

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 LEAVE TO TAKE LIMITED EXPEDITED DISCOVERY
PURSUANT TO ILLINOIS SUPREME COURT RULE 201(d)**

Plaintiffs Stephanie Mackey and Nick Migliore (“Plaintiffs”) respectfully move for leave to take limited expedited discovery pursuant to IL S. Ct. Rule 201(d) against Defendants Chemtool Incorporated (“Chemtool”) and The Lubrizol Corporation (“Lubrizol”) (collectively “Defendants”).

On June 14, 2021, a chemical fire erupted at Defendants’ grease, oil, and fluids manufacturing facility in Rockton, Illinois, causing explosions, a raging inferno, and a toxic smoke and dust plume that lasted for days and rained burning debris and ash on the surrounding neighborhoods. A disaster emergency was declared, describing the event as a “significant and hazardous fire,” and residents in the surrounding areas were evacuated for several days; others were directed to wear masks and stay indoors. Residents were directed not to touch or remove debris due to potential contamination and harm to their health. Public health officials are currently conducting surveys to determine the effects of the chemical fire on local residents.

Yet a basic question critical to residents’ use and enjoyment of their properties remain unanswered: what chemicals and toxic substances were stored in Defendants’ facility and are therefore likely to have been deposited on residents’ properties and inside their homes? Although more than three weeks have passed since the fire began, Defendants still have not publicly answered this question. Nor has any testing been conducted inside residents’ homes. This state of uncertainty—and the urgent need for answers so that residents can be informed and take necessary steps to protect themselves—compels Plaintiffs to file the instant motion for expedited limited discovery.

In consultation with their environmental pollution expert, Dr. Ranajit (Ron) Sahu, Plaintiffs have crafted targeted written discovery requests designed to obtain information about the chemicals and other toxic materials that were emitted during the explosions, fire, and

resulting toxic smoke and dust plume. Dr. Sahu, who has consulted with both private industry as well as the U.S. Environmental Protection Agency and the U.S. Department of Justice during more than 30 years as an environmental expert, has prepared a Declaration in which he summarizes the limited publicly available information about the fire, and explains what additional information is necessary to obtain from Defendants. Specifically, Plaintiffs' proposed First Set of Consolidated Discovery Requests seeks an inventory of the combustible and toxic materials that were stored in the facility at the time of the explosions and fire, including chemicals in storage tanks, raw materials, and intermediate and finished products. Plaintiffs further seek a narrow Rule 206(a)(1) deposition of each Defendant, limited to the subjects addressed in the Consolidated Discovery Requests, for the purpose of learning what chemicals were stored at the facility, and are therefore likely to have been released into the community.

As discussed *infra*, Plaintiffs have more than satisfied the “good cause” standard under Rule 201(d) for taking limited immediate discovery. The purposes of the expedited discovery are threefold: **First**, information about the hazardous materials inside the facility will allow Plaintiffs and class members to make informed decisions about whether they can fully use their properties, and the steps they should take to protect themselves from toxic chemicals and potential harm. As local media has reported, concerned residents want prompt answers to the question, “What was in that building?”¹ so that they can make appropriate decisions for themselves and their families about whether, and if so how, to safely use their properties. **Second**, a complete inventory of the toxic and combustible materials present inside the facility will allow Plaintiffs' counsel and their expert to make informed decisions regarding appropriate

¹ See, e.g., Chris Green, “What was in that building” Rockton residents want answers in Chemtool plant fire, Rockford Register Star, June 30, 2021, : <https://www.rrstar.com/story/news/2021/06/30/rockton-area-residents-seek-answers-wake-chemtool-plant-fire/7749404002/>

testing of class members' properties for hazardous substances. Identification of the chemicals and materials in the facility will inform these decisions. Such testing is urgent and time-sensitive because, as we show herein, the testing conducted by government authorities to date is incomplete and has not addressed the substances inside residents' homes. *Third*, the results of such testing will inform decisions about the remediation efforts, if any, that must be undertaken and how quickly they must be performed.

