

CAUSE NO. \_\_\_\_\_

CROSBY WARE,

Plaintiff,

v.

SESCO CEMENT, CORP.  
AGRI-SYSTEMS d/b/a ASI INDUSTRIAL,  
LAMPSON INTERNATIONAL, LLC,  
MCRAY CRANE & RIGGING, INC.,

Defendants.

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IN THE DISTRICT COURT

\_\_\_\_ JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION, JURY DEMAND, RULE 193.7 NOTICE,  
AND APPLICATION FOR TEMPORARY RESTRAINING ORDER  
AND TEMPORARY INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Crosby Ware, files this Original Petition, Jury Demand, Rule 193.7 Notice, and Application for Temporary Restraining Order and Temporary Injunction, against the Defendant(s) identified herein and will respectfully show the Court the following:

**I.  
DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 3, and hereby motions this Court to issue a discovery control plan tailored to the circumstances of this case as promptly as reasonably possible. *See* TEX. R. CIV. P. 190.4.

**II.  
PARTIES**

2.1 Plaintiff, Crosby Ware, is an individual who resides in Harris County, Texas. He may be reached through undersigned counsel at KHERKHER GARCIA, LLP.

2.2 Defendant, Sesco Cement, Corp. (“Sesco”), is a Texas corporation registered to conduct business in Texas with its principal office, principal place of business, and corporate

headquarters located at 7300 Wingate St., Houston, Harris County, Texas 77011. Therefore, this defendant is a Texas citizen. This defendant is registered to do business in Texas and conducts a substantial amount of business in Texas on a continuous and systematic basis. This defendant may be served with process through its registered agent, Mark A Counts, 1403 Thompson St., Conroe, Texas 77301. **Plaintiff requests a citation**. Plaintiff additionally asserts all rights and requests all relief under Texas Rule of Civil Procedure 28 and demand that this defendant answer in its true name, if it differs from that outlined above.

2.3 Defendant, Agri-Systems d/b/a ASI Industrial, is a foreign corporation registered to do business in Texas and conducting a substantial amount of business in Texas on a continuous and systematic basis. This defendant may be served with process through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3136. **Plaintiff requests a citation**. Plaintiff additionally asserts all rights and requests all relief under Texas Rule of Civil Procedure 28 and demand that this defendant answer in its true name, if it differs from that outlined above.

2.4 Defendant, Lampson International, LLC, is a foreign limited liability company registered to do business in Texas and conducting a substantial amount of business in Texas on a continuous and systematic basis. This defendant may be served with process through its registered agent, Buddy A. Davidson, 8820 Highway 35 South, Liverpool, Texas 77577. **Plaintiff requests a citation**. Plaintiff additionally asserts all rights and requests all relief under Texas Rule of Civil Procedure 28 and demand that this defendant answer in its true name, if it differs from that outlined above.

2.5 Defendant, McRay Crane & Rigging, Inc., is a Texas corporation registered to conduct business in Texas with its principal office, principal place of business, and corporate

headquarters located at 8431 Mosley Road, Houston, Texas 77075. Therefore, this defendant is a Texas citizen. This defendant is registered to do business in Texas and conducts a substantial amount of business in Texas on a continuous and systematic basis. This defendant may be served with process through its registered agent, Vickie L. McRay, 7001 Easthaven, Building C, Houston, Texas 77017. **Plaintiff requests a citation**. Plaintiff additionally asserts all rights and requests all relief under Texas Rule of Civil Procedure 28 and demand that this defendant answer in its true name, if it differs from that outlined above.

### **III. JURISDICTION & VENUE**

3.1 This Court has jurisdiction of the subject matter of this action, and the amount in controversy is above its minimum jurisdictional limits. All other jurisdictional prerequisites and conditions precedent to suit have been met.

3.2 This Court has personal jurisdiction over Defendant(s) because all or a substantial part of the events giving rise to this dispute occurred in the State of Texas, and this lawsuit arises out of a tort Defendant(s) committed in the State of Texas. This Court otherwise has personal jurisdiction over Defendant(s) because one or more are citizens of Texas, conduct a substantial amount of business in the State of Texas, and have continuous, systematic contacts with the State of Texas.

