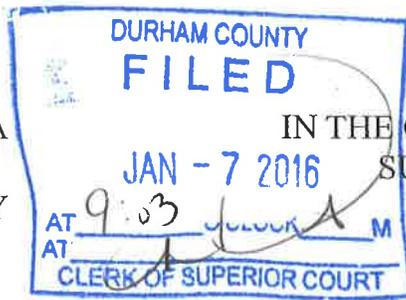


NORTH CAROLINA  
DURHAM COUNTY



IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.

SYLVIA A. ALMEIDA, )  
Administrator of the Estate of )  
Anderson A. Almeida; OLIMPIA )  
PENA, Administrator )  
of the Estate of Jose Luis )  
Lopez-Ramirez; and RICHARD P. )  
NORDAN, Administrator of the )  
Estate of Jose Erasmo Claros )  
Hernandez, )

Plaintiffs, )

v. )

ASSOCIATED SCAFFOLDING )  
COMPANY, INC., CHOATE )  
CONSTRUCTION COMPANY, )  
KLIMER PLATFORMS, LTD., and )  
KLIMER PLATFORMS, INC. )

Defendants. )

**COMPLAINT**  
**(Jury Trial Demanded)**

The plaintiffs, complaining of the defendants, allege and say:

**PARTIES**

1. Anderson A. Almeida, ("Mr. Almeida") a resident of Durham County, was killed on March 23, 2015. At the time of his death, Mr. Almeida was 33 years old.

2. Sylvia A. Almeida is the mother of Anderson A. Almeida. She was duly appointed Administrator of her son's estate by the Clerk of Superior Court of Durham County. She is acting as Administrator in the institution of this action, which is filed

within two years of Anderson A. Almeida's death. At the time of his death, Anderson A. Almeida was healthy and the father of one child, Ryan, 3.

3. Jose Luis Lopez-Ramirez, ("Mr. Lopez-Ramirez") a resident of Sampson County, was killed on March 23, 2015. At the time of his death, Mr. Lopez-Ramirez was 33 years old.

4. Olimpia Pena was duly appointed Administrator of the Estate of Jose Luis Lopez-Ramirez by the Clerk of Superior Court of Sampson County. She is acting as Administrator in the institution of this action, which is filed within two years of Jose Luis Lopez-Ramirez's death. At the time of his death, Jose Luis Lopez-Ramirez was healthy, married and the father of three children, Jose, 10; Acxan, 5; and Zashenka, 3.

5. Jose Erasmo Claros Hernandez, ("Mr. Hernandez") a resident of Durham County, was killed on March 23, 2015. At the time of his death, Mr. Hernandez was 41 years old.

6. Richard P. Nordan was duly appointed Administrator of Mr. Hernandez's estate by the Clerk of Superior Court of Durham County. Mr. Nordan is acting as Administrator in the institution of this action, which is filed within two years of Jose Erasmo Claros Hernandez's death. At the time of his death, Jose Erasmo Claros Hernandez was healthy, married and the father of two children, Madelin, 7, and Darleny, six months old.

7. Defendant Associated Scaffolding Company, Inc., (hereinafter "Associated Scaffolding") is a North Carolina corporation duly organized and existing under the laws

of the State of North Carolina and it transacts business in the State of North Carolina, including Durham County, North Carolina, where its corporate office is based.

8. Defendant Choate Construction Company (hereinafter “Choate”) is a Georgia corporation organized and existing under the laws of the State of Georgia and it transacts business in the State of North Carolina, including Durham County, North Carolina.

9. Defendant Klimer Platforms Ltd., (hereinafter “Klimer Ltd.”) is a Delaware corporation duly organized and existing under the laws of the State of Delaware and it transacts business in the State of North Carolina, including Durham County, North Carolina.

10. Defendant Klimer Platforms Inc., (hereinafter “Klimer Inc.”) is a Canadian corporation duly organized and existing under the laws of Canada, selling and servicing mast climbing work platforms throughout the United States, including in Durham County, North Carolina.

### **BACKGROUND**

11. On March 23, 2015, an 11-story office and retail building known as Charter Square was under construction at 555 Fayetteville St., Raleigh, North Carolina.

