

**IN THE CURCUIT COURT FOR THE STATE OF TENNESSEE
FIRST JUDICIAL DISTRICT, UNICOI COUNTY**

ALEXA PETERSON, individually and as)
next of kin of JOHNNY WAYNE)
PETERSON, Deceased,)
)
Plaintiff,)
)
v.)
)
IMPACT PLASTICS, INC. and)
GERALD O’CONNOR, JR.)
)
Defendants.)
)
)

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

This lawsuit arises from the tragic events at Impact Plastics in Erwin, Tennessee, on September 27, 2024. Several employees lost their lives because of the reckless and negligent conduct of Impact Plastics and its senior management.

Impact Plastics CEO Gerald O’Connor made Johnny and other employees come to work that day to meet production quotas. Orders had to go out. But as rain poured and the water rose, Johnny and his coworkers asked to leave. Instead of evacuating or allowing employees to leave, the company simply told employees to move their cars to higher ground. By then, it was already too late.

While most businesses in the area shut down to protect their employees, Impact Plastics and Mr. O’Connor chose profit. They had no emergency action plan, despite the factory being located in a federally-designated flood plain. They ignored every warning, putting lives in danger to fill an order.

Impact Plastics, led by Mr. O'Connor, chose greed over the safety of its workers. The deaths caused by Hurricane Helene's flooding were not just tragic—they were entirely preventable.

INTRODUCTION

1. Plaintiff Alexa Peterson brings this lawsuit to recover damages on account of the injuries to, and the wrongful death of, her father, Johnny Peterson, arising out of the events leading up to and including his death at the Impact Plastics facility, which is located in Unicoi County.

2. Through this lawsuit, based upon information and belief, forensic investigation, and other investigations and discovery conducted to date, Ms. Peterson asserts that the Defendants are responsible for the deaths of Johnny and the five other Impact Plastics employees who lost their lives during the flooding.

PARTIES

3. At the time of his death on September 27, 2024, Johnny Wayne Peterson was an unmarried resident of Tennessee. He was a father of four children, one of whom is a minor.

4. Plaintiff Alexa Peterson is a resident of Tennessee and is the oldest child of Johnny.

5. Ms. Peterson has standing as next of kin to bring a wrongful death action for Johnny under Tennessee Code Annotated § 20-5-107.

6. Upon information and belief, Defendant Impact Plastics, Inc., is a Tennessee corporation with its principal place of business located at 1070 South Industrial Drive, Suite A, Erwin, Tennessee 37650-3656.

7. Upon information and belief, Gerald O'Connor, Jr., is the Chief Executive Officer of Impact Plastics, Inc., resides in Unicoi County, Tennessee, and owns the property and facility where Impact Plastics is located.

JURISDICTION

8. This Court has subject matter jurisdiction over this case under Tenn. Code Ann. § 16-10-101.

9. This Court has personal jurisdiction over the Defendants under Tennessee Code Annotated § 20-2-223 because Defendants caused tortious injury by acts and omissions in this State.

10. Pursuant to Tennessee Code Annotated § 20-4-101, venue is proper in this Court because Defendants reside in Unicoi County, Tennessee, and because each alleged act or omission occurred in the county.