3.3 This case cannot be removed to federal court because no federal question exists, and diversity does not exist between the parties. *See* 28 U.S.C. § 1441. Removal would therefore have no basis in law or fact, and an improper removal would subject Defendant(s) to an award of costs, expenses, and fees, including, but not limited to, attorney's fees under 28 U.S.C. § 1447(c).

3.4 Venue is proper in Harris County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002 because Harris County is where a substantial part of the events giving rise to this suit

occurred and is also the county of Sesco Cement, Corp.'s and McRay Crane & Rigging, Inc.'s principal offices and principal places of business. Further, Harris County is a convenient forum and venue to Defendant(s), maintaining this litigation in this forum would not work a substantial injustice on Defendant(s), and the interests of justice dictate that this litigation be maintained in this forum and venue.

#### **IV. FACTUAL BACKGROUND**

4.1 This catastrophic injury case arises from Defendants' gross negligence and conscious decision to value profits over safety during the severe thunderstorm that blasted Houston on May 16, 2024.

4.2 On information and belief, Defendant, Sesco, owns and operates the cement plant located at 7300 Wingate Street near the Ship Channel. A construction project was ongoing at the plant, namely, construction of large storage tanks. At all relevant times, Sesco retained and exercised actual control over safety on the construction project and undertook duties to ensure that the worksite was in safe condition and all operations on the worksite were conducted in a safe manner.

4.3 On further information and belief, Sesco hired, Defendant, Agri-Systems d/b/a ASI Industrial, to construct the tanks. ASI Industrial holds itself out as an industry leader in this field. At all relevant times, ASI Industrial retained and exercised actual control over safety on the construction project and undertook duties to ensure that the worksite was in safe condition and all operations on the worksite were conducted in a safe manner.

4.4 On further information and belief, Defendant Lampson supplied rigging equipment and services on the construction project, including but not limited to, large cranes and the crane operators. At all relevant times, Lampson retained and exercised actual control over safety on the

construction project and undertook duties to ensure that the worksite was in safe condition and all operations on the worksite were conducted in a safe manner.

4.5 On further information and belief, Defendant, McRay Crane & Rigging, Inc., supplied rigging equipment and services on the construction project, including but not limited to, large cranes and the crane operators. At all relevant times, McRay retained and exercised actual control over safety on the construction project and undertook duties to ensure that the worksite was in safe condition and all operations on the worksite were conducted in a safe manner.

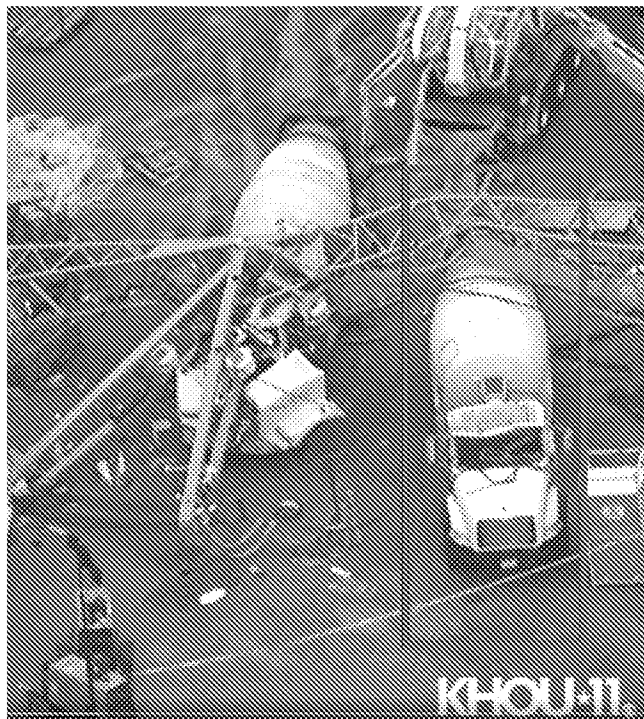
4.6 On May 16, 2024, a horrible storm was forecasted to hit Houston. And that is exactly what happened. Virtually the entire Houston Metro Area was affected. According to the National Weather Service, straight-line winds near Baytown and Galena Park peaked between 90 and 100 mph.

