

GOLDEN GRAIN ENERGY, LLC, and )  
LEXINGTON INSURANCE COMPANY, as ) Case No: **3:17-CV-03088-MWB**  
subrogee of Golden Grain Energy, LLC )  
)  
Plaintiff, )  
vs. )  
) **PLAINTIFF’S COMPLAINT**  
)  
ICM, INC., and GLASS KING )  
MANUFACTURING COMPANY, INC., )  
)  
Defendants. )

## **PARTIES AND GENERAL ALLEGATIONS**

2. Plaintiff Lexington Insurance Company (“Lexington”) was and is a corporation duly organized and existing under the laws of the State of Delaware, with its principle place of business in Wilmington, Delaware. Lexington is a surplus lines carrier providing insurance in the State of Iowa on a non-admitted basis, and at all pertinent times herein was a property insurer for property located at 1822 43rd Street SW, in Mason City, Iowa.

3. Upon information and belief, Defendant ICM, Inc., (“ICM”) is a Kansas corporation with its principal place of business located in Colwich, Kansas. ICM also has a research and development facility and pilot plant located in St. Joseph, Missouri. At all pertinent times herein, ICM was authorized to do business in the State of Iowa. ICM is in the business of designing waste water tank systems.

4. Upon information and belief, Defendant Glass King Manufacturing Company, Inc. (“Glass King”) is a Kansas corporation with its headquarters located in Great Bend, Kansas. At all pertinent times herein, Glass King was authorized to do business in the State of Iowa. Glass King is in the business of manufacturing Component Parts for waste water tank systems.

5. Upon information and belief, the injury to property herein alleged occurred on about October 21, 2015 at the Golden Grain facility located at 1822 43rd Street SW, in Mason City, Iowa (the “Facility”).

### **JURISDICTION AND VENUE**

6. Pursuant to 28 U.S.C. § 1332, jurisdiction is founded upon complete diversity of citizenship and because the amount in controversy exceeds \$75,000.

7. Venue is proper within this jurisdiction, pursuant to 28 U.S. § 1391, because the situs of the incident giving rise to this action occurred in Cerro Gordo County, Iowa.

### **FACTUAL ALLEGATIONS**

8. This matter arises out of a waste water holding tank (the “Tank”) collapse on October 21, 2015, at Golden Grain’s Facility.

9. The Tank was one of four incorporated in Golden Grain’s methanator system.

10. The Tank was constructed in 2003 with a resin material (“Component Part”) manufactured by Glass King, and it has a 30,000 gallon capacity.

11. ICM installed the Tank at Golden Grain's Facility in 2003.
12. On October 21, 2015, the Tank collapsed at Golden Grain's Facility, causing the Golden Grain to suffer severe property damages ("Incident").
13. Prior to the Incident, ICM issued a service bulletin (the "Bulletin"), dated November 20, 2014, regarding three other known instances of failures of Glass King manufactured tanks.
14. Upon information and belief, the chemicals contained within the tank's waste water led to fiberglass deterioration. Once the material started to deteriorate, it could not withstand the internal pressures of the tank's contents.
15. To date, damages from the Incident total \$748,752.45. Damages are expected to increase.
16. Pursuant to its policy of insurance, Golden Grain made a claim to Lexington seeking reimbursement of the aforementioned damages.
17. Pursuant to the policy of insurance, Lexington was obligated to pay and did pay Golden Grain \$648,752.45 in insurance claim payments as a result of the Incident.
18. As a result of the insurance payments paid by Lexington to Golden Grain, Lexington has become subrogated, to the extent of its payments, to Golden Grain's rights as against Defendants.
19. Golden Grain also suffered damages in the form of a \$100,000 insurance deductible as a result of the Incident.

## **COUNT I**

### **NEGLIGENCE AGAINST DEFENDANT ICM**

20. Plaintiffs incorporate by reference paragraphs 1 through 19 of this Complaint, as if fully stated herein.

21. At all material times, ICM owed a duty to the Golden Grain to design its waste water tanks with a reasonable degree of technical skill, without marked defects in character, strength, or appearance, and in a manner that would not cause damage to Golden Grain's property or to the property of any other consumer(s).

