

2. Ethan Thad McMahon, deceased, left as next of kin, Hayden Scott McMahon (minor son).

3. Plaintiff is a resident of Sioux Falls, South Dakota.

4. Defendant Hultgren is a resident of Sioux Falls, South Dakota.

5. Defendant Boomerang is a South Dakota limited liability company with its principal office located at 101 South Main Avenue, Suite 400, Sioux Falls, SD 57104.

6. Defendant CLP is a South Dakota limited liability company with its principal office located at 101 South Main Avenue, Suite 400, Sioux Falls, SD 57104.

7. Defendant Olympia is a South Dakota limited liability company with its principal office located at 101 South Main Avenue, Suite 400, Sioux Falls, SD 57104.

8. Defendant Legacy is a South Dakota limited liability company with its principal office located at 101 South Main Avenue, Suite 400, Sioux Falls, SD 57104.

9. Defendant RISE is a South Dakota corporation with its principal office located at 101 Railroad Avenue, Harrisburg, SD 57032.

10. Upon information and belief, Hultgren is a member-manager of CLP, Olympia, Legacy and Boomerang.

GENERAL ALLEGATIONS

11. On or about November 30, 2016, CLP conveyed to Boomerang via warranty deed certain real property described as the South Half (S1/2) of Lot Nine (9) in Block Twenty-One (21) of J.L. Phillips Addition to the City of Sioux Falls, Minnehaha County, South Dakota (“Copper Lounge”).

12. On or about November 30, 2016, Olympia conveyed to Boomerang via warranty deed certain real property described as Lot 8 and the North Half (N1/2) of Lot 9, both in Block 21 of J.L. Phillips Addition to Sioux Falls, Minnehaha County, South Dakota (“Skelly’s”).

13. The Copper Lounge building and Skelly’s building shared a load-bearing common wall located on the North side of the Copper Lounge building and the South side of the Skelly’s building.

14. On information and belief, Legacy hired Hultgren Construction, LLC (“Hultgren Construction”) as the general contractor for a new building to be constructed on the site of the now-former Skelly’s and Copper Lounge buildings (the “Project”).

15. Legacy was the developer for the Project.

16. Hultgren Construction was formed at the urging of Legacy’s principals to act as the general contractor for projects in which Legacy acted as the developer.

17. By using a captive construction company in Hultgren Construction instead of hiring a reputable, third-party construction contractor, Legacy was able to cut costs and save substantial amounts of money on its development projects.

18. RISE was the structural engineer for the Project and communicated with Legacy, Boomerang, Hultgren and Hultgren Construction about the Project.

19. On or about December 2, 2016, Copper Lounge and Skelly’s collapsed during the removal process of the load-bearing common wall shared by the two buildings.

20. Prior to the collapse, a family residing in the apartment unit on the top floor of the Copper Lounge building reported to Hultgren, Boomerang, Olympia, CLP and Legacy that a large crack had formed in the load-bearing common wall during the ongoing construction and demolition activities.

21. Hultgren, Legacy, CLP, Olympia and Boomerang knew or should have known the crack impaired the structural integrity of the load-bearing common wall, which created a significant, foreseeable risk the wall would give out and the entire structure would collapse.

22. Hultgren, Boomerang, Olympia, CLP and Legacy took no action to investigate the crack.

23. Hultgren, Boomerang, Olympia, CLP and Legacy took no action to ensure construction and demolition activities affecting the load-bearing common wall would be carried out with sufficient safety precautions taken and shoring mechanisms put in place to prevent a collapse.

24. Hultgren, Boomerang, Olympia, CLP and Legacy took no action to warn or alert those who would be present on-site of the Project to the danger posed by continued construction and demolition activities affecting the load-bearing common wall.

25. Hultgren, Boomerang, Olympia, CLP and Legacy knew a large crack had formed in the load-bearing common wall prior to the collapse and that no action was taken to investigate the crack.

26. Hultgren, Boomerang, Olympia, CLP and Legacy knew the structural integrity of the load-bearing common wall was impaired, which created significant, foreseeable risk that the wall would give out and the entire structure would collapse.

27. Hultgren, Boomerang, Olympia, CLP and Legacy knew that the removal of the load-bearing common wall was being conducted with insufficient safety precautions taken and shoring mechanisms put in place to prevent a collapse.

28. Hultgren, Boomerang, Olympia, CLP and Legacy knew through Hultgren that no action had been taken to warn or alert those present on-site of the Project to the danger posed by continued construction and demolition activities affecting the load-bearing common wall.

29. Hultgren Construction carried on its construction and demolition activities under a trial-by-error mentality.

30. Legacy and Boomerang knew Hultgren Construction carried on its construction and demolition activities under a trial-by-error mentality.

