IN THE SUPREME COURT OF IOWA

NO. 21-0723

JACQUELINE SUE UHLER,

Plaintiff-Appellant

vs.

THE GRAHAM GROUP, INC.,

Defendant-Appellee

APPEAL FROM THE DISTRICT COURT
OF POLK COUNTY CASE NO. LACL145890
HON. SAMANTHA GRONEWALD, JUDGE

PLAINTIFF-APPELLANT/AMENDED FINAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. PRESERVATION OF ERROR

II. STANDARD OF REVIEW

Authorities

Garr v. City of Ottumwa, 846 N.W.2d 865, 869-70 (Iowa 2014)

Knapp v. Simmons, 345 N.W.2d 118, 121 (Iowa 1984)

Morris v. Legends Fieldhouse Bar & Grill, 958 N.W.2d 817, 821(Iowa 2021), as amended (May 5, 2021)

Rauch v. Des Moines Elec. Co., 206 Iowa 309, 218 N.W. 340, 342 (1928)

Thompson v. Kaczinski, 774 N.W.2d 829, 836 (Iowa 2009)

Walls v. Jacob N. Printing, 618 N.W.2d 282, 285 (Iowa 2000)

Wiedmeyer v. Equitable Life Assurance, 644 N.W.2d 31, 32 (Iowa 2002)

III. THE EVIDENCE, WHEN VIEWED IN A LIGHT MOST FAVORABLE TO MS. UHLER AND RESOLVING ALL INFERENCE IN HER FAVOR, IS SUFFICIENT TO GENERATE A JURY QUESTION AS TO WHETHER OR NOT HER CLAIMED INJURIES WERE CAUSED BY EXPOSURE TO FUMES THAT RESULTED FROM GRAHAM'S ADMITTED USE OF DRAYNAMITE IN THE BUILDING ON THE DAY IN QUESTION

Authorities

Becker v. D & E Distrib., 247 N.W.2d 727, 730 (Iowa 1976)

Benson v. 13 Assocs., L.L.C., 2015 WL 582053, (Iowa Ct. App. 2015)

Bitner v. Ottumwa Cmty. Sch. Dist., 549 N.W.2d 295, 300 (Iowa 1996)

Clinkscales v. Nelson Sec., Inc., 697 N.W.2d 836, 841 (Iowa 2005)

Johnson v. Junkmann, 395 N.W.2d 862, 865 (Iowa 1986)

Larson v. Johnson, 253 Iowa 1232, 1234, 115 N.W.2d 849, 850 (1962)

Oak Leaf Country Club v. Wilson, 257 N.W.2d 739, 746–47 (Iowa 1977)

Randol v. Roe Enterprises, Inc., 524 N.W.2d 414, 417 (Iowa 1994)

Thompson v. Kaczinski, 774 N.W.2d 829, 836 (Iowa 2009)

Whetstine v. Moravec, 228 Iowa 352, 291 N.W. 425, 430 (1940)

IV. PART OF THE DISTRICT COURT'S ERROR WAS FAILING TO REALIZE THAT THE FACTS OF THIS CASE ARE UNDENIABLY DIFFERENT THAN THE RANES CASE

Authorities

Ranes v. Adams Lab'ys, Inc., 778 N.W.2d 677, 682-85 (Iowa 2010)

Spaur v. Owens-Corning Fiberglas Corp., 510 N.W.2d 854, 858 (Iowa 1994) 496 N.W.2d at 254 (citations omitted)

V. PART OF THE DISTRICT COURT'S ERROR WAS SIMPLY IGNORING THE BLOOMQUIST CASE AND THE SUPPORT IT PROVIDES FOR THE CONCLUSION THAT THERE WAS SUFFICIENT EVIDENCE TO GENERATE A JURY QUESTION ON THE ISSUE OF CAUSATION

Authorities

Bloomquist vs. Wapello County, 500 N.W.2d 1 (Iowa 1993)

VI. PART OF THE DISTRICT COURT'S ERROR WAS ITS FAILURE TO FACTOR INTO ITS ANALYSIS THE DIRECT ADMISSION, BY GRAHAM, THAT DRAYNAMITE FUMES INJURED MS. UHLER AND OTHERS

VII. PART OF THE DISTRICT COURT'S ERROR WAS ITS FAILURE TO CONSIDER THE LOGICAL CONCLUSION THAT, BY MANIPULATING THE "RECIRCULATION" OF AIR IN THE BUILDING ON THE DAY IN QUESTION, GRAHAM FORCED FUMES FROM DRAYNAMITE INTO PARTS OF THE BUILDING THEY MIGHT NOT OTHERWISE HAVE REACHED

Authorities

Banwart v. 50th St. Sports, L.L.C., 910 N.W.2d 540, 548–49 (Iowa 2018)

Peak v. Adams, 799 N.W.2d 535, 542–43 (Iowa 2011)

VIII. PART OF THE DISTRICT COURT'S ERROR WAS ITS FAILURE TO CONSIDER THE LOGICAL INFERENCE THAT, BECAUSE MS. UHLER WAS "MORE SUSCEPTIBLE" TO INJURY FROM EXPOSURE TO DRAYNAMITE, SHE MIGHT HAVE BEEN MORE LIKELY TO BE INJURED BY FUMES FROM DRAYNAMITE

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Did the District Court err in deciding there was insufficient evidence to generate a jury question as to whether or not fumes from a product called DRAYNAMITE caused injury to the Plaintiff/Appellant while she was in a building owned, operated and maintained by the Defendant/Appellee.

ROUTING STATEMENT

The asserted error of the District Court is based on the undisputed facts of this case and the established case law of this state. As such, it is respectfully submitted that this matter can be decided by the Court of Appeals.

STATEMENT OF THE CASE

This is a premises liability case brought against an entity that was responsible for the operation, maintenance and safety of a commercial office building (App. 8-15, 114-119, 207-208). The Plaintiff/Appellant (along with multiple other people) was injured when she exposed to noxious fumes in that building on October 16, 2017 (App. 125-140, 159-160, 215-225, 228-233, 245-247, 254-256, 261-264, 384-390, 427-450). The Defendant/Appellee admitted to using a product called DRAYNAMITE in the building just before people began complaining of symptoms the type of which are known to be caused by fumes from that product (Id.).

This case was timely filed and the parties engaged in discovery (App. 8-15, 114, 117-371, 384-390, 427-450). On May 5, 2021, less than two weeks before trial, Judge Samantha Gronewald granted summary judgment to the Defendant/Appellee (App. 451-460). On May 25, 2021, a Notice of Appeal was timely filed by the Plaintiff/Appellant (App. 461). The sole issue in this appeal is whether the District Court erred in its entry of summary judgment or, put another way, whether that court erred in finding there was insufficient evidence to generate a jury question on causation.

