

3. Plaintiff, KELLENE HOSETTE, the surviving spouse of Decedent ERIC HOSETTE, has been duly appointed as Administrator of the Estate of ERIC HOSETTE, deceased, and files the present action in such capacity. Order of appointment attached hereto.

4. At all times relevant to this Complaint, Plaintiff, ADAM CAIN, has been a citizen of Iowa and resident of Goose Lake, Clinton County, Iowa.

5. At all times relevant to this Complaint, Defendant, ARCHER-DANIELS-MIDLAND COMPANY (“ADM”), has been a foreign corporation doing business in Clinton County, Iowa.

6. At all times relevant to this Complaint, Defendant, BILL WHITTERS CONSTRUCTION CO., was a domestic corporation doing business in Clinton County, Iowa.

7. At all times relevant to this Complaint, Defendant, BWC INDUSTRIAL SERVICES, LLC, was a domestic corporation doing business in Clinton County, Iowa.

8. At all times relevant to this Complaint, ADM owned, controlled, managed, maintained, and operated a large manufacturing and processing complex located at or near 1251 Beaver Channel Pkwy., Clinton, Clinton County, Iowa.

II. EVENTS PRECEDING THE FIRE DEPARTMENT’S ARRIVAL

9. Defendant ADM’s Clinton operation includes several silos, including a silo commonly known as Silo #2. Silo #2 is approximately 100 feet in height and 24 feet in diameter.

10. On January 5, 2019, and for some time prior, Silo #2 contained corn gluten feed pellets.

11. Prior to October 2018, Defendant ADM, inadvertently or otherwise, left certain additives out of the batches of feed in Silo #2.

12. On or before mid-October, 2018, the feed, without additives, had become out of condition, resulting in the formation of a bridge – a hard horizontal layer of crusted, spoiled material partially up the height of the interior of the silo, with a hollow space underneath between the bottom of the silo and the bridged material.

13. The size and density of the bridge indicates that the bridge in Silo #2 formed gradually.

14. ADM became aware of the bridging in Silo #2 on or before mid-October, 2018.

15. After discovering that Silo #2 had completely bridged over, blocking the silo, ADM hired two contractors to attempt to break up and remove the bridge. These contractors were Industrial Silosource (“IS”), and BILL WHITTERS CONSTRUCTION CO., and/or BWC INDUSTRIAL SERVICES, LLC (hereinafter collectively, “BWC”).

16. BWC began its efforts to break up and remove the bridge on or around October, 2018.

17. In November, 2018, IS attempted to break up and remove the bridge using pressured blasts of air. Concurrently with IS, as well as prior and subsequent to IS’s involvement, BWC attempted to break up and remove the bridge using water. BWC first attempted to use a lower pressure water system, and later used a high-pressure water system.

18. BWC’s addition of water to the bridged material caused the material to swell.

19. After breaking off and removing some, though not nearly all, of the bridged material, ADM terminated the services of IS, and elected to continue only using the services of BWC to break up and remove the bridge.

20. Subsequent to the termination of IS, BWC primarily and/or exclusively attempted to break up the bridged material using a high-pressure water system, which involved the use of relatively large-diameter charged hose lines.

21. In the days prior to January 5, 2019, ADM and BWC became aware that the chunks of the bridged material that had fallen to the bottom of the silo was hot, smoldering, and blackened.

22. The hot, smoldering, and blackened material indicated that the bridged material was similarly hot and smoldering.

23. This hot, smoldering, and blackened material was hot enough that BWC was required to wait for the material to cool off so that it would not melt BWC's vacuum hose while BWC was clearing the fallen material from the bottom of the silo.

24. In spite of knowledge that the bridged material was hot and smoldering, Defendants, ADM and BWC, chose to continue their efforts to use water to break up and remove the bridged material in Silo #2.

25. Approximately two to three days prior to January 5, 2019, a smoldering fire had ignited inside of Silo #2. Defendants had attempted to suppress this fire using high-pressured water through relatively large-diameter, 1 1/2 inch hose.

