

STATE OF NORTH CAROLINA

COUNTY OF ROBESON

FILED

2020 FEB -6 PM 2:51

ROBESON COUNTY, O.S.C.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

20 CVS

20CV 0322

LISA TYLER JACOBS, Administratrix of the  
ESTATE OF JAMES EARL JACOBS

Plaintiff,

v.

MURPHY-BROWN, LLC d/b/a SMITHFIELD HOG  
PRODUCTION DIVISION and d/b/a SMITHFIELD  
GRAIN;  
SMITHFIELD FOODS, INC.;  
MB GRAIN, LLC d/b/a SMITHFIELD GRAIN;  
ROBERT WOODROW TAYLOR;  
JOHN MATTHEW LENNON;  
GREGORY POOLE EQUIPMENT COMPANY;  
GREGORY POOLE LEASING, LLC;  
GREGORY POOLE CAT, LLC; and  
GREGORY POOLE VECTOR, LLC

Defendants.

COMPLAINT

(Jury Trial Demanded)

NOW COMES Plaintiff LISA TYLER JACOBS, in her fiduciary capacity as Administratrix of the Estate of JAMES EARL JACOBS, complaining of the Defendants and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff **Lisa Tyler Jacobs** has applied for and has been duly appointed as Administratrix of the **Estate of James Earl Jacobs** by the Scotland County Clerk of Superior Court.

2. Plaintiff Lisa Tyler Jacobs, Administratrix of the Estate of James Earl Jacobs, is a citizen and resident of Robeson County, North Carolina residing at 2002 Mt. Zion Church Rd. Red Springs, NC 28377.

3. Acting in her fiduciary capacity, Plaintiff Lisa Tyler Jacobs files this wrongful death action pursuant to Chapter 28A of the General Statutes of North Carolina, including section 28A-18-2, within two years of the date of death of James Earl Jacobs.

4. Upon information and belief, Defendant **Murphy-Brown, LLC d/b/a Smithfield Hog Production Division and d/b/a Smithfield Grain** (hereafter referred to collectively as Defendant Murphy-Brown or Defendant Murphy-Brown, LLC”) is a limited liability company organized under the law of Delaware but headquartered in Warsaw, North Carolina. Its sole LLC member is Smithfield Packaged Meats, a corporation incorporated under the law of Delaware, with a principal office in Ohio. Smithfield Packaged Meats is a wholly-owned subsidiary of Smithfield Foods, Inc., a corporation incorporated under the law of Virginia with its principal office at 200 Commerce Street, Smithfield, VA 23430. Smithfield Foods, Inc. and all of its subsidiaries are ultimately owned by WH Group, a Chinese central government-controlled multinational corporation based out of China. Defendant Murphy-Brown, LLC d/b/a Smithfield Hog Production Division and d/b/a Smithfield Grain was directly involved in the material facts and corporate decisions herein and accordingly is jointly and severally liable.

5. At all times relevant herein, Defendant Murphy-Brown was engaged in substantial business activities within the State of North Carolina, with corporate offices located at 2822 Highway 24 West Warsaw, North Carolina 28398. At all times relevant herein, Defendant Murphy-Brown availed itself to the laws of the State of North Carolina and maintained its headquarters in the State of North Carolina.

6. At all times relevant herein and upon information and belief, Defendant Murphy-Brown owned and operated the Smithfield Grain facility located at 19600 Andrew Jackson Highway Laurinburg, NC 28353 and did business as and held itself out to the public as “Smithfield Grain.”

7. Upon information and belief, “Smithfield Grain” is an unincorporated division or business unit of Defendants Smithfield Hog Production and/or Smithfield Foods, Inc. Through its Smithfield Grain unit, the named Defendants own, control and use hog production and grain storage facilities, and feed mills, including in Colorado, Illinois, Iowa, Missouri, North Carolina,

Oklahoma, Pennsylvania, South Carolina, Texas, Utah and Virginia. Also, the Smithfield international segment owns and uses numerous grain storage facilities and feed mills, in Poland and Romania.

8. Defendant **Smithfield Foods, Inc.** (hereafter “Defendant Smithfield Foods”) is a corporation incorporated under the laws of the Commonwealth of Virginia, with its principal office located at 200 Commerce Street, Smithfield, Virginia 23430. Smithfield Foods, Inc. is directly involved in the material facts and corporate decisions herein and accordingly is jointly and severally liable. At all times relevant herein, Defendant Smithfield Foods, Inc. availed itself to the laws of the State of North Carolina.

9. Defendant **MB Grain, LLC** (hereafter, “Defendant MB Grain”) is a corporation incorporated under the laws of that State of Delaware, with its principal office and headquarters located at 2822 Highway 24 West Warsaw, NC 28398. MB Grain, LLC is directly involved in the material facts and corporate decisions herein and accordingly is jointly and severally liable. Upon information and belief, MB Grain is a division and subsidiary of Defendant Murphy-Brown, LLC and Smithfield Foods, Inc. At all times relevant herein, Defendant MB Grain, LLC availed itself to the laws of the State of North Carolina and did business as “Smithfield Grain.”

10. Upon information and belief, Defendant **Robert Woodrow Taylor** (hereafter “Defendant Taylor”) is a citizen and resident of Robeson County, North Carolina and resides at 14256 US Highway 301 N. St. Pauls, North Carolina 28384. Upon information and belief, at all times relevant herein, Defendant Taylor was acting as an employee or agent of Defendant Murphy-Brown, Defendant MB Grain and/or Defendant Smithfield Foods and was acting within the course and scope of said employment, agency and/or servitude.

11. Upon information and belief, Defendant **John Matthew Lennon** (hereafter “Defendant Lennon”) is a citizen and resident of Bladen County, North Carolina and resides at 9531 Red Hill Rd. Clarkton, North Carolina 28433. Upon information and belief, at all times relevant herein, Defendant Lennon was acting as an employee or agent of Defendant Murphy-Brown, Defendant MB Grain and/or Defendant Smithfield Foods and was acting within the course and scope of said employment, agency and/or servitude.