STATEMENT OF THE FACTS

I. SUMMARY

On October 16, 2017 ("the day in question"), Plaintiff/Appellant Jacqueline Uhler ("Ms. Uhler") went to work at the Plaza I Medical Office Building ("the building") at 1212 Pleasant Street in Des Moines. (App. 8-11, 82-94, 114-115). Defendant/Appellee The Graham Group, Inc. ("Graham") was the majority owner of the building (App. 8-15, 121-122, 155-156, 189, 207-214). By its own admission, Graham was responsible for the operation, maintenance and safety of the building (Id.).[1]

[1] The building's levels are referred to herein as the 1st level (the basement), the 2nd level (the ground floor), the 3rd level (the second story), the 4th level (the third story) and the 5th level (the fourth story).

On the afternoon of the day in question (shortly after a Graham employee used a sulfuric acid based product called "DRAYNAMITE" on the 1st level of the building), multiple people (including Ms. Uhler) from three different offices complained about fumes at various places in the building (App. 125-140, 159-160, 215-225, 228-232, 245-247, 254-256, 261-264). At least eleven of those people (including Ms. Uhler) reported that the fumes made them sick and an entire clinic was closed due to the presence of fumes in the building (Id.).

Fumes from DRAYNAMITE pose a danger of the exact injury claimed by Ms. Uhler as well as the symptoms voiced by numerous other people in the building on the day in question (App. 117-118, 128, 164, 195, 215-225, 265-270). Furthermore, the only known use of a potentially dangerous chemical in the building that day was Graham's use of DRAYNAMITE just before people began to complain about fumes in the building that were making them sick (App. 117-208).

Beside Graham's admitted use of DRAYNAMITE just before fumes were noticed by various people above where that use took place, there is no evidence even suggesting any other possible source for noxious fumes in the building on the day in question (App. 8-390, 427-491). There has never been

another instance of fumes making multiple people sick throughout the building (App. 125, 127, 138, 140, 142, 159-161, 174, 191, 193, 196).

In addition to admitting that it used DRAYNAMITE in the building on the day in question and that multiple people complained of being made sick by fumes in the building that day after that usage, Graham has actually admitted it was the use of DRAYNAMITE that caused there to be fumes in the building that made people sick (App. 117-119, 125, 127, 138, 140, 142, 144, 159-161, 174, 176-179, 188-195, 199, 232-233, 254-256, 261). That is, and as is discussed in more detail below, Graham has admitted the very fact the District Court said Ms. Uhler could not prove; namely that her injuries were caused by fumes caused by the use of DRAYNAMITE in the building (Id.). Furthermore, and as is again discussed in more detail below, records and opinions from multiple doctors support the conclusion that Ms. Uhler was injured by DRAYNAMITE fumes in the building on the day in question (App. 271-323, 384-390, 427-450).

II. FACTS ABOUT MS. UHLER

Ms. Uhler is a 78 year old widow with two adult children including a special needs child for whom she is the primary caregiver (App. 8-11, 115-116). On the day in question Ms. Uhler was at work in the records department

of the Blank Children's Pediatric Clinic on the 4th level of the building (App. 8-11, 114-116, 125, 159-160, 169-170, 215-225, 262-264).

In the afternoon of the day in question, after the admitted use of DRAYNAMITE by a Graham employee on the 1st level of the building, Ms. Uhler noticed, complained about and was made ill by fumes in her work area (App. 8-11, 114-119, 129-140, 160-170, 215-225, 289-323, 384-390, 427-450). Those fumes were noted not only by Ms. Uhler but also by numerous other people at various places in the building all of which were above where DRAYNMITE had been used (App. 8-11, 114-119, 129-140, 160-170, 215-264). The fumes were described as "harsh", "chemically" and smelling like "rotten eggs" all of which are common descriptions of the fumes generated by DRAYNAMITE and its chemical ingredient sulfuric acid (App. 115-119, 215-264, 349-358). Multiple people, in addition to Ms. Uhler, complained that the fumes made them sick (App. 215-264).

As of the day in question, and for some years before, Ms. Uhler had been diagnosed with asthma but that condition was well controlled and Ms. Uhler was an active person who was able to, and did, walk recreationally on a regular basis and enjoyed things like "taking the stairs" at work and working out at the gym (App. 115-116, 289-323, 384-390, 427-450). According to her doctors, as a result of her exposure to fumes in the building on the day in

question Ms. Uhler's asthma has markedly worsened and her ability to breath, speak and be active has been made much more difficult which, according to the unchallenged medical evidence, will be true for the rest of her life (App. 271-323, 384-390, 427-450). The same doctors also noted that Ms. Uhler's pre-existing asthma made her more susceptible to injury from exposure to DRAYNAMITE fumes than someone who did not have that condition (a fact the District Court simply ignored) (App. 289-323, 384-390, 427-450).

III. FACTS ABOUT GRAHAM AND THE BUILDING

Graham was, on the day in question the majority owner of the building and, as such, was responsible for its maintenance and operation (App. 8-15, 121-122, 155-156, 189, 191-192). The maintenance staff at the building was manager Toby George along with laborers Brad Grismore and Kevin Zimmerman (App. 65-66, 122-124, 155-158, 188-191). Graham executive Jeff Hatfield was, as of the day in question, Mr. George's supervisor (App. 155-156, 188-191). Only Messrs. George and Grismore were actually involved in the matters at issue on the day in question (App. 65-66, 120-206). All of the above-named persons were employees of Graham (Id.).[2]

[2] Messrs. George and Grismore were involved in the remediation efforts on the day in question after people reported fumes in the building after Mr. Gismore's use of DRAYNAMITE. Mr. Hatfield was in charge of the later effort to identify the cause of those fumes (App. 129-140, 160-70, 188-195). Mr. Hatfield's conclusion was that the fumes were caused by the use of

IV. FACTS ABOUT THE DAY IN QUESTION AND GRAHAM'S USE OF DRAYNAMITE IN THE BUILDING THAT DAY

Early in the afternoon on the day in question, after being told by Mr. George of a call from a tenant about a clogged sink on the 1st level, Mr. Grismore poured DRAYNAMITE, directly out of the bottle without measuring it, into standing water in that sink (App. 117-119, 129-140, 155-156, 160-170). Mr. Grismore did nothing to identify the cause of the clog and, to this day, Graham cannot identify the cause of the clog or explain how it reacted with DRAYNAMITE such that, according to what Mr. George told a tenant, "fumes started to spread" through the building (App. 133, 195, 261).[3]

Shortly after Mr. Grismore's use of DRAYNAMITE a tenant on the 3rd level of the building called Mr. George and complained about "funny odors"

DRAYNAMITE in the building (App. 188, 192-195). That conclusion was consistent with Mr. George having said, multiple times, that the source of the fumes was the use of DRAYNAMITE on the day in question (App. 232-233, 254-256, 261).