26. As of January 5, 2019, a fire had ignited inside of Silo #2.

27. On and before that date, openings at the top and bottom of the silo had been left open by Defendants, each of them, creating air flow, and, upon information and belief, fanning the flames.

28. The morning of January 5, 2019, after a period of deliberation, Defendants notified the Clinton Fire Department of the fire.

III. EVENTS AFTER THE ARRIVAL OF THE FIRE DEPARTMENT

29. Clinton Fire Department personnel arrived at Silo #2 prior to 6:00 a.m. on January 5, 2019.

30. In spite of the fire advancing beyond the incipient stages, Defendants, each of them, took steps to suppress the fire themselves, in conjunction with the Clinton Fire Department's efforts.

31. Defendant ADM established its own incident command, to work alongside the Fire Department's incident command.

32. Subsequent to the arrival of Clinton Fire Department personnel, Defendants, each of them, undertook to provide the Clinton Fire Department with all relevant information in order for the Clinton Fire Department to select appropriate fire suppression strategies.

33. At all times subsequent to the arrival of the Clinton Fire Department personnel, Defendant, each of them, voluntarily undertook to assist the Fire Department personnel in its efforts to combat the fire in Silo #2.

a. Side Hatch and Inspection Port

34. Clinton Fire Department desired to apply water beneath the bridged material from a side-hatch on the southeast side of Silo #2, approximately thirteen feet above the ground, for the reason of both the purposes of efficacy and for the safety of fire-fighting personnel.

35. The use of the side hatch to fight the Silo #2 fire was the fire department's preferred strategy initially, as well as throughout the fire suppression efforts, due to this strategy's efficacy and safety advantages for fire-fighting personnel.

36. Defendants, each of them, repeatedly actively dissuaded the Clinton Fire Department from its strategy of applying water beneath the bridged material from the side-hatch.

37. Defendants, each of them, repeatedly actively represented to the Clinton Fire Department personnel that they did not possess sufficient knowledge about the contents of Silo #2, including but not limited to whether the loose material of the silo was above the side hatch, and therefore the side hatch should not be opened.

38. In reality, the loose material inside Silo #2 was below the level of the side hatch, and the hatch could have been safely used for the Fire Department's desired fire suppression activities.

39. When Defendants, each of them, made the foregoing representations to the fire department personnel, Defendants, each of them, knew that the loose material inside Silo #2 was not above the side hatch, and that the hatch could have been safely used for the Fire Department's desired fire suppression activities.

40. When Defendants, each of them, made the foregoing representations to the fire department personnel, Defendants, each of them, should have known that the loose material inside Silo #2 was not above the side hatch, and that the hatch could have been safely used for the Fire Department's desired fire suppression activities.

41. When Defendants, each of them, made the foregoing representations to the fire department personnel, Defendants, each of them, knew of the existence of an inspection port in Silo #2 that would allow Defendants as well as fire department personnel to safely ascertain whether the silo's loose material was above or below the side hatch, as well as the quantity and condition of the material.

42. While Clinton Fire Department personnel repeatedly expressed their preference to access the side hatch for fire suppression efforts, for the sake of efficacy and safety, Defendants,

each of them, repeatedly failed to inform the fire department personnel of the existence of the inspection port, or the possibility of using the port to safely view the inside of the silo.

43. While Clinton Fire Department personnel repeatedly expressed their preference to access the side hatch for fire suppression efforts, for the sake of efficacy and safety, Defendants, each of them, repeatedly failed to use the inspection port to verify Defendants' representations that the material was above the level of the side hatch.

44. Defendants repeatedly failed to inform the fire department of the existence of the inspection port, or use the inspection port themselves, to view the quantity and conditions of the interior of Silo #2, which was critical to forming a fire suppression strategy that was efficacious as well as safe for fire department personnel.

45. In fact, it was not until mere seconds before the explosion that injured Plaintiff Adam Cain, and killed Decedent Eric Hosette, that Defendants informed Clinton Fire Department incident command that the loose material inside Silo #2 was in reality below the level of the side hatch, and therefore it was feasible to use preferred and safer fire suppression methods through the side hatch.