12. Upon information and belief, Defendant **Gregory Poole Equipment Company** is a Delaware corporation existing within the State of North Carolina with its principal office and headquarters located at 4807 Beryl Road Raleigh, North Carolina 27606. Defendant Gregory Poole Equipment Company was founded April 1, 1951 and is headquartered in Raleigh, North Carolina. Defendant Gregory Poole Equipment Company is the exclusive CAT construction equipment dealer for eastern North Carolina. Defendant Gregory Poole Equipment Company has a network of locations throughout North Carolina providing new and used sales, rentals, parts and service for construction, agriculture, forestry, electric power generation, marine power and a wide range of other industries. Upon information and belief, Defendant Gregory Poole Equipment is the parent corporation for Defendant Gregory Poole Leasing LLC, Defendant Gregory Poole CAT LLC and Defendant Gregory Poole Vector LLC. At all times relevant herein, Defendant Gregory Poole Equipment Company availed itself to the laws of the State of North Carolina.

13. Upon information and belief, Defendant **Gregory Poole Leasing LLC** is a North Carolina corporation organized and existing within the State of North Carolina with its principal office located at 4807 Beryl Road Raleigh, North Carolina 27606. Upon information and belief, Defendant Gregory Poole Leasing LLC is the heavy equipment leasing branch of Defendant Gregory Poole Equipment Company.

14. Upon information and belief, Defendant **Gregory Poole CAT LLC** is a North Carolina corporation organized and existing within the State of North Carolina with its principal office located at 4807 Beryl Road Raleigh, North Carolina 27606. Upon information and belief, Defendant Gregory Poole CAT LLC is also a leasing subsidiary for Defendant Gregory Poole Equipment Company.

15. Upon information and belief, Defendant **Gregory Poole Vector LLC** is a North Carolina corporation organized and existing within the State of North Carolina with its principal office located at 4807 Beryl Road Raleigh, North Carolina 27606. Upon information and belief, Defendant Gregory Poole Vector LLC is also a leasing subsidiary for Defendant Gregory Poole Equipment Company.

16. At all times relevant herein, upon information and belief, Defendant Gregory Poole Equipment Company, Defendant Gregory Poole Leasing LLC, Defendant Gregory Poole CAT LLC and Gregory Poole Vector LLC were engaged in substantial business activities within the State of North Carolina and availed itself to the laws of the State of North Carolina.

17. Upon information and belief, Defendant Gregory Poole Leasing LLC, Defendant Gregory Poole CAT LCC and Defendant Gregory Poole Vector LLC are subsidiaries of Defendant Gregory Poole Equipment Company and operate under the trade name "Gregory Poole." Hereafter, Defendants Gregory Poole Equipment Company, Gregory Poole Leasing LLC, Gregory Poole CAT LLC and Gregory Poole Vector LLC are collectively referred to as "Defendant Gregory Poole."

18. Venue is proper in Robeson County Superior Court pursuant to G.S. § 1-82.

19. This Court has jurisdiction over the parties and subject matter of this action pursuant to G.S. § 7A-243 as the amount in controversy exceeds the sum of \$25,000.00.

### **STATEMENT OF THE FACTS**

20. Paragraphs 1-19 of this Complaint are reincorporated as if fully set forth herein.

21. James Earl Jacobs (hereafter, "James Jacobs" or "Decedent"), age 30, was employed as a general laborer with First Source Staffing Services, LLC (hereafter, "First Source Staffing") and was *not* an employee, agent or servant of any named Defendants or their subsidiaries.

22. Upon information and belief, Defendant Murphy-Brown and/or Defendant MB Grain previously entered into a contractual relationship with First Source Staffing, LLC on or about June 9, 2017 to provide general labor for its Smithfield Grain facility located at 19600 Andrew Jackson Highway Laurinburg, NC 28352. Upon information and belief, Defendant Murphy-Brown contracted with First Source Staffing to provide untrained, unskilled and low-cost labor at its facilities in North Carolina.

23. First Source Staffing, LLC is a staffing agency that provides staffing and contractual services for food manufactures, warehouse distribution, agri-business, and administrative/clerical temporary workforce. At the time of the subject incident, First Source Staffing employed 7 employees to work at the Laurinburg Grain facility owned and operated by Defendant Murphy-Brown, LLC and Defendant MB Grain, LLC.

24. On May 17, 2018, James Earl Jacobs arrived at the Smithfield Grain facility located at 19600 Andrew Jackson Highway Laurinburg, NC 28352 to work as a general laborer with First Source Staffing, LLC.

25. May 17, 2018 was James Jacobs' first day at First Source Staffing and he had never worked at the Smithfield Grain facility prior to May 17, 2018.

26. Upon information and belief, the Smithfield Grain facility in Laurinburg, NC is owned and operated by Defendant Murphy-Brown and/or Defendant MB Grain.

27. Defendant Murphy-Brown and/or MB Grain is a grain sourcing and storage company which purchases locally grown grain directly from farmers and then stores it for later use. The "Laurinburg Grain Pile" services independent farmers in Scotland and surrounding counties. Farmers will unload corn during the July through September harvest until the grain storage pile reaches its storage capacity of 600,000 bushels. This corn is then utilized as needed in the year at various Smithfield Grain facilities to be used for feed for animals and/or sold to competitors who want to purchase grain.

28. On May 17, 2018, Defendant Lennon and Defendant Taylor were employed by Defendant Murphy-Brown and/or Defendant MB Grain and were assigned to the Smithfield Grain facility located at 19600 Andrew Jackson Highway Laurinburg, NC 28352 (also commonly referred to as the "Laurinburg Grain Pile").

29. Upon information and belief, Defendant Lennon and Defendant Taylor were both in supervisory positions with Defendant Murphy-Brown and/or Defendant MB Grain on May 17, 2018.

30. Upon information and belief, Defendant Lennon was Defendant Taylor's immediate supervisor at the Laurinburg Grain Pile on May 17, 2018.

31. On May 17, 2018, there was one supervisor from Defendant Murphy-Brown/MB Grain (Defendant Taylor) supervising, directing and monitoring the work of seven temporary employees from First Source Staffing, which included: (1) 3 equipment operators (i.e., Front-end loader, Bobcat, Farm Tractor), (2) 2 general laborers (i.e., manually shoveling corn off the grain barrier walls), (3) 1 skilled laborer at the loading area (i.e., administration of grain loaded into trailers and documentation of driver paperwork) and (4) 1 skilled laborer at the entryway of the jobsite.