FACTUAL ALLEGATIONS

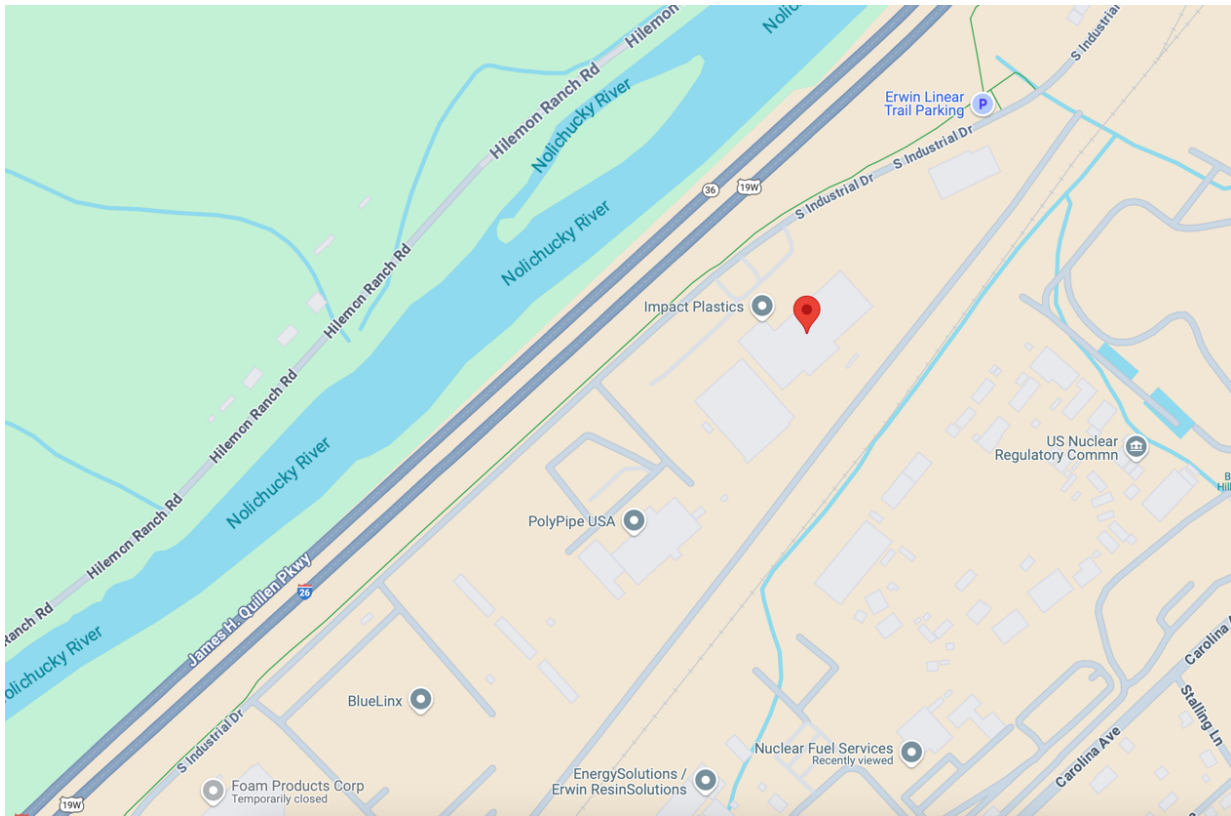
A. Defendant Impact Plastics, Inc.

11. Impact Plastics was founded in 1987 and is an established manufacturer of plastic injection molded components. The business is in Riverview Industrial Park, located at 1070 South Industrial Drive, Erwin, Tennessee:



12. The Impact Plastics location in the Riverview Industrial Park consists of more than a quarter of a million square feet of manufacturing and storage facilities.

13. The Riverview Industrial Park in which Impact Plastics is located is just a few dozen yards from the Nolichucky River. Only a parking lot and two roads—South Industrial Drive and James H. Quillen Parkway—separate Impact Plastics from the river:



14. The Federal Emergency Management Agency (“FEMA”) has designated the area in which Impact Plastics was located as a Flood Plain. Exhibit A, FEMA Flood Map.

15. Impact Plastics is located in an area also designated as a Flood Plain by the Tennessee Emergency Management Agency (“TEMA”). The flood maps are created by TEMA and FEMA to designate which areas “have the highest risk of flooding”:



16. Impact Plastics is, as shown by the designation of its facility in a Flood Plain, at a high risk for flooding.

17. Upon information and belief, Impact Plastics was required to have and did pay for specialty flood insurance due to its location in a designated Flood Plain.

18. Upon information and belief, Defendant Gerry O'Connor knew Impact Plastics was located in a Flood Plain that faced an increased risk of flooding.

19. In fact, the parking lot of Impact Plastics routinely filled with standing water due to its location in a low area between the river and road. Defendant O'Connor and senior management knew this.