46. It was not until approximately 30 minutes after the explosion that injured Plaintiff Adam Cain, and killed Decedent Eric Hosette, that Defendants informed Clinton Fire Department personnel that at all times there existed an inspection port that would have allowed fire fighter personnel to safely view the interior of Silo #2.

b. Fire Suppression Without the Use of the Side Hatch

47. With Defendants insisting that the use of the side hatch was not feasible due to the level of loose material inside of the silo, other avenues of attacking the fire were explored.

48. Defendants, each of them, represented to fire department personnel that Silo #2 contained germ, while the product in reality was gluten feed pellets.

49. Defendants, each of them, made representations to fire department personnel downplaying the risk of explosion with the use of other avenues of attacking the fire, such as accessing the top of the silo and using the silo's trench.

50. Defendants knew, or in the exercise of ordinary care should have known, of the risk of explosion while using other avenues of attacking the fire, including accessing the top of the silo, due to the contents of Silo #2, including but not limited to pressurized combustible smoke from longstanding use of water on the bridged material, other ignitable gasses, and/or combustible and explosible dust from corn gluten feed pellets.

51. After Defendants dissuaded the fire department from using the southeast side hatch, efforts to fight the fire from the silo's trench were unsuccessful due to smoke resulting, upon information and belief, from air flow in the silo.

52. Without access to the silo's trench, the Clinton Fire Department personnel attempted to use fire suppression efforts from the top opening of the silo.

53. The fire department was unable to access the top opening from a ladder truck, or aerial lift.

54. Defendant ADM, through an agent and/or employee, undertook to lead Clinton Fire Department personnel, and specifically Plaintiff Adam Cain, and Decedent Eric Hosette, to the top of Silo #2 via a catwalk connecting the top of the silo to another built structure.

55. The use of the top of the silo for fire suppression was a substantially less preferred fire suppression location, among other reasons due to the substantially increased safety risk that

this location posed to fire department personnel, including Plaintiff Adam Cain, and Decedent Eric Hosette.

56. Defendant ADM's agent leading Plaintiff Adam Cain and Decedent Eric Hosette on the catwalk had failed to wear a respirator, self-contained breathing apparatus, or other respiratory or smoke-filtration instrumentality, and accordingly could not get close enough to the silo to meaningfully instruct the firefighters about the conditions at the top of the silo, including the presence of any fall protection instrumentalities.

57. Plaintiff Adam Cain and Decedent Eric Hosette began applying water from the top of the silo.

58. During the application of water by Plaintiff Adam Cain and Decedent Eric Hosette, Defendant ADM's personnel underwent a shift change. At this time an ADM agent and/or employee informed Clinton Fire Department incident command that the loose material inside Silo #2 was in reality below the level of the side hatch, and therefore it was feasible to use preferred and safer fire suppression methods through the side hatch.

59. Mere seconds later a violent explosion occurred inside of Silo #2, causing Plaintiff Adam Cain, and Decedent Eric Hosette, to fall from the top of the silo.

60. The explosion, and resulting falls, was caused by the application of water through the top of the silo.

61. The falls and/or explosion would not have occurred had fire department personnel used their preferred fire suppression method accessing the silo's side hatch.

62. As a result of the fall and/or explosion, Plaintiff Adam Cain was severely injured.

63. As a result of the fall and/or explosion, Decedent Eric Hosette was severely injured and died.

IV. COUNTS FOR RELIEF

Count I – Kellene Hosette, as Administrator of the Estate of Eric Hosette v. ADM Wrongful Death - Negligence

1-63. Plaintiff, Kellene Hosette, as Administrator of the Estate of Eric Hosette, deceased, repeats and re-alleges paragraphs one (1) through sixty-three (63) as if fully set forth herein.

64. This Action is brought pursuant to I.A.C Sec. 633.336 commonly known as the Wrongful Death Act.

65. At the aforementioned time and place, Defendant, ADM, possessed a duty to act with ordinary care for the sake of those lawfully present on the Clinton complex, and to avoid negligent acts and/or omissions subsequent to the arrival of Clinton Fire Department personnel, such as Decedent.

