

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

STEPHANIE MACKEY and NICK  
MIGLIORE, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

CHEMTOOL INCORPORATED and  
THE LUBRIZOL CORPORATION,

Defendants.

Case No. 2021-L-0000165

Honorable Lisa Fabiano

**MEMORANDUM IN SUPPORT OF PLAINTIFFS'  
MOTION FOR APPOINTMENT OF INTERIM CLASS COUNSEL**

## **I. INTRODUCTION**

In the early hours of June 14, 2021, a fire and series of explosions occurred at a chemical plant operated by Defendants Chemtool Incorporated and the Lubrizol Corporation (“Defendants”) at 1165 Prairie Hill Road in Rockton, Illinois. The explosions and fire caused a massive toxic smoke and dust plume, visible from more than 100 miles away and detected by weather satellites that darkened the skies and deposited a variety of burning and smoldering debris throughout the neighboring community. Personnel, equipment, and other resources from dozens of fire departments were dispatched to the scene to combat the fire. Governor Pritzker activated personnel from numerous state agencies and departments to participate in the response. Winnebago County, Illinois authorities issued an executive proclamation of disaster emergency, describing the incident as a “significant and hazardous fire,” and ordered residents within a one-mile radius of the chemical plant to evacuate. These authorities also advised residents within a three-mile radius of the chemical plant to wear masks to protect against inhalation of potentially toxic and harmful chemicals, to remain indoors, and not to touch or pick up any of the debris that was deposited onto their properties due to the potential harm to their health.

All of this wreaked havoc on the community. Residents are dealing with unknown debris, dust, and residue inside their homes and on their properties, including their roofs, siding, decks, driveways, yards, flower beds, gardens, and children’s playsets, among other places. To date, scant information has been made available about the content of this debris, dust, and residue, and not knowing whether it is toxic and harmful to their health, property owners have been unable to resume their normal lives. Mowing the lawn, eating from the garden, and even playing with children outside poses unknown potential health and safety risks.

On June 18, 2021, Plaintiffs Stephanie Mackey and Nick Migliore (“Plaintiffs” or “Named” Plaintiffs) who reside approximately three blocks from Defendants’ chemical plant, filed the present class action on behalf of themselves and a class of similarly situated persons seeking money damages, including lost-use-and-enjoyment damages, to vindicate property rights, and injunctive relief, including an order that Defendants remediate the harm they caused. Vindication of these rights will depend, in large part, on the just, efficient, and organized resolution of this and similar litigation.

To that end, Plaintiffs are filing a contemporaneous motion to consolidate this class action with a similar, later-filed class action in this court, *Sara Henderson v. Chemtool Inc., et al.*, No. 2021-L-0000175 (“*Henderson*”), that is pending before Judge Honzel. Counsel for the plaintiffs in the two cases have decades of experience in class action and environmental litigation, have previously worked as co-counsel in other cases, and have reached an agreement to work collaboratively to prosecute their cases.<sup>1</sup>

Given the substantial size of the putative class, Plaintiffs anticipate that additional individual or class action lawsuits may be filed in this Court in the future.<sup>2</sup> Multiple cases create a risk of inefficiency, disorganization, and confusion among the litigants, their counsel, and the Court. One mechanism the Court has to prevent such an outcome is to appoint competent and

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<sup>1</sup> Plaintiffs are aware of one other similar class action pending in this court, *Grasley, et al. vs. Chemtool Inc.*, No. 2021-L-0000162 (“*Grasley*”), also assigned to this Court, which was filed one day prior to the present case and which identifies a putative class narrower in geographic scope than either the present case or *Henderson*, and have reached out to plaintiffs’ counsel in that case about potential collaboration, but no agreement has yet been reached.

