IN THE CIRCUIT COURT
17TH JUDICIAL CIRCUIT, WINNEBAGO COUNTY
STATE OF ILLINOIS

CHARLES GRASLEY, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CHEMTOOL INCORPORATED,	)	
	)	Case no. 2021 L 162
Defendant/Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
HOLIAN INSULATION COMPANY, INC.	)	
	)	
Third-Party Defendant.	)	

ORDER

This case comes before the court on the Plaintiffs' motion for class certification pursuant to 735 ILCS 5/2-801.

■ Background

The defendant, Chemtool, operated a plant in Rockton, Illinois, where it produced industrial lubricants. Most of its production involved petroleum based lubricants. Rockton is incorporated as a Village and has a population of about 7,500. Nearby South Beloit, Illinois, has a population just under 8000. The Plaintiffs note, then, that there are thousands of individuals living and working within a three mile radius of the plant.

On June 14, 2021, at about 7:00 a.m. a fire started at the Chemtool plant. The plant was evacuated as soon as the fire broke out so that no one was injured but after evacuation, explosions began to occur. The explosions and fire, fueled by petroleum in the plant, were of such magnitude

it was determined by first responders that the best approach was to allow the fire to burn out. Businesses and homes within a mile of the plant were evacuated by local authorities.

The resulting smoke plume was visible for miles and continued for several days. Nearby properties were littered with debris from the explosions, including carbonized remnants of burned-out chemicals. Both federal and state agencies were called-in in response to the disaster and public safety measures implemented include advisory direction to wear protective masks and remain indoors within a three-mile radius of the plant in order to avoid inhalation of potentially harmful chemicals.

The plaintiffs assert that, because Chemtool was operating a chemical plant in a populated area it had a duty to operate that plant in a manner free from negligence. Further, they allege that the explosion and fire were the result of a breach of that duty. Finally, the plaintiffs allege that they, as well as members of the proposed class, have experienced a myriad of property-related injuries as a direct or proximate cause of the explosions. This includes the loss or interruption of use of homes and businesses, expenses included with temporary relocation, and property damage.

Because they assert common injury, the plaintiffs seek certification of a class defined as:

> All current Illinois citizens who were, on June 14, 2021, owners or tenants of property located in Illinois within a three-mile radius of the Chemtool Chemical Plant.

The common law theories pled by the plaintiffs are negligence, nuisance, trespass, and trespass to chattels. Without delving into the elements of each of these torts, suffice it to say the pleadings focus on injuries to real and personal property including literal damage and loss of use and enjoyment. The remedies sought relate to both compensation in the form of damages and prayers for injunctive orders requiring remediation and cleanup of real property.

■ **Legal Standard**

The court's decision on whether to grant class certification is controlled by section 2-801 of the Illinois Code of Civil Procedure. (735 ILCS 5/2-801). The party seeking certification of the class carries the burden of establishing that all of the statutory prerequisites have been met. *Avery v. State Farm Mutual Insurance Co.*, 216 Ill.2d 100, 125 (2005). Because section 2-801 is patterned after Rule 23 of the Federal Rules of Civil Procedure, federal authority interpreting Rule 23 is persuasive regarding questions of class certification in Illinois. *Id.* The prerequisites to class certification are:

> (1) The class is so numerous that joinder of all members is impracticable;
>
> (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members;
>
> (3) The representative parties will fairly and adequately protect the interest of the class; and,
>
> (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.

(735 ILCS 5/2-801).

"At the time the motion for class certification is presented for hearing, the court may consider any matters of law or properly presented in the record, including pleadings, depositions, affidavits, answers to interrogatories, and any evidence adduced at hearing on the motion." *Cruz v. Unilock Chicago,* 383 Ill.App.3d 752, 763 (2d Dist. 2008), quoting *Enzenbacker v. Browning-Ferris Industries of Illinois, Inc.,* 332 Ill.App.3d 1079, 1084 (2d Dist. 2002).

■ **Analysis**

Chemtool objects to certification and argues that the plaintiffs have failed to establish all four prerequisites to certification. Both Chemtool and the plaintiffs have provided expert reports on the explosions and fire. In making these findings the court has reviewed the pleadings and

submissions of all parties of record. Additionally, a hearing was held and arguments of counsel made October 7, 2022. As to each of the requisite elements of section 2-801, the court finds as follows:

1. Numerosity

The plaintiffs have proposed a class made up of all property owners or tenants in geographic region comprising a circle with a three-mile radius with the Chemtool plant as its center.[1] No evidence of the precise number of individuals or entities this would encompass has been presented in this case. Taking notice of the public record in this court, however, reveals that in a public action for injunctive relief filed against Chemtool by the Illinois Attorney General (2021 CH 115), 848 residents of the area around its plant had called a hotline to report ash and debris from the fire had fallen on their properties. Given the population density of the defined area there is no doubt that the total number of potential plaintiffs may be a few thousand.