[3] Mr. Grismore's use of DRAYNAMITE was, in a number of ways, contrary to the Material Safety Data Sheet for DRAYNAMITE. The following warnings/directions were ignored by Mr. Grismore: "use in a well-ventilated area", "wear protective gloves, protective clothing, eye protection and face protection", "wear respiratory protection", "wash face, hands and any exposed skin thoroughly after handling", "do not flush into surface water or sanitary sewer system", "avoid breathing vapors, mist or gas", "local ventilation is suggested to control exposure from operations that can generate significant levels of vapor, mist or fumes", "chemical googles and a face shield should be worn when handling" and "reacts violently with water" (App. 129-140, 265-270, 349-358).

on that level (App. 117-119, 136-138, 160-170). After that, Mr. George got a call from another tenant (on the 4th level where Ms. Uhler worked) complaining of fumes that were making people sick (App. 8-11, 115-116, 160-70).

In response to those complaints, Mr. George called Mr. Grismore and, after finding out about his use of DRAYNAMITE, those men immediately went to the bathroom where that product had been used (App. 117-119, 128-140, 160-70). Initially, Graham's interrogatory answer said that, even before getting to the 1st level to meet Mr. Grismore, Mr. George could smell "a funny odor" on the 2nd level by the elevator (App. 117-119). However, by the time of Mr. George's deposition, Graham changed that story and Mr. George said he first smelled DRAYNAMITE, through a closed door to a room where the ventilation was allegedly "working", in a hallway on the 1st level of the building (App. 160-170).

After his receipt of the odor complaints from tenants, and after being able to smell DRAYNAMITE either through a closed door as he neared the room with the clogged sink or on the 2nd level by the elevator, Mr. George (with Mr. Grismore) sprang into action in an attempt to "air out" the building; something they had never done in their over forty combined years of working for Graham (App. 117-119, 125-140, 159-170). Specifically, Mr. George,

using a computer that controlled air flow in the building, altered that air flow thereby manipulating the "recirculation" of air that was already in the building (Id.). Mr. George and Mr. Grismore also went through the building opening interior and exterior doors and placing fans in various places in furtherance of their never before or since attempted effort to alter the "recirculation" of air that was already in the building (Id.).

During discovery Graham said "all remnants of any smell were out of the building within approximately 10 minutes of it being reported" (App. 117-119). However, in a communication with one of the tenants the next day, Mr. George said it took "about ½ hour" to air out the building (App. 261). Also, several people noted that odors were still detectable in the building even the next day (App. 215-225, 262-263, 366-367). Finally, Graham eventually admitted that, in fact, it actually has no idea how long it took to rid the building of the illness causing fumes that were complained about by multiple persons on (and even after) the day in question (App. 117-119, 141, 175, 261).

During discovery Graham gave multiple answers as to "how much" DRAYNAMITE Mr. Grismore used on the day in question. Graham's Answer to Interrogatory No. 8 listed the amount as "about a cup" (App. 117-119). Mr. George testified that Mr. Grismore told him he used "a cup" (App. 167). Mr. Grismore's deposition testimony was that he used "half a bottle"

(App. 133). Finally, in paragraph 19 of the Statement of Undisputed Facts offered in support of its summary judgment motion, Graham said Mr. Grismore "could" have used "up to two cups" (App. 30).[4]

V. FACTS ABOUT DRAYNAMITE AND ITS CAUSATIVE ROLE IN MS. UHLER'S INJURIES

The chemical ingredient in DRAYNAMITE is sulfuric acid and an odor commonly used to describe sulfuric acid (as well as sulfur dioxide/hydrogen sulfide in general) is "rotten eggs" (App. 265-270, 349-358). During discovery, Mr. Grismore admitted he did not smell rotten eggs until after his use of DRAYNAMITE on the day in question (App. 135). Additionally, other people reported that same smell in the building after Mr. Grismore's use of DRAYNAMTE and there is no evidence of anyone offering that complaint before that usage or of there being any other explanation for that odor in the

[4] The details of Graham's negligence on the day in question are detailed in the report of one of Ms. Uhler's designated experts, Gerald Sobczak. Those mistakes included: (a) failing to try appropriate non-chemical means to address the clogged sink; (b) using a dangerous chemical in a medical office building (a practice Graham has since ceased); (c) using a dangerous chemical in a medical office building during the middle of the work day instead of, at the very least, after normal business hours; (d) failing to notify the occupants of the building of the usage of a dangerous chemical before it took place or, at the very least, after a situation developed where noxious fumes were noticed throughout the building; and, (e) in response to complaints about illness causing fumes after the use of a dangerous chemical, manipulating the air flow in the building to alter the circulation of air that was already present and that already contained fumes that were making people sick (App. 209-214).

building that day (App. 115-116, 135, 170, 215-225, 228-230, 262-264). Furthermore, and as was admitted by Graham, exposure to DRAYNAMITE fumes can unquestionably cause serious injury including, without limitation, aggravation of conditions like asthma which is exactly what happened to Ms. Uhler (according to her doctors) because of her exposure to fumes in the building on the day in question (App. 142-143, 177, 197-198, 265-270, 289-323, 349-358, 384-390, 427-450).

Two doctors, Daniel Dodge, D.O. ("Dr. Dodge") and Jacqueline Stoken, D.O. ("Dr. Stoken"), both of whom were designated as experts and whose reports were made available to Graham in a timely manner, opined that the permanent worsening of Ms. Uhler's asthma was due to her being exposed to DRAYNAMITE fumes on the day in question (App. 16-18, 289-323). In addition to those opinions (from doctors the District Court said are qualified to opine on the cause of Ms. Uhler's injuries), Drs. Dodge and Stoken both also opined that, because of her underlying asthma, Ms. Uhler was more susceptible to permanent increased injury from exposure to DRAYNAMITE fumes than someone who did not have that condition (App. 289-323, 481-460).[5]

[5] Just with reference to Dr. Stoken, the following matters are true (App. 289-317): (1) she has education, experience and training in treating lung injuries like those at issue; (2) she interviewed Ms. Uhler about the day in question

In addition to the opinions of Drs. Dodge and Stoken, records of other doctors Ms. Uhler saw after the day in question support the conclusion that she was injured by exposure to DRAYNAMITE fumes that day in the building (App. 271-288, 384-390, 427-450). Like Drs. Dodge and Stoken, the District Court had the records of those doctors before it when it granted summary judgment (Id.). However, unlike Drs. Dodge and Stoken, the District Court simply ignored what the records of those other doctors said (App. 451-460).

After the day in question, Ms. Uhler saw Dr. Daphney Myrtil on October 18th and 26th, 2017 (App. 384-390). Dr. Myrtil's records clearly provide support for the conclusion that Ms. Uhler was injured as a result being exposed to chemical fumes at work on the day in question (Id.). For instance,

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and her complaints before and since; (3) she reviewed Ms. Uhler's medical records from before and after the day in question; (4) she reviewed materials which indicated, without limitation, that Graham admitted to using DRAYNAMITE in the building on the day in question and it had no explanation, other its use of DRAYNAMITE, for the fumes in the building that day and, in fact, had concluded itself that the source of those fumes was its admitted use of DRAYNAMITE; (5) she reviewed discovery materials which indicated that the complaints about fumes in the building on the day in question from multiple people were consistent with the presence of DRAYNAMITE fumes in the building that day; (6) one of her specifically listed opinions was "status post work injury on October 16, 2017, with occupational exposure of Draynamite with permanent lung damage"/"Mrs. Uhler has sustained a chemical fume injury with Draynamite which has caused permanent lung damage…." and (7) another of her specifically listed opinions was that Ms. Uhler "had, as of October 16, 2017, a medical condition (asthma) that made her more susceptible to injury from exposure to fumes generated by Draynamite than a person without that condition".

the record from October 18, 2017 states, without limitation, "exposed to fumes in the building…presents to clinic following exposure to what she describes as a cleaning agent…was just doing her job and she noticed a very nasty rotten egg smell…" (App. 384-387).