66. At the aforementioned time and place, Defendant, ADM, possessed a duty to act with ordinary care so as to not create risks for Clinton Fire Department personnel, such as Decedent, that were different than the reason for the initial presence of such fire department personnel.

67. Defendant ADM violated the aforesaid duties, in that it:

- a) Subsequent to the arrival of fire department personnel, failing to provide pertinent information relating to the amount and condition of the grain contained in the silo, that would have allowed the use of the silo's side entry, allowing Plaintiff Cain and Decedent to avoid performing more dangerous fire suppression efforts from the top of the silo;
- b) Subsequent to the arrival of fire department personnel, failed to collect critical information regarding the amount and condition of the grain contained in the silo, that would have allowed the use of the silo's side entry, allowing Plaintiff Cain and Decedent to avoid performing more dangerous fire suppression efforts from the top of the silo, from individuals Defendant knew, or in the exercise of care should have known, were likely to possess such information;

- c) Subsequent to the arrival of fire department personnel, failed to adequately communicate critical information to fire department personnel;
- d) Subsequent to the arrival of fire department personnel, failed to provide an adequately organized channel of information gathering and communication to fire department personnel;
- e) Subsequent to the arrival of fire department personnel, failed to take all available information into account with respect to the amount and type of grain in the silo, and resultingly incorrectly communicated the risks of opening the side entry to the silo;
- f) Subsequent to the arrival of fire department personnel, represented that the grain was at a level above the silo's side entry, which Defendant knew, or in the exercise of ordinary care should have known, was false;
- g) Subsequent to the arrival of fire department personnel, failed to adequately collect and communicate information about the grain, bridged product, and risk of explosion;
- h) Subsequent to the arrival of fire department personnel, represented that fire suppression efforts from the silo's side entry was not feasible, which Defendant knew, or in the exercise of ordinary care should have known, was false;
- i) Subsequent to the arrival of fire department personnel, failed to use the silo's inspection port to verify whether the grain was below the silo's side entry, when Defendant knew, or in the exercise of ordinary care should have known, that this would cause the fire department personnel to be caused to use more dangerous fire suppression efforts at the top of the silo;
- j) Subsequent to the arrival of fire department personnel, failed to inform the fire department personnel of the existence and configuration of the silo's inspection port in order to verify whether the grain was below the silo's side entry, when Defendant knew, or in the exercise of ordinary care should have known, that this would cause the fire department personnel to be caused to use more dangerous fire suppression efforts at the top of the silo;
- k) Subsequent to the arrival of fire department personnel, failed to use the silo's side entry to break up and/or extricate bridged material;
- l) Subsequent to the arrival of fire department personnel, transferred Defendant's incident command to an individual not authorized to perform, and not capable of adequately performing, duties relating to incident command of Defendant's efforts;

- m) Failed to provide adequate respiratory or other equipment to employees so that an employee could escort fire fighters to the location of fire suppression efforts, in order to provide information regarding the silo and its conditions;
- n) Failed to offer and/or adequately communicate the presence of fall prevention instrumentalities at the top of the silo; and
- o) Failed to adequately perform fire suppression activities during a mutual command fire suppression effort.

68. Decedent, Eric Hosette, would not have sustained injuries and resultingly died but for the foregoing acts and omissions of Defendant ADM.

69. In addition, the foregoing was a substantial factor in bringing about the injuries and resulting death of Decedent, Eric Hosette, the proximate and reasonably foreseeable result of the foregoing acts and omissions of Defendant ADM.

70. Decedent, Eric Hosette, is survived by next of kin.

71. As a proximate result of the death of Eric Hosette, his next of kin have and will continue to experience damages as provided for in the Wrongful Death Act.