4.7 At all relevant times, Defendants had actual knowledge of these weather forecasts and that cranes are prohibited from operating in high wind conditions. In fact, cranes have wind meters to measure and ensure safe crane operation and provide crane operators and onsite safety personnel with real-time data regarding wind conditions to help manage crane operations and take immediate action if needed.

4.8 Despite having actual knowledge of the weather forecasts and real-time weather conditions, and the dangers associated with continuing crane and other construction operations in them, Defendants nonetheless continued with business as usual. Specifically, Defendants required Plaintiff, a cement mixer truck driver, to come to the plant to deliver cement necessary for the ongoing construction project.

4.9 As Plaintiff sat in his mixer truck waiting on direction from Defendants, wind blew over a large crane used in the construction project, which collapsed onto Plaintiff's truck, violently

slamming his body and causing him severe injuries. At all relevant times, Defendants had control, retained control, and/or exercised actual control over this crane and related operations. The following aerial photo shows Plaintiff's truck crushed by the large crane:



4.10 These defendants, individually and collectively, either took zero actions to make the premises and ongoing work activities safe or took actions that were so dangerously deficient they amounted to being nonexistent. Their decision to continue operations and make money despite extremely dangerous weather directly caused Plaintiff's injuries.

4.11 Plaintiff miraculously survived but suffered catastrophic injuries, including, but not limited to, traumatic injuries to his head, neck, and back.

4.12 At the time of and preceding this incident, Plaintiff neither caused nor contributed to this incident.

**V.**  
**CAUSES OF ACTION AGAINST DEFENDANTS**

5.1 Plaintiff incorporates all other paragraphs by reference here fully.

5.2 Plaintiff would show that Defendants had ownership and/or control over the premises, instrumentality, and/or activity in question and thus had a duty to exercise the degree of care that a person of ordinary prudence would use to avoid harm under circumstances similar to those described herein.

5.3 Plaintiff's injuries were proximately caused by Defendants' negligent, careless and reckless disregard of this duty.

5.4 The negligent, careless, and reckless disregard and breach of this duty consisted of, but is not limited to, the following acts and omissions:

- a. failing to provide a safe work environment for contractors, including Plaintiff at the facility;
- b. failing to perform crane and construction operations and equipment inspections/maintenance in a safe, reasonable, and prudent manner;
- c. failing to maintain, follow, or enforce policies and procedures for safe crane and construction operations and equipment inspections/maintenance;
- d. failing to recognize and remediate hazards;
- e. failing to provide proper, safe equipment;
- f. failing to institute precautionary measures to protect individuals working at the facility in question and in and around the equipment in question;
- g. failing to adequately warn or make safe dangers or conditions of which Defendants had actual or constructive knowledge;
- h. failing to maintain its equipment in good working order;
- i. failing to secure the crane;
- j. undertaking and assuming a duty to make safe dangerous conditions on the premises, and failing to use reasonable care in doing so;

- k. creating a dangerous condition and failing to prevent injury to others, where it reasonably appeared or should have appeared to Defendants that Plaintiff, in exercise of their lawful rights, were likely to have been injured by creation of such dangerous situation, and failing to correct, make safe, or adequately warn about this condition;
- l. violating industry standards and best practices for safe operations and maintenance of equipment;
- m. failing to properly conduct rigging operations;
- n. failing to properly monitor weather conditions;
- o. failing to ensure appropriate weather conditions for use of cranes;
- p. failing to develop, implement, train on, and execute upon an inclement weather plan;
- q. negligently implementing policies and procedures and/or failing to adequately implement policies and procedures to ensure operations performed on the construction project in potentially high wind conditions were performed in a safe manner or shut down until conditions improved;
- r. failing to warn Plaintiff about the extreme dangers involved in entering and working on the premises, given the weather conditions, particularly related to high winds, straight-line winds, microbursts, and/or wind shear;
- s. failure to stop work in dangerous conditions;
- t. failing to properly hire, train, supervise, monitor and retain its employees, contractors, and agents;
- u. negligently hiring and retaining contractors;
- v. failing to use ordinary care as a reasonable company would under the same or similar circumstances; and
- w. such additional acts of negligence and gross negligence, which will be established as this case progresses.