20. Federal Occupational Safety and Health Administration (“OSHA”) regulations require every business with 10 or more employees to have an Emergency Action Plan (“EAP”) for emergencies likely to affect the business, including flooding. 29 C.F.R. § 1910.38.

21. The Tennessee Occupational Safety and Health Administration (“TOSHA”) has adopted the same federal standards and requires an EAP as well.

22. An EAP is a written document required by particular OSHA standards. 29 CFR 1910.38(a). The purpose of an EAP is to facilitate and organize employer and employee actions during workplace emergencies.

23. The EAP must address “emergencies that the employer may reasonably expect in the workplace. Examples are: fire; toxic chemical releases; hurricanes; tornadoes; blizzards; *floods*; and others.” 29 C.F.R. § Pt. 1910, Subpt. E, App. (emphasis added).

24. Employers must “review the [EAP] with each employee covered by the plan” (1) “[w]hen the plan is developed or the employee is assigned initially to a job;” (2) “[w]hen the employee’s responsibilities under the plan change; and” (3) “[w]hen the plan is changed.” 29 CFR 1910.38(f).

25. Upon information and belief, Defendants had no EAP to safely evacuate or help its employees in the event of an emergency, including flooding. And Defendants did not review any EAP for flooding with any employees.

B. Hurricane Helene

26. Hurricane Helene became the deadliest hurricane to strike the mainland United States since Hurricane Katrina in 2005.

27. On the morning of September 25, 2024, Hurricane Helene was upgraded to a Category 1 hurricane as it approached the Gulf states.

28. Evacuations and preparation began immediately. Hurricane warnings were posted throughout much of Florida, along with the first alerts for flash and urban flooding across much of the southeastern United States, reaching as far as the southern Appalachians and the Tennessee Valley. In addition to Florida, the coast of Georgia was placed under tropical storm warnings.

29. President Joe Biden swiftly authorized a federal disaster declaration for 61 counties across Florida.

30. Virginia Governor Glenn Youngkin also preemptively requested federal emergency assistance before Helene reached the region.

31. The next day, Hurricane Helene made landfall in Florida as a Category 4 hurricane. It caused widespread destruction and resulted in significant fatalities across the southeastern United States.

32. On September 25, 2024, before the hurricane made landfall, Western North Carolina was placed under tropical storm warnings. Buncombe County officials declared a local state of emergency for low-lying areas, such as Asheville and Montreat.

33. That same day, North Carolina Governor Roy Cooper declared a State of Emergency. Governor Cooper sent troops to areas most likely to be affected.

34. By September 25, the National Weather Service office in Morristown, Tennessee—just west of Unicoi—was already warning of an “extreme risk of life-threatening flooding” along the Tennessee-North Carolina border.

35. By September 25, 2024, most of east Tennessee, including Unicoi County, was already under a flood watch.

36. On September 25, 2024, the Unicoi County public schools issued an alert that they would be closed the following day out of concern for dangerous flooding. Unicoi County public schools were also closed September 27, 2024.

37. On September 25, 2024, Johnny received an email from Impact Plastics CFO Susan Chambers. The email was also sent to Defendant O’Connor and nine other Impact Plastics employees.

38. The subject of CFO Chambers’ email was titled “Friday,” which was September 27, 2024. The body of the email read: “Please make sure Friday when you leave to turn off your computers since the power will be down over the weekend. Susan.”

39. Johnny and other employees were surprised and upset by the email and by the general expectation that they show up for work on September 27, with Hurricane Helene fast approaching their county.

40. Impact Plastics chose to remain open on September 27, 2024, because the company wanted to meet order deadlines.

41. On September 26, 2024, another business in Riverview Industrial Park, Foam Products Corporation (located 0.4 miles from Impact Plastics, also on South Industrial Drive), announced it would be closed on September 26 and 27. It was the company's first weather closure in its 15-year history.

42. On September 26, 2024, the Tennessee Emergency Management Agency ("TEMA") issued Flash Report #1 for Hurricane Helene.