The first step, however, is determining what hazardous materials were inside the facility—an urgent question that demands an immediate answer. Plaintiffs and the putative class should not be forced to wait until ordinary discovery runs its course before learning this basic information. “Good cause” exists because Plaintiffs’ need for expedited discovery on this subject far outweighs any possible hardship to Defendants.

I. FACTUAL BACKGROUND

A. Parties and Claims.

Plaintiffs Mackey and Migliore live three blocks from Defendants’ Rockton, Illinois Production Center (“Center”), and bring this action on behalf of themselves and a proposed class of Illinois residents who live within a three-mile radius of the Center, alleging common law claims of negligence, nuisance and trespass, and seeking money damages, including lost use-and-enjoyment damages, to vindicate their property rights, and injunctive relief, including an order requiring Defendants to remediate the harm at or threatening their properties.

Defendants own and operate the Center, which manufactures fluids, lubricants and grease for industrial use. Lubrizol, a Berkshire Hathaway company, acquired Chemtool Incorporated in August 2013. See <http://www.chemtool.com> (last visited July 5, 2021). The Rockton facility is one several of Defendants’ production facilities, which are also located in California and Brazil.

Id. Another Lubizol facility located in Rouen, France was the site of a massive chemical explosion and fire in September 2019.²

B. The June 14, 2021 Fire and Subsequent Government Health Warnings.

In the early morning hours of June 14, 2021, a series of explosions occurred at the Center, resulting in an enormous chemical fire that caused a massive toxic smoke and dust plume, visible from more than 100 miles away and detected by weather satellites. In order to combat the fire, personnel, equipment, and other resources from 89 fire departments were dispatched to the scene, including an industrial firefighting organization from Louisiana. Complaint ¶ 14.

The enormity and severity of the disaster is most accurately captured by drone footage: <https://youtu.be/rX6zCDkMSRY>. The explosions and fire were so significant that Illinois Governor J.B. Pritzker activated personnel from numerous state agencies and departments, including the Illinois Emergency Management Association, the Illinois State Police, the Illinois National Guard, the Illinois Department of Public Health (“IDPH”), and the State Emergency Operation Center to participate in the response. In addition, the Illinois Department of Transportation, the Illinois Environmental Protection Agency (“IEPA”), the State Fire Marshal’s Office, the American Red Cross, and the Salvation Army were mobilized in the area. Officials from the United States Environmental Protection Agency were on scene to respond to the event and the U.S. Department of Health and Human Services and the Federal Emergency Management Agency also provided support. Complaint ¶ 15.

As a result of the explosions, fire, and resulting toxic smoke and dust plume, Winnebago County, Illinois authorities issued an executive proclamation of disaster emergency, describing

² See <https://www.mystateline.com/news/lubrizol-which-owns-rockton-chemtool-plant-had-similar-fire-in-france-in-2019/>

the incident as a “significant and hazardous fire,” and ordered residents within a one-mile radius of the Center to evacuate. Exhibit 1 (6/14/21 Executive Proclamation). The evacuation order displaced residents from at least 150 homes. Complaint ¶ 16. Firefighting authorities did not engage promptly in fire suppression activities because of the risk of environmental harm to the neighboring Rock River, determining that they would allow the materials at the Center to burn out before commencing such activities. Complaint ¶ 17. The fire was not extinguished until more than a week later. See <https://www.wchd.org/fire>

Both during and after the fire, numerous health warnings were issued by local officials. Winnebago County Department of Health (“WCDH”) advised residents within a three-mile radius of the Center to wear masks to protect against inhalation of potentially toxic and harmful chemicals, and to remain indoors but not use their air conditioning.³ Complaint ¶ 16. WCHD also directed residents not to touch or pick up any of the debris that was deposited onto their properties “due to the potential [of] contaminated or hazardous materials,” but to have it removed by professionals experienced in working with hazardous materials, and cautioned residents against using their lawn mowers due to concerns about the composition of particulates that were created by the explosion and fire. See <https://www.wchd.org/fire>. The evacuation order was lifted on the morning of January 18, 2021, but WCHD advised that “Residents should take precautions upon returning home as their environment has been impacted by the fire,” *id.*, and directed residents to review a Guidance document entitled “Returning Home After a Chemical Fire” that was prepared by the IEPA, the IDPH, and the Illinois Emergency Management Agency. See <https://www.wchd.org/fire/returning-home-after-a-chemical-fire>; Exhibit 2. Among other things, that Guidance told residents:

³ <https://www.wifr.com/2021/06/16/evacuation-order-extends-least-one-more-night-rockton-residents-following-chemical-explosion/>

“Do not let children play in or with items covered by the ash or debris.”