12. At all relevant times herein, Choate Construction Company was the general contractor for the Charter Square building project.

13. At all relevant times herein, Associated Scaffolding Co., Inc., was a contractor providing scaffolding and scaffolding work for the Charter Square building project.

14. At all relevant times herein, Klimer Platforms Ltd. was engaged in the business of selling, servicing and providing training for use of its Klimer mast climbing work platforms. Upon information and belief, Defendant Klimer Ltd. sold, and serviced the mast climbing work platforms for the Charter Square building project and provided training for persons using their products at Associated Scaffolding.

15. At all relevant times herein, Klimer Platforms Inc. was engaged in the business of manufacturing, selling, servicing and providing training for use of its Klimer mast climbing work platforms. Upon information and belief, Defendant Klimer Inc. manufactured, sold, and serviced the mast climbing work platforms for the Charter Square building project and provided training for persons using their products at Associated Scaffolding.

16. In constructing Charter Square, general contractor Choate Construction used several mast climbing work platforms as part of the work on the building. Mast climber work platforms, or scaffolds, are power driven work platforms that climb a thin vertical tower and can operate hundreds of feet above the ground.

17. Choate Construction contracted with Associated Scaffolding to provide and use several mast climber scaffolds as part of the work on the building.

18. Upon information and belief, the mast climber scaffolds used on the Charter Square project were purchased from Klimer Inc. and Klimer Ltd. and Klimer Inc. and Klimer Ltd. provided training and written instructions concerning their use.

19. On March 23, 2015, shortly before 11 a.m., Mr. Almeida, Mr. Lopez-Ramirez and Mr. Hernandez were working on scaffolding at the 9<sup>th</sup> floor of the Charter Square building.

20. Upon information and belief, Mr. Almeida, Mr. Lopez-Ramirez and Mr. Hernandez were working under the supervision of Elmer Guevara, an employee of Associated Scaffolding. At all relevant times, Mr. Guevara was working within the course and scope of his employment with Associated Scaffolding. Mr. Almeida was employed by KEA Contracting Inc.; Mr. Lopez-Ramirez and Mr. Hernandez worked for Jannawall, Inc.

21. As part of the task that day, Mr. Almeida and Mr. Guevara were to help dismantle a single tower Klimer mast scaffold on the south face of the building.

22. To dismantle the tower, the men were required to remove tie-ins that attached the mast tower to the building.

23. Mr. Lopez-Ramirez and Mr. Hernandez were assigned to install glass panels in openings in the building once the tie-ins were removed.

24. In dismantling the tower, a portion of the mast would be disconnected from its tie-in to the building, and 5-foot sections, weighing more than 240 lbs. each, were loaded on the scaffolding as it descended.

25. Upon information and belief, when the workers reached the 9<sup>th</sup> floor of the project, they disconnected the tie-ins to the building, as required.

26. Upon information and belief, the next tie-in connecting the building to the mast was more than 40 feet below the work platform.

27. Upon information and belief, stresses on the scaffolding, including the lack of tie-ins and the weight of the men and the pieces of scaffolding, were too large, making the scaffolding unstable.

28. After the tie-ins were disconnected on the 9<sup>th</sup> floor, the scaffolding failed, falling to the street.

29. Mr. Almeida, Mr. Hernandez and Mr. Lopez-Ramirez all fell approximately 100 feet, and would have been aware that they were falling to almost certain death.

30. Mr. Almeida, Mr. Hernandez and Mr. Lopez-Ramirez all fell to their deaths as the scaffolding collapsed. Mr. Guevara landed on a portable bathroom, and was severely injured.

31. Mr. Almeida, Mr. Hernandez and Mr. Lopez-Ramirez all endured conscious pain and suffering, and died of extensive injuries.