43. By September 26, 2024, the Nolichucky River was already beginning to flood.

44. On September 27, 2024, all public buildings in Unicoi County were closed.

45. Impact Plastics made all first shift employees report at 7:00 a.m. on September 27, 2024, to ensure that quotas were met and that orders could go out later that day.

46. Upon information and belief, Defendant O'Connor personally approved of and acquiesced to the plan to make their employees come to work on September 27 to complete orders.

47. On the morning of September 27, 2024, Impact Plastics employees began to arrive for the first shift as early as 6:20 a.m.

48. The first shift officially began at 7:30 a.m. As employees, including Johnny, began to arrive, rain was already falling heavily.

49. It was not long before the emergency alerts began ringing on cell phones throughout the factory floor and in the adjacent office where company officers worked.

At approximately 8:50 a.m., a Flash Flood Warning was issued for Erwin, Tennessee by the National Weather Service, urging people to find high ground and remain there.

50. At approximately 9:14 a.m., another Flash Flood Warning was issued for Erwin by the National Weather Service imploring people to move to higher ground.

51. Impact Plastics senior management, including Defendant O'Connor, were aware of these alerts but took no action.

52. The rain and winds continued to grow heavier. At approximately 9:20 a.m., the Flash Flood Warnings were upgraded to Flash Flood Emergency for Erwin and Unicoi County by the National Weather Service and automatically sent to cell phones in the area. These alerts were received by numerous employees at Impact Plastics at the time, including Impact Plastics senior management and Defendant O'Connor, none of whom took any action.

53. Multiple Impact Plastics employees were greatly distressed that they were not allowed to leave and that there was no plan for the dangerously developing weather. They asked whether they could leave, and they were not given permission to do so.

54. Employees were instructed that the shift would proceed as usual. At approximately 9:28 a.m., as emergency alerts were pouring in, Production Controller Sarah Vance sent an email to Johnny Peterson, CFO Chambers, and four other employees rescheduling "Tool Meeting" to 1:00 p.m. The expectation was that everyone would still be at work come that time.

55. By this time, it had been raining hard for hours and water was leaking through the ceiling and pooling in many places throughout the factory floor.

56. At approximately 9:38 a.m., Unicoi County Hospital, which is located just over a mile from Impact Plastics, was instructed by county emergency management to begin emergency evacuations.

57. Beginning around 10:00 a.m., as the rain relentlessly poured, emergency cell phone notifications continuously rang throughout the factory floor as employees continued to work to meet the quota. The alerts were coming from the Tennessee Emergency Management Agency, urging all who could to evacuate and flee to higher ground.

58. With the emergency alerts blaring throughout the factory floor, Defendant O'Connor and senior management remained focused on getting orders done and refused to let employees leave.

59. Shortly after 10:00 a.m., CFO Chambers, at the direction of Defendant O'Connor, came to the factory floor and instructed all employees to move their cars because the parking lot was getting "a little full of water."

60. Impact Plastics employees asked whether they could leave and were not given permission. Instead, they were only told that they could move their cars to the higher ground portion of the parking lot.

61. Around 10:30 a.m., the Impact Plastics building lost power. Employees began to panic and fear for their lives. Still, Defendant O'Connor and senior management refused to act despite still having time to do so.

62. When Impact Plastics employees went to move their cars, they captured cell phone video of their cars in the parking lot. By this time, water levels in the Impact Plastics parking lot were too high to allow vehicles to be safely operated:





63. With their vehicles effectively submerged under water and the only road leading in and out of the industrial park blocked, the Impact Plastic employees, including Johnny, began to fear they were trapped.

64. At this point, CFO Chambers appeared outside the front entrance where employees were gathered and trying to move cars. One employee asked, within earshot of other employees, whether they could leave. CFO Chambers said “no, not until I speak to [Defendant O’Connor].”

65. Still, despite knowing the dire circumstances, Defendant O’Connor and senior management failed to release employees from work, even as their cars shifted with the rising water levels just outside in the parking lot.

66. The need to evacuate was apparent to all employees and even the family members who knew their loved ones were at work there that day. At approximately 10:51 a.m., Plaintiff Alexa Peterson texted her father, Johnny, asking “Are they shutting it down for the day?” to which Johnny responded, “they better.” Johnny responded in this fashion because Defendant O’Connor and senior management had not dismissed employees from the job by 10:51 a.m.