“While outside playing or working in the yard, avoid hand to mouth contact and wash hands upon returning indoors.”

“When mowing wear respiratory protection.”

“When performing activities that may disturb ash or debris, wear respiratory protection.”

“Do not let pets drink water from puddles, or drink water or eat food that was outside during the incident.”

“Take off your shoes so that you do not track particles into your home.”

“When cleaning [air conditioner] filters wear a mask and gloves.”

“If you have a window air conditioner, close the outdoor air damper.”

“Clean interior floors and upholstery with high efficiency particulate air (HEPA-filter) vacuum cleaners.”

Id.

On or about June 15, 2021, the IEPA issued a press release stating that it had referred an enforcement action to the Illinois Attorney General’s office against Chemtool, citing violations of the Illinois Environmental Protection Act and Illinois Pollution Control Board Regulations relating to the June 14 fire and the “release of pollutants to the atmosphere.” Exhibit 3 (Illinois EPA News Release, June 15, 2021).

Further concerns for residents’ safety prompted WCHD officials to issue a “Health Impacts Survey” on July 1, 2021 in order to assess the impact of the Chemtool fire on the community. Exhibit 4 (WCHD Healthy Survey). The survey, which was prepared in collaboration with federal and state health authorities, asks residents about their exposure to smoke, dust and debris from the fire, whether they are experiencing any new or worsening symptoms, and whether they received care or treatment. *Id.*

According to the Director of the Illinois Emergency Management Agency, Alicia Tate-Nadeau, the chemicals inside the Chemtool facility included lead, sulfuric acid, nitrogen, and antifreeze. “Please understand this is one of the largest facilities in the nation that has different oils,” Ms. Tate-Nadeau stated. “So, when there’s a bunch of different chemicals in there and one of the things the chief looks at is what is in there and how do they work together?”⁴

C. Plaintiffs’ and Class Members’ Experiences and Legitimate Health Concerns.

The experiences of Plaintiffs and class members further reflect the severity of the disaster, as well as the uncertainty surrounding the toxicity of debris on their properties and the high level of community concern. Citizens have attended community meetings, and more than 2,000 individuals have formed a social media group called “Citizens for Chemtool Accountability,” in an effort to gain answers about the chemicals in the Rockton facility.⁵ One of the group’s co-administrators, Roscoe Township trustee Elizabeth Lundquist, explained that group’s discussions were focused on “ways we can work together to gather accurate information so that we can make informed decisions for ourselves, our families, and our community.” According to Ms. Lundquist, “The one thing that everyone wants to know is what was in that building and how much of it was in there.”

The experiences of Plaintiffs Mackey and Migliore are illustrative. They were in their home three blocks from the Center on the morning of June 14 when they heard a loud explosion and saw large flames and black smoke drifting towards their home. Exhibit 5 (Affidavit of Stephanie Mackey (“Mackey Aff.”) ¶¶ 1-5); Exhibit 6 (Affidavit of Nick Migliore (“Migliore

⁴ James Stratton, *The Chemtool Plant in Rockton is still burning, what chemicals are inside?*, June 14, 2021, <https://wrex.com/2021/06/14/the-chemtool-plant-in-rockton-is-still-burning-what-chemicals-are-inside/>

⁵ Chris Green, “*What was in that building*” *Rockton residents want answers in Chemtool plant fire*, Rockford Register Star, June 30, 2021, : <https://www.rrstar.com/story/news/2021/06/30/rockton-area-residents-seek-answers-wake-chemtool-plant-fire/7749404002/>

