

**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
by J.P. Deputy

Honorable Lisa Fabiano

SARA HENDERSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CHEMTOOL INCORPORATED and
THE LUBRIZOL CORPORATION,

Defendants,

BERKSHIRE HATHAWAY, INC.,

Respondent in Discovery.

Case No. 2021-L-0000175

Honorable Donna R. Honzel

MOTION TO CONSOLIDATE

INTRODUCTION

Plaintiffs Stephanie Mackey and Nick Migliore (“Plaintiffs”), and Movant Sara Henderson (“Movant”), through their undersigned counsel, and pursuant to 735 ILCS 5/2-1006, hereby move this Court for entry of an Order consolidating the action styled *Sara Henderson v.*

Chemtool Inc., et al., No. 2021-L-0000175 (“*Henderson*”), pending before Judge Honzel, into the earlier-filed action styled *Stephanie Mackey, et al. v. Chemtool Inc., et al.*, No. 2021-L-0000165 (“*Mackey*”), which is assigned to this Court. The two cases are putative class actions that arise out of the same event -- the June 14, 2021 explosions and chemical fire at the chemical plant located at 1165 Prairie Hill Road in Rockton, Illinois that is owned and operated by Chemtool Incorporated and The Lubrizol Corporation, both of whom are named as Defendants in the two cases (collectively “Defendants”). Counsel for Plaintiffs and counsel for Movant, attorneys with decades of experience in class action and environmental litigation who have previously worked as co-counsel in other cases, have reached an agreement to work collaboratively to prosecute their cases.¹

FACTUAL BACKGROUND

On June 18, 2021, Plaintiffs Stephanie Mackey and Nick Migliore, on behalf of themselves and all others similarly situated, commenced a class action against Defendants Chemtool Incorporated and The Lubrizol Corporation. *Mackey* was assigned to this Court. A copy of the *Mackey* complaint is attached as Exhibit 1. On June 28, 2021, Movant Sara Henderson, individually and on behalf of all others similarly situated, commenced a class action against the same Defendants and also named Berkshire Hathaway, Inc. as a Respondent in Discovery. *Henderson* was assigned to Judge Honzel. A copy of the *Henderson* complaint is attached as Exhibit 2.

¹ Plaintiffs and Movant 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 *Mackey*, which identifies a putative class narrower in geographic scope than either *Mackey* or *Henderson*, and have reached out to plaintiffs’ counsel in that case about potential collaboration, but no agreement has yet been reached.

Mackey and *Henderson* are both putative class actions that arise out of the same event, the June 14, 2021 explosions and chemical fire at Defendants’ Production Center located at 1165 Prairie Hill Road in Rockton, Illinois (“Rockton Production Center”). Both cases allege that Defendants’ negligent conduct caused the June 14 explosions, chemical fire, and the resulting toxic smoke and dust plume, which caused and continues to cause harm to Plaintiffs, Movant, and the other class members. Both cases assert claims for common law nuisance, negligence, and trespass. The geographic region of the putative classes in the two cases (a three-mile radius around the Rockton Production Center) is identical. Counsel for plaintiffs in the two cases have decades of experience in class action and environmental litigation who have previously worked as co-counsel in other cases and have reached an agreement to work collaboratively to prosecute their cases. Defendants have yet to appear or file responsive pleadings in either case.

ARGUMENT

A. Legal Standard

735 ILCS 5/2-1006 provides, in relevant part, that “actions pending in the same court may be consolidated, as an aid to convenience, whenever it can be done without prejudice to a substantial right.” Illinois courts favor consolidation when doing so conserves judicial resources. *Lake Cty. Forest Pres. Dist. v. Keefe*, 53 Ill.App.3d 736, 739 (2d Dist. 1977).

There are three grounds for consolidation:

(1) where several cases are pending involving substantially the same subject matter, the court may stay proceedings in all but one, the decision in the others being determined by that reached in one trial, thereby avoiding multiple trials on the same issue; (2) where several cases involve an inquiry into the same event in its general aspects, the cases may be tried together, but with separate docket entries, verdicts and judgments, the consolidation being limited to a joint trial; and (3) where several actions are pending which might have been the subject of a single proceeding, the cases, by consolidation, become merged into one in which the rights of the parties are determined.

Vitale v. Dorgan, 25 Ill.App.3d 941, 944 (2d Dist. 1975). Plaintiffs and Movant rely on the third ground, *i.e.*, *Mackey* and *Henderson* might have been the subject of a single proceeding.

B. The Cases Meet the Criteria for Consolidation

“Consolidation is proper where the cases are of the same nature, arise from the same event, involve the same or similar issues, and depend largely upon the same evidence.”

Robinson v. Robinson, 100 Ill.App.3d 437, 449 (2d Dist. 1981) (citing *Stone v. City of Belvidere*, 39 Ill.App.3d 829, 833 (2d Dist. 1976)). Here, *Mackey* and *Henderson* grow out of the same occurrence and involve the same issues of fact and law. Both cases allege that Defendants’ negligent conduct caused the explosions and chemical fire on June 14, 2021 at the Rockton Production Center and the resulting toxic smoke and dust plume, which caused and continues to cause harm to Plaintiffs, Movant, and the other class members. Both cases assert claims for common law nuisance, negligence, and trespass. The geographic region of the putative classes in the two cases is identical. The cases will depend largely upon the same evidence and involve the same issues, and the defenses are expected to be identical.

C. Consolidation Will Benefit the Court and the Parties

The purpose of consolidation “is to expedite the resolution of lawsuits, conserve the court’s time, avoid duplicating efforts, and save unnecessary expenses.” *J.S.A. v. M.H.*, 384 Ill.App.3d 998, 1005 (3d Dist. 2008), *as modified on denial of reh’g* (Sept. 8, 2008) (citing *Peck v. Peck*, 16 Ill.2d 268, 276 (1959)). Consolidating *Mackey* and *Henderson* will achieve these goals. Because the same issues of law and fact are present in the two cases, consolidation will result in substantial savings of time, resources, and cost for the Court and the parties. Further, consolidation will not result in delay nor otherwise cause prejudice, as Defendants have yet to appear or file responsive pleadings in either case.

CONCLUSION

WHEREFORE, Plaintiffs Stephanie Mackey and Nick Migliore and Movant Sara Henderson respectfully request that this Court enter an Order consolidating the action styled *Sara Henderson v. Chemtool Inc., et al.*, No. 2021-L-0000175, pending before Judge Honzel, into the earlier-filed action styled *Stephanie Mackey, et al. v. Chemtool Inc., et al.*, No. 2021-L-0000165, which is assigned to this Court. A proposed Order granting the motion is attached hereto.

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Dated: July 6, 2021

s/ Shawn M. Collins

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