22. ICM breached this duty owed to Golden Grain through negligent acts or omissions including, but not limited to, the following:

- a. Failing to design the Tank in a careful, safe, and proper manner, in compliance with all applicable standards;
- b. Negligently designing, manufacturing and/or distributing the Tank so that it was unfit for its intended use;
- c. Failing to design the Tank free of defects and deficiencies;
- d. Failing to use due care and safety to ensure that the Tank would not cause an unreasonable risk of malfunction;
- e. Failing to design the Tank in a skillful, workmanlike, prudent, and non-reckless manner;
- f. Failing to comply with all applicable statutes, ordinances, regulations, and industry standards;
- g. Negligently delegating, hiring, and/or supervising the workmanship of its agents and employees;
- h. Failing to recognize the likelihood and seriousness of damage related to its acts or omissions;
- i. Failing to take all necessary and reasonable precautions so as to prevent property damage to Golden Grain's Facility; and
- j. Any other acts of negligence which may be determined through the process of discovery.

23. As a direct and proximate result of ICM's breach of its duty of care, Plaintiffs sustained extensive damages.

24. To date, damages from the Incident total \$748,752.45. Damages are expected to increase.

25. Pursuant to its policy of insurance, Golden Grain made a claim to Lexington seeking reimbursement of the aforementioned damages.

26. Pursuant to the policy of insurance, Lexington was obligated to pay and did pay Golden Grain \$648,752.45 in insurance claim payments as a result of the Incident.

27. As a result of the insurance payments paid by Lexington to Golden Grain, Lexington has become subrogated, to the extent of its payments, to Golden Grain's rights as against ICM.

28. Golden Grain also suffered damages in the form of a \$100,000 insurance deductible as a result of the Incident.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment against ICM in excess of the amount required for federal diversity jurisdiction, the exact amount to be established at trial, and with costs, interest, expenses, fees, and any other relief this Court deems just and appropriate.

## **COUNT II**

### **NEGLIGENCE AGAINST DEFENDANT GLASS KING**

29. Plaintiffs incorporate by reference paragraphs 1 through 28 of this Complaint, as if fully stated herein.

30. At all material times, Glass King owed a duty to Golden Grain to manufacture its fiberglass Anaerobic Bio-Methanator Tank System ("Component Parts") with a reasonable

degree of technical skill, without marked defects in character, strength, or appearance, and in a manner that would not cause damage to the Golden Grain's property or to the property of any other consumer(s).

31. Glass King breached this duty owed to Golden Grain through negligent acts or omissions including, but not limited to, the following:

- a. Failing to manufacture the Component Parts of the Tank in a careful, safe, and proper manner, in compliance with all applicable standards;
- b. Failing to manufacture Component Parts of the Tank free of defects and deficiencies;
- c. Failing to use due care and safety to ensure that the Component Parts of the Tank would not cause an unreasonable risk of malfunction;
- d. Failing to manufacture the Component Parts of the Tank in a skillful, workmanlike, prudent, and non-reckless manner;
- e. Failing to comply with all applicable statutes, ordinances, regulations, and industry standards;
- f. Negligently delegating, hiring, and/or supervising the workmanship of its agents and employees;
- g. Failing to recognize the likelihood and seriousness of damage related to its acts or omissions;
- h. Failing to take all necessary and reasonable precautions so as to prevent property damage to Golden Grain's Facility; and
- i. Any other acts of negligence which may be determined through the process of discovery.

32. As a direct and proximate result of Glass King's breach of its duty of care, Plaintiffs sustained extensive damages.

33. To date, damages from the Incident total \$748,752.45. Damages are expected to increase.

34. Pursuant to its policy of insurance, Golden Grain made a claim to Lexington seeking reimbursement of the aforementioned damages.

35. Pursuant to the policy of insurance, Lexington was obligated to pay and did pay Golden Grain \$648,752.45 in insurance claim payments as a result of the Incident.

36. As a result of the insurance payments paid by Lexington to Golden Grain, Lexington has become subrogated, to the extent of its payments, to Golden Grain's rights as against Glass King.

37. Golden Grain also suffered damages in the form of a \$100,000 insurance deductible as a result of the Incident.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment against Glass King in excess of the amount required for federal diversity jurisdiction, the exact amount to be established at trial, and with costs, interest, expenses, fees, and any other relief this Court deems just and appropriate.

### **COUNT III**

#### **DESIGN DEFECT AGAINST DEFENDANT ICM**

38. Plaintiffs incorporate by reference paragraphs 1 through 37 of this Complaint, as if fully stated herein.

39. At all relevant times, ICM was in the business of manufacturing, designing, assembling, producing, inspecting, testing, selling and/or otherwise placing into the stream of commerce waste water tanks, such as the one at issue in this case.

40. ICM, in whole or in part, manufactured, designed, assembled, produced, inspected, tested, sold, and/or placed the Tank into the stream of commerce.

41. At the time the Tank in question left the control of ICM, a design defect existed that rendered the Tank subject to failure.