<sup>2</sup> Plaintiffs are aware of two later-filed actions pending in this court brought on behalf of individual plaintiffs relating to the same event, *Smith, et al. v. Chemtool, Inc., et al.*, No. 2021-L-0000166 (Winnebago Cty. Cir. Ct.) (Honzel, J.), and *Ghinazzi, et al. vs. Chemtool, Inc., et al.*, No. 2021-L-000170 (Winnebago Cty. Cir. Ct.) (Fabiano, J.).

credentialed attorneys as leaders in the litigation who are familiar with the law and the facts, who will provide vigorous representation, and who will advocate on behalf of the putative class.

To promote the just, efficient, and orderly prosecution of the claims of the Named Plaintiffs and the putative class, Plaintiffs respectfully seek the entry of an order appointing Robert S. Libman of Miner, Barnhill & Galland, P.C. (“MBG”) and Daniel R. Flynn of DiCello Levitt Gutzler LLC (“DLG”) as Interim Co-Lead Class Counsel, the creation of a Plaintiffs’ Executive Committee (“PEC”) to assist in the orderly and efficient prosecution of this litigation and appointment of the following firms and attorneys to the PEC: Miner, Barnhill & Galland, P.C. (Deanna N. Pihos), The Collins Law Firm, P.C. (Edward J. Manzke), Hart McLaughlin & Eldridge, LLC (Steven Hart), and Romanucci & Blandin, LLC (David Neiman).<sup>3</sup>

The law firms comprising the Proposed Interim Co-Lead Counsel and PEC (“Proposed Team”) offer an array of nearly 100 lawyers and an equal number of staff, with offices throughout northern Illinois. The Proposed Team has deep financial resources and has already retained leading experts and consultants. The proposed organizational structure will facilitate the orderly and efficient prosecution of this case, which involves hundreds if not thousands of putative class members, many legal issues that will need to be briefed cooperatively among counsel, and a likely voluminous document production that will require considerable resources and coordination to store and review.

## **II. FACTUAL BACKGROUND**

On June 18, 2021, Stephanie Mackey and Nick Migliore, by and through The Collins Law Firm, P.C. and Miner, Barnhill & Galland, P.C., filed their proposed class action complaint

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<sup>3</sup> Should plaintiffs’ counsel in the present case and *Henderson* reach agreement with plaintiffs’ counsel in *Grasley* to work collaboratively, counsel anticipate seeking to appoint one or more additional firms and attorneys to serve as interim class counsel.

against Defendants Chemtool and Lubrizol (“CLF Complaint”), attached as Exhibit 1. On June 28, 2021, Sara Henderson, by and through DiCello Levitt Gutzler LLC, Hart McLaughlin & Eldridge, LLC, Romanucci & Blandin, LLC, and Freiberg Law Offices, filed her proposed class action complaint against the these same Defendants (“DLG Complaint”), attached as Exhibit 2.<sup>4</sup>

Both Complaints arise out of the June 14, 2021 explosions and chemical fire at Defendants’ chemical plant located 1165 Prairie Hill Road in Rockton, Illinois, and contain similar factual allegations. CLF Complaint, ¶14, DLG Complaint, ¶34 (the explosion and fire resulted in a massive toxic smoke and a dust plume that was so large it was detected by weather satellites); CLF Complaint, ¶16, DLG Complaint, ¶41 (authorities in Winnebago County, Illinois issued an executive proclamation of disaster emergency including and ordered the evacuation of residents within a one-mile radius of the Chemtool plant); CLF Complaint, ¶16, DLG Complaint, ¶44 (Winnebago County, Illinois authorities advised residents within a three-mile radius of the Chemtool Chemical Plant to wear masks to protect against inhalation of potentially toxic and harmful chemicals and to remain indoors). CLF Complaint, ¶16; DLG Complaint, ¶¶46-47 (the explosions and fire deposited various dust and debris on nearby residents’ property, which residents were advised not to touch); CLF Complaint, ¶19, DLG Complaint, ¶57 (the debris, smoke, dust, and air quality resulting from the explosion and fire have caused physiological responses, including but not limited to respiratory difficulty, offensive smells, nausea, and headaches); CLF Complaint, ¶18, DLG Complaint, ¶¶54-56 (putative class members have been unable to use and enjoy their indoor and outdoor property as a result of the poor air quality and debris caused by the explosions and fire).

