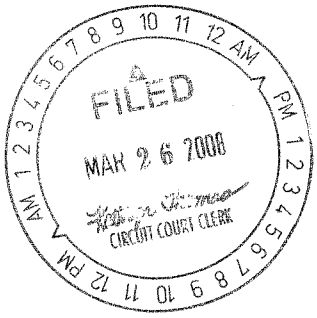
IN THE CIRCUIT COURT OF KANKAKEE COUNTY, ILLINOIS

21ST JUDICIAL CIRCUIT

EDITH QUICK, et al., Plaintiffs, v. SHELL OIL COMPANY, et al., Defendants.	CASE NO. 01-L-147 ORDER APPROVING SETTLEMENT AND FINAL JUDGMENT AS TO ALL MATTERS EXCEPT CLAIMS FOR PERSONAL INJURY



This case involves a spill of gasoline containing methyl tertiary butyl ether (MTBE) from an underground pipeline in Kankakee County in 1988. The facts of the case are set out in some detail in In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, 241 F.R.D. 435 (S.D.N.Y. 2007). The case was originally filed in this Court, then removed by defendants to federal court, where class certification was granted pursuant to Federal Rule of Civil Procedure 23. Following this certification the parties reached a settlement, and the case was remanded to this Court. The Court preliminarily approved the settlement in December 2007, and directed that notice be sent to class members. The Court then held a hearing on final approval of the settlement on February 28, 2008. Pursuant to section 2-801 of the Code of Civil Procedure (735 ILCS 5/2-801), the Court hereby grants final approval of the proposed settlement (the "Settlement") of this litigation.

I. The Class Is Certified for Purposes of the Settlement.

The Settlement Class is defined as:

> All current owners of real property in the Outer Area and Core Area, as defined on the map attached hereto as Exhibit A, and all people who resided or owned property within the Core Area from November 1, 1988, to the date of Final Approval.

Section 2-801 of the Code of Civil Procedure provides that an action may proceed as a class action if the circuit court finds that (1) the class is so numerous that joinder of all members is impractical; (2) there are questions of fact or law common to the class, and those 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 efficient and fair adjudication of the controversy. The Court finds that each of these elements is satisfied here.

A. Numerosity.

Section 2-801(1) requires that the proposed class must be "so numerous that joinder of all members is impracticable." No minimum number is required for class certification. "Generally, courts will find a class sufficiently numerous when it composes 40 or more members." DeMarco v. National Collector's Mint, Inc., 229 F.R.D. 73, 80 (S.D.N.Y. 2005)). In this case, notice was mailed to over 1,500 persons, and the Claims Administrator received approximately 1,384 claims as of February 14, 2008 (see Yurgine Decl., ¶ 8), and 37 claims after that date (see infra). Plainly, the numerosity requirement is satisfied here. See also In re MTBE, supra, 241 F.R.D. at 444 ("In this case, the numerosity requirement is plainly satisfied . . . .").

B. Commonality.

Section 2-801(2) requires that there be some question of law or fact common to the class,

and that common questions predominate over any questions affecting only class members. "So long as the class shares at least one question of fact or law, the commonality requirement is met." People United for Children, Inc. v. New York, 214 F.R.D. 252, 257-58 (S.D.N.Y. 2003).

As Judge Scheindlin found: "In this case, numerous common questions of fact and law are at the core of Plaintiffs' claims against the Companies because Plaintiffs' tort claims arise out of a single gasoline release." 241 F.R.D. at 443. The amount of gasoline released, the maintenance of the pipeline and response to the release, whether MTBE is a defective product, and a number of other issues are common to all potential claims arising from the spill. Id. The numerous common legal and factual questions arising from the core release predominate over individual issues such as damages. See In re MTBE, supra, 241 F.R.D. at 448 ("When liability can be resolved by a jury with a single decision that applies to the whole class, and the only individual question left to resolve relates to damages, class certification is warranted.").

C. Adequacy.

Section 2-801(3) requires that the plaintiff demonstrate that "[t]he representative parties will fairly and adequately protect the interest of the class." Under Rule 23, the federal counterpart to section 2-801: "This requires a two-part inquiry: (1) whether plaintiff's interests are antagonistic to the interest of other members of the class, and (2) whether plaintiff's attorneys are qualified, experienced and generally able to conduct the litigation." In re Veeco Instruments, Inc. Sec. Litig., 235 F.R.D. 220, 239 (S.D.N.Y. 2006) (quoting Baffa v. Donaldson, Lufkin & Jennrette Sec. Corp., 222 F.3d 52, 60 (2d Cir. 2000)).