32. On May 17, 2018, corn was being "reclaimed" from the Laurinburg Grain pile. This process involved one temporary employee from First Source Staffing operating an articulated front-end loader (CAT 950M Wheel Loader) pulling corn from the pile and loading it into waiting grain trailers. Air circulation tubes are spaced across the base of the pile to limit grain degradation. As the loader retrieves grain from the pile and the pile reduces in size, uncovering the air circulation tubes, equipment moving will be temporarily stopped and the temporary employees from First Source will remove the tubes from the grain pile physically by hand and sit them off to the side out of the grain pile area. The employees also manually use shovels to remove and gather up excess corn that is either stuck onto the inside of the grain barrier walls and corn that has fallen out of the bucket of the loader. It typically takes 10-14 days to reclaim the entire 600,000-bushel pile.

33. At all times relevant herein, the subject CAT 950M Wheel Loader was owned, maintained and provided for lease by Defendant Gregory Poole.

34. Upon information and belief, prior to May 17, 2018 Defendant Gregory Poole sent a quote electronically to Defendant Murphy-Brown and/or Defendant MB Grain, agreed to the terms of the equipment lease verbally, and eventually dropped off the subject CAT 950M Wheel Loader at the Laurinburg Grain Pile while no one was at the site.

35. Upon information and belief, Defendant Gregory Poole did not provide any training, guidance or assistance to Defendant Murphy-Brown and/or Defendant MB Grain as it related to the safe operation of the CAT 950M Wheel Loader. Defendant Gregory Poole also failed to provide any guidance, assistance, certification or training to First Source Staffing laborers on or before May 17, 2018.

36. Upon information and belief, Defendant Gregory Poole did not provide a copy of the CAT 950M Operators Manual to Defendant Murphy-Brown, Defendant MB Grain, Defendant Lennon or Defendant Taylor, despite such content being relevant and readily available to Defendant Gregory Poole.

37. The CAT 950M Wheel Loader is a large articulated front-end loader with an unloaded weight of approximately 42,357lbs. Given the weight and size of the CAT 950M Wheel Loader, specialized safety training and operator certification is required before it can be safely operated.

38. Upon information and belief, Defendant Gregory Poole entered into a contractual lease agreement to provide certain heavy equipment to Defendant Murphy-Brown and/or Defendant MB Grain, LLC on March 5, 2018 to provide the subject CAT950M Wheel Loader for the sum of \$1,025.00 per day to Defendant Murphy-Brown and/or MB Grain, LLC to be used at the Laurinburg Grain Pile.

39. The process of reclaiming corn described above is known to create a significant amount of dust and airborne debris which can make it an extremely dangerous work environment given the number of pedestrians and other nearby hazards including the simultaneous operation of multiple large pieces of heavy equipment (including the CAT 950M) in a small area with no designated pedestrian pathways or other pedestrian safety protocols.

40. On May 17, 2018, James Jacobs was operating a Case L755 Farm Tractor with bucket attached, gathering up corn that had fallen off of the side of the pile and placing it back onto the pile so that the CAT 950M front-end loader would retrieve as much corn as possible when loading.



41. Upon information and belief, at no time prior to May 17, 2018 did James Jacobs and the others from First Source Staffing receive any safety training whatsoever from either Defendant Murphy-Brown, Defendant MB Grain, Defendant Lennon, Defendant Taylor, First Source Staffing or Defendant Gregory Poole.

42. Upon information and belief, on the date referenced above, the subject CAT 950M front-end loader was being operated by Jose Gatica, also a temporary employee from First Source Staffing.

43. Upon information and belief, Jose Gatica had no certification or training whatsoever, whether formal or informal, to operate heavy equipment, nor did he possess any certificate or training to operate the subject CAT 950M Wheel Loader. Despite this fact, Defendant Murphy-Brown, Defendant MB Grain and Defendant Gregory Poole directed, allowed and permitted Mr. Buchanan to operate said heavy equipment.

44. Upon information and belief, on the date referenced above, James Jacobs stopped the Case L755 Farm Tractor that he was operating and parked the tractor along the northeast side of the grain pile area and exited the cab of tractor. James Jacobs then proceeded to walk northwest, to the other side of the grain pile to retrieve a cold water from the nearby cooler and to retrieve zip ties for his equipment. As James Jacobs was walking back to his farm tractor, the CAT 950M Wheel Loader being operated by Jose Gatica traveled in reverse and struck James Jacobs and ran over his upper back. Once James Jacobs was struck on the upper back and was on the ground, bystanders yelled to Jose Gatica (the CAT 950M operator) to immediately stop the equipment. As bystanders continued to waive their hands to Jose Gatica, rather than stopping as instructed, he went forward, fatally striking James Jacobs for the second time, however this time running over James Jacobs' head.

45. Upon information and belief, the first impact to the Decedent was non-fatal and the Decedent was still alive until the second fatal impact to the Decedents head.

46. Upon information and belief, there was a period of time in which Decedent was still conscious and alive after being struck on the torso and upper back by Jose Gatica. During this

period of time, the Decedent feared his impending death and suffered extremely painful injuries before being struck a second time in the head thereby ending his life.

47. Upon information and belief, at all times relevant herein, Defendant Murphy-Brown and/or Defendant MB Grain had management, oversight of, and directed the First Source employees at the Smithfield Grain Laurinburg facility, including the physical presence of at least one on-site supervisor (Defendant Taylor and/or Defendant Lennon) who were employed by Defendant Murphy-Brown and/or Defendant MB Grain and acting at the direct and control of Defendant Murphy-Brown and/or Defendant MB Grain.

48. Upon information and belief, Defendant Taylor was physically on-site on May 17, 2018 and failed to conduct a training and/or safety meeting with any of the First Source Staffing employees either on the subject date or at any point prior to the subject date as it related to the safe movement of heavy equipment and other safety instructions related to the corn “reclaiming” process.

49. Upon information and belief, at no point prior to May 17, 2018 did Defendant Taylor, Defendant Lennon, Defendant Murphy-Brown or Defendant MB Grain take steps to provide safety training or safety equipment to the temporary laborers employed by First Source Staffing.

