

**COURT OF COMMON PLEAS
ADAMS COUNTY, OHIO**

**PHOEBE ADKINS, AS
ADMINISTRATRIX OF THE
ESTATE OF JAMES FITZGERALD,
DECEASED, AND ON BEHALF OF
THE ESTATE OF JAMES FITZGERALD
AND THE WRONGFUL
DEATH BENEFICIARIES
8042 Marsh Hill Ct.
Ashland, Kentucky 41102**

CASE NO: _____

JUDGE _____

PLAINTIFF,

vs.

**THE ADAMO GROUP, INC
Serve at:
310 East Seven Mile Road
Detroit, Michigan 48203
Also Serve: Its Agent for
Service of Process:
James Adamo, Jr.
310 East Seven Mile Road
Detroit, Michigan 48203**

and

**ADAMO GROUP
Serve at:
310 East Seven Mile Road
Detroit, Michigan 48203
Also serve at:
40600 Ann Arbor Road East,
Suite 201
Plymouth, Michigan 48170**

and

**ADAMO GROUP, INC.
Serve Its Resident Agent:
James Adamo, Jr. at
310 East Seven Mile Road
Detroit, Michigan 48203**

COMPLAINT

WITH

JURY DEMAND

ENDORSED HEREON

and

ADAMO DEMOLITION COMPANY, INC.

Serve at:

**300 East Seven Mile Road
Detroit, Michigan 48203**

and

ADAMO DEMOLITION COMPANY, INC.

OF FLORIDA

Serve at:

**300 East Seven Mile Road
Detroit, Michigan 48203**

and

ADAMO DEMOLITION COMPANY, INC.

D/B/A ADAMO GROUP

Serve at:

**310 East Seven Mile Road
Detroit, Michigan 48203**

and

ADAMO DEMOLITION COMPANY

Serve at:

**300 East Seven Mile Road
Detroit, Michigan 48203**

Also Serve at:

**40600 Ann Arbor Road East,
Suite 201
Plymouth, Michigan 48170**

and

**ADAMO DEMOLITION COMPANY
TO TRANSACT BUSINESS UNDER
THE ASSUMED NAME OF ADAMO
GROUP, INC.**

Serve at:

**300 East Seven Mile Road
Detroit, Michigan 48203**

Also Serve at:

40600 Ann Arbor Road East, Suite 201

Plymouth, Michigan 48170

and

ADAMO CONTRACTING CORP.

Serve at:

300 East Seven Mile Road

Detroit, Michigan 48203

and

JTA DEMOLITION, INC.

Serve at:

300 East Seven Mile Road

Detroit, Michigan 48203

and

ADAMO EXCAVATING CORP.

Serve at:

320 East Seven Mile Road

Detroit, Michigan 48203

and

ADAMO HOLDINGS, INC.

Serve at:

320 East Seven Mile Road

Detroit, Michigan 48203

and

ADAMO INDUSTRIAL SERVICES, INC.

Serve at:

320 East Seven Mile Road

Detroit, Michigan 48203

and

ADAMO INVESTMENTS L.L.C.

Serve at:

320 East Seven Mile Road

Detroit, Michigan 48203

and

ADAMO WRECKING COMPANY

Serve at:

**320 East Seven Mile Road
Detroit, Michigan 48203**

and

MICHAEL F. BREHSE

Serve at:

**4255 Muchmore Road
Cincinnati, Ohio 45243-4125**

and

SAMUEL HARMON

Serve at:

**41927 Hystone Street
Canton, Michigan 48187**

and

RICHARD M. ADAMO

Serve at:

**310 East Seven Mile Road
Detroit, Michigan 48203**

and

RICK CUPPETILLI

Serve at:

**310 East Seven Mile Road
Detroit, Michigan 48203**

and

MARK ST. CYR

Serve at:

**310 East Seven Mile Road
Detroit, Michigan 48203**

and

SCM ENGINEER DEMOLITION, INC.

Serve at:

**3445 St. Clair Shores Boulevard
East China, Michigan 48054**

Also Serve at:
P.O. BOX 44
SAINT CLAIR, MICHIGAN 48079
Also Serve:
C/O STEVEN C. MURRAY
REGISTERED AGENT
3445 Saint Clair Shores Boulevard
East China, Michigan 48054

and

STEVEN C. MURRAY
Serve at:
3445 Saint Clair Shores BLVD.
East China, Michigan 48054

DEFENDANTS.

COMPLAINT

Now comes Plaintiff, Phoebe Adkins, duly appointed Administratrix of the Estate of James Fitzgerald, deceased, on behalf of the Estate of James Fitzgerald and the wrongful death beneficiaries, by and through Counsel, and for his Count and Causes of Action, states as follows.

INTRODUCTION

The Collapse

1. On December 9, 2020, at 8:30 AM the Adam's County Sherriff received a terrifying 911 call: the massive fourteen story boiler house at the Killen Generating Station had collapsed and trapped five workers.
2. The search and rescue radio transmissions revealed the terror: "They're currently missing five people. They have found 1 or 2 that they're treating. They do have one pinned." "It's about 300 yards by 500 yards. Complete collapse."

3. Debris trapped Travis Miller, James Fitzgerald, and Doug Gray. Several days passed before the recovery team discovered the remains of Mr. Gray and thirty days before the remains of Mr. Fitzgerald were discovered.

4. Mr. Fitzgerald lost his life as a result of the collapse. Mr. Fitzgerald left behind three beneficiaries: Adison Fitzgerald, his daughter, John Paul Fitzgerald, his brother, and Lynn Fitzgerald, his sister (collectively “beneficiaries”). The life of Mr. Fitzgerald’s beneficiaries forever changed. The loss of a father and brother along with the memories of the collapse and his impending death will forever cause his beneficiaries’ suffering.

5. Mr. Fitzgerald’s last memory on this earth was the sight and sound of an entire building coming down around him with no opportunity for escape. Mr. Fitzgerald’s last moments were spent suffering extreme emotional distress.

**Defendants’ Adamo, Adamo Management Employees, SCM and Steven C. Murray’s
Deliberate Intent Caused the Uncontrolled and Intentionally
Dangerous Collapse**

6. Loss of life, severe injuries, and emotional distress always is a tragedy. Deliberately endangering workers for financial gain is actionable, and justice demands that the responsible and liable parties assume legal and financial responsibility.

7. The Adamo Group, Inc., Adamo Group, Adamo Group, Inc., Adamo Demolition Company, Inc., Adamo Demolition Company, Inc. of Florida, Adamo Demolition Company D/B/A Adamo Group, Inc., Adamo Demolition Company, Adamo Demolition Company to Transact Business Under The Assumed Name of Adamo Group, Inc., Adamo Contracting Corp., JTA Demolition, Inc. Adamo Excavating Corp., Adamo Holding, Inc., Adamo Industrial Services, Inc., Adamo Investments L.L.C., Adamo Wrecking Company and its predecessors, successors, affiliates and assigns (collectively hereinafter referred to as “Defendants Adamo”) and Adamo

management employees: Michael F. Brehse, Samuel Harmon, Richard M. Adamo, Rick Cuppetilli and Mark St. Cyr (collectively hereinafter referred to as Adamo Management Employees) and SCM Engineer Demolition, Inc., and its predecessors, successors, affiliates and assigns (hereinafter collectively referred to as SCM) and its employee and officer, Steven C. Murray, are the parties who are responsible and liable for the injuries and wrongful death of James Fitzgerald. The property owners hired Adamo as the demolition general contractor and SCM served as the implosion subcontractor.

8. Before the December 9, 2020, collapse, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray, intentionally and deliberately set in motion a demolition sequence that they knew with substantial certainty would endanger the lives of workers and specifically knew would endanger James Fitzgerald who was assigned and required to work in the zone of danger.

9. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray intentionally and deliberately devised a demolition scheme that violated safe demolition practice and would injure workers, including James Fitzgerald. Instead of preparing the buildings for a safe and planned implosion, Defendants Adamo, Adamo Management Employees, SCM and Steven C. Murray took extraordinary steps to excessively weaken and destabilize the structure. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray intended the weakening to destabilize the structure and cause the building to fall in an uncontrolled collapse.

10. Before December 9, 2020, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray, knew that their plan had worked. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray, as anticipated, learned that the building's

infrastructure contained twisted and bowed columns, had moved, and was making unusual settling noises.

11. Despite knowing that the building had become unsafe and on the verge of inevitable and imminent collapse, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray instructed and directed James Fitzgerald to enter the zone of danger and continue to weaken the structure.

12. Defendants Adamo, Adamo Management Employees, SCM and Steven C. Murray deliberately and intentionally breached demolition protocol by refusing to consult with a structural engineer and/or competent person. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray knew that a structural engineer and/or competent person upon reviewing the weakened boiler house, would have advised Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray to cease demolition and reinforce the structure. Instead of protecting workers, including, James Fitzgerald, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray decided to sacrifice James Fitzgerald's health and security to accelerate the demolition and implosion of the boiler house.

13. Defendants Adamo's, Adamo's Management Employees, SCM's, and Steven C. Murray's motivation is clear. Adamo, Adamo Management Employees, SCM, and Steven C. Murray had fallen behind demolition deadlines and knew that bypassing the time-consuming steps necessary to prepare the building for implosion, including the placement of explosives throughout the enormous structure, would significantly accelerate the demolition. Further, a spontaneous collapse allowed Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray to save the costs associated with securing the necessary explosives.

THE PARTIES

Plaintiff

14. Plaintiff, Phoebe Adkins, duly appointed Administratrix of the Estate of James Fitzgerald, deceased, on behalf of the Estate of James Fitzgerald and the wrongful death beneficiaries, is now and at all times mentioned herein has been, a resident and citizen of the County of Boyd, Commonwealth of Kentucky.

15. Plaintiff, Phoebe Adkins, duly appointed Administratrix of the Estate of James Fitzgerald, deceased, is bringing the below claims on behalf of the Estate of James Fitzgerald, Adison Fitzgerald, John Paul Fitzgerald and Lynn Fitzgerald.

16. James Fitzgerald worked as a welder/burner. Defendant Harmon hired James Fitzgerald to work as a cutter and burner on the Killen Generating Station demolition project (“Killen”). The Killen station is located at 14869 U.S. Highway 52, Manchester, OH 45144 in Adams County, Ohio. James Fitzgerald started working on or about October 2020.

17. During his employment with Adamo, Defendant Harmon served as James Fitzgerald’s immediate supervisor.

Defendants

18. The Defendants Adamo, their predecessors, successors, assigns, associates, affiliates, principals and subsidiaries are incorporated in the states mentioned after their names as follows, with their principal place of business in Michigan, while doing business at all times relevant hereto in the County of Adams, State of Ohio:

A. The Adamo Group, Inc., Michigan;

- B. Adamo Group, Florida;
- C. Adamo Group, Inc., Michigan;
- D. Adamo Demolition Company, Inc., Michigan;
- E. Adamo Demolition Company, Inc., Florida;
- F. Adamo Demolition Company, Inc.;
d/b/a/ Adamo Group, Michigan;
- G. Adamo Demolition Company, Florida;
- H. Adamo Demolition Company to transact;
business under the assumed name of Adamo
Group, Inc., Florida;
- I. Adamo Contracting Corp., Michigan;
- J. JTA Demolition Inc., Michigan;
- K. Adamo Excavating Corp., Michigan;
- L. Adamo Holdings, Inc., Michigan;
- M. Adamo Industrial Services, Inc., Michigan;
- N. Adamo Investments L.L.C., Michigan; and
- O. Adamo Wrecking Company, Michigan.

19. Defendant, Michael F. Brehse, is a resident and citizen of the County of Hamilton, state of Ohio. At all times relevant hereto, Defendants Adamo employed Defendant Brehse as a safety engineer and project manager for the Killen demolition project. Further, at all times relevant hereto, Defendant Brehse worked in his aforementioned capacity in Adams County, Ohio.

20. Defendant, Samuel Harmon, is a resident and citizen of the State of Michigan. At all times relevant hereto, Defendants Adamo employed Defendant Harmon as a superintendent for

the Killen demolition project. Further, at all times relevant hereto, Defendant Harmon worked in his aforementioned capacity with Adamo in Adams County, Ohio. At all times relevant hereto, James Fitzgerald reported to Defendant Harmon.

21. Defendant, Richard M. Adamo, is a resident and citizen of the State of Michigan. At all times relevant hereto, Defendant, Richard M. Adamo, was an officer and/or executive with Defendants Adamo and worked in his aforementioned capacity in Adams County, Ohio.

22. Defendant, Rick Cuppetilli, is a resident and citizen of the State of Michigan. At all times relevant hereto, Defendant Cuppetilli was an officer and/or executive with Defendants Adamo and worked in his aforementioned capacity in the County of Adam, State of Ohio.

23. Defendant, Mark St. Cyr, is a resident and citizen of the State of Michigan. At all times relevant hereto, Defendant St. CYR was an officer and/or executive and engineer and safety manager with Defendants Adamo and worked in his aforementioned capacity in the County of Adams, State of Ohio.

24. Defendant, SCM Engineer Demolition, Inc. ("SCM"), is incorporated in the State of Michigan, with its principal place of business in the State of Michigan, while doing business at all times relevant hereto in the County of Adams, State of Ohio.

25. Defendant, Steven C. Murray, is a resident and citizen of the State of Michigan and among other titles, Defendant Murray is the President of Defendant SCM. During the Killen demolition, Defendant Murray made significant decisions and gave direction to those working on the demolition. This direction was a proximate cause of the collapse. At all times relevant hereto, Defendant Murray worked in his aforementioned capacity in the County of Adams, State of Ohio.

JURISDICTION AND VENUE

26. The Killen station, where the structure collapsed and where James Fitzgerald sustained his injuries and untimely death, is located at 14869 U.S. Highway 52, Manchester, Ohio 45144, in Adams County, Ohio. The conduct and events giving rise to Plaintiff's claims in this Complaint and Jury Demand occurred in Adams County, Ohio.

27. The Court has subject matter Jurisdiction under Ohio Revised Code Section §2305.01 and personal jurisdiction over the Defendants because the Defendants regularly, freely and purposefully directed their business activities at Ohio Citizens, such that each Defendant purposely has availed itself or himself of the privileges of conducting business in Ohio and each Defendant has rendered itself or himself subject to jurisdiction based, in large part, on the torts caused by its or his in-state activities alleged and detailed in this Complaint.

28. This matter is properly before this Court pursuant to Ohio Civil Rule 3(B).

BACKGROUND

29. Upon information and belief, Dayton Power and Light ("DPL") as a subsidiary of AES Ohio Generation, LLC ("AES"), in 2018, ordered the shutdown of the Killen Station plant. AES and DPL subsequently transferred ownership of Killen Station to Kingfisher Development, LLC ("Kingfisher").

30. Upon information and belief, Commercial Liability Partners ("CCL"), a company related to Kingfisher, assumed ownership, and assumed responsibility for demolition and remediation.

31. Upon information and belief, Kingfisher and/or CCL hired Defendants Adamo to perform the demolition. Defendants Adamo, as part of the demolition plan, hired SCM to perform the explosive component of the demolition.

History of Demolition Failures

32. Adamo and SCM both maintain their corporate headquarters in the Detroit, Michigan area and previously worked together on several projects. For example, in 2017, Adamo and SCM jointly demolished the Pontiac, Michigan superdome. Further, Adamo has a history of involvement in demolition projects where it disregarded the health and safety of its workers. This history put the Adamo Defendants and Adamo Management Employees on notice of the dangers in demolition including specifically dangers of weakening a structure.