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<sup>4</sup> The DLG Complaint further names Berkshire Hathaway, Inc. as a respondent in discovery pursuant to 735 ILCS 5/2-402.

Both Complaints assert common law claims for negligence (CLF Complaint, Count I; DLG Complaint, Count I), nuisance (CLF Complaint, Count II; DLG Complaint, Count III), and trespass (CLF Complaint, Count III; DLG Complaint, Count IV). The DLG Complaint asserts additional common law claims for willful and wanton conduct (DLG Complaint, Count II) and trespass to chattels (DLG Complaint, Count V).

### **III. ARGUMENT**

Class actions present unique and complex challenges that require a greater level of case management to simultaneously protect the interests of numerous litigants and absent class members while also creating efficiencies and avoiding confusion and disorganization. In that vein, the MANUAL FOR COMPLEX LITIGATION (Fourth) (2014) (the “*Manual*”) is particularly instructive, especially as it relates to the appointment of lawyers to leadership positions. Appointment of an interim class counsel is helpful in clarifying the “responsibility for protecting the interest of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement.” *Manual* § 21.11; *see also* WRIGHT & MILLER, 6a Fed, Proc, L. Ed. § 12:293 (same). In appointing a lead counsel, a court should “conduct an independent review [] to ensure that counsel appointed to lead roles are qualified responsible, that they will fairly and adequately represent all of the parties on their side, and that their charges will be responsible.” *Manual* § 10.22. The most important factor to the court’s analysis is whether the appointment will help “achiev[e] efficiency and economy without jeopardizing fairness to the parties.” *Id.* at § 10.221. The Duke Law Bolch Judicial Institute’s *Standards and Best Practices for Large and Mass-Tort MDLs* (“*Duke Standards*”), encourages the “appointment of an experienced slate of attorneys”

who will “fairly represent all plaintiffs, keeping in mind the benefits of diversity of experience, skills, and backgrounds.”

Illinois courts have echoed these sentiments. Lawyers representing class members must protect their due process rights and be “qualified, experienced, and generally able to conduct the proposed litigation.” *Lee v. Buth-Na-Bodhaige, Inc.*, 143 N.E.3d 645, 663 (Ill. App. Ct. 5th Dist. 2019) (citing *Miner v. Gillette Co.*, 428 N.E.2d 478 (Ill. 1981) and *Steinberg v. Chicago Medical School*, (Ill. 1977)). Further, Fed. R. Civ. P. 23(g)(3) provides that “[t]he court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.”<sup>5</sup> In order for an applicant to be found adequate to serve in such a capacity, the Court should consider:

- (i) The work counsel did in identifying or investigating potential claims in the action;
- (ii) Counsel’s experience in handling class actions, other complex litigation, and claims of the type asserted in the action;
- (iii) Counsel’s knowledge of the applicable law; and
- (iv) The resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv). In determining which counsel is best suited to act as interim class counsel, courts “have frequently appointed more than one firm” when it is in the best interests of the proposed class members. *See Walker v. Discover Fin. Servs.*, No. 10-CV-6994, 2011 WL 2160889, at \*3 (N.D. Ill. May 26, 2011) (collecting cases). Here, the proposed Interim Co-Lead Class Counsel, Robert S. Libman and Daniel R. Flynn, meet all of those criteria while also presenting a diverse background of experience in various, applicable practice areas to best

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<sup>5</sup> The Illinois class action statute (735 ILCS 5/2-801, *et seq.*) is patterned after an earlier version of Rule 23 of the Federal Rules of Civil Procedure. Accordingly, courts in Illinois have recognized Rule 23 as persuasive authority regarding class certification issues. *Smith v. Illinois Central R.R. Co.*, 223 Ill.2d 441 (2006); *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill.2d 100 (2005).

and most efficiently prosecute *this* case, in *this* Court, against *these* Defendants with the resources to do so.

