suffering;
- b. Past and future mental anguish;
- c. Past and future medical expenses;
- d. Past and future loss of earning capacity;
- e. Past and future physical disfigurement;
- f. Past and future loss of household services;
- g. Past and future loss of consortium and love and affection;
- h. Burial expenses;
- i. Past and future loss of financial support;
- j. Past and future economic damages; and
- k. Pre-judgment interest at the highest lawful rate;
- l. Post-judgment interest at the highest lawful rate;
- m. Costs of Court;
- n. Punitive/exemplary damages (capped and/or uncapped); and
- o. Any other damages available under statutory or common law.

53. In accordance with Texas Rule of Civil Procedure 47(c)(4), Intervenors demand monetary relief over \$1,000,000.00 but not more than \$750,000,000.00.

Respectfully submitted,

THE PINKERTON LAW FIRM, PLLC

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Automated Certificate of eService

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C Pinkerton on behalf of Chad Pinkerton
Bar No. 24047199
cpinkerton@chadpinkerton.com
Envelope ID: 87975157
Filing Code Description: Counter Claim/Cross
Action/Interpleader/Intervention/Third Party
Filing Description: Counter Claim/Cross
Action/Interpleader/Intervention/Third Party
Status as of 5/21/2024 2:32 PM CST

Case Contacts

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Daphney Reid		dreid@chadpinkerton.com	5/21/2024 2:22:16 PM	SENT
Jose De Leon		jdeleon@chadpinkerton.com	5/21/2024 2:22:16 PM	SENT
Samuel Kinne		skinne@chadpinkerton.com	5/21/2024 2:22:16 PM	SENT