Aff.”) ¶¶ 1-5). A strong foul-smelling odor filled the air and it became difficult to breathe. At approximately 8:30 a.m., the Rockton Police Department ordered them to evacuate the area and they complied. As they were leaving their home, burning and smoldering debris was falling out of the sky from the black smoke cloud and landing on their property. Burning debris landed on the roof of a neighboring property and started a fire on the roof. Mackey Aff. ¶¶ 6-11; Migliore Aff. ¶¶ 6-11. Plaintiffs did not return to their home until four days later. When they returned, large chunks of debris were scattered across their property and neighborhood. Using a magnet, they also found smaller pieces of burnt metal that they otherwise would not have been able to see, as well as droplets of a brown liquid substance. Pictures of the debris and liquid droplets are attached to Ms. Mackey’s affidavit. Mackey Aff. ¶¶ 13-19 and Exhibit A thereto; Migliore Aff. ¶¶ 13-19.⁶

Eventually, workers from a company hired by Defendants called Clean Harbors arrived to remove debris from the Plaintiffs’ property. Although the large pieces of debris were removed, the Clean Harbors workers did not remove the smaller pieces and instead smashed them into the ground by foot. Currently, more than three weeks since the fire began, Plaintiffs are still anxious about living in their home, do not feel safe, and are concerned about whether they and their family are being exposed to something harmful. They are concerned about the air in their home and neighborhood, the dust in their home, the ground around their home and in

⁶ Other neighbors similarly found metallic debris on their properties, and have resorted to using magnets in an attempt to remove it. A local news article reported that one Rockton resident, elementary school teacher Dan Enderle, found tiny metallic flakes sprinkled across his property even after Chemtool’s contractor was sent to clean his property. Fearful of the potential health hazard to his family, he bought a metallic roller of the kind used to pick up nails at construction sites. He removed bags of the metallic material from his yard and garden, and noted, “It’s nauseating to me that all this stuff was in our yard.” See Jeff Kolkey, *Rockton residents turn to magnets to pull ‘nauseating’ debris from yards after Chemtool fire*, Rockford Register Star, July 1, 2021, <https://www.rrstar.com/story/news/2021/07/01/rockton-residents-shaken-chemtool-fire-find-metallic-debris-yards/7789402002/>

their neighborhood, the substances that fell onto their property and the value of their home and other homes in their neighborhood. Since the June 14 fire, Plaintiffs have not been able to fully use and enjoy their home. Mackey Aff. ¶¶ 21-28; Migliore Aff. ¶¶ 21-28.

Sarah Henderson, who lives with her family 1.8 miles south of the Chemtool facility, had a similar experience.⁷ Exhibit 7 (Affidavit of Sarah Henderson (“Henderson Aff.”) ¶¶ 1-3). She observed large black debris falling from the sky, and a strong foul-smelling chemical odor that made it difficult to breathe. *Id.* ¶ 5. There were large chunks of burnt debris, small pieces of brown metal, and a brown liquid substance through her neighborhood and on her property. *Id.* ¶ 8. She and her husband decided to evacuate their home for several days out of concern for the health and well-being of their family—especially their children. *Id.* ¶ 12. Despite numerous requests for assistance from Clean Harbors, burnt debris remains on her property, including her roof. She remains anxious about the safety of her home and whether she and her family are being exposed to harmful substances that are in the ground on her property and in the dust in her home, and has not been able to fully use and enjoy her home. Many of her neighbors and friends in the area have expressed similar concerns. *Id.* ¶¶ 21-28.

D. Summary of the Limited Publicly-Available Information Regarding the Chemicals Burned in the Fire.

During the three weeks since the fire erupted, only scant information has been provided to the public regarding the nature of the chemicals located in the facility. However, this limited information demonstrates that local residents have legitimate reasons to be concerned about the

⁷ Ms. Henderson is the named plaintiff in a putative class action styled *Sara Henderson v. Chemtool, Inc., et al.*, No. 2021-L-0000175, pending before Judge Honzel, which also arises from the June 14 explosion and fire. Counsel for Ms. Henderson and counsel for Plaintiffs in the instant case have reached an agreement to work collaboratively to prosecute their cases, and contemporaneously with the filing of the present motion are filing a motion to consolidate the two matters.

substances that were deposited on their property and entered their homes, and are justified in seeking additional information on an expedited basis.