**FIRST CLAIM FOR RELIEF**  
**(Negligence of Associated Scaffolding Company, Inc.)**

32. Plaintiffs hereby reallege and incorporate paragraphs 1 through 31 of this complaint.

33. Defendant Associated Scaffolding Company, Inc., individually, and through its employee Elmer Guevara, was negligent in that it:

- a. Exceeded the maximum distance specified by the manufacturer of the mast climber scaffold for the installation of tie-ins securing the scaffold to the building, by allowing a 47 foot, 6 inch span between the 6<sup>th</sup> and 9<sup>th</sup> floors, when the maximum recommended distance was 40 feet.
- b. Failed to properly train the operator of the mast climber.
- c. Failed to provide a competent person to operate and supervise use of the mast climber, in violation of 29 CFR 1926.451(g)(2).
- d. Failed to provide a competent person to correctly determine the maximum amount of weight permitted on the mast climber.
- e. Failed to secure use of a crane for the safe disassembly of the mast climber.
- f. Loaded the scaffolding in excess of its intended loads or rated capacity by placing 4,227 lbs. on the scaffold when its maximum gross weight for the particular configuration being used was 2,500 lbs. in violation of 29 CFR 1926.451(f)(1).
- g. Loaded the scaffolding with mast sections and struts on platform extensions of the scaffolding that are not intended to be used for carrying materials, contrary to the manufacturer's instructions and in violation of 29 CFR 1926.451(f)(1).
- h. Failed to provide a competent person to inspect the scaffolding and its components before each work shift in violation of 29 CFR 1926.451(f)(3).
- i. Failed to inspect the scaffolding and its components before each work shift and after any occurrence which could affect the scaffold's structural integrity in violation of 29 CFR 1926.451(f)(3).
- j. Failed to safely install, safely operate and safely dismantle a mast climbing work platform, by failing to follow safe construction practices in the industry.

- k. Failed to observe that care and caution required of a reasonably prudent scaffolding company under the same or similar circumstances.

34. As a direct and proximate result of the negligence of defendant Associated Scaffolding, Mr. Almeida suffered conscious pain and mental suffering, fell 100 feet and died.

35. As a direct and proximate result of the defendant's negligence, the estate of Anderson A. Almeida has incurred funeral and burial expenses.

36. As a direct and proximate result of the defendant's negligence, the estate of Anderson A. Almeida is entitled to recover from defendant Associated Scaffolding Company, Inc., damages for the present monetary value of the deceased to his next of kin, including for the loss of the society, companionship, comfort guidance and advice of the deceased, as well as the loss of his income, services, protection, care and support. The decedent's beneficiaries are entitled to compensation for these losses, and all other damages permitted under the wrongful death statute N.C.G.S. § 28A-18-2(b) and in an amount in excess of \$25,000.00.

37. As a direct and proximate result of the negligence of defendant Associated Scaffolding, Mr. Lopez-Ramirez suffered conscious pain and mental suffering, fell 100 feet and died.

38. As a direct and proximate result of the defendant's negligence, the estate of Jose Luis Lopez-Ramirez has incurred funeral and burial expenses.

39. As a direct and proximate result of the defendant's negligence, the estate of Jose Luis Lopez-Ramirez is entitled to recover from defendant Associated Scaffolding Company, Inc., damages for the present monetary value of the deceased to his next of kin, including for the loss of the society, companionship, comfort guidance and advice of the deceased, as well as the loss of his income, services, protection, care and support. The decedent's beneficiaries are entitled to compensation for these losses, and all other damages permitted under the wrongful death statute N.C.G.S. § 28A-18-2(b) and in an amount in excess of \$25,000.00.

40. As a direct and proximate result of the negligence of defendant Associated Scaffolding, Mr. Hernandez suffered conscious pain and mental suffering, fell 100 feet and died.

41. As a direct and proximate result of the defendant's negligence, the estate of Jose Erasmo Claros Hernandez has incurred funeral and burial expenses.

42. As a direct and proximate result of the defendant's negligence, the estate of Jose Erasmo Claros Hernandez is entitled to recover from defendant Associated Scaffolding Company, Inc., damages for the present monetary value of the deceased to his next of kin, including for the loss of the society, companionship, comfort guidance and advice of the deceased, as well as the loss of his income, services, protection, care and support. The decedent's beneficiaries are entitled to compensation for these losses, and all other damages permitted under the wrongful death statute N.C.G.S. § 28A-18-2(b) and in an amount in excess of \$25,000.00.