The first pulmonary specialist Ms. Uhler saw after the day in question was Dr. Gregory Hicklin (who died in 2018 after which Dr. Dodge took over as Ms. Uhler's pulmonologist). Dr. Hicklin's records also clearly support the conclusion that Ms. Uhler suffered injury due to exposure chemical fumes in the building on the day in question (App. 271-288, 427-444). For instance, and without limit, a record from November 29, 2017 states "in mid-October, she was exposed to a hydrogen sulfide episode due to a spill or accident in the basement below where she works. Many people were evacuated" (App. 427-432). Likewise, a record from January 19, 2018 states "has a history of asthma but was doing well until she was exposed to fumes at the workplace. There was an incident where multiple people were exposed, and she has had problems since then" (App. 433-438). [6]

[6] The fact that the records of Drs. Myrtil and Hicklin do not refer to DRAYNAMITE (or contain all the details of the incident) hardly means they do not support the conclusion that Ms. Uhler was injured by DRAYNAMITE fumes in the building on the day in question. When Ms. Uhler was seeing those doctors, what she knew was that there were fumes in the building on the day in question that had made her sick. The identification, by Graham, of DRAYNAMITE as the source of those fumes did not take place until after

VI. FACTS PROVING GRAHAM HAS ADMITTED IT WAS THE USE OF DRAYNAMITE THAT CAUSED THERE TO BE INJURY CAUSING FUMES IN THE BUILDING ON THE DAY IN QUESTION

In the history of the building, and the collective experiences of the Graham employees who were involved in the matters at issue, there has never been a day, other than the day in question, when (a) multiple occupants of a building were made sick by noxious fumes; (b) an entire office was closed due to illness causing fumes in a building; or (c) efforts were made to try to "air out" an entire building due to complaints of illness causing fumes (App. 125, 127, 138, 140, 142, 159-161, 174, 191, 261, 372-381). Furthermore, each Graham employee who had any involvement with the matters at issue here fully admitted that they had no explanation for the illness causing fumes in the building on the day in question other than the admitted use of DRAYNAMITE therein.[7]

Ms. Uhler had seen those doctors and Dr. Hicklin had died. That is why those doctors' records do not refer to DRAYNAMITE. That hardly means those records offer no support for the conclusion that Ms. Uhler was injured by exposure to DRAYNAMITE. Rather, the records of Drs. Myrtil and Hicklin (along with the opinions of Drs. Dodge and Stoken), when read along with the evidence showing that source of the fumes was DRAYNAMITE, clearly support the conclusion that Ms. Uhler was injured by exposure to chemical fumes on the day in question and that those fumes existed due to Graham's use of DRAYNAMITE in the building that day.

[7] App. 144 (Brad Grismore): "Can you give me one specific plausible explanation for the complaints [about illness causing odors in the building on the day in question] other than your use of… DRAYNAMITE…in the

Graham listed Mr. George as an expert and specifically indicated that, as such, he was qualified to testify about air movement in the building (App. 19-22). That fact is significant because Mr. George has told several people that the fumes in the building on the day in question were caused by the use of DRAYNAMITE on the 1st level of the building (App. 232-233, 254-256, 261). In other words, Graham identified as its expert on the topic of air flow in the building someone who has literally told people that the fumes in the building on the day in question were caused by the use of DRAYNAMITE that day…the very fact the District Court ruled Ms. Uhler could not prove as a matter of law (Id.).

More specifically, Unity Point employee Andrea Fetters (a supervisor who fielded a number of the complaints from persons who said that fumes made them sick) testified as follows (App. 232-233):

> "What…explanation…have you been given…about…there being fumes in the building that were making people feel unwell? What I recall is that there was something that was disposed of in the drain…they had poured something down the drain…So in terms of

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basement of the building that day… No."; App. 176-177 (Toby George): "Can you offer any explanation for the complaints of the people who say they got sick on the day in question besides the use of chemicals in the basement by Brad? No, I cannot." and App. 177-178: "Can you give me a single specific plausible explanation for the complaints…other than the use of DRAYNAMITE in the building that day? No, I can't."; and App. 199 (Jeff Hatfield): "Do you have a single plausible specific explanation for what happened that day that does not involve the use of DRAYNAMITE in the basement? I don't."

> what you recall being told by [Graham] about the cause of all this was they had poured something down the drain? Yes. Do you remember who told you that? Toby George. Did he tell that to you that day or afterward? That day…Have you been given any other explanation, either that day or since, by anyone…about why these fumes were in the building in question on the day in question? Not that I recall."

Scott Draper (another Unity Point employee who was in direct contact with Graham about the fumes in the building) testified (App. 254-256):

> "What did you learn from Toby about what caused the incident…[T]hat there was a cup of drain cleaner poured into a basement sink drain, and it resulted in fumes. And the source of that information was Toby George? Yes."

Finally, the day after the incident Mr. Draper sent an email to other Unity Point employees in which he said (App. 261):

> "I spoke with Toby and he'll put together a synopsis of the timeline for the 1212 incident. It was just his staff that were involved. Poured about 1 cup of drain cleaner in a basement sink drain. Fumes started to spread…."[8]

In addition to those examples of Mr. George admitting that the source of the fumes was DRAYNAMITE, Mr. Hatfield, Graham's Senior Vice President of Medical Properties who was involved in trying to identify the source of the fumes in the building on the day in question, came to the same conclusion (App. 188-195). More specifically, Mr. Hatfield testified that, after talking to Mr. George, various tenants and the plumbing contractor used

[8] The promised "synopsis" from Mr. George was never prepared.

by Graham, the conclusion was that the fumes were caused by the use of DRAYNAMITE in the building that day (App. 193: "In my opinion, the chemical was part of what caused problems…"). After that, Graham stopped using DRAYNAMITE due to the conclusion that it was the source of the fumes on the day in question (App. 194-195: "So the next logical thing is let's not use [DRAYNAMITE]. I don't ever want to have a second one of these.").

Finally, and very much consistent with all of the foregoing, in its answer to Ms. Uhler's interrogatory asking for an explanation of the events on the day in question and the actions of its employees having to do with those events, Graham identified and described Mr. Grismore's usage of DRAYNAMITE in the building and the efforts of Messrs. George and Mr. Grismore to address the fumes they felt were caused by that usage (App. 117-119). In other words, it was Graham that identified Mr. Grismore's use of DRAYNAMITE as the source of the illness causing fumes in the building in question on the day in question. Only after realizing the importance of that admission did Graham (or, more accurately, its legal counsel) begin to dispute that the presence of fumes in the building on the day in question was caused by the use of DRAYNAMITE.[9]

[9] During the course of discovery, two requests were made to counsel for Graham for counsel for Ms. Uhler to be given access to the building (App. 368-371). Both of those requests were ignored.