Under this proposed structure, the Interim Co-Lead Class Counsel would be charged with responsibility for the day-to-day conduct of the litigation and for carrying out the orders of the Court concerning the litigation. Specifically, as suggested in the *Manual*, Interim Co-Lead Class Counsel would be charged with the following duties:

[F]ormulating (in consultation with other counsel) and presenting positions on substantive and procedural issues during the litigation ... in presenting written and oral arguments and suggestions to the court, working with opposing counsel in developing and implementing a litigation plan, initiating and organizing discovery requests and responses, conducting the principal examination of deponents, employing experts, arranging for support services, and seeing that schedules are met.”

*Manual* § 10.221.

Named Plaintiffs’ proposed designation of Interim Co-Lead Class Counsel will promote the orderly and efficient progress of this case, and all related actions, if any, consolidated by the Court, as well as ensure prosecution of this litigation in an efficient and coordinated manner. As detailed below, the proposed Interim Co-Lead Class Counsel are well-qualified to serve as representatives of the Plaintiff Class and are capable of fairly representing its interests in this litigation. Named Plaintiffs respectfully request their appointment as such by the Court.

**A. Proposed Lead Counsel**

**1. Robert S. Libman of Miner Barnhill & Galland, P.C.**

Robert Libman has three decades of experience representing private parties and government clients as plaintiffs in wide array of complex civil litigation in the public interest, including false claims, consumer protection, civil rights, and environmental litigation.



From 1991 to 2004, Mr. Libman served as a Senior Trial Attorney and Special Litigation Counsel in the Civil Rights Division of the U.S. Department of Justice in Washington, D.C., litigating pattern-or-practice employment discrimination cases across the country against a variety of public employers, supervising more than two dozen trial attorneys, managing complex, high-stakes cases, engaging in voluminous discovery, and leading trial teams.

After joining MBG in 2004, and continuing through 2019, Mr. Libman served as a Special Assistant Attorney General representing eight states (including Illinois and Wisconsin) in the Average Wholesale Price (“AWP”) litigation, bringing civil enforcement actions against dozens of pharmaceutical drug manufacturers and other entities under state consumer protection, Medicaid fraud, false advertising, and false claims statutes to recover damages to state Medicaid programs caused by the publication of false and deceptive drug prices. Mr. Libman led MBG’s team in these complex and vigorously defended cases, which included five jury trials and two bench trials, and which resulted in the recovery of nearly \$1.2 billion in settlements and judgments after trial for MBG’s clients, including nearly \$680 million for the State of Illinois. In 2020, the legal publication Law360 recognized Mr. Libman’s leadership and success in the AWP litigation, naming him a “Titan of the Plaintiffs Bar.”

Mr. Libman has on other occasions been trusted by state Attorneys General to manage complex litigation as outside counsel. He is currently outside counsel to Idaho in its opioid litigation and to Alaska in its litigation relating to the youth e-cigarette epidemic.

Mr. Libman has handled dozens of other complex civil matters during his career, including environmental and class cases. For example:

- In *Sierra Club v. PPL Montana LLC et al.*, 13-cv-00032-DLC-JCL (D. Mont.), a citizen suit under the Clean Air Act against a major utility concerning violations of the EPA’s Prevention of Significant Deterioration program, Mr. Libman was brought in to specifically handle complex expert issues at trial. The case settled shortly before trial.

- In *Pruitt, et al. v. QLS, et al.*, No. 1:16-cv-9718 (N.D. Ill.), Mr. Libman represents a putative class of African-American laborers alleging that a staffing agency refused to assign them work on the basis of race.
- In *Brighton Park Neighborhood Council, et al. v. Berrios, et al.*, Mr. Libman represented several community organizations in litigation against the Office of the Assessor of Cook County, Illinois, alleging that its system of valuing residential property unlawfully discriminated against racial minorities.