50. Upon information and belief, none of the temporary First Source Staffing employees were required to wear, nor were they provided, the necessary high-visibility safety vest to be worn in or around the heavy equipment being operated in or around the Laurinburg Grain Pile.

51. Following the subject incident described above, the North Carolina Department of Labor (“NCDOL”) launched an investigation and conducted various interviews and onsite inspections of the equipment involved in the incident and conducted an onsite visit to the Smithfield Grain facility in Laurinburg.

52. Upon information and belief, various eyewitnesses did not hear any audible back-up alarm coming from the CAT 950M Wheel Loader on May 17, 2018 prior to the equipment striking the Decedent.

53. Upon information and belief, Jose Gatica, Defendant Murphy-Brown and/or Defendant MB Grain failed to properly inspect the subject CAT 950M Wheel Loader for deficiencies, including an inspection of the backup audible alarm, prior to or on May 17, 2018.

54. Upon information and belief, Defendant Gregory Poole likewise also failed to properly inspect the subject CAT 950M Wheel Loader, including an inspection of the backup audible alarm, prior to or on May 17, 2018.

55. Nathan Buchanan, a First Source Staffing employee on May 17, 2018, reports that he operated the same CAT 950M Wheel Loader that struck the decedent prior to the subject incident and that the backup audible alarm was *not* functioning correctly at that period.

56. Specifically, Nathan Buchanan reports that despite him operating the same CAT 950M Wheel Loader several days prior, he never heard that specific piece of equipment emit an audible backup audible alarm. Mr. Buchanan did hear other pieces of equipment at the site emit the appropriate backup audible alarm, but never did he hear the backup alarm on the subject CAT 950M Wheel Loader.

57. Nathan Buchanan was also an eyewitness to the incident described above, and reports that he did not hear the CAT950M's backup audible alarm on May 17, 2018 prior to the heavy equipment striking the Decedent.

58. Similar to Jose Gatica, Nathan Buchanan also had no certification or training whatsoever, whether formal or informal, to operate heavy equipment, nor did he possess any certificate or training to operate the subject CAT 950M Wheel Loader. Despite this fact, Defendant Murphy-Brown, Defendant MB Grain and Defendant Gregory Poole directed, allowed and permitted Mr. Buchanan to operate said heavy equipment.

59. Upon information and belief, on the above date and time, there was no communication or communication system between the equipment operator(s) and the ground personnel working in and/or around the Laurinburg Grain Pile. The CAT Operation and Maintenance Manual, 950M/962M Wheel Loaders, SEBU9052-09, February 2018 Pg. 30, Section Visibility states that

“appropriate jobsite organization is required in order to minimize hazards that are caused by restricted visibility...job site organization is a collection of rules and procedures that coordinates machines and people that work together in the same area.” One example stated from the manual is as follows: “[c]ommunication between workers and operators prior to approaching the machine.”

60. Caterpillar, the manufacturer of the subject CAT 950M Wheel Loader, provides methods to minimize hazards that are caused by restricted visibility when using the visual aids (mirrors and rear camera monitor) in their CAT Operation and Maintenance Manual. Page 30 recommends “jobsite organization” which they define as “a collection of rules and procedures that coordinates machines and people that work together in the same area.” CAT’s manual provides examples of jobsite organization as: “safety instructions, controlled patterns of machine movement and vehicle movement, workers that direct traffic to move when safe, restricted areas, operator training, warning symbols or warning signs on machines or on vehicles, a system of communication, communication between workers and operators prior to approaching the machine.”

61. Upon information and belief, none of the foregoing “jobsite organization” safety methods, rules or procedures outlined in the CAT Operation and Maintenance Manual were utilized on or before May 17, 2018.

62. Upon information and belief, Jose Gatica, the CAT 950M Wheel Loader operator on May 17, 2018, stated to NCDOL investigators that the dust in the grain pile made it extremely dangerous to operate the CAT 950M Wheel Loader and resulted in decreased visibility and the inability to use the back-up camera.

63. Specifically, Jose Gatica stated to NCDOL investigators that dust build up on the back-up camera and mirrors made it nearly impossible to see pedestrians and other equipment when traveling in reverse. Jose Gatica also stated that on the morning of May 17, 2018, the work environment was so dusty that he had to clean off the mirrors and windshield of the CAT 950M Wheel Loader “at least 2-3 times before the incident.” The dusty environment at the Laurinburg

Grain Pile on May 17, 2018 made nearly impossible to see forwards and backwards on the CAT 950M Wheel Loader and at times, Jose Gatica could not even see the large bucket in front of him.

64. Upon information and belief, the topic of the excess dusty conditions described above when working in the grain pile with the CAT 950M Wheel Loader was reported at least one time to Defendant Murphy-Brown and/or Defendant MB Grain at least one week prior to the incident described above by First Source Staffing employees, including Jose Gatica.

65. While the subject CAT 950M Wheel Loader had a small backup camera, the constant dust accumulation made it difficult to utilize in the subject grain pit environment. It was also reported that use of water to clean off the dust accumulation made the lack of visibility even worse as it created mud.

66. Upon information and belief, despite the complaints from Jose Gatica and other First Source Staffing employees at least one week prior to May 17, 2018, Defendant Murphy-Brown, Defendant MB Grain, Defendant Taylor and Defendant Lennon did nothing to implement new safety procedures and no new policies were implemented to ensure the safety of the First Source Staffing laborers who were working at the Smithfield Grain facility in Laurinburg.

67. On November 16, 2018, the North Carolina Department of Labor issued a Citation and Notification of Penalty to Defendant Murphy-Brown and/or Defendant MB Grain pursuant to G.S. 95-129(1) in that the “employer did not furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that were causing or were likely to cause death or serious injury or serious physical harm to his employees in that employees were exposed to struck by hazards.”

68. According to the NCDOL, the subject Notification of Penalty to Defendant Murphy-Brown and/or Defendant MB Grain was identified as “serious.” Violations are identified as “serious” if it is reasonably predictable that death or serious harm could result and that the employer knew, or should have known, of the hazard.

69. Further, the NCDOL stated that “a restricted area was not established or implemented to protect employees from struck-by hazards when working or walking near a CAT 950M Wheel Loader operating with significantly restricted rearward visibility.”