**SECOND CLAIM FOR RELIEF**  
**(Negligence of Choate Construction Company)**

43. Plaintiff hereby realleges and incorporates paragraphs 1 through 42 of this complaint.

44. There is a recognizable and substantial danger inherent in performing construction work 100 feet above the ground on a high rise scaffold.

45. Choate knew of the circumstances creating the danger to those working on the scaffold work platforms at substantial heights.

46. Performing work on a scaffold 100 feet above the ground is inherently dangerous.

47. Defendant Choate, as general contractor on the project, had a non-delegable duty to provide for the safety of Mr. Almeida, Mr. Hernandez and Mr. Lopez-Ramirez because they were performing inherently dangerous work.

48. Upon information and belief, Defendant Choate, because it was behind on the project, pushed Associated Scaffolding to complete the dismantling of the scaffold within a day, a timetable that it knew or should have known was too rushed to be completed safely.

49. Defendant Choate was negligent in that it:
- a. Allowed the maximum distance specified by the manufacturer of the mast climber scaffold for the installation of tie-ins, securing the scaffold to the building, to be exceeded by allowing a 47 foot, 6 inch span between the 6<sup>th</sup> and 9<sup>th</sup> floors, when the maximum recommended distance was 40 feet.
  - b. Failed to ensure the operator of the mast climber was properly trained.

- c. Failed to ensure a competent person was provided to operate and supervise use of the mast climber.
- d. Failed to provide a competent person to determine the maximum amount of weight permitted on the mast climber.
- e. Failed to provide use of a crane for the safe disassembly of the mast climber.
- f. Allowed the scaffolding to be loaded in excess of its intended loads or rated capacity by placing 4,227 lbs. on the scaffold when its maximum gross weight for the particular configuration being used was 2,500 lbs.
- g. Allowed the scaffolding to be loaded with mast sections and struts on platform extensions of the scaffolding that are not intended to be used for carrying materials, contrary to the manufacturer's instructions.
- h. Failed to provide a competent person to inspect the scaffolding and its components before each work shift as required by the manufacturer.
- i. Failed to ensure the scaffolding and its components were inspected before each work shift and after any occurrence which could affect the scaffold's structural integrity.
- j. Required Associated Scaffolding to complete the removal of the subject scaffold, and to have the required windows installed, when it knew or should have known that the task could not be completed safely in that short a period of time.
- k. Failed to designate anyone to adequately and properly perform safety inspections of the scaffolding and scaffolding work area.
- l. Failed to ensure that the mast climbing work platform was safely installed, safely operated and safely dismantled by failing to follow safe construction practices in the industry.
- m. Failed to observe that care and caution required of a reasonably prudent general contractor under the same or similar circumstances.

50. As a direct and proximate result of the negligence of defendant Choate, Mr. Almeida suffered conscious pain and mental suffering, fell 100 feet and died.

51. As a direct and proximate result of the defendant's negligence, the estate of Anderson A. Almeida has incurred funeral and burial expenses.

52. As a direct and proximate result of the defendant's negligence, the estate of Anderson A. Almeida is entitled to recover from defendant Choate Construction Company damages for the present monetary value of the deceased to his next of kin, including for the loss of the society, companionship, comfort guidance and advice of the deceased, as well as the loss of his income, services, protection, care and support. The decedent's beneficiaries are entitled to compensation for these losses, and all other damages permitted under the wrongful death statute N.C.G.S. § 28A-18-2(b) and in an amount in excess of \$25,000.00.

53. As a direct and proximate result of the negligence of defendant Choate, Mr. Lopez-Ramirez suffered conscious pain and mental suffering, fell 100 feet and died.

54. As a direct and proximate result of the defendant's negligence, the estate of Jose Luis Lopez-Ramirez has incurred funeral and burial expenses.

55. As a direct and proximate result of the defendant's negligence, the estate of Jose Luis Lopez-Ramirez is entitled to recover from defendant Choate Construction Company damages for the present monetary value of the deceased to his next of kin, including for the loss of the society, companionship, comfort guidance and advice of the deceased, as well as the loss of his income, services, protection, care and support. The

decedent's beneficiaries are entitled to compensation for these losses, and all other damages permitted under the wrongful death statute N.C.G.S. § 28A-18-2(b) and in an amount in excess of \$25,000.00.