MBG's environmental practice includes individual and class litigation and consultation with advocacy groups and non-profits on pollution and contamination issues. Mr. Libman will be supported by other members of MBG's environmental litigation practice group.

Representative environmental cases litigated by MBG, include:

- *Freeman et al. v. Grain Processing Corp.*, No. LACV 021232 (Iowa Dist. Ct.). MBG served as lead counsel for a class of over 10,000 residents, pursuing common law and statutory nuisance, negligence, and trespass claims related to a corn wet mill's air emissions. MBG obtained a \$51.5 million settlement on behalf of the class.
- *Kamuda et al. v. Sterigenics U.S., LLC et al.*, No. 18 L 10475 (Circuit Court of Cook County, Illinois). MBG represents dozens of individuals suing a large medical sterilization facility and related defendants for their emissions of Ethylene Oxide—a known human carcinogen. MBG was appointed to the Plaintiffs' Executive Committee.
- *Hernandez v. U.S. Steel Corp.*, GD-19-005325 (Allegheny Cty. Ct. of Common Pleas, Pa.). MBG serves as lead counsel in this class action asserting common law claims arising from a catastrophic fire at U.S. Steel's Clairton Coke Works.
- *Sierra Club v. Union Electric Co. d/b/a/ Ameren Missouri*, 14-CV-408-AGF (E.D. Mo.). MBG acted as lead counsel for Sierra Club in a citizen suit seeking injunctive relief and civil penalties against one of the nation's largest utilities for violations of the CAA, and the utility's operating permits at three coal-fired power plants.
- *United States v. Ameren Missouri*, 11-cv-00077-RWS (E.D. Mo.). MBG represented the Sierra Club as a plaintiff-intervenor in litigation brought under the Clean Air Act.

Additional information about MBG and its environmental litigation practice group can be found on its Firm Resume, attached as Exhibit 3, and its website: <https://www.lawmbg.com/>.

## **2. Daniel R. Flynn of DiCello Levitt Gutzler LLC**

Daniel R. Flynn leads DLG's environmental practice, which focuses on representing individuals, communities, and states in holding some of the largest companies in the world responsible for polluting the environment and endangering human health. Mr. Flynn assists governmental agencies, individuals, communities, and corporate entities with ensuring that companies that have violated environmental regulations are held accountable remediate the harm they have caused through civil litigation, contribution and cost recovery actions, citizen suits, enforcement actions, and proper due diligence and contract negotiation.

Mr. Flynn and DLG's environmental practice group have been appointed Special Assistant Attorneys General to file lawsuits against polluters in the State of Michigan, seeking to hold them responsible for contaminating the environment with poly- and perfluoroalkyl chemicals, sometimes referred to as "forever chemicals." These cases have wide-reaching implications for state governments and their residents. These cases include:

- *Nessel, et al. v. 3M Co., et al.*, District of South Carolina, MDL No. 2:18-mn-2873-RMG, Member Case No. 2:21-cv-01708;
- *Nessel, et al. v. E.I. Du Pont de Nemours and Company, et al.*, District of South Carolina, MDL No. 2:18-mn-2873-RMG, Member Case No. 2:20-cv-03307;
- *Nessel, et al. v. Chemguard, Inc., et al.*, District Court of South Carolina, MDL No. 2:18-mn-2873-RMG, Member Case No. 2:21-cv-00373; and
- *Nessel, et al. v. Asahi Kasei Plastics North America, Inc.*, Michigan Circuit Court for the 44th Judicial Circuit, Livingston County, Case No. 20-030909-NZ

Mr. Flynn's stewardship ensures not only that polluters be held responsible for contamination and clean-up, but also that corporate entities understand their responsibilities under state and federal environmental laws. Mr. Flynn has worked specifically with a variety of chemical companies in developing and auditing chemical safety programs under various OSHA standards and EPA regulations, including the process safety management ("PSM") programs and

risk management plans (“RMP”). As a result of Mr. Flynn’s advocacy in counseling clients on compliance, his corporate clients lead their respective industries in environmental, health, and safety stewardship efforts under a number of rules and regulations including the Clean Water Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act, the Resource Conservation and Recovery Act, and the Occupational Safety and Health Act.