70. The NCDOL found that “one acceptable and feasible method of abatement includes the employer to establish a jobsite organization, when there is a restricted visibility from dust build up on the visual aids (mirrors and rear camera monitor) equipped on a wheel loader. A jobsite organization will include the following: safety instructions, controlled patterns of machine movement and vehicle movement, workers that direct traffic to move when safe, restricted areas, operator training, warning symbols or warning signs on machines or vehicles, a system of communication and communication between workers and operators prior to entering the work area and/or approaching moving equipment.”

71. Upon information and belief, none of the foregoing recommended jobsite organization safety protocols or other safety measures were followed or implemented by Defendant Murphy-Brown and/or Defendant MB Grain on or before May 17, 2018.

72. Further, upon information and belief, Defendant Gregory Poole failed to monitor and ensure that appropriate jobsite organization protocols were being followed by Defendant Murphy-Brown and Defendant MB Grain on or before May 17, 2018.

73. Upon information and belief, Defendant Murphy-Brown and/or Defendant MB Grain exposed the temporary laborers of First Source Staffing, including the Decedent, to extremely dangerous working conditions, which Defendant Murphy-Brown and/or Defendant MB Grain had direct and specific knowledge of prior to the subject incident on May 17, 2018. Despite these prior warnings and complaints, Defendant Murphy-Brown and/or Defendant MB Grain took no steps to change the working conditions, equipment, personnel or any other conditions at the Smithfield Grain facility prior to the fatal incident on May 17, 2018 involving Decedent. In addition to the specific warnings of such conditions, the conditions were also readily observable and known to Defendants Lennon and Taylor, who were regularly present at the Laurinburg Grain Pile during the reclaiming process described above.

74. The Occupational Health and Safety Administration (“OSHA”) recognizes the serious dangers of grain dust and characterizes grain handling facilities as a “high hazard industry” where workers can be exposed to numerous serious and life-threatening hazards. OSHA details some of the hazards as fires and explosions from grain dust accumulation, suffocation from engulfment and entrapment in grain bins, falls from heights and crushing injuries and amputations from grain handling equipment.

75. Despite the serious and known safety hazards described above, Defendant Murphy-Brown, Defendant MB Grain, LLC and Defendant Smithfield Foods, Inc. failed to take any steps whatsoever to ensure the safety of those working near and around its numerous grain facilities.

76. Upon information and belief, Defendant Murphy-Brown, Defendant MB Grain and Defendant Smithfield Foods, Inc. acted in contravention to its own policies and procedures by not informing Decedent and other contractors and business invitees of the applicable safety procedures and dangers and also by failing to train and inform Decedent and others of the applicable safety procedures related to the foreseeable hazards.

**COUNT I: DIRECT NEGLIGENCE OF DEFENDANT MURPHY-BROWN, LLC,  
DEFENDANT MB GRAIN, LLC, DEFENDANT SMITHFIELD FOODS, INC. &  
NEGLIGENCE OF DEFENDANT TAYLOR AND DEFENDANT LENNON  
IMPUTED TO DEFENDANT MURPHY-BROWN, LLC, DEFENDANT MB GRAIN,  
LLC AND DEFENDANT SMITHFIELD FOODS, INC.**

77. Paragraphs 1-76 of this Complaint are reincorporated as if fully set forth herein.

78. On May 17, 2018, at the aforementioned time and place, Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC, Defendant Smithfield Foods, Inc., Defendant Taylor and Defendant Lennon owed a duty of reasonable care to those persons lawfully at its Smithfield Grain facility located at 19600 Andrew Jackson Highway Laurinburg, NC 28352, including but not limited to James Earl Jacobs, to furnish a safe work environment free from known hazards. Defendant Murphy-Brown, MB Grain, LLC, and Smithfield Foods, Inc. also owed a duty of reasonable care in the training of its own employees and the training of temporary laborers from outside organizations such as First Source Staffing.

79. At all times relevant herein, Defendant Taylor and Defendant Lennon were acting as employees or agents of Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and Defendant Smithfield Foods, Inc. and were acting within the course and scope of said employment, agency and/or servitude thereby imputing their negligence to their employer(s): Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and Smithfield Foods, Inc. by operation of law under the doctrine of *Respondeat Superior* and/or agency.

80. Defendant Murphy-Brown, LLC Defendant MB Grain, LLC, Defendant Smithfield Foods, Inc., Defendant Taylor and Defendant Lennon were directly negligent, grossly negligent, negligent *per se*, and willful and wanton in that Defendant Murphy-Brown LLC Defendant MB Grain, LLC, Defendant Smithfield Foods, Inc., Defendant Taylor and Defendant Lennon:

- a) Negligently, grossly negligently, willfully and wantonly failed to ensure that all heavy equipment operators were properly trained and certified to operate said heavy machinery at the Smithfield Grain facility located at 19600 Andrew Jackson Highway Laurinburg, NC on or before May 17, 2018.
- b) Negligently, grossly negligently, willfully and wantonly allowed, permitted and directed Jose Gatica, a wholly untrained, uncertified and unqualified person, to operate a CAT 950M Wheel Loader in a low to zero visibility environment despite knowledge and complaints concerning the dusty environment and lack of rearward visibility.
- c) Negligently, grossly negligently, willfully and wantonly entrusted Jose Gatica, a wholly untrained and unqualified person, with a CAT 950M Wheel Loader in a low to zero visibility environment despite knowledge and complaints concerning the dusty environment and lack of rearward visibility.
- d) Negligently, grossly negligently, willfully and wantonly failed to furnish a place of employment free from recognized hazards that were causing or were likely to cause death or serious injury or serious physical harm to others in direct violation of G.S. § 95-129(1). Such negligence of Defendants is negligence *per se*.



- e) Negligently, grossly negligently, willfully and wantonly failed to ensure that all personal protective equipment (PPE) was being worn by all persons entering or working near the Laurinburg Grain Pile. Such PPD would include, but is not limited to: high-visibility vest worn by pedestrians who are working near and around heavy equipment with restricted rearward visibility.
  