ARGUMENT

I. PRESERVATION OF ERROR

Graham filed its Motion For Summary Judgment ("the Motion") on March 17, 2021. Ms. Uhler filed her properly supported resistance ("the Resistance") to the Motion on April 7, 2021. Ms. Uhler also filed her trial exhibits on May 3, 2021. The Resistance and Ms. Uhler's trial exhibits clearly demonstrated the existence of evidence sufficient to generate a jury question on the issue of whether or not Ms. Uhler's exposure to DRAYNAMITE fumes in the building on the day in question caused her claimed injuries.

There was an unrecorded hearing on the Motion and the Resistance on April 12, 2021. After that, on April 30, 2021, Ms. Uhler, through counsel, filed Plaintiff's Additional Legal Authority In Support of Resistance To Motion For Summary Judgment. Following that, on May 5, 2021, having before it all of the materials attached to the Resistance, all of the Plaintiff's trial exhibits and the legal authorities cited in Ms. Uhler's various filings to that point, the District Court entered its Ruling on Defendant's Motion For Summary Judgment ("the Ruling"). The Ruling disposed of this case at the trial court level in its entirety. On May 25, 2021 a Notice of Appeal was timely filed by Ms. Uhler.

II. STANDARD OF REVIEW

A grant of summary judgment is reviewed for the correction of errors of law. Wiedmeyer v. Equitable Life Assurance, 644 N.W.2d 31, 32 (Iowa 2002). Summary judgment is "not proper if reasonable minds could draw different inferences and conclusions from the undisputed facts. In this respect, summary judgment is functionally akin to a directed verdict…and every legitimate inference that can be deduced from the evidence should be afforded the nonmoving party…a fact question is generated if reasonable minds can differ on how the issue should be resolved." Knapp v. Simmons, 345 N.W.2d 118, 121 (Iowa 1984); see also Morris v. Legends Fieldhouse Bar & Grill, 958 N.W.2d 817, 821 (Iowa 2021) ("On motion for summary judgment, the court must: (1) view the facts in the light most favorable to the nonmoving party, and (2) consider on behalf of the nonmoving party every legitimate inference reasonably deduced from the record…").

As this Court has long held, "causation is a question for the jury save in very exceptional cases where the facts are so clear and undisputed, and the relation of cause and effect so apparent to every candid mind, that but one conclusion may be fairly drawn…" Thompson v. Kaczinski, 774 N.W.2d 829, 836 (Iowa 2009). Causation, like any other fact, can be proven by direct and circumstantial evidence and neither is more or less conclusive than the

other. Walls v. Jacob N. Printing, 618 N.W.2d 282, 285 (Iowa 2000); see also Rauch v. Des Moines Elec. Co., 206 Iowa 309, 218 N.W. 340, 342 (1928) ("proof of 'causal connection' [between a defendant's complained of behavior and a plaintiff's alleged damages] may be by…direct or circumstantial evidence"). Finally, "to determine whether the defendant…caused the plaintiff's harm…the defendant's conduct is a cause in fact of the plaintiff's harm if, but-for the defendant's conduct, that harm would not have occurred…" Garr v. City of Ottumwa, 846 N.W.2d 865, 869-70 (Iowa 2014).

III. THE EVIDENCE, WHEN VIEWED IN A LIGHT MOST FAVORABLE TO MS. UHLER AND RESOLVING ALL INFERENCES IN HER FAVOR, IS SUFFICIENT TO GENERATE A JURY QUESTION AS TO WHETHER OR NOT HER INJURIES WERE CAUSED BY EXPOSURE TO FUMES THAT RESULTED FROM GRAHAM'S USE OF DRAYNAMITE IN THE BUILDING ON THE DAY IN QUESTION.

The above-noted realities of Iowa law cannot legitimately be questioned. However, and with all due respect, after stating those principles in the Ruling, the District Court issued a ruling that simply ignored them (along with most of the evidence). That is, and quite simply put, the error by the District Court was that, in evaluating whether a jury question existed on causation, it failed to look at the totality of the evidence and it most certainly failed to look at the evidence in a light most favorable to Ms. Uhler and in a way that decided all reasonable inferences in her favor.

Instead of doing those things, which it was required to do by Iowa law, the District Court looked myopically at only certain parts of the evidence (the opinions of Drs. Dodge and Stoken) and bought into the fallacy that a plaintiff in Ms. Uhler's position has to offer expert testimony on things like "concentration levels and/or duration of exposure" and, if they cannot, there can be no jury question on causation. That was reversible error. See Bitner v. Ottumwa Cmty. Sch. Dist., 549 N.W.2d 295, 300 (Iowa 1996) ("a court deciding a motion for summary judgment must not weigh the evidence, but rather simply inquire whether a reasonable jury faced with the evidence presented could return a verdict for the nonmoving party.").

The reality, of course, is that it would be impossible for anyone to be able to know precisely how the DRAYNAMITE Graham admittedly used on the day in question reacted with whatever was in the clogged sink so as to be able to know why those things resulted in fumes spreading throughout the building. Graham itself has no idea what was in the water Mr. Grismore poured DRAYNAMITE into, how much DRAYNAMITE he used or how long it took to rid the building of the fumes. Given that, how in the world is Ms. Uhler supposed to ascertain that information or recreate precisely what happened on the day in question? The answer, of course, is that Ms. Uhler was not required to do that.

Rather, what Ms. Uhler was required to do was present evidence (direct and circumstantial and expert and non-expert) from which a jury could reasonably conclude that the behavior of Graham on the day in question caused the fumes that were noted by numerous people and, in turn, caused people, including Ms. Uhler, to report being injured (conclusions which Graham itself long ago reached). See Larson v. Johnson, 253 Iowa 1232, 1234, 115 N.W.2d 849, 850 (1962) ("…evidence must be such as to make plaintiff's theory of causation reasonably probable and more probable than any other theory based on such evidence. It is not necessary the testimony be so clear as to exclude every other possible theory. This means only the evidence must be such as to raise a jury question within the elements of the foregoing rule; it need not be conclusive.") and Whetstine v. Moravec, 228 Iowa 352, 291 N.W. 425, 430 (1940) (plaintiffs bear the burden "to show [a]causal connection between the negligence claimed and the injury…[that connection] need be established only by the preponderance or greater weight of the evidence… And this is true whether the testimony be direct or circumstantial. No different rule is applied in the establishment of these facts than is ordinarily applied in the establishment of any other fact in a civil action."); see also Clinkscales v. Nelson Sec., Inc., 697 N.W.2d 836, 841 (Iowa 2005) ("mere skepticism of a…claim is not a sufficient

reason to prevent a jury from hearing the merits of a case") and Becker v. D & E Distrib., 247 N.W.2d 727, 730 (Iowa 1976) ("evidence indicating a probability or likelihood of [causation]….may be inferred by combining an expert's…testimony with non-expert [evidence] that the described condition of which complaint is made did not exist before [the] occurrence of those facts alleged to be the cause thereof…"). It is, with all due respect, impossible to logically conclude Ms. Uhler did not clear that hurdle.