67. At approximately 10:52 a.m., Johnny texted videos to his daughter, Plaintiff Alexa Peterson, of the flooded parking lot and a flooded Industrial Park Drive.

68. By 11:12 a.m., it became clear to Impact Plastics employees that they were trapped by the rising water levels. Johnny’s father texted him asking “You ok? get your car out?” to which Johnny responded “I moved it. We can’t get out.”

69. By 11:35 a.m., with his employees trapped and fearing for their lives, Defendant O’Connor and other senior management had stealthily exited the building

out of the back door after securing some business documents from their own private offices.

70. Around this same time, Johnny understood that he and his fellow employees were dismissed from work. He and others immediately started trying to find ways to leave the industrial park. Johnny went back inside the factory in an effort to help other employees trapped inside who were also trying to leave after being dismissed. As he searched for others, he texted Plaintiff Alexa Peterson photographs of the break room, which was under water.

71. At approximately 11:42 a.m., Johnny texted his daughter again that he was back inside of the building and trapped. He texted her “can’t get out” and that “it rose so fast.”

72. At approximately 11:59 a.m., Johnny texted his father a photo showing severe flooding on the street with a nearly submerged cargo trailer.

73. As water levels continued to rise, other Impact Plastic employees trying to leave work climbed into the bed of a semi-trailer parked on South Industrial Drive—which is not located on Impact Plastics property—and captured photos on their phones as they waited to be rescued:



74. By approximately 12:13 p.m., Johnny was still trying to leave work and had made his way into the semi-trailer off company property on South Industrial Drive and was able to call his father for 17 seconds. He also texted him video of the flooding:



75. The flood levels continued to rise, and the water began to tear through the industrial park, sweeping away employee vehicles and those who could not manage to hang on to the semi-trailer rails. Johnny managed to call his father again for one minute at 12:44 p.m.

76. By 12:57 p.m., nothing was left of the Impact Plastics parking lot. Telephone poles were falling; employee vehicles were gone; and the walls of the building were beginning to cave. Johnny sent video to his father from the truck bed of a semi-trailer showing severe rushing flood waters with Impact Plastics in the background:



77. At 1:01 p.m., Plaintiff Alexa Peterson texted her father “Where are y’all at?” to which Johnny responded, “In bed 18 wheeler.” This was the semi-trailer that was located off of company property on South Industrial Drive.

78. Johnny knew he could not survive much longer as the water levels continued to swell and pummel the semi-trailer. He texted his daughter for the last time at 1:17 p.m. “I love you allllll,” he managed to type out. This was the last text Alexa Peterson received from her father.

79. Johnny’s father tried in desperation to reach emergency services but could not. At 1:27 p.m., he asked his son “You ok,” to which his son responded “Not for Long.” This was the last text Johnny sent to anyone.

80. Shortly after sending these texts, Johnny was swept away by the overwhelming flood waters and drowned. His body was recovered by a search and rescue team off Impact Plastics property days later.

81. In total, 11 workers from Impact Plastics were swept away in floodwaters and six are confirmed to have perished.

82. On October 4, 2024, Defendant O’Connor released a statement that “no one perished on company property.”

83. The day after the flood, two young employees who survived went back to Impact Plastics to try to locate their vehicles. As they approached, they saw Gerry standing near the railroad tracks by the back of his building. When Gerry saw them, he turned and immediately yelled at them to leave and threatened to have them arrested if they got any closer to his property.

CAUSES OF ACTION

COUNT ONE

Wrongful Death – Negligence (Impact Plastics and Gerald O'Connor, Jr.)

84. Plaintiff incorporates each and every preceding paragraph as if restated in full.

85. The physical injuries to and ultimate death of Johnny Peterson were the result of negligence on the part of Defendant O'Connor and Impact Plastics, including its agents and officers, the actions of whom it is responsible.

86. Impact Plastics had a non-delegable duty to exercise reasonable care to avoid placing its employees, including Johnny, in physical danger.