Chemtool does not dispute that the sheer number of potential plaintiffs would render joinder of all impracticable. Rather, it makes an overarching argument that the case is not suitable for class certification because each potential plaintiff has a factually individualized claim such that resolution of the case will not be possible, "without having to resort to individual, *property-by-property*, proof that will consume the litigation – particularly when weighed against Chemtool's contravening evidence." (Chemtool's Surreply in Opposition, p. 1). Further, highlighting a third party report concluding that most of the damage occurred to the south of the plant, the direction in which the smoke was carried into the atmosphere, Chemtool argues that the use of a circle with a three mile radius is too arbitrary and would include thousands who likely suffered no damage.

[1] Because the putative class is limited to Illinois residents, the circle does not extend the full three miles to the north but ends at the border between Illinois and Wisconsin which separates the communities of South Beloit, Illinois, and Beloit, Wisconsin.

Reaching the nature and scope of actual damage suffered by each and every potential plaintiff is premature at best. The representative plaintiffs have claimed injury related to damage and loss of use of their property. If the representative plaintiffs are able to establish injuries in fact which were proximately caused by Chemtool's negligence, the individualized claims on the non-joined parties may then be established by submission of the individual claims. The court will decline the invitation have the non-joined parties demonstrate that their claims are meritorious before negligence is shown. See *Cruz,* 383 Ill.App.3d at 770.

The plaintiffs have outlined a proposed class, supported by an evidentiary report and by evidence of governmental response, which is illustrative of the existence of a large number of individuals who may have been harmed by Chemtool's actions or omissions in breach of duty. To narrow the geographic area included would likely lead to exclusion of class members with claims who happened not to live to the south of the plant. In that event, this would result in non-joined parties being left to file actions and defeating the purpose of the class action. The fact that many within the geographic definition may not have claims is not a bar to certification. *Steinberg v. Chicago Medical School,* 69 Ill.2d 320, 338 (1977). Moreover, the actual number of plaintiffs may be resolved later on in the suit, after the class is certified. *Cruz,* 383 Ill.App.3d at 770. It is enough that plaintiffs have made a good-faith, non-speculative estimate of class size. *Id.* Plaintiffs have made a demonstration that the proposed class is sufficiently numerous to make joinder of all of the members impracticable.

2. Commonality

In order for the court to determine whether common questions regarding all potential class members predominate over questions regarding individual class members requires a three-step analysis. First, the court must identify which substantive issues will control the outcome of the

litigation, assess which of these issues will predominate the litigation and then determine whether these predominant issues are common to the class. *Smith v. Illinois Central R.R. Co.*, 223 Ill.2d 441, 449 (2006) (citation omitted). The predominance test is satisfied when, "a judgment in favor of the class members should decisively settle the entire controversy, and all that should remain is for other members of the class to file proof of their claim." *Id.*, quoting *Life Insurance Co. of the Southwest v. Brister,* 722 S.W.2d 764, 772 (Tex.App.1986).

The submissions of the parties and the litigation to date make certain that Chemtool's negligence will be a predominate issue. Chemtool denies that its negligence was the cause of the explosion and fire. Rather, it has submitted an investigatory report which lays fault for the fire on a third party, Holian, which was performing work on piping insulation in the plant at the time of the initial fire. The report concludes that Holian's employee improperly used a scissor lift which bent a valve on a tank full of heated petroleum leading to a micro-crack in the piping and atomization of petroleum into the air inside the facility. From there even the smallest electrostatic spark, dropping a wrench on a metal platform for instance, could have, and apparently did, ignited the mist. In its third-party complaint against Holian, Chemtool points to an OSHA citation against Holian as evidence that Holian, not Chemtool, was negligent.

Further, as noted above, Chemtool argues vociferously that in order to prove its negligence, the plaintiffs will have to first prove, on an individualized basis, that they were harmed by the explosion and fire. Much of Chemtool's opposition to the motion for class certification is spent arguing that the geographic definition of the proposed class is arbitrary. Specifically, that many within the geographic circle will have suffered no injury whatsoever, and among those that may have been injured the injuries incurred will be substantially different depending on both proximity to the explosions and direction from the plant. This because the smoke plume which lasted for at

least nine days drifted primarily to the south. Further, Chemtool notes that it may have already remediated much of the damage so that those made at least partially whole would need to be separated from the proposed class.