5.5 Plaintiff further asserts the doctrine of *res ipsa loquitur*.

5.6 Further, the acts or omissions described above, when viewed from Defendants' standpoint, involved an extreme degree of risk considering the probability and magnitude of the



potential harm to Plaintiff and others. Defendants had actual, subjective awareness of this risk but proceeded with conscious indifference to the rights, safety, and welfare of Plaintiff and others.

5.7 Plaintiff would further show that the injuries and damages that Plaintiff sustained as a result of the incident in question were caused by the gross negligence of Defendants acting by and through their employees, agents, officers and representatives in the course and scope of their employment for said Defendants. Plaintiff would further show that Defendants ratified and failed to repudiate their agents' gross negligence.

5.8 Additionally, Defendants ratified and failed to repudiate grossly negligent acts of its employees, agents, and vice principals.

5.9 Moreover, Defendants hired, retained, and entrusted critically important work to incompetent and reckless employees, agents, and vice principals who consciously disregarded their duties of safety.

5.10 As such, Defendants are grossly negligent and should be subjected to exemplary damages.

## **VI. DAMAGES**

6.1 Plaintiff incorporates all other paragraphs by reference here fully.

6.2 Plaintiff, Crosby Ware, seeks recovery of the following damages, which were a direct and proximate result of the occurrence made the basis of this lawsuit and Defendants' acts and omissions outlined above:

- a. Pain and suffering sustained in the past and future;
- b. Mental anguish sustained in the past and future;
- c. Physical impairment sustained in the past and future;
- d. Disfigurement sustained in the past and future;

- e. Past and future reasonable and necessary medical expenses;
- f. Past and future reasonable and necessary cost of medical monitoring;
- g. Prejudgment and post-judgment interest;
- h. Exemplary damages; and
- i. Any and all other damages to which Plaintiff is justly entitled as shown through the course of this proceeding.

## **VII.**

### **RULE 47 STATEMENT OF MONETARY RELIEF SOUGHT**

7. Plaintiff prefers that the jury determine the fair amount of compensation for Plaintiff's damages. It is too early in this case to assess the full nature and scope of Plaintiff's damages, and Plaintiff places the decision regarding the amount of compensation to be awarded in the jury's hands. Rule 47 of the Texas Rules of Civil Procedure, however, requires Plaintiff to provide a statement regarding the amount of monetary relief sought. Accordingly, Plaintiff states that monetary relief of over \$1,000,000, in an amount to be determined by the jury, is being sought.

## **VIII.**

### **RULE 193.7 NOTICE**

8. Pursuant to Texas Rule of Civil Procedure 193.7, Plaintiff hereby gives notice that Plaintiff intends to use all discovery instruments produced in this case at trial. Such discovery documents include, but are not limited to, all documents Defendants have produced in response to Plaintiff's written discovery requests.

## **XI.**

### **DEMAND TO PRESERVE EVIDENCE**

9. Plaintiff hereby requests and demands that Defendants and their agents, attorneys, and insurers preserve, maintain, and place a litigation hold on all documents, communications, tangible things, and electronically stored information that arise out of or relate to the incident made

the basis of this suit. Plaintiff further requests and demands that Defendants not destroy, alter, move, modify, reconfigure, replace, destroying, or discard of any equipment or instrumentality that was involved in or present at the subject property at the time of the incident in question, and any other physical evidence, documents, communications, electronically stored information, and telematics data related to the subject crane collapse and/or work taking place at the time of the incident. Failure to maintain such items will constitute “spoliation” of the evidence and may subject Defendants to sanctions.