31. Legacy lacked the experience and competency to carry out or otherwise oversee the Project in a reasonable and safe manner.

32. Legacy and Boomerang knew Hultgren Construction lacked the experience and competency to carry out or otherwise oversee the Project in a reasonable and safe manner.

33. Hultgren Construction did not provide its agents, servants, and employees with adequate and sufficient training or safety equipment.

34. Legacy and Boomerang knew Hultgren Construction did not provide its agents, servants, and employees with adequate and sufficient training or safety equipment.

35. Hultgren Construction and Legacy performed demolition work on-site of the Project on the date of the collapse without first receiving permission from the City of Sioux Falls to do so.

36. Hultgren Construction, Legacy, Boomerang, CLP and Olympia performed demolition work on-site of the Project with insufficient safety precautions taken and shoring mechanisms put in place to prevent a collapse.

37. On information and belief, RISE communicated with Legacy, Hultgren and Hultgren Construction regarding the removal of the load-bearing common wall between Copper

Lounge and Skelly's, advised Hultgren and Hultgren Construction regarding the shoring mechanism for the wall removal project and was aware said wall was being removed without proper safety precautions having been taken.

38. RISE knew or should have known of the danger of continuing construction and demolition activities on-site of the Project.

39. RISE took no action to warn or alert those who would be present on-site of the Project to the danger posed by continued construction and demolition activities affecting the load-bearing common wall.

40. RISE knew or should have known Hultgren Construction did not have authority from the City of Sioux Falls to perform construction or demolition work on-site of the Project on the date of the collapse.

41. RISE failed to advise Hultgren Construction of the need to obtain proper authority for the continuation of construction and demolition activities on-site of the Project.

42. RISE failed to advise Hultgren Construction of reasonable safety precautions needed to ensure proper support and shoring of the load-bearing common wall was in place prior to and during construction and demolition activities.

43. RISE failed to advise Hultgren Construction to cease continuation of construction and demolition activities affecting the load-bearing common wall.

44. The decedent was a construction worker for Hultgren Construction working on-site at the Project when the collapse occurred.

45. As a result of the collapse, the decedent was crushed by falling debris resulting in his death.

46. Following the collapse, OSHA issued multiple serious citations for all of the deficient conditions found to exist at the site of the Project.

47. In addition to issuing citations, OSHA referred the matter to the United States Attorney's Office for potential criminal prosecution. That is rare. For example, in 2013, OSHA made 39,228 inspections but referred only three cases for potential criminal prosecution.

48. The decedent was employed by Hultgren Construction but not by any of the Defendants at the time of his death.

49. During the project, the decedent was exposed not only to the dangerous condition posed by the removal of the loadbearing wall, but also by being directed to remove and dispose of asbestos-containing material without proper protective equipment or according to proper procedure. Legacy, CLP, Boomerang and Olympia were all aware of and responsible for decedent's exposure to asbestos.

50. This action is brought for compensatory and punitive damages that are or may ultimately be shown applicable and permitted under the law, including but not limited to:

- a. The medical, funeral, burial, and other expenses for the disposition of decedent's body;
- b. The pecuniary loss, counsel, guidance, and aid decedent would have reasonably provided his surviving minor child, Hayden, had he lived and the loss of advice, assistance, companionship, society and protection the decedent would have reasonably provided Hayden had he lived;
- c. The fear and terror of impending death suffered by the decedent, including his conscious pain, suffering and mental anguish;

d. Any and all other such damages that are provided for or may be provided for by applicable law.

COUNT I – WRONGFUL DEATH – PREMISES LIABILITY AND NEGLIGENCE

(Defendants Boomerang, CLP, and Olympia)

51. Plaintiff re-alleges the foregoing paragraphs of this Complaint and hereby incorporates them by reference as if fully set forth herein.

52. The decedent was a business invitee of Boomerang, CLP, and Olympia while he was on the premises of the Project, which property and premises were owned, controlled, and maintained by Boomerang, CLP, and Olympia at all times material hereto, to wit:

a. The decedent was a construction worker who was invited to enter and remain on the premises of the Project by Boomerang, CLP, and Olympia through their agents, servants, and employees.

b. At the invitation of Boomerang, CLP, and Olympia, the decedent worked on-site at the Project both before and after November 30, 2016.

c. At the invitation of Boomerang, CLP, and Olympia, the decedent worked on-site at the Project on December 2, 2016, up to and including at the time of the collapse.

d. The decedent's purpose as a construction worker on the premises of the Project was a purpose directly or indirectly connected with business dealings of Boomerang, CLP, and Olympia as owners of the premises.