Defendants have provided only minimal information to the public about the chemicals burned. In a factsheet available on Lubrizol's website, only the following general information is provided under the heading "What Burned?":

Understandably, questions have been raised about the materials burned in the fire. The materials impacted in the fire are liquid ingredients and finished greases used in a variety of lubrication applications. We have provided a list of products and ingredients impacted by the fire to the local authorities, and our health and safety experts have completed a thorough evaluation of the materials burned.

Exhibit 8 (Chemtool Rockton Overview, <http://www.lubrizon.com> (July 5, 2021)).

What Plaintiffs' counsel know about the materials stored at Defendants' facility and burned in the fire is summarized in the Declaration of Plaintiffs' expert, Ranajit (Ron) Sahu, Ph.D. ("Sahu Decl."), attached hereto as Exhibit 9. Dr. Sahu has over thirty years of experience as a consultant on environmental and chemical engineering issues, taught courses on air pollution at UCLA and other universities for many years, and has consulted with both private sector and government clients including the U.S. Environmental Protection Agency, the U.S. Department of Justice, and state agencies. *Id.*, ¶¶ 3-7 and attached resume.

Dr. Sahu explains:

- The dark smoke plumes created by the fire confirm that "much of the combustible material did not burn cleanly, resulting in a toxic mix of partially combusted, and highly hazardous compounds." Sahu Decl., ¶ 14. Combustion products resulting from the chemicals reported as being stored at the plant—including Zinc, Sulfuric Acid, Lead, Ethylene Glycol, and Diphenylmethane Diisocyanate—"would create a range of hazardous and air toxic compounds." *Id.* ¶ 16. In light of what is known about the chemicals on the premises, as well as the appearance of the dark plumes and residents' accounts of the odor, residents within the class area "are right to be worried and concerned about whether it is safe to be on their properties and whether they have been, and will continue to be, exposed to toxic chemicals." *Id.* ¶ 17.

- The air monitoring conducted to date has provided only limited information regarding the nature and extent of the chemicals emitted during the explosions and fire, or the substances that landed in and around residents' homes. Although EPA mobilized its monitoring efforts as quickly as it could, the air monitors did not capture the substances that were released into the atmosphere by the initial explosions or the first six (6) hours of the fire during which a long black cloud of chemicals blanketed the surrounding neighborhoods and entered residents' homes. *Id.* ¶ 20. The available information indicates that "significant quantities of air pollutants were generated, dispersed, deposited, and otherwise spread in the overall area in these first many hours." *Id.* Thus, it is critical to determine what chemicals were on-site during the explosions, and which chemicals were likely to have burned during the first hours of the fire.
- Notwithstanding EPA reporting requirements, public information about the chemicals inside industrial facilities and their quantities is often limited, both because of exemptions and the fact that reporting requirements only apply where substances are in quantities greater than the thresholds established in the regulations. *Id.* ¶¶ 33-35. "[T]hese excluded substances or those present below their respective reporting thresholds can create significant toxic and hazardous air pollutants in the case of a large fire" like the one that occurred at Chemtool. *Id.* ¶ 35. "Only the Defendants would be aware of the full list of all chemicals and combustible materials and their quantities located at the plant." *Id.*
- "[T]here was no reported targeted or systemic sampling of residences," either in the immediate vicinity of the fire or downwind. *Id.* ¶ 30. Thus, no testing or analysis has been conducted of the substances that entered residents' homes and are likely to still be present inside.

E. Information Sought by Plaintiffs' Expedited Discovery Requests.

Plaintiffs' counsel, in consultation with Dr. Sahu, have crafted a proposed First Set of Consolidated Discovery Requests (attached hereto as Exhibit 10), consisting of limited and targeted interrogatories and document requests that are designed to gather information regarding the nature and extent of the toxic and combustible materials at the Rockton facility.