WHEREFORE, Plaintiff, Kellene Hosette, as Administrator of the Estate of Eric Hosette, deceased, prays for judgment against the Defendant, ARCHER-DANIELS-MIDLAND COMPANY, in an amount that is fair and reasonable, to be determined by evidence, in excess of any jurisdictional limits, plus costs and any other further relief that this Honorable Court deems equitable and just.

Count II – Kellene Hosette, as Administrator of the Estate of Eric Hosette v. BWC Wrongful Death - Negligence

1-71. Plaintiff, Kellene Hosette, as Administrator of the Estate of Eric Hosette, deceased, repeats and re-alleges paragraphs one (1) through seventy one (71) as if fully set forth herein.

72. This Action is brought pursuant to I.A.C.Sec. 633.336 commonly known as the Wrongful Death Act.

73. At the aforementioned time and place, BWC, possessed a duty to act with ordinary care for the sake of those lawfully present on the Clinton complex, and to avoid negligent acts and/or omissions subsequent to the arrival of Clinton Fire Department personnel, such as Decedent.

74. At the aforementioned time and place, BWC, possessed a duty to act with ordinary care so as to not create risks for Clinton Fire Department personnel, such as Decedent, that were different than the reason for the initial presence of such fire department personnel.

75. BWC violated the aforesaid duties, in that it:

- a) Subsequent to the arrival of fire department personnel, failing to provide pertinent information relating to the amount and condition of the grain contained in the silo, that would have allowed the use of the silo's side entry, allowing Plaintiff Cain and Decedent to avoid performing more dangerous fire suppression efforts from the top of the silo;
- b) Subsequent to the arrival of fire department personnel, failed to collect critical information regarding the amount and condition of the grain contained in the silo, that would have allowed the use of the silo's side entry, allowing Plaintiff Cain and Decedent to avoid performing more dangerous fire suppression efforts from the top of the silo, from individuals Defendant knew, or in the exercise of care should have known, were likely to possess such information;
- c) Subsequent to the arrival of fire department personnel, failed to adequately communicate critical information to fire department personnel;
- d) Subsequent to the arrival of fire department personnel, failed to provide an adequately organized channel of information gathering and communication to fire department personnel;
- e) Subsequent to the arrival of fire department personnel, failed to take all available information into account with respect to the amount and type of grain in the silo, and resultingly incorrectly communicated the risks of opening the side entry to the silo;

- f) Subsequent to the arrival of fire department personnel, represented that the grain was at a level above the silo's side entry, which Defendant knew, or in the exercise of ordinary care should have known, was false;
- g) Subsequent to the arrival of fire department personnel, failed to adequately collect and communicate information about the grain, bridged product, and risk of explosion;
- h) Subsequent to the arrival of fire department personnel, represented that fire suppression efforts from the silo's side entry was not feasible, which Defendant knew, or in the exercise of ordinary care should have known, was false;
- i) Subsequent to the arrival of fire department personnel, failed to use the silo's inspection port to verify whether the grain was below the silo's side entry, when Defendant knew, or in the exercise of ordinary care should have known, that this would cause the fire department personnel to be caused to use more dangerous fire suppression efforts at the top of the silo;
- j) Subsequent to the arrival of fire department personnel, failed to inform the fire department personnel of the existence and configuration of the silo's inspection port in order to verify whether the grain was below the silo's side entry, when Defendant knew, or in the exercise of ordinary care should have known, that this would cause the fire department personnel to be caused to use more dangerous fire suppression efforts at the top of the silo;
- k) Subsequent to the arrival of fire department personnel, failed to use the silo's side entry to break up and/or extricate bridged material; and
- l) Failed to adequately perform fire suppression activities that it had voluntarily undertaken during a mutual command fire suppression effort.

76. Decedent, Eric Hosette, would not have sustained injuries and resultingly died but for the foregoing acts and omissions of BWC.

77. In addition, the foregoing was a substantial factor in bringing about the injuries and resulting death of Decedent, Eric Hosette, the proximate and reasonably foreseeable result of the foregoing acts and omissions of BWC.

78. Decedent, Eric Hosette, is survived by next of kin.

79. As a proximate result of the death of Eric Hosette, his next of kin have and will continue to experience damages as provided for in the Wrongful Death Act.