Killen Demolition Project

33. Upon information and belief, Dayton Power and Light (“DPL”) operated the Killen power generating station. The station began commercial generation in 1982.

34. The power plant contained a 618 Mega Watt coal-fired unit and combustion turbine.

35. The power plant housed the coal-fired unit in a massive structure (“boiler house”) that included two connected buildings. The largest of the connected buildings was at least fourteen stories high.

36. Upon information and belief, in March of 2017, DPL Inc. (“DPL”), an AES company, decommissioned the Killen Station. Federal and State laws and regulations required DPL to remediate the property.

37. Upon information and belief, DPL, instead of performing the required remediation, transferred ownership and operation of the Killen Station to Kingfisher Development, LLC (“Kingfisher”). Commercial Liability Partners, LLC (“CLP”) is a company related to Kingfisher.

38. CLP’s and Kingfishers’ core business is the acquisition, management, and closure of large, heavy industrial sites, chemical plants, multi-site portfolios, and closed power plants.

39. Federal and State laws and regulations required CLP and Kingfisher to remediate the property.

40. A critical component of the remediation is the demolition and removal of buildings and other structures and removal of the resulting toxins and demolition debris.

41. CLP and Kingfisher, in December 2019, hired Defendants Adamo to serve as the general demolition contractor.

42. Defendants Adamo and Adamo Management Employees subsequently hired Defendants SCM and Steven C. Murray to serve as the explosion/implosion subcontractor.

43. Defendants SCM and Steven C. Murray agreed to prepare the boiler house for implosion, place the explosives and charges into the structure, and implode the boiler house.

44. Defendants Adamo and Adamo Management Employees arrived on site and/ or worked from the Defendants Adamo and Adamo Management Employees' offices in Michigan and began the demolition during the spring of 2020.

45. The safe demolition and removal of the Killen Station buildings was a complicated and time-consuming process that required detailed planning. The existence of environmentally toxic and dangerous chemicals and substances complicated the demolition.

46. Before the physical demolition, Defendants Adamo and Adamo Management Employees mobilized equipment and undertook abatement work to prevent chemicals and toxins from seeping into the ground and into the Ohio River.

47. Once Defendants Adamo and Adamo Management Employees finished the preliminary abatement, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray began the interior demolition, i.e., gutting the multiple buildings that comprised the power plant/boiler house to prepare for the implosion of the boiler house and adjoining building.

48. To gut the buildings and prepare the boiler house for implosion, Defendants Adamo and Adamo Management Employees hired welders/burners to disassemble portions of the steel structures.

49. Defendants Adamos' supervisor Defendant, Samuel Harmon, hired burners and cutters from the local area union, including James Fitzgerald.

50. James Fitzgerald worked as a welder/burner.

51. Before starting the demolition of the boiler house, Defendants Adamo and Adamo Management Employees, without using explosives, demolished several other buildings. After weakening the buildings, Defendants Adamo and Adamo Management Employees, used cables to pull the buildings down.

52. Defendant Harmon, in November of 2020, directed James Fitzgerald to prepare the boiler house and adjoining building (hereinafter boiler house) for implosion.

53. Before James Fitzgerald started working on the boiler house, the building included weight bearing operational equipment. Defendants Adamo and Adamo Management Employees used heavy tools and equipment, including backhoes with cutters, i.e., shears, to remove the mini boilers and piping.

54. The boiler remained on top of the structure. The boiler was estimated to exceed 80,000 tons.

55. Defendants Adamo and Adamo Management Employees significantly weakened and destabilized the boiler house by removing a substantial number of the steel beams and columns from the upper levels of the boiler house.

56. Defendants Adamo and Adamo Management Employees knew that the steel beams and columns provided critical structural support and that removal of the beams markedly destabilized the boiler house.

57. Defendants Adamo, Adamo Management Employees (specifically including Defendant Harmon), Defendants SCM, and Steven C. Murray directed James Fitzgerald to burn cuts into the remaining steel to further weaken and destabilize the structure and to allow for the placement of explosives.

58. During the third week of November 2020, Defendant Steven C. Murray, and other SCM employees arrived, and along with Defendants Adamo and Adamo Management Employees, worked and actively participated directly with James Fitzgerald and other Adamo employees by giving directions, orders, and permission on how to prepare the boiler house for demolition.

59. A demolition that uses explosives is dangerous and demands careful preparation. An implosion requires the responsible parties to secure a variety of state licenses. An implosion requires a detailed implosion plan that identifies the location of burns and cuts, the placement of explosives and identifies detailed procedures concerning cutting and burning techniques. The contractor is required to take special precautions to store the explosives.

60. An implosion requires special drilling equipment. The boiler house implosion required Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray to set the charges and explosives in steel support structures. To place the charges, the welders/burners, including James Fitzgerald, under the direction of Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray, used special torch-cutting (burning) techniques. The cutting techniques, which required propane and oxygen torches, involved precision cuts being

made on the steel beams, columns, rebar, or any other steel having charges set in place. The cutting temperature of the torches approached and may have exceeded 3,800 degrees Fahrenheit.

61. The requirement for a successful demolition is retaining a structural engineer who fully understands the nature and condition of the building. Industry custom and practice in December of 2020 required Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray to retain a structural engineer charged with undertaking a detailed engineering study of the boiler house.

62. The engineer needed to understand the nature and condition of the boiler house. The structural engineer needed to understand the condition of the building in its static state and understand the condition of the boiler house under loads, such as live loads from operations, wind load, and seismic loading if the structure is within an active seismic zone. The structural engineer also needed to understand explosives operations and explosives products.

63. The National Demolition Association Standard 11.0 - Safe Blasting Procedures highlights the need for a qualified structural engineer and provides as follows: "The use of explosives to demolish entire buildings should be done by specialty contractors. The preparation of a structure for demolition by explosives may require the removal of structural columns, beams or other building components. **This work should be directed by a structural engineer** or a competent person qualified to direct the removal of these structural elements. **Extreme caution should be taken during this preparatory work to prevent the weakening and premature collapse of the structure**". (Emphasis added.)

64. Industry custom and practice in December of 2020 required the project superintendents/supervisors, Defendants Adamo, Adamo Management Employees, SCM, and

Steven C. Murray, to prepare a detailed demolition plan including the precise location of each planned cut and burn, and the precise location where the explosives would be set.

65. During the preparation of the boiler house for implosion, industry custom and practice in December 2020 required Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray to monitor the boiler house and continually check for safety issues including the stability of the structure and the effects the burns, cuts, and the removal of support had on building stability.

66. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray knew that the burns and cuts and the removal of support beams and columns substantially weakened the boiler house and made the boiler house susceptible to premature failure.

67. To guard against pre-implosion collapse, industry custom and practice requires contractors to take pictures and video to document if any changes to the demolition plan need to be made. The general contractor and the blasting contractor, as a check and balance, share the documentation with the structural engineer. If issues arise, i.e., building movement, the structural engineer will direct the contractors to stabilize the building to prevent premature collapse.

68. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray deliberately and intentionally ignored industry custom and practice. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray failed to engage a structural engineer to monitor the progress of the demolition and determine that the boiler house remained stable. Each of these Defendants knew, with a substantial degree of certainty, that the demolition of the structures was dangerous and further knew with a substantial degree of certainty that James Fitzgerald would suffer injuries and/or death if required to perform his assigned work.

69. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray never prepared a detailed demolition plan that identified the precise location and nature of the cuts and burns to be made by James Fitzgerald and the other cutters and burners. Nor did Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray prepare a detailed pre-implosion plan that located the precise location where the charges would be set.

70. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray failed to take pictures of the cuts and burns made during the preparation and never shared the pictures with a structural engineer to determine if the cuts and burns were appropriate and if the boiler house remained stable.