53. Boomerang, CLP, and Olympia, through their agents, servants, and employees, knew or should have known of the presence of a concealed or dangerous condition on the premises that posed an unreasonable risk of harm to decedent and others present on the property.

54. Boomerang, CLP, and Olympia, through their agents, servants, and employees, created and contributed to the concealed and dangerous condition on the premises.

55. Boomerang, CLP, and Olympia, through their agents, servants, and employees, knew or should have known decedent and others present on the property were unlikely to discover, realize, or protect themselves from the concealed or dangerous condition.

56. Boomerang, CLP, and Olympia, through their agents, servants, and employees had the authority, capability, and wherewithal to protect business invitees such as decedent and others present on the property from concealed and dangerous conditions on the premises.

57. Boomerang, CLP, and Olympia, owed decedent the duty of exercising reasonable care of maintaining and securing the premises for decedent's benefit and safety.

58. Boomerang, CLP, and Olympia, through their agents, servants, and employees, breached their duty by failing to keep the premises reasonably safe from concealed or dangerous conditions for the benefit and safety of decedent and others on the property.

59. Boomerang, CLP, and Olympia, owed decedent the duty to warn decedent of concealed or dangerous conditions on the premises.

61. Boomerang, CLP, and Olympia, through their agents, servants, and employees, breached their duty by failing to warn decedent or others on the property of concealed or dangerous conditions on the premises.

62. The decedent's death was caused by the negligence of Boomerang, CLP, and Olympia, and without any contributory negligence on the part of the decedent.

63. As a result, Plaintiff and the decedent's minor son, Hayden, have suffered the losses set forth above.

COUNT II – WRONGFUL DEATH – WILLFUL AND WANTON MISCONDUCT

(Defendants Boomerang, CLP, and Olympia)

64. Plaintiff re-alleges the foregoing paragraphs of this Complaint and hereby incorporates them by reference as if fully set forth herein.

65. Boomerang, CLP, and Olympia caused the death of decedent as alleged in Count I.

66. Boomerang, CLP, and Olympia, through their agents, servants, and employees, demonstrated an affirmative, intentional, and reckless disregard for the rights of the decedent.

67. Boomerang, CLP, and Olympia acted willfully and wantonly, and their conduct resulted in the decedent's death.

COUNT III – SURVIVAL CLAIM

68. Plaintiff re-alleges the foregoing paragraphs of this Complaint and hereby incorporates them by reference as if fully set forth herein.

69. As a direct and proximate result of the negligence and/or intentional and reckless misconduct of Boomerang, CLP, and Olympia, the decedent was subjected to extreme terror, pain, suffering and injury, all of which permit recovery as survival damages, in an amount to be determined at trial.

COUNT IV – WRONGFUL DEATH – NEGLIGENCE

(Defendant Hultgren)

70. Plaintiff re-alleges the foregoing paragraphs of this Complaint and hereby incorporates them by reference as if fully set forth herein.

71. Hultgren owed decedent a duty to take reasonable precaution and to warn Plaintiff and others working on-site of the Project of the presence of a dangerous condition at the worksite, and Hultgren breached his duty.

72. The decedent's death was caused solely and proximately by the negligence of Hultgren, and without any contributory negligence on the part of the decedent.

73. As a result, Plaintiff and the decedent's minor son, Hayden, have suffered the losses set forth above.

74. Legacy, CLP, Boomerang and Olympia are liable for Hultgren's conduct defined herein.

COUNT V – WRONGFUL DEATH – WILLFUL AND WANTON MISCONDUCT

(Defendant Hultgren)

85. Plaintiff re-alleges the foregoing paragraphs of this Complaint and hereby incorporates them by reference as if fully set forth herein.

86. Hultgren caused the death of decedent as alleged in Count VI.

87. Hultgren demonstrated an affirmative, intentional, and reckless disregard for the rights of the decedent.

88. Hultgren acted willfully and wantonly, and his conduct resulted in the decedent's death.

89. Legacy, CLP, Boomerang and Olympia are liable for Hultgren's conduct defined herein.

COUNT VI – SURVIVAL CLAIM

90. Plaintiff re-alleges the foregoing paragraphs of this Complaint and hereby incorporates them by reference as if fully set forth herein.

91. As a direct and proximate result of Hultgren's negligence and/or intentional and reckless misconduct, the decedent was subjected to extreme terror, pain, suffering and injury, all of which permit recovery as survival damages, in an amount to be determined at trial.

92. Legacy, CLP, Boomerang and Olympia are liable for Hultgren's conduct defined herein.

COUNT VII – WRONGFUL DEATH – NEGLIGENCE

(Defendant Legacy)

93. Plaintiff re-alleges the foregoing paragraphs of this Complaint and hereby incorporates them by reference as if fully set forth herein.