As Dr. Sahu explains, the requested information is critical to understanding the nature and extent of the substances that were deposited onto Plaintiffs' and class members' properties during the explosions and fire. Dr. Sahu notes that significant "data gaps" need to be filled in

order to ensure that residents “have reasonable data-based reassurance that there will not be adverse health or welfare consequences, especially over the long term.” Sahu Decl., ¶ 36.

As summarized by Dr. Sahu, Plaintiffs’ discovery requests seek “[i]nformation to understand where within the Chemtool plant the fire began, how it spread, and what chemicals and materials were initially burned and in what quantity,” as well as information about the “type, location, and amount of chemicals, fuels, fuel combustion devices, and other combustible material present at the Rockton site when the fire ignited.” *Id.* ¶ 2.

This information should be readily accessible to Defendants, and Plaintiffs respectfully request leave to serve the proposed written discovery requests forthwith, and an order directing Defendants to provide responses within ten (10) calendar days thereafter. Plaintiffs further request leave to take a Rule 201(a)(1) deposition of each Defendant, limited to the topics that are the subject of the proposed written discovery requests and with each deposition limited to three hours of on-the-record time, within ten (10) calendar days after each Defendant serves its responses to the proposed written discovery.

II. ARGUMENT

A. Legal Standard

Illinois Supreme Court Rule 201(d) allows a court, “upon good cause shown,” to grant a party leave to initiate discovery before all defendants have appeared or are required to appear.⁸ *See Yuretich v. Sole*, 259 Ill.App.3d 311, 317 (Fourth Dist. 1994) (“Discovery may be initiated after all defendants have appeared or are required to appear, or earlier with leave of court”); *Winfrey v. Chicago Park Dist.*, 274 Ill.App.3d 939, 949 (First Dist. 1995) (Supreme Court Rules

⁸ Rule 201(d) states: “(d) **Time Discovery May Be Initiated.** Prior to the time all defendants have appeared or are required to appear, no discovery procedure shall be noticed or otherwise initiated without leave of court granted upon good cause shown.” IL S. Ct. Rule 201(d).

allow “liberal pre-trial discovery” and “[a] plaintiff may file a motion requesting discovery even before the defendant appears”); *Dept. of Transp. for and in Behalf of People v. Collins*, 69 Ill.App.3d 269, 273 (Third Dist. 1979) (Under Rule 201, “discovery can be initiated at any time with leave of court upon good cause shown”).

Applying Rule 201(d), Illinois courts in a variety of circumstances have permitted early or expedited discovery upon a showing of good cause. *See e.g., McInnis v. OAG Motorcycle Ventures, Inc.*, 2015 IL App. (1st) 142644 ¶ 15 (expedited discovery permitted prior to preliminary injunction hearing); *Feldheim v. Sims*, 326 Ill.App.3d 302, 307 (First Dist. 2001) (expedited discovery ordered during pendency of motion to dismiss); *John Crane, Inc. v. Admiral Insurance Co.*, No. 04CH8266, 2006 WL 1010495, *2-3 (Circuit Court of Cook County, April 12, 2006) (expedited discovery warranted due to insurer’s potential liquidation).

Similarly applying a “good cause” standard under Fed. R. Civ. P. 26(d), federal courts have authorized expedited discovery in environmental cases where immediate disclosure of information is needed. *See, e.g., United States v. Smith*, No. 19-CV-3920, 2019 WL 6124479, *2 (E.D.N.Y. July 19, 2019) (permitting limited expedited discovery and ordering defendant to immediately respond to a Request for Information from the EPA); *Giltmane v. Tennessee Valley Authority*, 2009 WL 230594, *2 (E.D. Tennessee Jan. 20, 2009) (good cause shown to allow limited expedited discovery relating to ash spill).

B. Plaintiffs Have Shown “Good Cause” to Take Limited Expedited Discovery.

Here, Plaintiffs have demonstrated “good cause” under Rule 201(d) for limited expedited discovery targeted to gather information regarding the inventory of toxic and combustible materials in Defendants’ facility at the time of the explosions and chemical fire. Immediate disclosure of this information is necessary for several reasons, as discussed below.