42. The Tank was defective as evidenced by the fact that the Tank collapsed at Golden Grain's facility.

43. A reasonable alternative safer design could have been practically adopted at the time of sale or distribution.

44. The alternative design would have reduced or avoided the foreseeable risks of harm posed by the Tank.

45. The omission of the alternative design rendered the Tank not reasonably safe.

46. As a direct and proximate result of the improper design of the Tank, Plaintiffs sustained damages described herein.

47. To date, damages from the Incident total \$748,752.45. Damages are expected to increase.

48. Pursuant to its policy of insurance, Golden Grain made a claim to Lexington seeking reimbursement of the aforementioned damages.

49. Pursuant to the policy of insurance, Lexington was obligated to pay and did pay Golden Grain \$648,752.45 in insurance claim payments as a result of the Incident.

50. As a result of the insurance payments paid by Lexington to Golden Grain, Lexington has become subrogated, to the extent of its payments, to Golden Grain's rights as against ICM.

51. Golden Grain also suffered damages in the form of a \$100,000 insurance deductible as a result of the Incident.



WHEREFORE, Plaintiffs respectfully request this Court enter a judgment against ICM in excess of the amount required for federal diversity jurisdiction, the exact amount to be established at trial, and with costs, interest, expenses, fees, and any other relief this Court deems just and appropriate.

#### **COUNT IV**

##### **DESIGN DEFECT AGAINST DEFENDANT GLASS KING**

52. Plaintiffs incorporate by reference paragraphs 1 through 51 of this Complaint, as if fully stated herein.

53. At all relevant times, Glass King was in the business of manufacturing, designing, assembling, producing, inspecting, testing, selling and/or otherwise placing into the stream of commerce Component Parts for waste water tanks, such as the one at issue in this case.

54. Glass King, in whole or in part, manufactured, designed, assembled, produced, inspected, tested, sold, and/or placed the Component Parts for the Tank into the stream of commerce.

55. At the time the Component Parts of the Tank in question left the control of Glass King, a design defect existed that rendered the Component Parts subject to failure.

56. The Component Parts were defective as evidenced by the fact that the Tank collapsed at Golden Grain's facility.

57. A reasonable alternative safer design could have been practically adopted at the time of sale or distribution.

58. The alternative design would have reduced or avoided the foreseeable risks of harm posed by the Component Parts.

59. The omission of the alternative design rendered the Component Parts not reasonably safe.

60. As a direct and proximate result of the improper design of the Component Parts, Plaintiffs sustained damages described herein.

61. To date, damages from the Incident total \$748,752.45. Damages are expected to increase.

62. Pursuant to its policy of insurance, Golden Grain made a claim to Lexington seeking reimbursement of the aforementioned damages.

63. Pursuant to the policy of insurance, Lexington was obligated to pay and did pay Golden Grain \$648,752.45 in insurance claim payments as a result of the Incident.

64. As a result of the insurance payments paid by Lexington to Golden Grain, Lexington has become subrogated, to the extent of its payments, to Golden Grain's rights as against Glass King.

65. Golden Grain also suffered damages in the form of a \$100,000 insurance deductible as a result of the Incident.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment against Glass King in excess of the amount required for federal diversity jurisdiction, the exact amount to be established at trial, and with costs, interest, expenses, fees, and any other relief this Court deems just and appropriate.

## **COUNT V**

### **DEFECTIVE MANUFACTURING AGAINST DEFENDANT ICM**

66. Plaintiffs incorporate by reference paragraphs 1 through 65 of this Complaint, as if fully stated herein.

67. At all relevant times, ICM was in the business of manufacturing, designing, assembling, producing, inspecting, testing, selling and/or otherwise placing into the stream of commerce waste water tanks, such as the one at issue in this case.

68. ICM, in whole or in part, manufactured, designed, assembled, produced, inspected, tested, sold, and/or placed the Tank into the stream of commerce.

69. The Tank manufactured by ICM departed from the intended design even though all possible care was exercised in the preparation and marketing of the product.

70. The defective Tank departed from its intended design when the Tank collapsed at Golden Grain's Facility.

71. The manufacturing defect was the direct and proximate cause of the Plaintiffs' damages described herein.

72. To date, damages from the Incident total \$748,752.45. Damages are expected to increase.

73. Pursuant to its policy of insurance, Golden Grain made a claim to Lexington seeking reimbursement of the aforementioned damages.

74. Pursuant to the policy of insurance, Lexington was obligated to pay and did pay Golden Grain \$648,752.45 in insurance claim payments as a result of the Incident.