The interests of the Class Representatives and the Class Members are the same here: maximize their recoveries. The Class Representatives have asserted the same legal theories and basic damage claims that Class Members have. As Judge Scheindlin found: "In this case,

Plaintiffs have satisfied the typicality requirement because each class member's claim arises from the same event: the gasoline release in November of 1988. As a result, Plaintiffs' motivation to prove their claims is typical of all class members." In re MTBE, supra, 241 F.R.D. at 444-45.

Class Counsel also satisfy the adequacy of representation requirement. Class Counsel have extensive experience in MTBE contamination cases and have ably represented the interests of the Class. See In re MTBE, supra, 241 F.R.D. at 446 (finding adequacy both for Class Representatives and for Class Counsel). Cf. Iglesias-Mendoza v. La Belle Farm, Inc., 239 F.R.D. 363, 375 (S.D.N.Y. 2007) (finding adequacy of counsel under Rule 23(g); "[counsel] has diligently identified and pursued the claims in this action to date"). Thus, the requirements of adequacy have been met.

D. Fair and Efficient Adjudication of the Controversy.

Finally, section 2-801(4) requires that the Court find that the "class action is an appropriate method for the fair and efficient adjudication of the controversy." Here, class certification is distinctly superior to attempting to prosecute more than one thousand individual cases involving the same core legal and factual issues. Given the number of Class Members and their relative damages, it is unlikely that they would want to endure the expense of litigation by bringing their claims individually. This is demonstrated by the fact that, given the choice between opting out and participating in the settlement, less than 1% of the class chose to opt-out – and only one of those opt-outs was due to a clear desire to pursue separate litigation. Yurgine Decl., ¶ 9. Nor is there any indication that there will be difficulties in administering the Settlement in terms of adjudicating the claims filed by "Core Area" class members or in paying requests for well testing and substitute water which "Outer Area" class members are expected to

present to the Administrator. Thus, class certification here is both a fair and an efficient method of adjudicating the controversy.

Because each of the requirements of section 2-801 of the Code of Civil Procedure is satisfied here, the Court certifies the Class for settlement purposes.

II. Adequacy of Notice.

The notice to class members in this case was based upon model notices prepared by the Federal Judicial Center. Axline Decl., ¶ 7. The notice was submitted to and approved by the Court in the process of providing preliminary approval of the settlement, and the notice was mailed to over 1500 Class Members who owned parcels in the affected area. Yurgine Decl., ¶ 4. In addition, a summary of the notice was published for three consecutive days in the Kankakee Journal, and a web site containing a copy of the notice, the notice summary, the settlement agreement, and answers to frequently asked questions was established and referenced in the notice. Class Counsel followed up with postcards to Class Members as the deadline approached. The effectiveness of the Class notice is evidenced by the strength of the response to that notice – approximately 1,384 claims were submitted by February 14, 2008, together with eleven opt-outs (Yurgine Decl., ¶ 8), and 37 claims after that date (see infra).

III. The Settlement Is Fair and Reasonable.

The adequacy of a class action settlement is measured by "reasonableness." Donovan v. Estate of Fitzsimmons, 778 F.2d 298, 307-08 (7th Cir. 1985). "A trial court should not disapprove a settlement nor should its approval be overturned on review unless, taken as a whole, the settlement appears so unfair as to preclude judicial approval." Gowdey v. Commonwealth Edison Co., 37 Ill.App.3d 140, 149-50, 345 N.E.2d 785, 793 (1976).

Factors to evaluate in determining "reasonableness" include: "the strength of the

plaintiff's case on the merits measured against the terms of the settlement; the complexity, length, and expense of continued litigation; the degree of opposition to the settlement; the presence of collusion in gaining a settlement; the opinion of competent counsel as to the reasonableness of the settlement; and the stage of the proceedings and the amount of discovery completed." Donovan v. Estate of Fitzsimmons, supra, 778 F.2d at 308.

The Court finds that each of these factors in this case demonstrates that the settlement is "reasonable."

A. Strength of the Case Measured Against Settlement.

The settlement is substantial. It provides $26 million in cash and an agreement to connect all domestic water systems in a core area, involving hundreds of residences, to public water at defendants' sole expense. The agreement also provides for testing of wells in an area beyond the area of contamination, and provides for potable water should MTBE be detected in any of those wells in the future. Plaintiffs and defendants disagree as to the precise value of the non-cash part of the settlement, but there is no doubt that the total value of the settlement approaches or exceeds $40 million.

Plaintiffs' case on the merits is not without risks, including questions about the actual extent of impact from the release and the potential contribution from other sources. Moreover, the release at the core of this case occurred twenty years ago, further complicating plaintiffs' proofs. Given these risks, the value of the settlement is more than reasonable.