WHEREFORE, Plaintiff, Kellene Hosette, as Administrator of the Estate of Eric Hosette, deceased, prays for judgment against the Defendant, BILL WHITTERS CONSTRUCTION CO., and BWC INDUSTRIAL SERVICES, LLC, each of them, in an amount that is fair and reasonable, to be determined by evidence, in excess of any jurisdictional limits, plus costs and any other further relief that this Honorable Court deems equitable and just.

**COUNT III-Hosette v. ADM and BWC
SURVIVAL-NEGLIGENCE**

Comes now the Plaintiff, Kellene Hosette, as surviving spouse and duly appointed Administrator of the Estate of Eric Hosette, and for her Petition at Law against the Defendants **ADM** and **BWC** states as follows:

1-79. The Plaintiff repeats and realleges paragraphs 1-79 of this Petition as Paragraphs 1-79 of this Count III with full force as if pleaded here in full.

80. That as a direct and proximate result of one or more of the foregoing negligent acts/or omissions of the Defendants ADM Bill Whitters Construction Co. and BWC Industrial Services, LLC, the Plaintiff suffered injuries of a personal and pecuniary nature prior to his death, including, but not limited to:

- a. Pain and suffering; and
- b. Medical Expenses.

WHEREFORE, Plaintiff Kellene Hosette, as surviving spouse and duly-appointed Administrator of the Estate of Eric Hosette, prays for judgment in her favor and against the Defendants, and each of them in an amount necessary to fully and fairly compensate the Estate for all losses provided pursuant to the Survival Statute.

COUNT V-Hosette v. ADM and BWC
LOSS OF CONSORTIUM

1-80. The Plaintiff Kellene Hosette, individually incorporates by reference paragraphs 1-80 of this Petition as paragraphs 1-80 of this Count V with full force and effect as if pleaded here in full.

81. That as a result of the negligent acts of the Defendants herein, the Plaintiff was caused to suffer, and will continue to suffer in the future, loss of benefits of company, cooperation, affection, the aid of the other in every marital relationship, general usefulness, industry and attention within the home and the family.

82. That as a direct and proximate result of one or more of the foregoing negligent acts/omissions of the Defendants, the Plaintiff Kellene Hosette suffered a loss of consortium.

WHEREFORE, the Plaintiff Kellene Hosette prays for judgment in her favor and against the Defendants, and each of them, in an amount necessary to fully and fairly compensate her for all losses compensable under her claim for loss of consortium.

Count VI – Adam Cain v. ADM
Negligence

1-82. Plaintiff, Adam Cain, repeats and re-alleges paragraphs 1-82 of this Petition as paragraphs 1-82 as if fully set forth herein.

83. At the aforementioned time and place, Defendant, ADM, possessed a duty to act with ordinary care for the sake of those lawfully present on the Clinton complex, and to avoid negligent acts and/or omissions subsequent to the arrival of Clinton Fire Department personnel, such as Decedent.

84. At the aforementioned time and place, Defendant, ADM, possessed a duty to act with ordinary care so as to not create risks for Clinton Fire Department personnel, such as Decedent, that were different than the reason for the initial presence of such fire department personnel.