Finally, urging that the plaintiffs have some obligation to make at least a *prima facie* showing of injury to all members of the class, Chemtool argues that the involvement of local, state and federal agencies in this disaster are not "proof" that anyone suffered injury to person or property. For example, plaintiffs' allegation of the fact that the Winnebago County Health Department, an agency of the Illinois Department of Public Health, warned all residents within three miles of the plant to remain indoors with windows closed and wear filtering masks when outdoors to avoid inhaling potential toxic fumes does not show that there were toxic fumes or that, if there were, anyone was exposed.

Certainly Chemtool must acknowledge that the actions taken by public bodies in response to this incident at least are evidence of harm or potential harm resulting from the explosions and fire. For example, Chemtool has already entered into an Agreed Order and Preliminary Injunction in this court in case number 2021 CH 115. In the case, filed by the Illinois Attorney General, Chemtool has been ordered to pay the cost of clean-up pursuant to Illinois environmental statutes. Again, while this does not create or prove a duty owed to plaintiffs or breach of that duty, it is certainly some evidence of injury to property surrounding the explosions.

In a nutshell, Chemtool asserts that they were not negligent and, if they were negligent, it did not cause any harm. Or at least no widespread harm that the representative plaintiffs will be able to prove. It also urges that there is no evidence, circumstantial or otherwise, to indicate that the claims of the putative plaintiffs will be common in nature or extent.

For their part, the plaintiffs assert that liability is not just a predominant issue, it is *the* predominant issue. They reiterate that their motion for class certification is for purposes of negligence, only. There are no claims for personal injury, only for damages and injunctive relief for property injuries. Going back to the basics of a claim for negligence, the plaintiffs must plead and prove that Chemtool owed surrounding properties a duty to run its plant in a manner free from negligence, a breach of that duty and an injury proximately caused by that breach. In essence, the plaintiffs assert that the representative group may establish liability by showing the duty and a breach of that duty. At trial, the representative plaintiffs may show actual injury caused by the dispersal of debris and release of toxic particulates onto their properties. If so, the plaintiffs would presumably be entitled to having their properties cleaned of debris and toxins and damages related to temporary loss of use or relocation. If, and only after, the representative plaintiffs prevail, "all that should remain is for other [non-joined] members of the class to file proof of their claim." *Illinois Central,* 223 Ill.2d at 449.

Chemtool argues, that before class certification, plaintiffs must establish that any injury must be common to all members of the proposed class lest the litigation turn into dozens of mini-trials about individual injuries and damages. It does not appear to the court that the individualized claims that Chemtool urges are present here. Chemtool relies heavily on the Illinois Supreme Court's opinion in *Illinois Central* for the proposition that class certification, "would trigger an unworkable array of fact-intensive, claimant-specific questions that would inevitably result in numerous mini-trials that defy class treatment." *Id.* at 445. *Illinois Central* involved class certification of a massive personal injury and property damage tort case following derailment of a train hauling a variety of toxic chemicals in tank cars which ruptured during derailment. *Id.* at 443. There, the court looked to Fed.R.Civ.P. 23 and federal authority which stood for the proposition

that certification of mass tort personal injury cases has been disfavored. *Id.* at 449, citing *Castano v. American Tobacco Co.,* 84 F.3d 734, 746 (5th Cir. 1996); Fed.R.Civ.P. 23(b)(3) advisory committee notes, ("A 'mass accident' resulting in injuries to numerous persons is ordinarily not appropriate for a class action because of the likelihood that significant questions, not only of damages but of liability and defenses of liability, would be present, affecting the individuals in different ways.").