Mr. Flynn and DLG’s environmental practice group has done significant environmental legal work including:

- Litigating citizen suits under various environmental statutes;
- Litigating landfill and natural gas pipeline permitting matters;
- Litigating state environmental agency solid waste regulations;
- Litigating matters related to chemical safety under various EPA regulations and OSHA standards;
- Litigating CERCLA contribution and cost recovery actions;
- Ensuring that companies meet EPA’s regulations and OSHA’s standards designed to protect communities and workers from chemical hazards, including the Clean Air Act’s Risk Management Plan and Process Safety Management;
- Advising clients on air, water, and waste permitting applications, draft permits, and final permits and counseling clients on how to comply with applicable regulatory requirements and their permit requirements, and
- Counseling clients on obtaining relief under EPA’s and state voluntary audit programs.

In addition to DLG’s environmental work, DLG employs some of the country’s top complex litigators and has extensive class action and trial experience. One of the few firms of its kind that regularly tries cases to verdict, DLG’s practice also includes in-house focus group and mock trial programs, led by DLG partner Robert F. DiCello, enabling the firm to develop cases

for trial from the outset. DLG attorneys have obtained jury verdicts across a variety of fields, including verdicts in excess of \$81 million in the past few years alone, and have successfully led—and are currently leading—some of the largest and most complex nationwide class actions and commercial litigations, including the nationwide data breach litigations against Equifax and Marriott, representing hundreds of millions of individuals whose data was compromised due to inadequate data security practices. *In re Equifax Inc., Customer Data. Sec. Breach Litig.*, No. 17-md-2800 (N.D. Ga.) (\$700 million settlement); *In re Marriott International Customer Data Security Breach Litigation*, No. 8:19-md-02879-PWG (D. Md.).

The other DLG attorneys working with Mr. Flynn on this action also have extensive environmental and class action experience and have worked alongside Mr. Flynn on other class action matters. Adam Levitt is a founding partner of DiCello Levitt and Managing Partner of its Chicago office, from where he heads the firm’s product liability and public client practice groups. His experience is broad, and he has handled cases in each of the firm’s practice areas. Mr. Levitt is one of the nation’s leading advocates for plaintiffs in class action, commercial, and public client litigation, particularly in financial services, consumer protection, automotive defect, agricultural, antitrust, environmental, and securities litigation. Mr. Levitt has close to 30 years’ experience leading nationwide commercial and class action lawsuits and has recovered close to \$20 billion in pre- and post-verdict settlements for his clients and class members.

DLG Associate Anna Claire Skinner brings significant environmental experience to the case. During Ms. Skinner’s career, she has litigated numerous cases before state and federal court and administrative tribunals from inception through settlement and trial. She has experience with most environmental, health, and safety statutes and regulations, including the Clean Water Act, the Clean Air Act, the Comprehensive Environmental Response,

Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act, the Resource Conservation and Recovery Act, and the Occupational Safety and Health Act.

Additional information about DiCello Levitt Gutzler and its attorneys can be found in its Firm Resume, a copy of which is attached as Exhibit 4, and the firm's website:

<https://dicellolevitt.com/>.

## **B. Plaintiffs' Lead Counsel and PEC Responsibilities**

### **1. Lead Counsel**

As Lead Counsel, MBG and DLG would be responsible for: coordinating the responsibilities of the PEC, receiving and distributing promptly to counsel for non-PEC Plaintiffs all relevant notices and other documents from the Court or from other parties, submitting to the Court and distributing to Defendants any notices or other documents, establishing and maintaining a depository of documents produced by Defendants, keeping minutes or transcripts of meetings, appearing at periodic court noticed status conferences, performing other necessary administrative or logistical functions, and carrying out any other duty as the Court may order.