71. Instead of safely preparing the boiler house for a safe implosion, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray intended that the boiler house fall in an uncontrolled collapse before implosion and knew with a substantial degree of certainty that the collapse of the structure was dangerous and further knew with a substantial degree of certainty that James Fitzgerald would suffer injuries and/or untimely death if required to perform his assigned work. To ensure that the boiler house collapsed, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray directed and instructed the burners and cutters, including James Fitzgerald, to make excessive and unnecessary cuts to weaken and destabilize the boiler house. Further, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray directed, ordered and actually participated through their respective job functions in the removal of bracing including, but not limited to, beams and columns.

72. By averting an implosion and allowing the boiler house to collapse, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray accelerated the demolition. Since Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray had

fallen behind schedule, avoiding the time necessary to prepare for implosion enabled Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray to hasten the demolition.

73. Weakening and preparing the boiler house to collapse instead of imploding the building also saved Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray the considerable cost of using explosives and retaining a structural engineer. Further, the pandemic substantially had increased the difficulty of securing explosives. Neither Defendants Adamo, Adamo Management Employees, SCM, nor Steven C. Murray likely possessed the necessary explosives or necessary amount of explosives to implode the boiler house.

74. The plan of Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray worked.

75. A few days before the boiler house collapsed, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray were on notice that the boiler house had become unstable.

76. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray knew that the boiler house had twisted/bowed columns, was shifting, and making unusual settling noises. Nonetheless, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray failed to consult with a structural engineer, or a competent person as described above, and add shoring, bracing, or other means to stabilize the boiler house.

77. Defendants Adamo, Adamo Management Employees, SCM and Steven C. Murray knew that a structural engineer or a competent person, after reviewing the condition of the boiler house, would have advised Defendants Adamo, Adamo Management Employees, SCM and Steven C. Murray that the boiler house was on the verge of an imminent uncontrolled collapse and to halt

demolition and stabilize the structure. Stabilization would have caused delay and substantially increased the costs of the demolition/implosion.

78. When the Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray refused to engage a structural engineer, The Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray consciously ignored industry standards, custom, and National Demolition Association Standard 11.0, and decided to endanger the health and safety of James Fitzgerald by directing James Fitzgerald to perform work inside a building on the verge of known imminent collapse.

79. Knowing that the boiler house was on the inevitable verge of collapse, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray, to accelerate the collapse, intentionally endangered James Fitzgerald and instructed him to continue to make cuts and burns.

80. On December 9, 2020, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray's intention to demolish the boiler house without using explosives succeeded. While James Fitzgerald was in the boiler house performing his assigned and required work, the fourteen-story structure collapsed. **JAMES FITZGERALD WAS BURIED UNDER THE COLLAPSED STEEL AND CONCRETE. (Emphasis added.) As a result of this collapse, James Fitzgerald was caused to suffer extreme injuries, extreme mental anguish, extreme emotional distress, and untimely death as more fully hereinafter described. (Emphasis added.)**

81. James Fitzgerald remained buried under the structure for thirty days. Prior to the collapse, James Fitzgerald heard and saw the building coming down around him and believed he would die. He suffered extreme mental anguish and emotional distress from his pain and belief that he would die. Unfortunately, James Fitzgerald lost his life during the collapse.

82. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray knew that the boiler house was in a weakened state and would collapse. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray, to avoid alerting the workers in and near the boiler house of the danger, deliberately and intentionally failed to take any action to prepare a rescue plan for when the boiler house would fall.

83. When the boiler house collapsed and buried James Fitzgerald, Defendants Adamo, Adamo Management Employees (specifically Harmon and Brehese), SCM, and Steven C. Murray were intentionally and deliberately unprepared to rescue James Fitzgerald. As a result, James Fitzgerald remained buried underneath the debris for thirty days before his body was recovered.

84. The beneficiaries, as fully described herein, suffered mentally and emotionally through each of the thirty days during the recovery effort to locate James Fitzgerald's body.

85. The beneficiaries could only watch as each of the thirty days passed with the slow realization that their worst suspicions were true.

86. On January 9, 2021, James Fitzgerald's body was located and recovered. His life had been lost. He lost appendages as a result of the collapse that were never recovered.

87. The beneficiaries relive the horror of that experience every day and suffer extreme emotional and mental anguish as result of the events that happened on December 9, 2020.

Intentional Destruction of Evidence

88. During the demolition, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray maintained sophisticated cameras that recorded the demolition. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray used the cameras to allow their employees in their Detroit, Michigan offices to monitor the demolition. The

cameras also allowed Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray in the on-premises trailer to monitor the demolition.

89. The cameras recorded the activity taking place at the boiler house.

90. When the boiler house collapsed, Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray, without explanation, “lost” the video that captured the collapse and the events leading to the collapse.

91. The loss was intentional and intended to prevent litigants and regulators from using the video to establish Defendants Adamo’s, Adamo Management Employees, SCM, and Steven C. Murray’s deliberate and intentional conduct to sacrifice the life of James Fitzgerald to cause the boiler house to fall before implosion.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

EMPLOYER INTENTIONAL TORT AGAINST DEFENDANTS ADAMO

92. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, solely on behalf of the Estate of James Fitzgerald for the injuries James Fitzgerald suffered prior to death, realleges, reaffirms, and incorporates by reference each allegation contained in this Complaint and specifically paragraphs 1 through 3, 5 through 83, and 88 through 91 of this Complaint as if fully rewritten herein, and for his First Cause of Action, states as follows:

93. At the time and place aforementioned and at all times all times relevant hereto, James Fitzgerald was working within the course and scope of his employment, pursuant to his assigned and required duties as an employee of Defendants Adamo, and took direction from several of Defendants Adamo’s Management Employees, including Defendant Harmon.

94. Defendants Adamo, at the time and place aforementioned and at all times relevant hereto, owed duties to James Fitzgerald. Those duties include, but are not limited to, the following:

- a. to provide a safe place to work in accordance with applicable and generally recognized and accepted practices, as well as standards and legal requirements including, but not limited to, regulations of the United States Department of Labor, Occupational Safety and Health Administration (“OSHA”);
- b. to provide a place of employment free from recognized hazards likely to cause death or serious physical harm, including the duty to provide structural engineers to regularly certify the stability of the structures where James Fitzgerald was working;
- c. to not remove safety equipment from James Fitzgerald’s assigned area of work;
- d. to not remove the safety equipment including, but not limited to, shoring and bracing from the equipment on which James Fitzgerald was required to perform his assigned work, or in the area where he was required to work;
- e. to not misrepresent hazardous conditions in the area where James Fitzgerald was required to work;
- f. to not bypass safe practices in the work area where James Fitzgerald was required to work; and,
- g. to stop the work James Fitzgerald was required to perform when the Defendants Adamo knew, with substantial certainty, that the structure on which James Fitzgerald was required to work would collapse and cause serious injuries and/or death to James Fitzgerald.

95. The actions hereinbefore and hereinafter described by the Defendants Adamo were by and through Defendants’ Adamo’s Management Employees acting within the course and scope of their employment for the Defendants’ Adamo.

96. The Defendants Adamo, through their Management Employees, knew, at all times relevant to the work that James Fitzgerald was required to perform, facts that include, but are not limited to, that:

- a. it is critical and necessary for demolition of a structure, and specifically the structure on which James Fitzgerald was required to work, being the boiler house, to continually consult with a structural engineer and have a detailed demolition plan in place that identifies and details the sequence of the demolition, including the placement of charges and the location of cuts and burns related to the weakening of the structure, and including the placement of charges to facilitate the planned implosion. Further, if there is no detailed sequence and no detailed plan of demolition, the parties involved in managing the demolition are knowingly creating a dangerous condition and know with substantial certainty that the structure will collapse during demolition;
- b. the removal of beams, columns, and other supports and bracing together with the weight, the height, and remaining equipment in the boiler house, including the boiler, critically weakened the boiler house, rendered the boiler house unstable and would cause the boiler house to sustain an uncontrolled collapse that would injure and/or kill anyone including, James Fitzgerald, in the vicinity of the boiler house;
- c. the boiler house had developed twisted and bowed columns, had moved, and was making unusual settling noises. These events established that the boiler house was weakened and unstable and a collapse would occur that would kill and/or injure anyone, including James Fitzgerald who was in the vicinity of the boiler house, and required the immediate stoppage of work and consultation with structural engineer; and,
- d. it was critical to have a detailed safety plan and necessary equipment on-site to rescue workers, including James Fitzgerald, when the boiler house inevitably would collapse.