There is no dispute that the product Graham admitted using in the building (just before people started to complain about fumes making them sick) is dangerous and generates the exact kind of fumes people reported. There is no dispute that multiple people did complain about fumes that made them sick and that they were all above where DRAYNAMITE was used. There is no dispute that the descriptions of the fumes matched common descriptions of the chemical in DRAYNAMITE and there is no evidence those fumes were present before the use of DRAYNAMITE. There is no dispute that the fumes were bad enough to close an entire office in the building and that, in response to complaints about fumes, Graham employees took steps to manipulate the "recirculation" of air throughout the building (in a way never attempted before or since). Other than the use of DRAYNAMITE, there is no other explanation for the fumes and Graham

itself concluded the fumes were caused by the use of DRAYNAMITE. Finally, based on the foregoing facts, two doctors specifically opined that Ms. Uhler was injured by exposure to DRAYNAMITE fumes in the building on the day in question and the records of several other doctors clearly support that same conclusion.

With all of that in mind, and again recognizing that the evidence must be viewed in a light most favorable to Ms. Uhler and that all logical inferences that can possibly be deduced from the same have to be decided in her favor, it is impossible to logically conclude that a reasonable jury could not find Ms. Uhler was injured by DRAYNAMITE fumes. Put another way, it is logically impossible to conclude that a reasonable jury could not reach the exact same conclusion that Graham did (i.e. that the source of the injury causing fumes on the day in question was the use, by Graham, of DRAYNAMITE in the building). See Johnson v. Junkmann, 395 N.W.2d 862, 865 (Iowa 1986) (the type of "exceptional case" where causation can be decided as a matter of law "is one in which after construing the evidence in its most favorable light and resolving all doubts in favor of the party seeking to establish proximate cause, the relationship between cause and effect nonetheless is so apparent and so unrelated to defendant's conduct that

no reasonable jury could conclude defendant's fault was a proximate cause of plaintiff's injuries").[10]

To demonstrate the truth of the foregoing position, it is respectfully requested that the Court consider an analogy that alters, only slightly, the facts of this case. Suppose the following:

(1) There are complaints about "the smell of smoke" throughout a four story, multi-tenant office building that are significant enough to lead to the temporary closure of an entire office in the building and multiple people complaining of being made sick.

(2) The building owner admits one its employees was burning trash in a dumpster in the basement of the building within minutes of people (in various offices on the upper floors) complaining of smoke. However, aside from knowing the employee was burning

[10] Graham's denial now that its use of DRAYNAMITE is what lead to the illness causing fumes in the building is just one more reason why a jury should be allowed to decide this case. It is beyond reasonable dispute that Graham originally concluded that the fumes came from its use of DRAYNAMITE. Graham decided to deny that fact only when it (or more accurately its legal counsel) realized the significance of that reality. While Graham was free to make that 180 degree turn, in doing so it only showed again what was already clear from all of the other evidence. Namely that a jury should be allowed to decide if the injuries suffered by Ms. Uhler were caused by fumes which came from Graham's admitted use of DRAYNAMITE in the building on the day in question.

"trash" in a dumpster, the owner has no idea what the trash was or what else was in the dumpster before its employee lit the fire.

(3) Within minutes of the start of the dumpster fire, multiple occupants of the building (in various offices above the dumpster) complain of smoke and a number of them report maladies (that they attribute to the smoke) ranging from eye irritation to an inability to breath.

(4) After people in the building start to complain about smoke, maintenance employees take steps to manipulate the flow of air in the building in an effort, according to them, to "recirculate" the air that was already in the building (which, of course, at that point already contained smoke).

(5) The owner admits there has never been an issue with smoke in the building before or since and that it is unaware of any other explanation for how or why there could have been smoke in the building other than the dumpster fire started by its employee.

(6) After-the-fact, the building owner undertakes an effort to figure out "why" there was smoke in the building and it concludes (and tells multiple people) that it was the dumpster fire in the basement that lead to there being smoke in the building (and, because of that, it tells its employees to stop burning trash in the dumpster).

(7) Finally, multiple medical doctors conclude and opine that one of the occupants of the building, who had a pre-existing respiratory condition that made her more susceptible to serious lung injury, suffered serious lung injury due (according to doctors who saw her before all of the details of the incident were known) to "an as of yet unknown airborne irritant that smelled like a dumpster fire" or (according to the doctors who saw the person after the details were more understood) to "smoke inhalation caused by the dumpster fire".

In that situation, would the person with lung damage be required, in order to generate a jury question on causation in a lawsuit against the building owner based on the negligence of its trash burning employee, to have precise evidence as to "how" the smoke got to them or how "concentrated" that smoke was? Would that person have to start a dumpster fire in the basement of the building to "prove" that smoke could get from where the fire was to where they were when they were injured? Would that person be required to somehow recreate the "trash" that was being burned and the other items in the dumpster before the fire was started? Would they also have to be given access to the entire building, including its HVAC system, so they could recreate the efforts that were undertaken on the day in

question to manipulate the airflow throughout the building (after the fire started and people began to complain of smoke that caused them injury/damage)?

The answer to those questions, it would appear fairly obviously, is "NO". In that situation, it seems indisputably true that the appropriate course of action would be for a jury to be allowed to evaluate the evidence so it could decide if the dumpster fire in the basement lead to the smoke that made the plaintiff sick. See Oak Leaf Country Club v. Wilson, 257 N.W.2d 739, 746–47 (Iowa 1977) ("Proof of the necessary causal connection [between a defendant's complained of behavior and a plaintiff's claimed damages] may be by either direct or circumstantial evidence…[and] it is generally for the trier of fact to say whether circumstantial evidence [makes the plaintiff's theory of causation reasonably probable]…. [Furthermore,] the probability of [such a] causal connection necessary to generate a jury question need not come solely from one witness. 'Probability' may be inferred by combining an expert's 'possibility' testimony with nonexpert testimony that the described condition of which complaint is made did not exist before occurrence of those facts.").

This situation is no different.