87. Defendant O'Connor had a duty to exercise reasonable care to avoid placing those under his supervision and working within a premises he owned in physical danger.

88. Impact Plastics and Defendant O'Connor knew that Hurricane Helene was causing heavy rainfall in the area in which its facility was located.

89. Impact Plastics and Defendant O'Connor knew that the company's facility was located in an area designated as a flood risk by FEMA and TEMA.

90. Impact Plastics and Defendant O'Connor knew or should have known that forcing employees to be present at work at the facility on September 27, and refusing to dismiss them to allow them to leave in a timely manner before the flooding, would result in serious bodily injury or death.

91. As early as September 25, 2024, Impact Plastics and Defendant O'Connor knew that having employees at the factory during Hurricane Helene placed them in danger.

92. Defendants breached their duty by, among other actions and inactions, forcing employees to be present for work on September 27, refusing to allow them to leave when Flash Flood Warnings were first issued as early as 8:50 a.m., and by both failing to provide a plan for evacuating from the facility and failing to provide aid to employees who were trapped and unable to escape due to rising water levels.

93. Johnny was not injured and did not die on his employer's premises but rather on the only available route from the workplace after he was dismissed from work.¹

94. Johnny's injuries and death were a proximate result of the Defendants' negligent and reckless actions and omissions.

95. The actions and omissions of Impact Plastics and Defendant O'Connor were reckless and done with a conscious disregard of a substantial and unjustifiable risk of harm to Johnny and others, thereby entitling Plaintiff to an award of punitive damages.

96. Impact Plastics and Defendant O'Connor were aware or should have been aware of a substantial and unjustifiable risk that the flooding on September 27, 2024 would cause the death of Johnny and other company employees.

¹ See *Taylor v. BGL Mining Co.*, No. 01S01-9604-CH-00066, 1997 WL 72125, at *1 (Tenn. Feb. 21, 1997) (finding that such an injury "was not in the course of [] employment").

97. The risk was of such a nature and degree that Impact Plastics' and Defendant O'Connor's failure to perceive it constituted a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances.

98. The failure of Impact Plastics and Defendant O'Connor to perceive the substantial and unjustified risk posed by forcing Impact Plastics employees, including Johnny, to come to work, remain at work during the flood, and to work there without a plan for safely evacuating during a flood was the cause of their deaths, in violation of Tenn. Code Ann. § 39-13-212.

99. Because Defendants' acts and omissions were criminal under Tennessee law, the limitation on the amount of noneconomic damages imposed by Tenn. Code Ann. § 29-39-102 does not apply to this action.

100. Plaintiff seeks damages for wrongful death as permitted by Tennessee law, including damages for the pain and suffering that Johnny experienced before his death, as well as damages for funeral expenses and the pecuniary value of his life, including loss of earning capacity and the loss of society, companionship, comfort, guidance, and other losses experienced by Plaintiff by reason of his death.

COUNT TWO

Wrongful Death – Negligence *Per Se* for Failure to Maintain an Emergency Action Plan (Impact Plastics)

101. Plaintiff incorporates each and every preceding paragraph as if restated in full.

102. OSHA and TOSHA regulations imposed a duty upon Impact Plastics to adopt and maintain an EAP.

103. Upon information and belief, Impact Plastics did not have an EAP in place to address the potential for flooding or how to respond to flooding at the facility and company property.

104. The failure of Impact Plastics to have an EAP violated OSHA and TOSHA regulations, including 29 C.F.R. § 1910.38.

105. The failure of Impact Plastics to adopt and maintain an EAP, and its violation of 29 C.F.R. § 1910.38, constituted negligence *per se*.

106. In the alternative, upon information and belief, Impact Plastics did not properly inform employees of any EAP to address the potential for flooding or how to respond to flooding at the facility and company property.

107. The failure of Impact Plastics to properly inform its employees of such an EAP violated OSHA and TOSHA regulations, including 29 C.F.R. § 1910.38.