**X.  
DUTY TO DISCLOSE**

10. Pursuant to Texas Rule of Civil Procedure 194.1, Defendants are required to provide the information or material described in Rule 194.2, 194.3 and 194.4 without awaiting a discovery request from Plaintiff.

**XI.  
DEMAND FOR JURY TRIAL**

11. Plaintiff hereby demands a jury trial on this matter and tenders the appropriate jury fee.

**XII.  
APPLICATION FOR TEMPORARY RESTRAINING ORDER  
AND INJUNCTIVE RELIEF**

12.1 Based on reasonable information and belief, Plaintiff asserts that Defendants may change, alter, destroy or modify the evidence related to this crane collapse. Pursuant to Texas Rule of Civil Procedure 680, Plaintiff asks this Court to issue a temporary restraining order prohibiting Defendants from altering, moving, modifying, reconfiguring, replacing, destroying, or disposing of any equipment that was present at the facility in question or near the facility in question on May 16, 2024, including, but not limited to, the subject cranes, all electronic storage devices and

operational logs related to the subject cranes, all appurtenances, weather monitoring devices, tools, machines, permits, documents, and all equipment and appurtenances near and/or involved with the incident in question until Plaintiff is given an opportunity to inspect such evidence. This evidence constitutes tangible, relevant evidence materially related to the incident complained of having injured Plaintiff. In order for Plaintiff to properly investigate and pursue these claims, and recover damages and see that justice is done, this Court should restrain Defendant, its agents, servants, employees, contractors, contract employees, attorneys, affiliates, and those acting in concert with or in representation of said Defendant from changing altering, destroying, or modifying any evidence related to the explosion and fire.

12.2 If Defendant is permitted to change, alter, destroy, or modify any evidence related to this incident, Plaintiff will lose the opportunity to inspect the evidence, and will be unable to prosecute the claim, and, as a result, Plaintiff will be deprived of adequate remedies at law. Defendant is incapable of responding in monetary damages if the evidence is not preserved because Plaintiff would then have no evidence to demonstrate such wrongful actions. Upon granting of the Temporary Restraining Order, Plaintiff will post bond, as necessary.

12.3 There is no adequate remedy at law available to Plaintiff to prevent the Defendants from changing, altering, modifying, or destroying evidence, unless the Court grants immediate relief restraining such conduct. Plaintiff pray that this Court enter a Temporary Restraining Order preserving the status quo by restraining Defendants from in any way changing, altering, destroying, or modifying the evidence related to crane collapse, but not limited to, the subject cranes, all electronic storage devices and operational logs related to the subject cranes, all appurtenances, weather monitoring devices, tools, machines, permits, documents, and all

equipment and appurtenances near and/or involved with the incident in question. Plaintiff also seeks an order preserving:

- Any and all photographs, videos, drone footage, aerial footage, and digital scans of the scene of the incident, parties involved, and/or equipment involved in the incident;
- Any and all stickers, safety slogans, warnings, labels, etc. attached to or placed on any equipment involved in the incident;
- Any and all documents, communications, electronically stored information, and tangible things regarding the scene of the incident, parties, and/or equipment involved in the incident;
- Any and all documents, communications, electronically stored information, and tangible things relating to the incident, including but not limited to OSHA records or records exchanged with any other governmental agency in connection with the incident in question;
- Any and all emails, text messages, SMS messages, social media messages, electronic data, documents, statements, diaries, calendar entries, memos, incident reports, call slips or telephone messages, audio recordings, facsimiles, voicemail messages, correspondence, and all other communications related to the incident;
- Any and all crane maintenance logs, crane maintenance and repair records, crane operational logs, crane operational data, crane weather data, crane inspection reports, crane annual inspection reports, crane operating manuals, audio recordings and any transcript of any recorded statements, and mobile, radio, and dispatch records related to the incident; and
- All permits, job safety analyses, site safety plans, emergency weather response plans, inspection reports, and other documents relating to the operations taking place at the time of the incident in question.
- All electronic data and telematics data showing how, when, and by whom the subject cranes had been operated on the day of the incident and in the 30 days before and after.
- All wind meter data and other electronic data showing wind speeds and wind speed alerts at the subject premises on the day in question and in the 30 days before.
- All documents, communications, electronically stored information, and tangible things arising out of, relating to, and evidencing all weather and storm forecasts, weather warnings, and all other weather data in Defendants' possession or otherwise accessible to Defendants on the day of the incident and in the 30 days before.