- f) Negligently, grossly negligently, willfully and wantonly failed to establish appropriate jobsite organization protocols, including but not limited to: (1) failure to establish controlled patterns of machine movement and vehicle movement, (2) failure to implement a safe travel path for heavy machinery with workers directing pedestrian and other vehicle traffic, (3) failure to establish restricted areas, (4) failure to conduct and implement heavy equipment operator training and certification, (5) failure to implement and use warning symbols or warning signs on machines or vehicles, (6) failure to implement a system of communication and communication between workers and heavy equipment operators prior to entering the works area and when approaching equipment in motion. Such jobsite organization protocols were readily available to Defendants in the CAT 950M Wheel Loader Operation and Maintenance Manual.
  
- g) Negligently, grossly negligently, willfully and wantonly failed to properly train and monitor its supervisory staff at the Smithfield Grain facility in Laurinburg, including Defendant Taylor and Defendant Lennon on how to implement safety meetings, follow appropriate and relevant safety protocol and implement appropriate jobsite organization protocol and methods.
  
- h) Negligently, grossly negligently, willfully and wantonly hired, retained and entrusted Defendant Taylor and Defendant Lennon.
  
- i) Negligently, grossly negligently, willfully and wantonly failed to inspect and repair the subject CAT 950M Wheel Loader, which upon information and belief, was not properly emitting an audible back-up alarm on day of the subject incident.

- j) Negligently, grossly negligently, willfully and wantonly failed to take out of service and isolate the CAT 950M Wheel Loader despite it not emitting a reverse audible alarm.
- k) Negligently, grossly negligently, willfully and wantonly failed to take reasonable precautions to publish, adopt, and enforce a safety plan and safe method of movement around the Laurinburg, NC grain facility especially as it related to the “reclaiming” of grain and the simultaneous use of multiple pieces of heavy equipment.
- l) Negligently, grossly negligently, willfully and wantonly continued to allow a wholly untrained and uncertified person to operate the subject CAT 950M Wheel Loader despite the specific and obvious warnings of the dangers of the dust accumulation and specific complaints from Jose Gatica and others regarding the zero to no visibility in the grain pile due to excess dust accumulation.
- m) Was negligent grossly negligent, reckless, willful and wanton in other manners as will be determined through discovery and proven at trial.

81. Such negligence and breach of duty of Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC, Defendant Smithfield Foods, Inc., Defendant Taylor and Defendant Lennon was the direct and proximate cause in the death of Decedent James Earl Jacobs on May 17, 2018.

82. By reason of the wrongful death of James Earl Jacobs, Plaintiff Lisa Tyler Jacobs, the heir of the deceased, is entitled to recover of Defendants, jointly and severally, Pursuant to G.S. § 28A-18-2, a lump sum sufficient to compensate the Estate including: expenses for care, treatment and hospitalization incident to the injury resulting in death; compensation for pain and suffering of the decedent; the reasonable funeral expenses of the decedent; the present monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of reasonably expected; net income of decedent, services, protection, care and assistance of the decedent, whether voluntary or obligatory, to the persons

entitled to the damages recovered, and society, companionship, comfort, guidance, kindly offices and advice of the decedent to the persons entitled to the damages recovered.

83. Plaintiff is also entitled to such punitive damages as the decedent could have recovered pursuant to Chapter 1D of the General Statutes had the decedent survived, and punitive damages for wrongfully causing the death of the decedent through malice or willful or wanton conduct, as defined in G.S. § 1D-5.

**COUNT II: DIRECT NEGLIGENCE OF DEFENDANT GREGORY POOLE EQUIPMENT COMPANY, DEFENDANT GREGORY POOLE LEASING LLC, DEFENDANT GREGORY POOLE CAT LLC AND DEFENDANT GREGORY POOLE VECTOR LLC**

84. Paragraphs 1-83 of this Complaint are reincorporated as if fully set forth herein.

85. The leasing and operation of large heavy equipment, (such as the CAT 950M Wheel Loader) in a known and recognized “high hazard” environment (such as the Laurinburg Grain Pile) qualifies as an “inherently dangerous activity” in that it can be performed safely provided certain precautions are taken, but will, in the ordinary course of events, cause injury to others if these precautions are omitted.

86. On May 17, 2018, at the aforementioned time and place, Defendant Gregory Poole Equipment Company, Defendant Gregory Poole Leasing, LLC, Defendant Gregory Poole CAT, LLC and Defendant Gregory Poole Vector, LLC owed a *non-delegable* duty of reasonable care to provide safe, operable and properly inspected equipment to its client/lessee—Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and/or Defendant Smithfield Foods, Inc.

87. On May 17, 2018, at the aforementioned time and place, Defendant Gregory Poole Equipment Company, Defendant Gregory Poole Leasing, LLC, Defendant Gregory Poole CAT, LLC and Gregory Poole Vector LLC owed a *non-delegable* duty of reasonable care to provide adequate training and certification to potential operators of the subject heavy equipment being leased to Defendant Murphy-Brown, Defendant MB Grain, LLC and/or Defendant Smithfield Foods, Inc. also had a *non-delegable* duty to investigate the licensure, training and certification(s)

of any potential operators of its heavy equipment prior to releasing the equipment or allowing it to be used in a known and recognized high hazard environment.

88. Defendant Gregory Poole Equipment Company, Defendant Gregory Poole Leasing, LLC, Defendant Gregory Poole CAT, LLC and Defendant Gregory Poole Vector LLC, knew or should have known that the activity of leasing large pieces of specialized heavy equipment, which was to be used in a known and recognized high hazard environment, is an inherently dangerous activity.

89. Defendant Gregory Poole Equipment Company, Defendant Gregory Poole Leasing, LLC, Defendant Gregory Poole CAT, LLC and Defendant Gregory Poole Vector LLC failed to use ordinary and reasonable care to prevent the injury and ultimate death of the Decedent, by failing to take reasonable safety precautions or by failing to ensure that such precautions were in fact taken by the subject lessee, Defendant Murphy-Brown, Defendant MB Grain, LLC and/or Defendant Smithfield Foods, Inc.

90. Defendant Gregory Poole Equipment Company, Defendant Gregory Poole Leasing, LLC, Defendant Gregory Poole CAT, LLC and Defendant Gregory Poole Vector, LLC's failure to use ordinary and reasonable care in the leasing, maintenance and ownership of the subject CAT 950M Wheel Loader was a proximate cause in the death of Decedent James Earl Jacobs.