75. As a result of the insurance payments paid by Lexington to Golden Grain, Lexington has become subrogated, to the extent of its payments, to Golden Grain's rights as against ICM.

76. Golden Grain also suffered damages in the form of a \$100,000 insurance deductible as a result of the Incident.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment against ICM in excess of the amount required for federal diversity jurisdiction, the exact amount to be established at trial, and with costs, interest, expenses, fees, and any other relief this Court deems just and appropriate.

## **COUNT VI**

### **DEFECTIVE MANUFACTURING AGAINST DEFENDANT GLASS KING**

77. Plaintiffs incorporate by reference paragraphs 1 through 76 of this Complaint, as if fully stated herein.

78. At all relevant times, Glass King was in the business of manufacturing, designing, assembling, producing, inspecting, testing, selling and/or otherwise placing into the stream of commerce waste water tank Component Parts, such as the one at issue in this case.

79. Glass King, in whole or in part, manufactured, designed, assembled, produced, inspected, tested, sold, and/or placed the Component Parts into the stream of commerce.

80. That the Component Parts manufactured by Glass King departed from the intended design even though all possible care was exercised in the preparation and marketing of the product.

81. The defective Component Parts departed from its intended design when the Tank collapsed at Golden Grain's Facility.

82. The manufacturing defect was the direct & proximate cause of the Plaintiffs' damages described herein.

83. To date, damages from the Incident total \$748,752.45. Damages are expected to increase.

84. Pursuant to its policy of insurance, Golden Grain made a claim to Lexington seeking reimbursement of the aforementioned damages.

85. Pursuant to the policy of insurance, Lexington was obligated to pay and did pay Golden Grain \$648,752.45 in insurance claim payments as a result of the Incident.

86. As a result of the insurance payments paid by Lexington to Golden Grain, Lexington has become subrogated, to the extent of its payments, to Golden Grain's rights as against Glass King.

87. Golden Grain also suffered damages in the form of a \$100,000 insurance deductible as a result of the Incident.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment against Glass King in excess of the amount required for federal diversity jurisdiction, the exact amount to be established at trial, and with costs, interest, expenses, fees, and any other relief this Court deems just and appropriate.

## **COUNT VII**

### **BREACH OF EXPRESS AND/OR IMPLIED CONTRACT AGAINST DEFENDANT ICM**

88. Plaintiffs incorporate by reference paragraphs 1 through 87 of this Complaint, as if fully stated herein.

89. ICM expressly and/or impliedly contracted with Golden Grain to install the Tank at Golden Grain's Facility.

90. In return for ICM's services, it received an agreed upon consideration, and an agreement placed certain obligations upon ICM.

91. ICM breached its contractual obligations to Golden Grain by its acts and/or omissions, including but not limited to the following:

- a. Failing to conduct its design, manufacture and/or distribution of the Tank in a careful, safe, and proper manner, in compliance with all applicable standards so as not to cause any property damage and/or losses;
- b. Failing to use proper design, manufacturing and/or distribution procedures that would ensure an avoidance of defect and/or malfunction;
- c. Failing to comply with applicable safety standards when designing, manufacturing and/or distributing the Tank under the contract;
- d. Failing to use due care and safety to ensure that the Tank would not cause an unreasonable risk of malfunction;
- e. Failing to design the Tank in a skillful, workmanlike, prudent, and non-reckless manner;
- f. Failing to comply with all applicable statutes, ordinances, regulations, and industry standards;
- g. Failing to take all necessary and reasonable precautions so as to prevent property damage to the Golden Grain's Facility; and
- h. Any other acts of negligence which may be determined through the process of discovery.

92. As a direct and proximate result of ICM's breach, Plaintiffs sustained extensive damages.

93. To date, damages from the breach total \$748,752.45. Damages are expected to increase.

94. Pursuant to its policy of insurance, Golden Grain made a claim to Lexington seeking reimbursement of the aforementioned damages.

95. Pursuant to the policy of insurance, Lexington was obligated to pay and did pay Golden Grain \$648,752.45 in insurance claim payments as a result of the breach.

96. As a result of the insurance payments paid by Lexington to Golden Grain, Lexington has become subrogated, to the extent of its payments, to Golden Grain's rights as against ICM.

97. Golden Grain also suffered damages in the form of a \$100,000 insurance deductible as a result of the breach.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment against ICM in excess of the amount required for federal diversity jurisdiction, the exact amount to be established at trial, and with costs, interest, expenses, fees, and any other relief this Court deems just and appropriate.

Respectfully submitted,

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