97. Defendants Adamo, through their Management Employees, knew at all times relevant to the work that James Fitzgerald was required to perform, facts that include, but are not limited to:

- a. that a detailed demolition plan that identified and detailed the sequence of the demolition, including the placement of charges and the location of cuts and burns related to the weakening of the structure, and including the placement of charges to facilitate the planned implosion, did not exist and that the failure to have the plan endangered anyone, including James Fitzgerald, in the vicinity of the boiler house;
- b. that a structural engineer had failed to review the demolition plan and sequence and that Defendants Adamo had failed to consult an engineer

during the weakening of the boiler house, including after Defendants Adamo had removed a significant portion of the structures beams and columns that provided critical support;

- c. that the removal of beams, columns and other supports and bracing together with the weight, the height, and remaining equipment in the boiler house, including the boiler, critically weakened the boiler house and rendered the boiler house unstable and these conditions would cause the boiler house to sustain an uncontrolled collapse that would injure and/or kill anyone, including James Fitzgerald, in the vicinity of the boiler house;
- d. that Defendants Adamo failed to use bracing and shoring to stabilize the boiler house, yet Defendants Adamo instructed James Fitzgerald, to continue to work in the boiler house;
- e. that the boiler house had developed twisted and bowed columns, had moved, and was making unusual settling noises. These events established that the boiler house was weakened and unstable and a collapse would occur that would kill and/or injure anyone, including James Fitzgerald, who was in the vicinity of the boiler house, and that these facts required the immediate stoppage of work and consultation with a structural engineer,
- f. that Defendants Adamo refused to consult with a structural engineer upon learning of the boiler house's instability. That the reason Adamo refused to consult with an engineer was that Adamo knew with certainty that the engineer would instruct Adamo to immediately cease demolition activities and instruct Adamo to take the time-consuming action of stabilizing the building and assume the considerable expenses involved in stabilizing the structure;
- g. that Defendants Adamo had failed to have a detailed safety plan and necessary equipment on-site to rescue workers, including James Fitzgerald, when the boiler house inevitably collapsed.

98. Defendants Adamo, knew of the existence of the dangerous conditions, as hereinbefore and hereinafter mentioned, and identified in this complaint, of the work environment related to the boiler house, and with this knowledge, required its employee, James Fitzgerald, to work in the boiler house when Defendants Adamo knew that the boiler house was unstable and would collapse during the demolition work. Further, Defendants Adamo deliberately

removed equipment safety guards from the structure that include, but are not limited to, bracing and stabilizing equipment. Defendants Adamo deliberately misrepresented the hazardous and dangerous conditions of the boiler house to James Fitzgerald. Defendants Adamo, despite knowing that the removal of beams, columns, and other supports and bracing together with the weight, the height, and remaining equipment in the boiler house, including the boiler, critically weakened the boiler house and rendered the boiler house unstable and would cause the boiler house to sustain an uncontrolled and imminent collapse and despite knowing that the boiler house had developed twisted and bowed columns, had moved, and was making unusual settling noises. Defendants Adamo, required James Fitzgerald to work under the dangerous conditions.

99. At all relevant times, Defendants Adamo, through their Management Employees, knew of the exact dangers under which their employee, James Fitzgerald, was required to work. Furthermore, Defendants Adamo, knew if they subjected James Fitzgerald to such dangerous processes, procedures, instrumentalities and/or conditions as hereinbefore and hereinafter mentioned that harm and injury to James Fitzgerald was substantially certain to occur. Defendant. Adamo, at all relevant times, and with knowledge of the described dangerous conditions and knowledge of the totality of the circumstances and conditions, acted to require James Fitzgerald to continue to perform the dangerous tasks and work that he was required to perform.

100. The mentioned acts and omissions identified in this Complaint of the Defendants Adamo, through its Management Employees, were intentional and deliberate as defined by Ohio Employer Intentional Tort Law, Ohio Revised Code Section 2745.01, et. seq. and were committed with a clear knowledge that James Fitzgerald would suffer bodily and emotional harm. Defendants Adamo committed the described and identified acts with the deliberate intent

to injure James Fitzgerald, with the belief that injury and/or death to James Fitzgerald was certain to occur. At all times relevant Defendants Adamo knew, with a substantial degree of certainty, that James Fitzgerald was exposed to injury while Defendants Adamo continued to require James Fitzgerald to perform his assigned duties.

101. As a direct and proximate result of the mentioned acts and omissions identified in this Complaint of the Defendants Adamo, James Fitzgerald was caused to suffer the injuries and damages immediately hereinbefore and hereinafter described, identified, and mentioned in this Complaint. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, solely on behalf of the Estate of James Fitzgerald for the injuries he suffered prior to death, seeks damages against each of the Defendants Adamo in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars.

SECOND CAUSE OF ACTION

CO-EMPLOYEE INTENTIONAL TORT AGAINST DEFENDANTS MICHAEL

BREHESE, SAMUEL HARMON, RICHARD M. ADAMO, RICK CUPPETILLI AND

MARK ST. CYR

102. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, solely on behalf of the Estate of James Fitzgerald for the injuries James Fitzgerald suffered prior to death, realleges, reaffirms, and incorporates by reference herein each allegation contained in this Complaint and specifically in paragraphs 1 through 3, 5 through 83, and 88 through 100 of this Complaint as if fully rewritten herein, and for his Second Cause of Action, states as follows:

103. This claim is brought against each of the Defendants, Michael Brehse, Samuel Harmon, Richard M. Adamo, Rick Cuppetilli, and Mark St. Cyr, in their supervisory capacity over James Fitzgerald. Each of these Defendants was a co-employee of James Fitzgerald. Defendants, Brehse, Harmon, Adamo, Cuppetilli and St. Cyr, possessed and exercised the power to control and direct James Fitzgerald's work activities, including his work activities on the day that the structure/boiler house collapsed. Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, also possessed and exercised the power to control and direct James Fitzgerald's work activities throughout his employment with Defendants Adamo.

104. Each of the Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, directed James Fitzgerald and other Adamo employees to substantially weaken the boiler house with the specific intent to create dangerous instability and cause an uncontrolled collapse.

105. Each of the Defendants, Brehse, Harmon, Adamo, Cuppetilli and St. Cyr, to intentionally and dangerously destabilize the boiler house directed Adamo employees to remove an excessive number of beams and columns and bracing. The removal of beams, columns, and bracing created the desired instability.

106. To further destabilize the structure, each of the Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, directed James Fitzgerald and other Adamo employees to make an excessive number of cuts and burns into the steel. The burns and cuts made the boiler house more unstable and accelerated the uncontrolled collapse.

107. Within a few days of the December 9, 2020 collapse, each of the Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, learned that their plan to create dangerous instability had succeeded. Each of the Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St.

Cyr, received the news that that the boiler house had developed twisted and bowed columns, had moved, and was making unusual settling noises.

108. Each of the Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, realizing that their plan to cause an uncontrolled collapse was succeeding, failed to take any action to stabilize the building. Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, failed to consult with a structural engineer or competent person or take appropriate steps to brace and shore the massive structure.

109. Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, refused to consult with a structural engineer or competent person knowing with substantial certainty that the engineer would confirm that the building was on the verge of an imminent controlled collapse and would instruct Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, to immediately cease demolition activities and instruct Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, to take the time-consuming action of stabilizing the building and assume the considerable expenses involved in stabilizing the structure.

110. Instead of taking steps to protect James Fitzgerald, Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, sent James Fitzgerald into the dangerously compromised building to make additional cuts and burns that would create greater danger and instability.

111. Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, with the specific knowledge of the dangerous condition present and with intent to cause the boiler house to fall without warning and without safeguards, acted with intent and with a knowledge of substantial certainty that it was probable that James Fitzgerald, on being required to perform his work, would suffer injuries.

112. As a result, when the building fell as intended, James Fitzgerald, suffered injuries, mental anguish and emotional distress preceding his death.

113. Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, fully understood and knew the dangerous conditions identified in this Complaint. Defendants, Brehse, Harmon, Adamo, Cuppetilli, and St. Cyr, therefore, committed a co-employee intentional tort by virtue of facts that include, but are not limited to, the following:

- a. by having the knowledge of the existence of a dangerous process, procedure, instrumentality, or condition within Adamo's business operation;
- b. by having the knowledge that James Fitzgerald, was subjected by his employment to the dangerous process, procedure, instrumentality, or condition and harm was substantially certain and probable to occur; and
- c. with this knowledge, requiring James Fitzgerald to perform the dangerous task James Fitzgerald was performing when the building collapsed.

114. As a direct and proximate result of the mentioned acts and omissions identified in this Complaint of each of the Defendants Michael Brehse, Samuel Harmon, Richard M. Adamo, Rick Cuppetilli, and Mark St. Cyr, James Fitzgerald was caused to suffer those injuries and damages hereinbefore and hereinafter described, identified and mentioned in this Complaint. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, solely on behalf of the Estate of James Fitzgerald for the injuries he suffered prior to death, seeks damages against each of the Defendants, Michael Brehse, Samuel Harmon, Richard M. Adamo, Rick Cuppetilli, and Mark St. Cyr in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars.

THIRD CAUSE OF ACTION

NEGLIGENCE AGAINST DEFENDANTS' SCM AND STEVEN C. MURRAY

115. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, solely on behalf of the Estate of James Fitzgerald for the injuries he suffered prior to death, realleges, reaffirms and incorporates by reference each allegation contained in this Complaint and specifically in paragraphs 1 through 3, 5 through 83, 88 through 100, and 103 through 113 of this Complaint as if fully rewritten herein, and for his Third Cause of Action, states as follows:

116. Each of the Defendants, SCM and Steven C. Murray, owed James Fitzgerald a duty to exercise reasonable and ordinary care in connection with all aspects of their actions relating to the demolition of the boiler house, including specifically a duty to avoid injuring James Fitzgerald.

117. Owing to the dangerous nature of the demolition work to be performed by Defendants SCM and Steven C. Murray on demolition of the hereinbefore and hereinafter mentioned structure, and their superior and exclusive knowledge of the dangers of demolition, each of the Defendants, SCM and Steven C. Murray, owed nondelegable duties to avoid injury to James Fitzgerald and any other persons in the zone of danger. Those duties of care include, but are not limited to:

- a. properly determine the safe and appropriate steps that should be taken to demolish and implode the boiler house hereinbefore and hereinafter mentioned;
- b. determine the type and location of cuts that should be made to safely weaken the structure;
- c. know the proximity of workers, including specifically James Fitzgerald, and uninvolved persons to the site while cuts were being made and the boiler house was being weakened;

- d. know the proximity of persons including specifically James Fitzgerald, to the site while the boiler house was in a weakened condition;
- e. properly instruct and supervise those persons making the cuts,
- f. monitor the condition of the boiler house using such monitoring efforts and equipment as necessary;
- g. not leave the boiler house in a weakened state;
- h. properly establish a safe clear distance and safety perimeter while the boiler house was being prepared for demolition;
- i. warn that the structure/boiler house was in a dangerously unsafe condition while it was being weakened for demolition by use of explosives;
- j. prepare a detailed implosion/demolition plan that identified the location of the cuts and burns to be made; and,
- k. engage, hire, or consult with a structural engineer to obtain confirmation that the boiler house/structure remained stable and specifically while James Fitzgerald worked in the structure.

118. The Defendants, SCM and Steven C. Murray, each breached their duties in numerous ways, including but not limited to:

- a. failing to exercise reasonable care in the highest degree;
- b. failing to properly demolish/implode the boiler house in a safe manner;
- c. failing to act with reasonable care in determining the appropriate steps to take to accomplish the safe demolition of the boiler house;
- d. failing to properly determine the location and/or type of cuts and/or other steps to be made to weaken the structure and prepare the boiler house for implosion;
- e. failing to ensure that the boiler house was not left in a weakened and unsafe state for an extended period;

- f. failing to properly establish a safe clear distance and safety perimeter while the boiler house was being prepared for demolition;
- g. failing to properly institute safety measures, including bracing and shoring, while the boiler house was being prepared for demolition;
- h. failing to warn that the boiler house was in a dangerously unsafe condition while it was being weakened for explosive demolition;
- i. failing to properly monitor the condition of the boiler house while it was being weakened in preparation for demolition/implosion;
- j. failing to prepare a detailed implosion/demolition plan that identified the location of the cuts and burns; and,
- k. failing to engage, hire, or consult with a structural engineer to obtain confirmation that the boiler house remained stable.

119. As a direct and proximate result of the mentioned acts and omissions identified in this Complaint of each of the Defendants, SCM and Steven C. Murray, James Fitzgerald was caused to suffer those injuries and damages hereinbefore and hereinafter described, identified and mentioned in this Complaint. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, solely on behalf of the Estate of James Fitzgerald for the injuries he suffered prior to death, seeks damages against each Defendant, SCM and Steven C. Murray in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars.

FOURTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

AGAINST ALL DEFENDANTS

120. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, solely on behalf of the Estate of James Fitzgerald for injuries James Fitzgerald suffered prior to death, realleges, reaffirms and incorporates by reference each allegation contained in this

Complaint and specifically paragraphs 1 through 3, 5 through 83, 88 through 100, 103 through 113, and 115 through 118 of this Complaint as if fully rewritten herein, and for his Fourth Cause of Action, states as follows:

121. Each of the Defendants herein individually and collectively engaged in deliberate and intentional conduct knowing that their conduct would cause the boiler house to fall in a predictable uncontrolled collapse.

122. Despite this knowledge, Defendants sent James Fitzgerald into the zone of danger.

123. Defendants' individual and collective conduct was extreme and beyond all possible bounds of decency and was utterly intolerable in a civilized community and resulted in intentional infliction of emotional distress to James Fitzgerald.

124. Additionally, each Defendant knew that sending James Fitzgerald into a structure on the imminent verge of an uncontrolled collapse would cause James Fitzgerald to sustain serious emotional distress and therefore intended that James Fitzgerald suffer serious emotional distress.

125. As a result of Defendants' individual and collective conduct, the boiler house fell in an uncontrolled collapse and buried James Fitzgerald in concrete and steel debris. While the structure collapsed around him, James Fitzgerald remained conscious and believed that he would die.

126. As a direct and proximate result of the mentioned acts and omissions identified in this Complaint of each of the Defendants, James Fitzgerald was caused to suffer serious emotional distress of a nature that a reasonable person could be expected to endure.

FIFTH CAUSE OF ACTION

NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

AGAINST DEFENDANT SCM AND DEFENDANT STEVEN C. MURRAY

127. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, solely on behalf of the Estate of James Fitzgerald for injuries James Fitzgerald suffered prior to death, realleges, reaffirms and incorporates by reference each allegation contained in this Complaint and specifically in paragraphs 1 through 3, 5 through 83, 88 through 100, 103 through 112, and 115 through 118 of this Complaint as if fully rewritten herein, and for his Fifth Cause of Action, states as follows:

128. Defendants, SCM and Steven C. Murray, individually and collectively, as hereinbefore and hereinafter mentioned, engaged in conduct that caused the boiler house to fall in a predictable uncontrolled collapse.