85. Defendant ADM violated the aforesaid duties, in that it:

- a) Subsequent to the arrival of fire department personnel, failing to provide pertinent information relating to the amount and condition of the grain contained in the silo, that would have allowed the use of the silo's side entry, allowing Plaintiff Cain and Decedent to avoid performing more dangerous fire suppression efforts from the top of the silo;
- b) Subsequent to the arrival of fire department personnel, failed to collect critical information regarding the amount and condition of the grain contained in the silo, that would have allowed the use of the silo's side entry, allowing Plaintiff Cain and Decedent to avoid performing more dangerous fire suppression efforts from the top of the silo, from individuals Defendant knew, or in the exercise of care should have known, were likely to possess such information;
- c) Subsequent to the arrival of fire department personnel, failed to adequately communicate critical information to fire department personnel;
- d) Subsequent to the arrival of fire department personnel, failed to provide an adequately organized channel of information gathering and communication to fire department personnel;
- e) Subsequent to the arrival of fire department personnel, failed to take all available information into account with respect to the amount and type of grain in the silo, and resultingly incorrectly communicated the risks of opening the side entry to the silo;
- f) Subsequent to the arrival of fire department personnel, represented that the grain was at a level above the silo's side entry, which Defendant knew, or in the exercise of ordinary care should have known, was false;
- g) Subsequent to the arrival of fire department personnel, failed to adequately collect and communicate information about the grain, bridged product, and risk of explosion;
- h) Subsequent to the arrival of fire department personnel, represented that fire suppression efforts from the silo's side entry was not feasible, which Defendant knew, or in the exercise of ordinary care should have known, was false;

- i) Subsequent to the arrival of fire department personnel, failed to use the silo's inspection port to verify whether the grain was below the silo's side entry, when Defendant knew, or in the exercise of ordinary care should have known, that this would cause the fire department personnel to be caused to use more dangerous fire suppression efforts at the top of the silo;
- j) Subsequent to the arrival of fire department personnel, failed to inform the fire department personnel of the existence and configuration of the silo's inspection port in order to verify whether the grain was below the silo's side entry, when Defendant knew, or in the exercise of ordinary care should have known, that this would cause the fire department personnel to be caused to use more dangerous fire suppression efforts at the top of the silo;
- k) Subsequent to the arrival of fire department personnel, failed to use the silo's side entry to break up and/or extricate bridged material;
- l) Subsequent to the arrival of fire department personnel, transferred Defendant's incident command to an individual not authorized to perform, and not capable of adequately performing, duties relating to incident command of Defendant's efforts;
- m) Failed to provide adequate respiratory or other equipment to employees so that an employee could escort fire fighters to the location of fire suppression efforts, in order to provide information regarding the silo and its conditions;
- n) Failed to offer and/or adequately communicate the presence of fall prevention instrumentalities at the top of the silo; and
- o) Failed to adequately perform fire suppression activities during a mutual command fire suppression effort.

86. Plaintiff Adam Cain would not have sustained injuries and resultingly died but for the foregoing acts and omissions of Defendant ADM.

87. In addition, the foregoing was a substantial factor in bringing about the injuries and resulting death of Plaintiff, Adam Cain, the proximate and reasonably foreseeable result of the foregoing acts and omissions of Defendant ADM.

88. As a proximate result of the explosion and resulting fall, Plaintiff, Adam Cain, was caused to experience pain and suffering, loss of enjoyment of life, loss of function, lost

wages, and medical charges, and will continue in the future to experience pain and suffering, loss of enjoyment of life, loss of function, lost wages, and medical charges.

WHEREFORE, Plaintiff, Adam Cain, prays for judgment against the Defendant, ARCHER-DANIELS-MIDLAND COMPANY, in an amount that is fair and reasonable, to be determined by evidence, in excess of any jurisdictional limits and other relief deemed equitable and just.

Count VII-ADAM CAIN v. BWC
Negligence

1-89. Plaintiff, Adam Cain, repeats and re-alleges paragraphs 1-89 of this Petition as if fully set forth herein.

90. At the aforementioned time and place, BWC, possessed a duty to act with ordinary care for the sale of those lawfully present on the Clinton complex, and to avoid negligent acts and/or omissions subsequent to the arrival of Clinton Fire Department personnel, such as Decedent.

91. At the aforementioned time and place, BWC, possessed a duty to act with ordinary care so as to not create risks for Clinton Fire Department personnel, such as Decedent, that were different than the reason for the initial presence of such fire department personnel.