12.4 This tangible and physical evidence is relevant and reasonably necessary to determine the cause of the incident made the basis of this suit, the loss of which would irreparably harm Plaintiff.

**XIII.  
REQUEST FOR HEARING  
ON TEMPORARY RESTRAINING ORDER**

13. Plaintiff further prays for this Court to set a hearing on Plaintiff's Application for Temporary Restraining Order and subsequent injunctive relief in this matter.

**XIV.  
REQUEST FOR TEMPORARY INJUNCTION**

14.1 The preceding paragraphs are incorporated herein for all purposes.

14.2 Plaintiff also asks the Court the set its application for temporary injunction for hearing, and after the hearing, issue a temporary injunction against Defendants as follows:

Enjoining Defendants and all persons acting in concert or participating with Defendants or under Defendants' direction or control, including any current and/or former officers, directors, members, partners, employees, agents, attorneys, affiliates, predecessors, successors, assigns, agents, attorneys, affiliates, predecessors, successors, assigns and/or representative, and any other individuals or entity with any authority whatsoever, whether actual or apparent from changing, altering, destroying, or modifying the evidence related to the explosion and fire including, but not limited to, the storage tank, the tank's appurtenances, gas monitoring devices, tools, machines, permits, documents, and all equipment and appurtenances near and/or involved with the incident in question until Plaintiff is given an opportunity to inspect such evidence.

**XV.  
REQUEST FOR INSPECTION**

15. Plaintiff also prays that this Court issue an Order permitting the Plaintiff's attorneys and investigative staff, including, but limited to, consulting experts, to have access to the incident scene and operating unit (and all equipment and appurtenances present and related) where the explosion occurred to inspect, photograph, and film the scene, as well as conduct any necessary

testing. Such access for the purpose of inspection, photographing, and filming is essential in order for the Plaintiff to prepare this case for jury trial and to see that justice is done.

**XVI.  
RESERVATION OF RIGHTS**

16. The above allegations against Defendants are made acknowledging that investigation and discovery, although undertaken, are continuing in this matter. As further investigation and discovery are conducted, additional facts may be uncovered that necessitate further, additional, and/or different allegations, including the potential of adding additional parties to the case or dismissing parties from the case. The right to do so, under Texas law, is expressly reserved.

**XVII.  
PRAYER**

17. For these reasons, Plaintiff prays that the Court grant the motion for Temporary Restraining order and Temporary Injunction. Plaintiff further prays that Defendants be cited to appear and answer herein, and, upon a final hearing of the cause, judgment be entered for the Plaintiff and against Defendants for:

- a. Actual damages above the jurisdictional minimum of the Court, further outlined above;
- b. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- c. All costs of court;
- d. Exemplary damages; *and*
- e. All other relief to which Plaintiff is justly entitled.

Respectfully submitted,

**KHERKHER GARCIA, LLP**

By: /s/ Jesus Garcia, Jr.

Steve Kherkher

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**ATTORNEYS FOR PLAINTIFF**



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Steve Kherkher on behalf of Jesus Garcia, Jr.

Bar No. 24027389

skherkher-team@kherkhergarcia.com

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#### Case Contacts

| Name         | BarNumber | Email                           | TimestampSubmitted    | Status |
|--------------|-----------|---------------------------------|-----------------------|--------|
| Jesus Garcia | 24027389  | JGarcia-team@kherkhergarcia.com | 5/19/2024 12:05:48 PM | SENT   |



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this May 21, 2024

Certified Document Number: 114468068 Total Pages: 17

Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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