91. Defendant Gregory Poole Equipment Company, Defendant Gregory Poole Leasing, LLC, Defendant Gregory Poole CAT, LLC and Defendant Gregory Poole Vector LLC were directly negligent, grossly negligent, negligent *per se*, and willful and wanton in that Defendant Gregory Poole Equipment Company, Defendant Gregory Poole Leasing, LLC, Defendant Gregory Poole CAT, LLC and Defendant Gregory Poole Vector, LLC:

- a) Negligently, grossly negligently, willfully and wantonly allowed and permitted, Jose Gatica, a wholly untrained and uncertified person, to operate its CAT 950M Wheel Loader on May 17, 2018.

- b) Negligently, grossly negligently, willfully and wantonly failed to reasonably inspect the subject CAT 950M Wheel Loader, which it owned and maintained, on or before May 17, 2018 to ensure the backup audible alarm was working as intended.
- c) Negligently, grossly negligently, willfully and wantonly failed to properly repair and take out of service the subject CAT 950M Wheel Loader despite its defective backup audible alarm.
- d) Negligently, grossly negligently, willfully and wantonly failed to implement a process to ensure that all persons operating the leased CAT 950M Wheel Loader were properly certified, trained, qualified or otherwise fit to operate a CAT 950M Wheel Loader or other similar heavy machinery.
- e) Negligently, grossly negligently, willfully and wantonly failed to provide the CAT 950M Operation and Maintenance Manual, which upon information and belief was in the possession of the Gregory Poole Defendants, to any of the Defendants or their agents, or to any of the temporary laborers employed by First Source Staffing, LLC on or prior to May 17, 2018.
- f) Negligently, grossly negligently, willfully and wantonly failed to train Defendant Taylor, Defendant Lennon or any of the temporary laborers from First Source Staffing, LLC to safely operate the subject CAT 950M Wheel Loader.
- g) Negligently, grossly negligently, willfully and wantonly entrusted the subject CAT 950M Wheel Loader to Defendant Murphy-Brown, LLC, MB Grain, LLC and/or Defendant Smithfield Foods Inc.
- h) Negligently, grossly negligently, willfully and wantonly entrusted the subject CAT 950M Wheel Loader to Jose Gatica and Nathan Buchanan of First Source Staffing, LLC, both untrained and uncertified in the safe operation of a CAT 950M Wheel Loader.

- i) Was negligent, negligent *per se*, grossly negligent, reckless, willful and wanton in other manners as will be determined through discovery and proven at trial.

92. Such negligence and breach of the aforementioned non-delegable duty of care of Defendant Gregory Poole Equipment Company, Defendant Gregory Poole Leasing, LLC, Defendant Gregory Poole CAT, LLC and Defendant Gregory Poole Vector, LLC was the direct and proximate cause in the death of James Earl Jacobs.

93. In the alternative, Defendant Gregory Poole Equipment Company, Defendant Gregory Poole Leasing, LLC, Defendant Gregory Poole CAT, LLC and Defendant Gregory Poole Vector, LLC are otherwise vicariously liable for the negligence of Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC, Defendant Smithfield Foods, Inc. and their agents/employees by operation of law under the theories of agency, *respondet superior* and joint enterprise/joint venture.

94. By reason of the wrongful death of James Earl Jacobs, Plaintiff Lisa Tyler Jacobs, the heir of the deceased, is entitled to recover of Defendants, jointly and severally, Pursuant to G.S. § 28A-18-2, a lump sum sufficient to compensate the Estate including: expenses for care, treatment and hospitalization incident to the injury resulting in death; compensation for pain and suffering of the decedent; the reasonable funeral expenses of the decedent; the present monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of reasonably expected; net income of decedent, services, protection, care and assistance of the decedent, whether voluntary or obligatory, to the persons entitled to the damages recovered, and society, companionship, comfort, guidance, kindly offices and advice of the decedent to the persons entitled to the damages recovered.

**COUNT III: PUNITIVE DAMAGES AGAINST DEFENDANT MURPHY-BROWN, LLC, DEFENDANT MB GRAIN, LLC, DEFENDANT SMITHFIELD FOODS, INC. AND THEIR AGENTS/EMPLOYEES DEFENDANT TAYLOR AND DEFENDANT LENNON ET AL.**

95. Paragraphs 1-94 of this Complaint are reincorporated as if fully set forth herein.

96. Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and Defendant Smithfield Foods, Inc.'s above-described recurring conduct, acts, omissions, negligence, and impropriety included aggravating factors giving rise to a claim for punitive damages under Chapter 1D of the North Carolina General Statutes.

97. Pursuant to N.C. Gen. Stat. § 1D-15(a), Defendant Murphy-Brown, LLC, Defendant MB Grain and Defendant Smithfield Foods, Inc. are jointly and severally liable for punitive damages in this action in that Defendant Murphy-Brown, LLC, Defendant MB Grain and Defendant Smithfield Foods, Inc. are liable for compensatory damages and have committed one or more aggravating acts or omissions justifying an award of punitive damages, including without limitation, recurring acts of egregious and reckless behavior, and specific instances of willful and wanton conduct.

98. Upon information and belief, the officers, directors or managers of Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and/or Defendant Smithfield Foods, Inc. participated in or condoned the conduct constituting the aggravating factors giving rise to punitive damages.

99. To the extent that said recurring acts of egregious and reckless behavior were committed by Defendant Taylor, Defendant Lennon or any other employee or agent of Defendant Murphy-Brown, Defendant MB Grain, LLC and/or Defendant Smithfield Foods, Inc., said acts or omissions are imputed to Defendant Murphy-Brown, Defendant MB Grain, LLC and/or Defendant Smithfield Foods, Inc. by operation of law under the doctrine of *respondeat superior* and/or agency.

100. The recurring conduct, acts, omissions, negligence and impropriety of Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and Defendant Smithfield Foods, Inc. and its employees and/or agents were willful, wanton, malicious, and in reckless disregard for the rights and interests of the Decedent and justify an award of punitive damages. Accordingly, Plaintiff demands judgment against Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC Defendant Smithfield Foods, Inc., Defendant Taylor and Defendant Lennon, jointly and severally for punitive damages in an amount to be determined at trial.