129. Defendants, SCM and Steven C. Murray, sent James Fitzgerald into the zone of danger.

130. Defendants, SCM and Steven C. Murray, failed to exercise reasonable and ordinary care with respect to James Fitzgerald and the negligent actions of Defendants SCM and Steven C. Murray, as hereinbefore and hereinafter mentioned, were a direct and proximate cause of the boiler house to fall on top of James Fitzgerald.

131. Additionally, Defendants, SCM and Murray, knew that allowing James Fitzgerald to be in the vicinity of the boiler house placed James Fitzgerald in peril.

132. As a direct and proximate result of Defendants SCM and Murray's individual and collective conduct, the boiler house fell in an uncontrolled collapse and buried James Fitzgerald in concrete and steel debris. While the structure collapsed around him, James Fitzgerald remained conscious and believed that he would die.

133. As a direct and proximate result of the individual and collective actions of Defendants SCM and Steven C. Murray, James Fitzgerald was caused to suffer serious emotional

distress of a nature that a reasonable person could not be expected to endure.

SIXTH CAUSE OF ACTION

SPOILIATION OF EVIDENCE AGAINST ALL DEFENDANTS

134. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald deceased, on behalf of the Estate of James Fitzgerald and the wrongful death beneficiaries, realleges, reaffirms and incorporates by reference herein each allegation contained in this Complaint and specifically in paragraphs 1 through 3, 5 through 83, 88 through 91, and all allegations in Count 1, 2, 3, 4, 7, 8, 9 and 10 of this Complaint as if fully rewritten herein and for his Sixth Cause of Action, states as follows:

135. Defendants Adamo, Adamo Management Employees, SCM, and Steven C. Murray knew that the boiler house was on the verge of imminent collapse and that a collapse would cause injuries. Defendants knew that litigation was probable.

136. Prior to the collapse, Defendants Adamo maintained a sophisticated video recording system that recorded the demolition. The recording system permitted Defendants Adamos' employees to view the demolition, including the work being performed in the boiler house, from the on-site trailer and from corporate headquarters.

137. The recording system recorded the collapse and the events preceding the collapse.

138. Defendants Adamo, Adamo Management Employees and/or SCM or Steven C. Murray intentionally destroyed the recordings for the specific purpose of disrupting or negatively affecting Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald deceased, on behalf of the Estate of James Fitzgerald and the wrongful death beneficiaries, case.

139. As a direct and proximate result of Defendants' willful destruction of the video recorded evidence, Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald

deceased, on behalf of the Estate of James Fitzgerald and the wrongful death beneficiaries, case and the ability to prove her case may have been irreparably disrupted or destroyed or damaged.

140. As a direct and proximate result of Defendants' willful destruction of evidence, Plaintiff has suffered harms and losses in an as yet undetermined amount.

SEVENTH CAUSE OF ACTION

NEGLIGENCE AGAINST DEFENDANTS ADAMO

141. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, solely on behalf of the Estate of James Fitzgerald deceased, for injuries James Fitzgerald suffered prior to death, realleges, reaffirms and incorporates by reference each allegation contained in this Complaint and specifically in paragraphs 1 through 3, 5 through 83, 88 through 100, 103 through 112, 115 through 117, 120 through 124 of this Complaint as if fully rewritten herein, and for his Seventh Cause of Action, states as follows:

142. To the extent that any of the named Defendants Adamo are not the employer of James Fitzgerald, these parties are herein named as Defendants by virtue of their negligence, carelessness, and failure to exercise reasonable and ordinary care with respect to their acts and omissions as hereinbefore and hereinafter mentioned.

143. Each of the non-employer Defendants Adamo owed James Fitzgerald a duty to exercise reasonable and ordinary care in connection with all aspects of their actions relating to the demolition of the boiler house, including specifically a duty to avoid injuring James Fitzgerald.

144. Owing to the dangerous nature of the demolition work to be performed during the demolition of the hereinbefore and hereinafter mentioned structure, and their superior and exclusive knowledge of the dangers of demolition, each of non-employer Defendants Adamo owed

nondelegable duties to avoid injury to James Fitzgerald and any other persons in the zone of danger.

Those duties of care include, but are not limited to:

- a. properly determine the safe and appropriate steps that should be taken to demolish and implode the boiler house hereinbefore and hereinafter mentioned;
- b. determine the type and location of cuts that should be made to safely weaken the structure;
- c. know the proximity of workers, including specifically James Fitzgerald, and uninvolved persons to the site while cuts were being made and the boiler house was being weakened;
- d. know the proximity of persons, including specifically James Fitzgerald, to the site while the boiler house was in a weakened condition;
- e. properly instruct and supervise those persons making the cuts;
- f. monitor the condition of the boiler house using such monitoring efforts and equipment as necessary;
- g. not leave the boiler house in a weakened state;
- h. properly establish a safe clear distance and safety perimeter while the boiler house was being prepared for demolition;
- i. warn that the structure/boiler house was in a dangerously unsafe condition while it was being weakened for demolition by use of explosives;
- j. prepare a detailed implosion/demolition plan that identified the location of the cuts and burns to be made; and,

- k. engage, hire or consult with a structural engineer to obtain confirmation that the boiler house/structure remained stable and specifically while James Fitzgerald worked in the structure.

145. The non-employer Defendants Adamo breached its/their duties in numerous ways, including but not limited to:

- a. failing to exercise reasonable care in the highest degree;
- b. failing to properly demolish/implode the boiler house in a safe manner;
- c. failing to act with reasonable care in determining the appropriate steps to take to accomplish the safe demolition of the boiler house;
- d. failing to properly determine the location and/or type of cuts and/or other steps to be made to weaken the structure and prepare the boiler house for implosion;
- e. failing to ensure that the boiler house was not left in a weakened and unsafe state for an extended period;
- f. failing to properly establish a safe clear distance and safety perimeter while the Boiler house was being prepared for demolition;
- g. failing to properly institute safety measures, including bracing and shoring, while the boiler house was being prepared for demolition;
- h. failing to warn that the boiler house was in a dangerously unsafe condition while it was being weakened for explosive demolition;
- l. failing to properly monitor the condition of the boiler house while it was being weakened in preparation for demolition/implosion;
- i. failing to prepare a detailed implosion/demolition plan that identified the location of the cuts and burns; and,
- j. failing to engage, hire, or consult with a structural engineer to obtain confirmation that the boiler house remained stable.

146. As a direct and proximate result of the mentioned acts and omissions identified in this Complaint of each of the non-employer Defendants Adamo, James Fitzgerald was caused to suffer those injuries and damages hereinbefore and hereinafter described, identified and mentioned

in this Complaint. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, solely on behalf of the Estate of James Fitzgerald for injuries James Fitzgerald suffered prior to death, seeks damages against each of the non-employer Adamo Defendants, in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars.

DAMAGES ASSOCIATED WITH PRECEEDING COUNTS

147. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, solely on behalf of the Estate of James Fitzgerald for injuries James Fitzgerald suffered prior to death, realleges, reaffirms and incorporates by reference herein each allegation contained in this Complaint and specifically in paragraphs (1) through (146) of this Complaint as if fully rewritten and for his Damages causes of action, states as follows:

PAIN AND SUFFERING DAMAGES

148. Each Defendant's intentional and negligent acts were and are a direct and proximate cause of James Fitzgerald's suffering of extreme pain, extreme emotional distress, and extreme mental anguish prior to his death as described herein. As a result of each Defendant's individual and collective acts, James Fitzgerald, suffered blunt force trauma to the head and body.

149. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, solely on behalf of the Estate of James Fitzgerald, is entitled to compensation and seeks to recover for the physical, mental and emotional pain that Defendants' collective and individual intentional acts proximately caused James Fitzgerald to suffer.

EIGHTH CAUSE OF ACTION

WRONGFUL DEATH AGAINST DEFENDANTS ADAMO

150. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, by and through the Estate of James Fitzgerald on behalf wrongful death beneficiaries,

realleges, reaffirms and incorporates by reference each allegation contained in this Complaint and specifically in paragraphs 1 through 91, 93 through 100, and 103 through 113 of this Complaint as if fully rewritten herein, and for her Eighth Cause of Action, states as follows:

151. As a direct and proximate result of Defendants Adamos' actions and omissions as described above, decedent, Jamie Fitzgerald, lost his life.

152. By reason of the death of Plaintiff's Decedent, James Fitzgerald, he left surviving him as next of kin, his daughter Adison Fitzgerald, his brother John Paul Fitzgerald, and his sister Lynn Fitzgerald.

153. At the time of his death, Plaintiff's Decedent, James Fitzgerald, was 47 years of age, in good health, and that as a direct result of his death, each of his aforementioned next of kin and each heir at law as herein before and hereinafter mentioned was caused to suffer extreme grief and all other losses and damages as allowed by Ohio law, including Ohio Revised Code §2125.02 that include, but are not limited to, loss of support from the reasonably expected earning capacity of the Decedent, loss of support, loss of services of the Decedent, loss of the society of the Decedent, including losses of companionship, consortium, contribution, care, assistance, attention, protection, advice, guidance, counsel, instruction, training and education that would have been derived from James Fitzgerald, loss of prospective inheritance to each of the Decedent's next of kin and each heir at law as hereinbefore mentioned, and extreme mental anguish and grief incurred and suffered by each of James Fitzgerald's surviving child and siblings. Additionally, each of Decedent's next of kin and each heir at law has been caused to suffer loss of services rendered by the Plaintiff's Decedent as father and brother. Plaintiff further claims funeral and burial expenses. Plaintiff, in her capacity as Administratrix of the Estate of James Fitzgerald, seeks damages against each Defendant for an amount in excess of \$25,000.00.

NINTH CAUSE OF ACTION

WRONGFUL DEATH AGAINST MICHAEL BREHSE, SAMUEL HARMON,

RICHARD M. ADAMO, RICK CUPPETILLI, AND MARK ST. CYR

154. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, by and through the Estate of James Fitzgerald on behalf wrongful death beneficiaries, realleges, reaffirms and incorporates by reference each allegation contained in this Complaint and specifically in paragraphs 1 through 91 and 103 through 113 of this Complaint as if fully rewritten herein, and for his Ninth Cause of Action, states as follows:

155. As a direct and proximate result of Defendants, Michael Brehse, Samuel Harmon, Richard M. Adamo, Rick Cuppetilli, and Mark St. Cyr's actions and omissions as described above, decedent, Jamie Fitzgerald, lost his life.

156. By reason of the death of Plaintiff's Decedent, James Fitzgerald, he left surviving him as next of kin, his daughter Adison Fitzgerald, his brother John Paul Fitzgerald, and his sister Lynn Fitzgerald.

157. At the time of his death, Plaintiff's Decedent, James Fitzgerald, was 47 years of age, in good health, and that as a direct result of his death, each of his aforementioned next of kin and each heir at law as herein before and hereinafter mentioned was caused to suffer extreme grief and all other losses and damages as allowed by Ohio law, including Ohio Revised Code §2125.02 that include, but are not limited to, loss of support from the reasonably expected earning capacity of the Decedent, loss of support, loss of services of the Decedent, loss of the society of the Decedent, including losses of companionship, consortium, contribution, care, assistance, attention, protection, advice, guidance, counsel, instruction, training and education that would have been derived from James Fitzgerald, loss of prospective inheritance to each of the Decedent's

next of kin and each heir at law as hereinbefore mentioned, and extreme mental anguish and grief incurred and suffered by each of James Fitzgerald's surviving child and siblings. Additionally, each of Decedent's next of kin and each heir at law has been caused to suffer loss of services rendered by the Plaintiff's Decedent as father and brother. Plaintiff further claims funeral and burial expenses. Plaintiff, in her capacity as Administratrix of the Estate of James Fitzgerald, seeks damages against each Defendant for an amount in excess of \$25,000.00.

TENTH CAUSE OF ACTION

WRONGFUL DEATH AGAINST

DEFENDANT SCM AND DEFENDANT STEVEN C. MURRAY

158. Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, by and through the Estate of James Fitzgerald on behalf wrongful death beneficiaries, realleges, reaffirms and incorporates by reference each allegation contained in this Complaint and specifically in paragraphs 1 through 91 and 116 through 118 of this Complaint as if fully rewritten herein, and for her Tenth Cause of Action, states as follow:

159. As a direct and proximate result of Defendants SCM and Steven C. Murray's actions and omissions as described above, decedent, Jamie Fitzgerald, lost his life.

160. By reason of the death of Plaintiff's Decedent, James Fitzgerald, he left surviving him as next of kin, his daughter Adison Fitzgerald, his brother John Paul Fitzgerald, and his sister Lynn Fitzgerald.

161. At the time of his death, Plaintiff's Decedent, James Fitzgerald, was 47 years of age, in good health, and that as a direct result of his death, each of his aforementioned next of kin and each heir at law as herein before and hereinafter mentioned was caused to suffer extreme grief and all other losses and damages as allowed by Ohio law, including Ohio Revised Code §2125.02

that include, but are not limited to, loss of support from the reasonably expected earning capacity of the Decedent, loss of support, loss of services of the Decedent, loss of the society of the Decedent, including losses of companionship, consortium, contribution, care, assistance, attention, protection, advice, guidance, counsel, instruction, training and education that would have been derived from James Fitzgerald, loss of prospective inheritance to each of the Decedent's next of kin and each heir at law as hereinbefore mentioned, and extreme mental anguish and grief incurred and suffered by each of James Fitzgerald's surviving child and siblings. Additionally, each of Decedent's next of kin and each heir at law has been caused to suffer loss of services rendered by the Plaintiff's Decedent as father and brother. Plaintiff further claims funeral and burial expenses. Plaintiff, in her capacity as Administratrix of the Estate of James Fitzgerald, seeks damages against each Defendant for an amount in excess of \$25,000.00.

EXEMPLARY AND PUNITIVE DAMAGES

162. Defendants' behavior as hereinbefore and hereinafter mentioned demonstrated malice, ill will, recklessness, willful and wanton misconduct, and/or a total disregard for the rights and safety of James Fitzgerald, which caused substantial harm and untimely death. Defendants' behavior therefore warrants an award of exemplary damages.

163. Defendants' behavior demonstrated malice or aggravated or egregious fraud pursuant to applicable law.

164. Defendants' behavior should be made an example of and discouraged so that the same wrongful conduct does not happen to someone else.

WHEREFORE, Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, on behalf of the Estate of James Fitzgerald and the wrongful death

beneficiaries, herein demands judgment against all of the Defendants, jointly and severally, in an amount in excess of Twenty-Five Thousand (\$25,000.00) dollars in compensatory damages, and all other relief to which he may be entitled.

WHEREFORE, Plaintiff, Phoebe Adkins, as Administratrix of the Estate of James Fitzgerald, deceased, on behalf of the Estate of James Fitzgerald and the wrongful death beneficiaries, herein demands judgment against all of the Defendants, jointly and severally, in an amount in excess of Twenty-Five Thousand (\$25,000.00) dollars in punitive damages, and all other relief to which he may be entitled, including costs and attorneys' fees.

Respectfully submitted,

By: 
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JURY DEMAND

With the filing of this Complaint, Plaintiff herein demands a Trial by Jury.

By: 
Blake A. Fromang (101627)
TRIAL COUNSEL FOR PLAINTIFF