Expedited discovery is necessary to inform putative class members regarding the chemicals on their properties. First, information about the hazardous materials inside the facility will allow Plaintiffs and class members to make informed decisions about whether they can fully use their properties, and the steps they should take to protect themselves from toxic chemicals and potential harm. Plaintiffs and the putative class members should not be forced to wait until ordinary discovery runs its course before learning what toxic substances were in the facility, and have been deposited onto their properties.

A full inventory of the toxic and combustible materials has not yet been disclosed to the public, and is not accessible to Plaintiffs, their counsel, or their environmental consultant. Full information regarding the toxicity of the materials stored at the plant is critical and urgent, since debris from the explosions and fire has not yet been removed from residents' yards, gardens and rooftops, including small metallic flakes and brown liquid droplets of unknown chemical composition. Winnebago County health officials have directed residents to take precautionary measures to avoid handling, ingesting, or breathing the materials deposited by the fire onto their properties, *see* Exhibit 2, yet residents still lack full information about what these substances are.

Moreover, dust from explosions and fire has entered residents' homes but, to Plaintiffs' knowledge, has not yet been tested or analyzed. County officials have instructed residents to clean the dust with high efficiency particulate air (HEPA-filter) vacuum cleaners (which are expensive and not available to all residents), but no information has been provided about what toxic substances this dust contains. Similarly, although officials from county, state and federal agencies have collaborated to conduct a health survey of the impact of the fire on local residents' health, the specific chemicals to which the residents' properties were exposed has not been fully disclosed. Given that highly hazardous substances would have been stored at the facility, a full

and immediate disclosure of the materials on-site is urgently needed so that Plaintiffs and class members can insure that they can fully and safely use their properties.

Expedited discovery is necessary to inform what further environmental testing and investigation must be conducted. Second, a complete inventory of the toxic and combustible materials present inside the facility will allow Plaintiffs’ counsel and their expert to make informed decisions as to the appropriate testing of class members’ properties and homes for hazardous substances, if any, that should be conducted. Such testing is urgent and time-sensitive since the testing conducted by government authorities to date is incomplete. As Dr. Sahu explains, sampling, testing and analysis must be based on “tailoring of chemicals and pollutants that would be expected from chemicals stored at the facility or, importantly, products of incomplete combustion and transformation of those chemicals as a result of the fire.” Sahu Decl., ¶ 32.

Expedited discovery is necessary to inform what further remediation efforts must be undertaken. Third, the results of testing and analysis will allow Plaintiffs’ counsel to determine what further remediation efforts, if any, must be undertaken and how quickly they must be performed. As Dr. Sahu explains, the sampling and testing will “guide appropriate remedial measures, as needed, such that ongoing and future adverse exposures are eliminated.” *Id.* ¶ 37.

III. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs’ motion for limited expedited discovery. A proposed Order granting the motion is attached.

Respectfully submitted,
/s/ Shawn M. Collins
Shawn M. Collins
One of the Attorneys for Plaintiff

Shawn Collins (#6195107)
shawn@collinslaw.com
Edward J. Manzke (#6209413)
ejmanzke@collinslaw.com
Margaret E. Galka (#6329705)
mgalka@collinslaw.com
Dayna Smith (#6336782)
dsmith@collinslaw.com
THE COLLINS LAW FIRM, PC
1770 Park St., Ste. 200
Naperville, Illinois 60563
630.527.1595

Robert S. Libman
rlibman@lawmbg.com
Scott A. Entin
sentin@lawmbg.com
Benjamin Blustein
bblustein@lawmbg.com
Nancy L. Maldonado
nmaldonado@lawmbg.com
Deanna N. Pihos
dpihos@lawmbg.com
David P. Baltmanis
dbaltmanis@lawmbg.com
Matthew J. Owens
mowens@lawmbg.com
MINER, BARNHILL & GALLAND, P.C.
325 N. LaSalle St., Ste. 350
Chicago, Illinois 60654
312.751.1170
Atty. No. 44720