94. Legacy owed the decedent a duty to of care to select a competent construction contractor for the Project, and Legacy breached its duty.

95. Legacy owed the decedent a duty to take reasonable precaution and to warn decedent and others working on-site of the Project of the presence of a dangerous condition at the worksite, and Legacy breached its duty.

96. The decedent's death was caused solely and proximately by the negligence of Legacy, and without any contributory negligence on the part of the decedent.

97. As a result, Plaintiff and the decedent's minor son, Hayden, have suffered the losses set forth above.

COUNT VIII – SURVIVAL CLAIM

98. Plaintiff re-alleges the foregoing paragraphs of this Complaint and hereby incorporates them by reference as if fully set forth herein.

99. As a direct and proximate result of Legacy's negligence, the decedent was subjected to extreme terror, pain, suffering and injury, all of which permit recovery as survival damages, in an amount to be determined at trial.

COUNT IX – WRONGFUL DEATH – NEGLIGENCE

(Defendant RISE)

100. Plaintiff re-alleges the foregoing paragraphs of this Complaint and hereby incorporates them by reference as if fully set forth herein.

101. RISE owed the decedent a duty of care to provide its professional services with the skill and care ordinarily exercised by others in the engineering profession, and RISE breached its duty.

102. RISE owed the decedent a duty to take reasonable precaution and to warn decedent and others working on-site of the Project of the presence of a dangerous condition at the worksite, and RISE breached its duty.

103. The decedent's death was caused solely and proximately by the negligence of RISE, and without any contributory negligence on the part of the decedent.

104. As a result, Plaintiff and the decedent's minor son, Hayden, have suffered the losses set forth above.

COUNT X – SURVIVAL CLAIM

105. Plaintiff re-alleges the foregoing paragraphs of this Complaint and hereby incorporates them by reference as if fully set forth herein.

106. As a direct and proximate result of RISE's negligence, the decedent was subjected to extreme terror, pain, suffering and injury, all of which permit recovery as survival damages, in an amount to be determined at trial.

COUNT XI - PUNITIVE DAMAGES

(Defendants Legacy, Boomerang, CLP, Olympia, Hultgren)

107. Plaintiff re-alleges the foregoing paragraphs of this Complaint and hereby incorporates them by reference as if fully set forth herein.

108. Defendants Legacy, Boomerang, CLP, Olympia, and Hultgren, acted with an intentional and reckless disregard of the decedent's rights.

109. Legacy, Boomerang, CLP, Olympia, and Hultgren intentionally, willfully, wantonly, and/or recklessly caused the decedent to endure extreme terror, pain, suffering and injury, prior his death.

110. Legacy, Boomerang, CLP, Olympia, and Hultgren are therefore liable for punitive damages in an amount to be determined at trial.

COUNT XII – FRAUDULENT TRANSFER (SDCL 54-8A-1, et seq.)

(Defendant Boomerang)

111. Plaintiff re-alleges the foregoing paragraphs of this Complaint and hereby incorporates them by reference as if fully set forth herein.

112. On information and belief, Boomerang has recently received significant insurance proceeds as a result of the building collapse described above.

113. On information and belief, the claims against Boomerang arising out of the building collapse are sufficient to render Boomerang insolvent.

114. Plaintiff is a creditor of Boomerang.

115. Pursuant to SDCL 54-8A-7(3), Plaintiff seeks an injunction against all further disposition of assets by Boomerang.

116. To the extent assets have been transferred out of Boomerang for less than equivalent value since December 2, 2016, Plaintiff seeks to avoid and claw back all such transfers pursuant to SDCL 54-8A-7(1) to the extent necessary to satisfy Plaintiff's claim.

WHEREFORE, Plaintiff prays that the Court enter judgment in favor of Plaintiff and against Defendants as follows:

- a. Judgment against Defendants for general damages in an amount to be determined at trial;
- b. Judgment against Defendants for special damages in an amount to be determined at trial;
- c. Judgment against Legacy, Boomerang, CLP, Olympia, and Hultgren for punitive damages;
- d. For injunctive relief as requested herein;
- e. For Plaintiff's costs and disbursements herein.
- f. For prejudgment interest.
- g. For such other, further, and different relief as the Court deems just and equitable.

PLAINTIFF DEMANDS A TRIAL BY JURY

Dated at Sioux Falls, South Dakota, this 5th day of March, 2018.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.

/s/ Vince M. Roche

Vince M. Roche
Justin T. Clarke
206 West 14th Street
PO Box 1030
Sioux Falls, SD 57101-1030
Telephone: (605) 336-2880
Attorneys for Plaintiff