DRAYNAMITE was used in the building just before multiple people began to complain about fumes that made them sick. Those people were all in places above where DRAYNAMITE was used and the fumes were so bad that an entire office was closed. The fumes people reported matched the common descriptions of the chemical in DRAYNAMITE and fumes from DRAYNAMITE undeniably cause the very types of symptoms that were voiced by people in the building. The person who used DRAYNAMITE admitted that he did not detect the smell that so many people complained about until after he used the product. That person cannot say what was in the drain he poured DRAYNAMITE into and Graham cannot even state accurately how much of the product was used. The supervisor who responded to complaints about fumes admitted he smelled DRAYNAMITE either an entire story away from where it had been used or down a hallway, through a closed door, from the room where it had been used. The employees who tried to deal with the fumes people were complaining about did so by altering, in a way they had never tried before, the airflow in the building in order to "recirculate" air that was already in the building (which was the same air they felt had fumes people were complaining about). Neither the owner of the building nor any of its employees has any explanation, other than the use of DRAYNAMITE, for the fumes in the

building and, in fact, they concluded that DRAYNAMITE was the cause of the fumes (a fact they shared with multiple persons and were so sure about that they stopped using DRAYNAMITE altogether). Finally, multiple doctors have authored records and offered opinions that support the conclusion (and in the case of two doctors state directly) that Ms. Uhler was injured by DRAYNAMITE fumes in the building on the day in question.

As this Court has long since recognized, "causation is a question for the jury save in very exceptional cases where the facts are so clear and undisputed, and the relation of cause and effect so apparent to every candid mind, that but one conclusion may be fairly drawn…" Thompson, 774 N.W.2d at p. 836. With that in mind, it is respectfully submitted that the foregoing evidence, when viewed in a light most favorable to Ms. Uhler and deciding all inferences from the same in her favor, was more than sufficient to generate a jury question on causation. See Benson v. 13 Assocs., L.L.C., 2015 WL 582053, (Iowa Ct. App. 2015) (case involving a person who was injured at work and a reversal of a summary judgment in favor of the building owner based on the appellate court's recognition that said owner, who retained control over the building, owed a duty of reasonable care to entrants to the building with regard to conduct in the building "that creates risks to entrants" and "artificial conditions" in the building "that pose risks

to entrants") and Randol v. Roe Enterprises, Inc., 524 N.W.2d 414, 417 (Iowa 1994) (in reversing a grant summary judgment on the issue of causation, Supreme Court held that "we think the district court erroneously discounted the probative value of the circumstantial evidence…This court has routinely observed that circumstantial evidence often may be equal or superior to direct evidence….Affording [the plaintiff] every legitimate inference reasonably deducible from the evidence, a reasonable mind could conclude that the [complained of condition on the property led to the injury causing incident and, as such, generated] a genuine issue of material fact on proximate cause.").

IV. PART OF THE DISTRICT COURT'S ERROR WAS FAILING TO REALIZE THAT THE FACTS OF THIS CASE ARE UNDENIABLY DIFFERENT THAN THE RANES CASE

This case is not remotely similar to the case cited by Graham in the Motion and relied on by the Court in its Ruling. Ranes v. Adams Lab'ys, Inc., 778 N.W.2d 677, 682–85 (Iowa 2010), dealt with a drug about which there was very little evidence of the same causing even the general type of injury (stroke) alleged by the plaintiff (an adult man) and about which there was zero evidence of the same causing stroke in adult men. Also, Mr. Ranes, who had mental issues, saw thirteen doctors all of whom felt he did not suffer a stroke (let alone one caused by the drug in question). Against

that backdrop, the trial court in Ranes excluded the testimony of one doctor (a pediatrician) who was willing to say ingestion of the drug did cause Mr. Ranes' claimed stroke. That decision was upheld on appeal.

To say that Ranes is factually similar to this case, or somehow necessitates the dismissal of this case as a matter of law, is simply wrong. The evidence here is clear (and, in fact, uncontroverted) that the chemical in DRAYNAMITE causes fumes exposure to which can and does lead to the exact type of injury sustained by Ms. Uhler. That fact alone makes this case materially different then Ranes. Beyond that, in this case there is undeniably evidence establishing that fumes were caused in the building on the day in question by the use of DRAYNAMITE. Again, that fact makes this case undeniably different than Ranes. Finally, unless one literally ignores the specific opinions of Drs. Dodge and Stoken, as well as the records of Drs. Myrtil and Hicklin, it is beyond reasonable dispute that there is medical evidence (from doctors that the District Court identified as qualified to speak to the cause of Ms. Uhler's lung damage) that would reasonably support a jury concluding that Ms. Uhler's damages were caused by exposure to fumes

from Draynamite in the building on the day in question. That reality, once again, makes this case different from Ranes. [11]

V. PART OF THE DISTRICT COURT'S ERROR WAS SIMPLY IGNORING THE BLOOMQUIST CASE AND THE SUPPORT IT PROVIDES FOR THE CONCLUSION THAT THERE WAS SUFFICIENT EVIDENCE TO GENERATE A JURY QUESITON ON THE ISSUE OF CAUSATION

On April 30, 2021, five days before the Court's Ruling granting summary judgment to Graham, Ms. Uhler filed Plaintiff's Additional Authority In Support of Resistance To Motion For Summary Judgment (DPA, ¶ 40). In that filing, the District Court's attention was directed to the

[11] This case is much more similar to cases having to do with asbestos exposure than it is to Ranes. Asbestos cases almost always involve plaintiffs who are unable to prove with precision when and how they were exposed to asbestos containing products or even which asbestos containing products they were exposed to. However, exactly like the product at issue in this case, there is no legitimate question that asbestos exposure carries with it a risk of injury. Also, and as is the case here, in asbestos cases there is typically a great deal of evidence that the injured person worked around/was exposed to asbestos. In such cases, Iowa law recognizes "that a reasonable inference of exposure to a defendant's asbestos-containing product, coupled with expert testimony [about the danger of] asbestos…" is enough to generate a jury question on the issue of proximate cause. Spaur v. Owens-Corning Fiberglas Corp., 510 N.W.2d 854, 858 (Iowa 1994) 496 N.W.2d at 254 (citations omitted). The facts here are very similar. There is a great deal of evidence that Graham's use of DRAYNAMITE on the 1st level of the building caused fumes to spread to other levels of the building. Beyond that, multiple doctors have opined that fumes from DRAYNAMITE are dangerous and, in their opinion, caused injury to Ms. Uhler on the day in question. Under those circumstances it is clear that the evidence in this case, like asbestos cases, is more than sufficient to generate a jury question on the issue of proximate cause.

case of Bloomquist v. Wapello County, 500 N.W.2d 1 (Iowa 1993). In spite of that, and the clear support found in Bloomquist for the conclusion that a jury question on causation existed here, the District Court ignored that case.

Very much like this case, Bloomquist was a case involving injuries allegedly caused to workers in an office building by exposure to chemicals that were used in the building. Like the chemical in this case, the chemicals in Bloomquist were known to be both (1) in the building and (2) dangerous.

After a jury verdict in favor of the plaintiffs, the trial court in Bloomquist took that verdict away by deciding the issue of proximate cause as a matter of law (because the plaintiffs did not present epidemiological evidence of causation). In overturning that decision, this Court noted:

> "….The plaintiffs' experts concurred in their opinions that medical problems experienced by the plaintiffs were permanent and were caused by [exposure to the chemicals in question which were used in the building and were known to be dangerous]….the evidence presented by the plaintiffs in support of their proximate cause claim was properly admitted. The jury found that the evidence was sufficient on causation, and the court erred in deciding otherwise, as a matter of law…."