92. BWC violated the aforesaid duties, in that it:

- a) Subsequent to the arrival of fire department personnel, failing to provide pertinent information relating to the amount and condition of the grain contained in the silo, that would have allowed the use of the silo's side entry, allowing Plaintiff Cain and Decedent to avoid performing more dangerous fire suppression efforts from the top of the silo;
- b) Subsequent to the arrival of fire department personnel, failed to collect critical information regarding the amount and condition of the grain contained in the silo, that would have allowed the use of the silo's side entry, allowing Plaintiff Cain and Decedent to avoid performing more dangerous fire suppression efforts from

the top of the silo, from individuals Defendant knew, or in the exercise of care should have known, were likely to possess such information;

- c) Subsequent to the arrival of fire department personnel, failed to adequately communicate critical information to fire department personnel;
- d) Subsequent to the arrival of fire department personnel, failed to provide an adequately organized channel of information gathering and communication to fire department personnel;
- e) Subsequent to the arrival of fire department personnel, failed to take all available information into account with respect to the amount and type of grain in the silo, and resultingly incorrectly communicated the risks of opening the side entry to the silo;
- f) Subsequent to the arrival of fire department personnel, represented that the grain was at a level above the silo's side entry, which Defendant knew, or in the exercise of ordinary care should have known, was false;
- g) Subsequent to the arrival of fire department personnel, failed to adequately collect and communicate information about the grain, bridged product, and risk of explosion;
- h) Subsequent to the arrival of fire department personnel, represented that fire suppression efforts from the silo's side entry was not feasible, which Defendant knew, or in the exercise of ordinary care should have known, was false;
- i) Subsequent to the arrival of fire department personnel, failed to use the silo's inspection port to verify whether the grain was below the silo's side entry, when Defendant knew, or in the exercise of ordinary care should have known, that this would cause the fire department personnel to be caused to use more dangerous fire suppression efforts at the top of the silo;
- j) Subsequent to the arrival of fire department personnel, failed to inform the fire department personnel of the existence and configuration of the silo's inspection port in order to verify whether the grain was below the silo's side entry, when Defendant knew, or in the exercise of ordinary care should have known, that this would cause the fire department personnel to be caused to use more dangerous fire suppression efforts at the top of the silo;
- k) Subsequent to the arrival of fire department personnel, failed to use the silo's side entry to break up and/or extricate bridged material; and
- l) Failed to adequately perform fire suppression activities that it had voluntarily undertaken during a mutual command fire suppression effort.

93. Plaintiff, Adam Cain, would not have sustained injuries but for the foregoing acts and omissions of Defendant BWC.

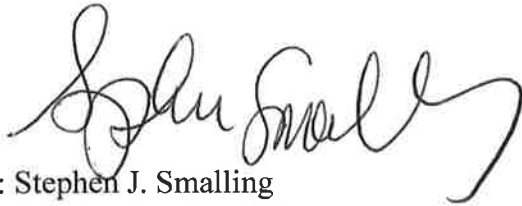
94. In addition, the foregoing was a substantial factor in bringing about the injuries of Plaintiff, Adam Cain, the proximate and reasonably foreseeable result of the foregoing acts and omissions of Defendant BWC.

95. As a proximate result of the explosion and resulting fall, Plaintiff, Adam Cain, was caused to experience pain and suffering, loss of function of the body, lost wages, and medical charges, and will continue in the future to experience pain and suffering, loss of function of the body, lost wages, and medical charges.

WHEREFORE, Plaintiff, Adam Cain, prays for judgment against the Defendant, BWC, in an amount that is fair and reasonable, to be determined by evidence, in excess of any jurisdictional limits, plus costs and any other further relief that this Honorable Court deems equitable and just.

Respectfully submitted,

CAPRON & AVGERINOS, P.C.



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IN THE IOWA DISTRICT COURT FOR CLINTON COUNTY

IN THE MATTER OF THE

Estate of Eric M. Hosette

Case No. 07231 ESPR019755

Letters of Appointment

Docket Event Code: LEAP

KNOW ALL PERSONS BY THESE PRESENTS:

That having been duly appointed and qualified as Administrator of the above entitled matter,

Kellene M. Hosette

is vested with all powers authorized by law in the premises.

Letters issued: February 13, 2020

/s/ Caroline J. Ebersberger

Clerk of Court/Designee
CLINTON County