108. The failure of Impact Plastics to properly inform its employees of such an EAP, and its violation of 29 C.F.R. § 1910.38, constituted negligence *per se*.

109. As a result of this negligence, Johnny and other employees died.

110. Johnny and his fellow employees who died and were injured in the flooding were members of the class of persons that OSHA and TOSHA regulations requiring an EAP were designed to protect.

111. Johnny was not injured and did not die on his employer's premises but rather on the only available route from the workplace after he was dismissed from work.

112. Impact Plastics knew or reasonably should have known that its facility and property was located in a FEMA-designated Flood Plain, posing a higher risk of flooding.

113. As early as September 25, 2024, Impact Plastics knew or reasonably should have known that Hurricane Helene posed a severe risk of flooding.

114. Impact Plastics reasonably should have expected flooding at its facility and on its property on September 27, 2024.

115. When flooding began on the morning of September 27, 2024, Impact Plastics reasonably should have known of the extreme danger posed to employees at its facility and on its property.

116. The actions and omissions of Impact Plastics were reckless and done with a conscious disregard of a substantial and unjustifiable risk of harm to Johnny and others, thereby entitling Plaintiff to an award of punitive damages.

117. Johnny's injuries and death were a proximate result of the failure of Impact Plastics to adopt and maintain an EAP as required by OSHA and TOSHA.

118. In the alternative, Johnny's injuries and death were a proximate result of the failure of Impact Plastics to properly inform its employees of such an EAP as required by OSHA and TOSHA.

COUNT THREE

Wrongful Death – Premises Liability (Impact Plastics and Gerald O'Connor, Jr.)

119. Plaintiff incorporates each and every preceding paragraph as if restated in full.

120. Impact Plastics, as a business and tenant of 1070 South Industrial Drive in Erwin, Tennessee, and Defendant O'Connor, as the owner and manager of the property located at 1070 South Industrial Drive in Erwin, Tennessee where Impact Plastics operated, owed employees a duty to use reasonable care to prevent injuries caused by dangerous conditions on the property.

121. Defendant Impact Plastics, through its senior management, and Defendant O'Connor, each had knowledge of the heightened risk of flooding on the property posed by Hurricane Helene. They knew of the elevated risk prior to September 27 but also on that day as the flooding began and water levels rose.

122. Johnny and other Impact Plastics employees died and were injured as a direct and proximate cause of the hazardous flooding condition on the property maintained and managed by both Defendants and owned by O'Connor.

123. Johnny was not injured and did not die on his employer's premises but rather on the only available route from the work place after he was dismissed from work.

124. The deaths and injuries of Johnny and the other employees did not arise directly from their employment duties but rather from the dangerous flooding condition of the premises itself.

125. Defendants' actions were reckless and done with a conscious disregard of a substantial and unjustifiable risk of harm to Johnny and others, thereby entitling Plaintiff to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands a trial of this cause by a jury of twelve (12) and pray for a determination of the following:

- A. that the Defendants be cited to appear and answer;
- B. that judgment be entered against the Defendants for the compensatory damages in an amount to be determined at trial;
- C. that judgment be entered against the Defendants for the punitive damages in an amount to be determined at trial;
- D. that Plaintiff is entitled to all damages listed above in an amount not less than twenty-five million dollars (\$25,000,000);
- E. that pre-judgment and post-judgment interest be ordered;
- F. that all costs be taxed to Defendants;
- G. that Plaintiff be awarded court costs, including discretionary costs; and
- H. that Plaintiff be awarded such other and further relief as this Court deems necessary to effectuate justice between the parties.

Dated: October 14, 2024

Respectfully submitted,

/s/ Alex Little

J. Alex Little (TN BPR #29858)

Zachary C. Lawson (TN BPR #36092)

John R. Glover (TN BPR #37772)

Litson PLLC

54 Music Square East, Suite 300

Nashville, Tennessee 37203

Telephone: 615-985-8205

alex@litson.co | zack@litson.co | jr@litson.co

Attorneys for Plaintiff

COST BOND

Undersigned agrees to act as surety for costs in this cause.

/s/ Alex Little _____
J. Alex Little