56. As a direct and proximate result of the negligence of defendant Choate, Mr. Hernandez suffered conscious pain and mental suffering, fell 100 feet and died.

57. As a direct and proximate result of the defendant's negligence, the estate of Jose Erasmo Claros Hernandez has incurred funeral and burial expenses.

58. As a direct and proximate result of the defendant's negligence, the estate of Jose Erasmo Claros Hernandez is entitled to recover from defendant Choate Construction Company damages for the present monetary value of the deceased to his next of kin, including for the loss of the society, companionship, comfort guidance and advice of the deceased, as well as the loss of his income, services, protection, care and support. The decedent's beneficiaries are entitled to compensation for these losses, and all other damages permitted under the wrongful death statute N.C.G.S. § 28A-18-2(b) and in an amount in excess of \$25,000.00.

### **THIRD CLAIM FOR RELIEF**

#### **(Negligence of Klimer Platforms Ltd. and Klimer Platforms Inc.)**

59. Plaintiff hereby realleges and incorporates paragraphs 1 through 58 of this complaint.

60. Upon information and belief, defendants Klimer Ltd. and Klimer Inc. manufactured and sold the mast climber that collapsed in this incident to Associated

Scaffolding Co., Inc., and delivered the mast climber to Associated Scaffolding's Durham, N.C., offices.

61. Upon information and belief, defendants Klimer Ltd. and Klimer Inc. provided instructions, education and training in the use of its KlimerLite mast climber, including to persons at Associated Scaffolding who used the KlimerLite mast climber.

62. Defendants Klimer Ltd. and Klimer Inc. had a responsibility to provide clear and consistent instructions and warnings in the use of their product, including warning of safety hazards and concerns.

63. Defendants Klimer Ltd. and Klimer Inc. knew or should have known that its KlimerLite mast scaffold did not have sufficient load bearing excess weight capacity designed and built into the subject mast scaffold as required by the American National Standards Institute and industry custom and practice.

64. Defendants Klimer Ltd. and Klimer Inc. were negligent in that they:
- a. Failed to provide adequate instructions for the safe use of its KlimerLite mast climber.
  - b. Failed to provide adequate training for the safe use of its KlimerLite mast climber.
  - c. Failed to provide adequate warnings for the safe use of its KlimerLite mast climber.
  - d. Failed to provide adequate instructions for the safe construction of the KlimerLite mast climber.
  - e. Failed to provide adequate training for the safe construction of the KlimerLite mast climber.
  - f. Failed to provide adequate warnings for the safe construction of the KlimerLite mast climber.

- g. Failed to provide adequate instructions for the safe dismantling of the KlimerLite mast climber.
- h. Failed to provide adequate training for the safe dismantling of the KlimerLite mast climber.
- i. Failed to provide adequate warnings for the safe dismantling of the KlimerLite mast climber.
- j. Failed to provide adequate instructions for the safe loading of its KlimerLite mast climber.
- k. Failed to provide adequate training for the safe loading of its KlimerLite mast climber.
- l. Failed to provide adequate warnings for the safe loading of its KlimerLite mast climber.
- m. Failed to clearly and adequately indicate the correct load-bearing capacity of its KlimerLite mast climber.
- n. Failed to design its mast climber work platform with the necessary safe margin of error in its loading capacity.
- o. Failed to construct its mast climber work platform with the necessary safe margin of error in its loading capacity.
- p. Failed to observe that care and caution required of a reasonably prudent scaffolding company under the same or similar circumstances.

65. As a direct and proximate result of the negligence of defendants Klimer Ltd. and Klimer Inc., Mr. Almeida suffered conscious pain and mental suffering, fell 100 feet and died.

66. As a direct and proximate result of the defendants' negligence, the estate of Anderson A. Almeida has incurred funeral and burial expenses.