MBG and DLG would also handle the responsibilities typically assumed by a Liaison Counsel. This includes facilitating communications between the Plaintiffs and Defendants and between the Plaintiffs and the Court. In most circumstances Lead Counsel would file documents with the Court on behalf of the Plaintiffs and would otherwise serve as the primary point of contact for Plaintiffs in the case. MBG and DLG would also manage the finances for, and carry out other responsibilities assigned to them by, the Plaintiffs' committees (if necessary).

### **2. Plaintiffs' Executive Committee**

Plaintiffs propose that a Plaintiffs Executive Committee be appointed consisting of the following firms and attorneys: Miner, Barnhill & Galland, P.C. (Deanna N. Pihos), The Collins

Law Firm, P.C. (Edward J. Manzke),<sup>6</sup> Hart McLaughlin & Eldridge, LLC (Steven Hart)<sup>7</sup> and Romanucci & Blandin, LLC (David Neiman).<sup>8</sup> The PEC, as a group, would be responsible for making strategic decisions that apply to all Plaintiffs involved in this lawsuit. If approved, the PEC would be authorized to prepare liability fact stipulations, discovery requests, and other documents on behalf of all Plaintiffs under the direction of the Lead Counsel. Plaintiffs propose that all discovery be conducted in a coordinated and consolidated basis by the PEC. All final decisions as to the prosecution of the case would be made by the Lead Counsel in coordination and agreement with the other members of the PEC. The Plaintiffs propose that the decisions of the PEC bind all Plaintiffs' counsel in this case as if those actions or non-actions had been undertaken by Plaintiffs' counsel, with leave to file application with the Court at any time for good cause shown why Plaintiffs' counsel should not be bound by a particular action or non-action of the PEC.

### **C. Expenses of Litigation**

The Plaintiffs respectfully request that the Court empower the Lead Counsel and PEC to determine jointly the amount necessary to be funded in order to prosecute this lawsuit. Once the calculation is made, the Lead Counsel should have the right to seek contribution.

### **D. Work Performed to Date and Resources for Future Work**

Proposed Interim Co-Lead Counsel have familiarized themselves with the facts and the law surrounding this case since the June 14, 2021 explosions and fire. They have attended community meetings in the Rockton area with concerned residents and conducted interviews of

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<sup>6</sup> Information about the Collins Law Firm and Mr. Manzke can be found on the firm's website: <https://www.collinslaw.com/>.

<sup>7</sup> Information about Hart McLaughlin & Eldridge, LLC and Mr. Hart can be found in the Declaration of Mr. Hart, attached hereto as Exhibit 5, and on the firm's website: <https://www.hmelegal.com/>.

<sup>8</sup> Information about Romanucci & Blandin, LLC and Mr. Neiman can be found on its Firm Resume, attached hereto as Exhibit 6, and the firm's website: <https://rblaw.net/>.

dozens of potential class members. They have monitored the work of the Rockton and Winnebago County authorities, as well as the state and federal environmental protection agencies. They have retained leading experts and consultants to assist in their factual investigation. Contemporaneously with the filing of this motion, they have filed a motion for leave to take limited expedited discovery of the Defendants to determine the chemicals and other materials that were stored and burned in the fire in order to bring transparency to class members who still do not know the potential health risks they face both inside and outside of their homes.

Both law firms are well-established, successful, and have the track records, as well as the financial and human resources, necessary to manage and prosecute this litigation on behalf of the putative class.

#### **IV. CONCLUSION**

For the above reasons, Named Plaintiffs respectfully request that the Court enter the attached proposed Order, appointing Robert S. Libman and Daniel R. Flynn as Interim Co-Lead Class Counsel and establishing a Plaintiffs' Executive Committee in this Class Action and for any similar or related actions later consolidated therewith.

Respectfully submitted,

/s/ Shawn M. Collins

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