Bloomquist, 500 N.W.2d at 3-6. That holding is, for all intents and purposes, on point with this case and, in fact, the evidence here is even more convincing than in Bloomquist in that, in that case (unlike here), there was a plausible alternative explanation for the injury causing fumes other than the chemicals the Plaintiffs pointed to. Given all of that, it is respectfully

submitted the District Court erred in ignoring Bloomquist (along with the totality of the evidence herein) while reaching the conclusion that there was insufficient evidence to generate a jury question on causation.

VI. PART OF THE DISTRICT COURT'S ERROR WAS ITS FAILURE TO FACTOR INTO ITS ANALYSIS THE DIRECT ADMISSION, BY GRAHAM, THAT DRAYNAMITE FUMES INJURED MS. UHLER AND OTHERS

It is worth pointing out one last time that Graham itself concluded that the use of DRAYNAMITE in the building was what caused the fumes that made Ms. Uhler and so many others sick. Additionally, one of the people who voiced that opinion (Toby Geroge) was literally identified, by Graham, as an expert on the movement of air in the building. Finally, Graham was so confident in that conclusion that it stopped using DRAYNAMITE altogether (in order to avoid the possibility of another day like the one in question). Those evidentiary realities cannot reasonably be questioned.

On page 3 of the Ruling the Court acknowledged the evidence showing that Graham admitted that the use of DRAYNAMITE by Mr. Grismore in the building on the day in question was a cause of the fumes in the building that day. However, and in spite of the fact that it was required to view the evidence in the light most favorable to Ms. Uhler and decide every reasonable inference in her favor, the Court simply ignored that evidence in its CONCLUSIONS OF LAW and RULING. In those portions

of the Ruling, the Court said nothing about the fact that that there is unquestionably evidence of Graham admitting that its use of DRAYNAMITE in the building on the day in question caused fumes therein that made multiple people (including Ms. Uhler) sick. With all due respect, the District Court could not (in ruling on a motion for summary judgment) rightfully ignore that evidence and, when the same is appropriately considered, it is clear that a jury might very well conclude (as Graham did) that the use of DRAYNAMITE in the building lead to the fumes that made Ms. Uhler (and so many other people) sick.

VII. PART OF THE DISTRICT COURT'S ERROR WAS ITS FAILURE TO CONSIDER THE LOGICAL CONCLUSION THAT, BY MANIPULATING THE "RECIRCULATION" OF AIR IN THE BUILDING ON THE DAY IN QUESTION, GRAHAM FORCED FUMES FROM DRAYNAMITE INTO PARTS OF THE BUILDING THEY MIGHT NOT OTHERWISE HAVE REACHED.

The very fact that Messrs. George and Grismore did not limit their remediation efforts to the 1st floor logically supports the conclusion that there were DRAYNAMITE fumes on the various levels of the building. If that was not the case, then why did Messrs. George and Grismore do anything on the upper floors of the building? Furthermore, it is hardly unreasonable to conclude that, by intentionally manipulating the "recirculation" of air in the building (in a manner they had never done before

and have never done since), Messrs. George and Grismore caused DRAYNAMITE fumes to be moved throughout the building (even more than they otherwise were) including, of course, into the area where Ms. Uhler was working when she noticed the fumes that made her, and so many others around her, sick.

That evidence, coupled with everything else noted herein (including the inability of Graham to identify a single plausible cause of the fumes that does not come back to its use of DRAYNAMITE), again shows there is clearly sufficient evidence to submit the issue of proximate cause to a jury. See Banwart v. 50th St. Sports, L.L.C., 910 N.W.2d 540, 548–49 (Iowa 2018) ("the issue is not whether a party uses circumstantial evidence, as opposed to direct evidence, to prove his or her claim because circumstantial evidence may raise a genuine issue of material fact. Rather, the issue is whether the party has proffered sufficient evidence. In regards to sufficiency of the evidence, evidence is substantial if a reasonable person would find it adequate to reach a conclusion.") and Peak v. Adams, 799 N.W.2d 535, 542–43 (Iowa 2011) ("The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record. An inference is legitimate if it is rational, reasonable, and otherwise permissible under the governing substantive law

…If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists…").

VIII. PART OF THE DISTRICT COURT'S ERROR WAS ITS FAILURE TO CONSIDER THE LOGICAL INFERENCE THAT, BECAUSE MS. UHLER WAS "MORE SUSCEPTIBLE" TO INJURY FROM EXPOSURE TO DRAYNAMITE, SHE MIGHT HAVE BEEN MORE LIKELY TO BE INJURED BY FUMES FROM DRAYNAMITE.

As noted previously, there is unquestionably evidence (in the opinions of Drs. Dodge and Stoken) that Ms. Uhler's pre-existing asthma made her more susceptible to injury from exposure to DRAYNAMITE fumes than someone without that underlying condition. That evidence was entirely ignored by the District Court. Furthermore, that evidence, when combined with everything else (including the above-noted evidence indicating that Graham's actions in response to the complaints about fumes, at the very least arguably, caused those fumes to be pushed into places in the building they might not otherwise have gone), again demonstrates that an entirely reasonable inference from the evidence is that Ms. Uhler could have been injured by exposure to DRAYNAMITE fumes that might not have been all that concentrated or strong. Once again, the District Court simply ignoring that possibility demonstrates that it erred in determining that the issue of causation should not have been decided by a jury.

CONCLUSION

For the reasons set forth herein, it is respectfully respected that this Court enter an order reversing the Ruling of the District Court and remand this case for trial on the merits as soon as practicable.

REQUEST FOR ORAL ARGUMENT

Plaintiff-Appellant Jacqueline Sue Uhler respectfully requests to be heard orally upon the submission of this appeal.

CERTIFICATE OF FILING

The undersigned hereby certifies that I, or someone acting on my behalf, filed the foregoing Plaintiff-Appellant's Amended Final Brief via the Iowa Judicial Branch EDMS system on October 11, 2021.

*/s/ Nicolle Phifer*_____
Nicolle Phifer

CERTIFCATE OF SERVICE

The undersigned hereby certifies that on the 11th day of October, 2021, a copy of the foregoing Plaintiff-Appellant's Amended Final Brief was served via the Iowa Judicial Branch EDMS system to the attorneys listed below:

James S. Blackburn
699 Walnut Street, Suite 1700
Des Moines, IA 50309

*/s/ Nicolle Phifer*_____
Nicolle Phifer

CERTIFICATE OF COMPLIANCE

The undersigned certifies that:

1. This amended final brief complies with the type-volume limitation of Iowa App. 6.903(1)(g)(1) because this proof brief contains 9,472 words, excluding the parts of the brief exempt by Iowa R. App. P. 6.9903(1)(g)(1).

2. This amended final brief complies with the typeface requirements of the Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903 (1)(f) because this brief has been prepared in proportionally space typeface using Times New Roman 14.

Dated: October 11, 2021

*/s/ Nicolle Phifer*_____
Nicolle Phifer