The *Illinois Central* case involved a situation in which the court found that the vast majority of the claimed injuries and damages there flowed not from the derailment but from the exposure to the chemicals spilled. *Illinois Central,* at 453-54. This, the court concluded, meant highly individualized variables including to which chemicals each plaintiff had been exposed, the nature and extent of exposure, whether toxic chemicals were inhaled or directly contacted, as well as the age, medical history, preexisting conditions, of each. *Id.* at 454. Furthermore, members of the putative class each sought different damages for existing personal injury, risk of future injury or illness, emotional injury, as well as damages for relocation or diminution of value of real property. *Id.*

In the instant case, the plaintiffs all claim property damages only, which is clearly different than in *Illinois Central.* See *Id.* at 456, citing *Doyle v. Flour Corporation,* 199 S.W.3d 784 (Mo.App.2006). More importantly, the plaintiffs in this case seek class certification at this point only for purposes of liability in negligence. See *Id.* at 457, citing *Reynolds v. CSX Transportation, Inc.*, 55 Ohio App.3d 19 (1989). Here, the question of liability (negligence) is the same for all members of the proposed class. While the extent of damage to each member of the proposed class might be different, since each is a straightforward property claim, proving a claim for each should be a fairly objective process similar to adjusting property damage claims following a tornado. The

cost of remediating a property tainted with residue of the fire and reimbursing relocation costs or business interruption losses are easily calculable, demonstrable, and will not predominate the litigation. Finally, in assessing claims of non-joined parties, the representative plaintiffs will be motivated by a fiduciary duty to the class as a whole to screen out those claims that lack merit.

The court finds that the plaintiffs have met their burden of showing that the common issue of negligence will predominate and that this issue – a duty, breach of the duty resulting in injury and proximate causation – will be common to all members of the class.

3. Adequacy of representation

The test to determine the adequacy of representation is whether the interests of those who are parties are the same as those who are not joined. *P.J.'s Concrete Pumping Service, Inc. v. Nextel West Corporation*, 345 Ill.App.3d 992, 1004 (2d Dist. 2004). The court may consider the extent to which the class' interests and those of existing parties converge or diverge, the commonality of legal and factual positions, the practical abilities of existing parties in terms of resources and expertise, and the vigor with which existing parties represent the class's interests. *City of Chicago v. John Hancock Mutual Life Insurance Co.,* 127 Ill.App.3d 140, 145 (1st Dist. 1984).

Having found that there are common questions of law or fact and that these questions predominate over any questions affecting only individual members, it does not defeat the certification of the class because of some factual variations among class members' grievances. See *Clark v. Tap Pharmaceutical Products, Inc.,* 343 Ill.App.3d 538, 548 (5th Dist. 2003). Neither will the fact that some members of the class may not be entitled to relief because of some particular factors peculiar to them prevent certification of the class. *Steinberg v. Chicago Medical School,* 69

Ill.2d 320, 338 (1977). After the litigation of common questions, questions that are unique to individual class members may be determined in ancillary proceedings. *Clark* at 548.

As discussed above, the common question that predominates is that of Chemtool's negligence or lack thereof. The court is convinced that if the representative plaintiffs are capable of establishing negligence, a judgment would resolve the entire controversy and all that would remain would be ancillary proceedings in which class members would prove their individual claims. See *Brister,* 722 S.W.2d at 772. Each of the representative plaintiffs is in the proposed class and alleges property damage or loss of use of their properties. The representative plaintiffs have already been quite determined in their pursuit of the entire class's interests. Indeed, at this early juncture it appears to the court that the damages due any one plaintiff may be relatively small such that a common fund may be the mechanism which might allow at least for partial compensation of individualized claims on a *pro rata* basis for any damage in fact.

Further, the court notes that counsel for all parties, including Chemtool and Holian, are seasoned, skilled and trustworthy so that there is no doubt whatsoever that the all members of the class will be vigorously and capably represented. The court finds that the interests of non-joined class members will be adequately protected.

4. Appropriateness

The fourth requirement for class certification is that the class action is an appropriate method for fairly and efficiently adjudicating the controversy. "In deciding whether the fourth requirement. . .is met, a court considers whether a class action can best secure economies of time, effort, and expense or accomplish the other ends of equity and justice that class actions seek to obtain." *Walczak v. Onyx Acceptance Corporation,* 365 Ill.App.3d 664, 679 (2d Dist.

2006). "Where the first three requirements for class certification have been satisfied, the fourth requirement may be considered fulfilled as well." *Id.*

■ **Conclusion**

For all of the foregoing reasons, the court ORDERS that the motion of plaintiffs pursuant to 735 ILCS 5/2-801 is granted and hereby determines that this action may be maintained as a class action and, subject to amendment pursuant to 735 ILCS 5/2-802(a), the members of the class shall be:

> All current Illinois citizens who were, on June 14, 2021, owners or tenants of property located in Illinois within a three-mile radius of the Chemtool Chemical Plant.

The case remains set for status before the court at 1:30 p.m., November 18, 2022, virtually at Zoom I.D. number 963 9791 8024.

Dated: Oct. 10, 2022

Judge Stephen E. Balogh