67. As a direct and proximate result of the defendants' negligence, the estate of Anderson A. Almeida is entitled to recover from defendants Klimer Platforms, Ltd., and Klimer Platforms, Inc., damages for the present monetary value of the deceased to his next of kin, including for the loss of the society, companionship, comfort guidance and advice of the deceased, as well as the loss of his income, services, protection, care and support. The decedent's beneficiaries are entitled to compensation for these losses, and all other damages permitted under the wrongful death statute N.C.G.S. § 28A-18-2(b) and in an amount in excess of \$25,000.00.

68. As a direct and proximate result of the negligence of defendants Klimer Ltd. and Klimer Inc., Mr. Lopez-Ramirez suffered conscious pain and mental suffering, fell 100 feet and died.

69. As a direct and proximate result of the defendants' negligence, the estate of Jose Luis Lopez-Ramirez has incurred funeral and burial expenses.

70. As a direct and proximate result of the defendants' negligence, the estate of Jose Luis Lopez-Ramirez is entitled to recover from defendants Klimer Platforms, Ltd., and Klimer Platforms, Inc., damages for the present monetary value of the deceased to his next of kin, including for the loss of the society, companionship, comfort guidance and advice of the deceased, as well as the loss of his income, services, protection, care and support. The decedent's beneficiaries are entitled to compensation for these losses, and all other damages permitted under the wrongful death statute N.C.G.S. § 28A-18-2(b) and in an amount in excess of \$25,000.00.

71. As a direct and proximate result of the negligence of defendants Klimer Ltd. and Klimer Inc., Mr. Hernandez suffered conscious pain and mental suffering, fell 100 feet and died.

72. As a direct and proximate result of the defendants' negligence, the estate of Jose Erasmo Claros Hernandez has incurred funeral and burial expenses.

73. As a direct and proximate result of the defendants' negligence, the estate of Jose Erasmo Claros Hernandez is entitled to recover from defendants Klimer Platforms, Ltd., and Klimer Platforms, Inc., damages for the present monetary value of the deceased to his next of kin, including for the loss of the society, companionship, comfort guidance and advice of the deceased, as well as the loss of his income, services, protection, care and support. The decedent's beneficiaries are entitled to compensation for these losses, and all other damages permitted under the wrongful death statute N.C.G.S. § 28A-18-2(b) and in an amount in excess of \$25,000.00.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs pray the court as follows:

1. That the estate of Anderson A. Almeida, have and recover from the defendants, jointly and severally, compensatory damages in a sum in excess of \$25,000.00.

2. That the estate of Jose Luis Lopez-Ramirez, have and recover from the defendants, jointly and severally, compensatory damages in a sum in excess of \$25,000.00.

3. That the estate of Jose Erasmo Claros Hernandez, have and recover from the defendants, jointly and severally, compensatory damages in a sum in excess of \$25,000.00.

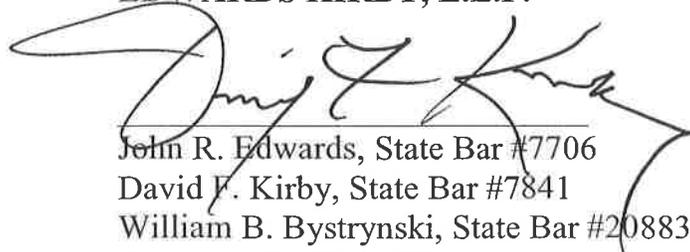
4. That the cost of this action, including pre-judgment interest, be taxed against the defendants.

5. For a trial by jury.

6. For such other and further relief as the court deems just and proper.

This the 6 day of January, 2016.

**EDWARDS KIRBY, L.L.P.**



John R. Edwards, State Bar #7706  
David F. Kirby, State Bar #7841  
William B. Bystrynski, State Bar #20883  
Attorneys for Plaintiffs

P. O. Box 17005  
Raleigh, NC 27619  
Phone: (919) 780-5400  
Fax: (919) 800-3099



**CHUK E. UMERAH, ATTORNEY AT LAW**

A handwritten signature in black ink, appearing to read "Chuk E. Umerah".

Chuk E. Umerah, State Bar #24583

Attorney for the Estate of

Jose Luis Lopez-Ramirez

210 E. Russell Street, #106

Fayetteville, NC 28301

Phone: (910) 323-9272

Fax: (910) 323-9271