101. Such recurring conduct, acts, omissions, negligence and impropriety of Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and Defendant Smithfield Foods, Inc. and/or their respective agents or employees, include but are not limited to the following:

- a) Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and Defendant Smithfield Foods, Inc, failed to take any steps whatsoever in response to the specific warning/complaint made by Jose Gatica (the wholly untrained CAT 950M Wheel Loader operator) regarding the specific and credible warning of dangerous dust accumulation and the lack of rearward visibility while operating the CAT 950M Wheel Loader in the Laurinburg Grain Pile at least one week prior to the subject incident and death of Decedent.
  
- b) During the conversations with Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and/or Defendant Smithfield Foods, Inc. employees (Defendant Taylor and/or Defendant Lennon), temporary laborers from First Source Staffing discussed with Defendant Taylor/Lennon about potentially wetting the corn to help minimize the dust but were told they could not wet the corn and Defendant Taylor/Lennon specifically acknowledged that “there was a lot of dust.” Upon information and belief, Defendant Taylor and Lennon told the temporary First Source employees they had to “keep working to keep production up” and “just had to get through it.” Said managers and supervisors of Defendant Murphy-Brown, LLC, MB Grain, LLC and/or Smithfield Foods, Inc. had actual knowledge of the extremely hazardous working conditions and its impact on the visibility of the equipment operator(s) prior to the subject incident on May 17, 2018, yet they took no steps whatsoever to implement appropriate jobsite organizations or conduct safety meetings to ensure the safety of those at its Laurinburg Grain Pile. Such conduct is willful, wanton and with conscious disregard for human life.
  
- c) Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and Defendant Smithfield Foods, Inc. acted with reckless, willful and wanton disregard for human life by allowing a wholly untrained person to operate a CAT 950M Wheel Loader



in a high hazard environment with high pedestrian traffic with severely restricted visibility due to dust accumulation. Defendant Murphy-Brown, LLC and/or Defendant Smithfield Foods, Inc. otherwise took no steps whatsoever to provide basic safety equipment, PPE or training to persons working at its grain facility in Laurinburg, NC on May 17, 2018.

- d) Upon information and belief, Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and Defendant Smithfield Foods, Inc. continued to operate the subject CAT 950M Wheel Loader at the Laurinburg Grain Facility following the Decedent's death on May 17, 2018 and failed to properly notify Defendant Gregory Poole of the incident.
- e) Upon information and belief, since its inception, Defendant Murphy-Brown, LLC, MB Grain, LLC and Defendant Smithfield Foods, Inc. have had numerous investigations, inquiries and penalties levied against them by the North Carolina Department of Labor and the federal Occupational Safety and Health Administration (OSHA) for various "serious" safety violations yet Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and/or Defendant Smithfield Foods, Inc. have utterly failed to implement appropriate safety guidelines, protocols and training to ensure that serious injury or deaths do not continue to occur at their various facilities. This gives rise to a pattern of recurrent willful and wanton behavior on the part of Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and/or Defendant Smithfield Foods, Inc. for which Plaintiff is asserting a claim for punitive damages.
- f) Upon information and belief, since 2010, there have been at least 11 OSHA Complaints/Referrals with regards to Defendant Smithfield Foods, Inc.
- g) Upon information and belief, since 2010, there have been at least 14 OSHA Complaints/Referrals with regards to Defendant Murphy-Brown, LLC.
- h) Upon information and belief, Defendant MB Grain, LLC is a relatively new corporate division/subsidiary of Defendant Murphy-Brown, LLC (formed on

10/27/14), yet still has had 2 OSHA inquiries (including the present incident) since 2014.

- i) Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC and Defendant Smithfield Foods, Inc. and their respective employees and agents were willful, wanton and grossly negligent in various other ways that will be determined through discovery and proven at trial which will further support and warrant a claim for punitive damages. Such willful and wanton conduct was the direct and proximate cause in the Decedent's death on May 17, 2018.

### **PRAYER FOR RELIEF**

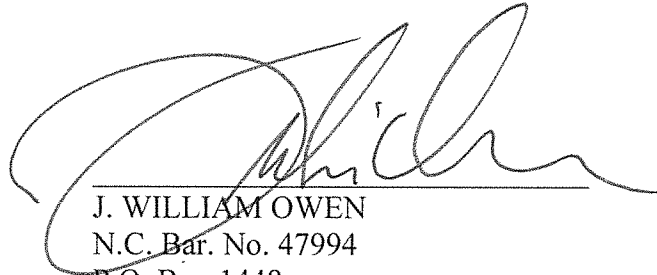
WHEREFORE, acting in her fiduciary capacity as Administratrix of the Estate of James Earl Jacobs and pursuant to G.S. § 28A-18-2, Plaintiff Lisa Tyler Jacobs hereby prays the Court for judgment against all named Defendants, jointly and severally as follows:

1. For compensatory damages in an amount in *excess of* TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) jointly and severally against all named Defendants, with interest, as allowed by law in favor of the Estate of James Earl Jacobs.
2. For punitive damages pursuant to Chapter 1D of the North Carolina General Statutes in an amount in *excess of* TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) against Defendant Murphy-Brown, LLC, Defendant MB Grain, LLC, Defendant Smithfield Foods, Inc., Defendant Taylor and Defendant Lennon, with interest, as allowed by law in favor of the Estate of James Earl Jacobs.
3. That the cost of this action be taxed against the Defendants.
4. For trial by jury as to all issues of fact arising herein.
5. For such other relief as the Court deems equitable, just and proper.

[SIGNATURES ON NEXT PAGE]

This the 6<sup>th</sup> day of February 2020.

MUSSELWHITE, MUSSELWHITE,  
BRANCH & GRANTHAM



J. WILLIAM OWEN  
N.C. Bar. No. 47994  
P.O. Box 1448  
Lumberton, NC 28359



W. EDWARD MUSSELWHITE, JR.  
N.C. Bar No. 9971  
P.O. Box 1448  
Lumberton, NC 28359

*Attorneys for Plaintiff Lisa Tyler Jacobs,  
Administratrix for the Estate of James Earl  
Jacobs*