B. Complexity, Length, and Expense of Continued Litigation.

The case was heavily litigated, in multiple forums, for more than six years. The parties engaged in extensive discovery, hired numerous experts, and took more than twenty depositions during the course of the litigation. In addition to the usual complexities that accompany any

environmental class action, the case faced unusual procedural complexities arising from its removal to federal court, competing jurisdictional concerns, and transfer into and out of a multi-district litigation proceeding involving over 160 cases.

It is noteworthy that, in reaching this settlement, the parties engaged in four separate face to face mediation sessions, in three separate locations, three of which were supervised by talented but expensive private mediators. The process of drafting and executing the settlement alone took nearly six months. There is no doubt that, absent settlement, resolution of this case would entail hard-fought, lengthy, and expensive litigation.

C. Degree of Opposition.

Opposition to the settlement is minimal and acceptance overwhelming. Less than 1% of the Class opted-out, and approximately 1,384 claims were filed as of February 14, 2008 (Yurgine Decl., ¶ 8), and 37 claims after that date (see infra). Of the fifteen objections that were filed, ten outer area parcel owners objected to not being included in the core area and four parties objected to the capping of their wells, perhaps not fully understanding that they could file a claim toward the cash amounts in the settlement for any increase in water bills resulting from being connected to public water. Yurgine Decl., ¶ 9.

D. Absence of Collusion.

It is evident from the record that the settlement was not the result of collusion. The case was heavily litigated for more than six years at great expense, the Personal Representatives must submit claims against the Settlement Fund just like every other Class Member, and Class Counsel's fees and expenses were negotiated and are to be paid separately, and not from the Settlement Fund.

E. Opinion of Counsel as to Reasonableness.

It is the opinion of Class Counsel that the settlement is reasonable and even generous, particularly given the risks and expense of litigation. Axline Decl., ¶ 8. The settlement fully addresses the underlying complaint allegations – contamination and potential contamination of drinking water – by providing, at defendants' sole expense, for the provision of public drinking water to every home that is at any reasonable risk of having their well water contaminated. The settlement also provides a generous fund – $26 million – to compensate Class Members for the impacts of past contamination. Class Counsel has extensive experience in the area of groundwater contamination litigation, and are exceptionally hard nosed negotiators. The settlement plainly reflects difficult and arms length negotiations. Axline Decl., ¶ 8.

F. Stage of Proceedings.

The proceedings are at an advanced stage so that there is no concern that a rapid settlement was reached in order to advantage Class Representatives. The case was heavily litigated for more than six years, and settlement was achieved only after the class was certified in federal court. Following settlement, the case was remanded to this Court which, following a motion and hearing, entered an order giving preliminary approval to the settlement.

G. Amount of Discovery.

The parties engaged in extensive discovery prior to reaching settlement. Multiple sets of interrogatories and document production requests were submitted and responded to, and at least twenty depositions were taken. Axline Decl., ¶ 5. The discovery resulted in the production of tens of thousands of pages of documents, all of which needed to be reviewed in order to prosecute the case.

H. Settlement Administrator.

Former Judge Thomas M. Ewert has been nominated as the Administrator of this Settlement. The Court has examined Judge Ewert's qualifications and finds him exceptionally well-qualified to act as Administrator of the Settlement Fund established by the Settlement Agreement. Accordingly, Judge Ewert is hereby appointed as Settlement Administrator.

I. Objections and Opt-Outs.

This Court has read and carefully considered all documents filed in support of the Settlement Agreement, all documents containing objections to the proposed Settlement Agreement, and all Opt-Out documents. In addition, the Court conducted a hearing in open court on February 28, 2008, in which comments were invited from any person present in the Courtroom. The Court heard testimony from all persons who sought to speak. Based on the documents filed and testimony heard, the Court finds that all objections to the Settlement Agreement should be overruled, and further finds that all Opt-Outs that were timely filed in the proper form and not withdrawn should be allowed. Persons who have withdrawn Opt-Out forms and submitted Claim Forms before the date of execution of this Order will be allowed to submit supporting materials and make claims against the Settlement Fund. Persons who have opted-out shall not participate in the benefits of the Settlement Agreement or receive any proceeds from the Settlement Fund created by the Settlement Agreement.

J. Attorneys' Fees and Expenses of Class Counsel.

The Court finds that the provisions of the Settlement Agreement requiring Shell Oil Company to pay the attorneys' fees and expenses of Class Counsel are fair and reasonable.

Under Illinois law, attorneys' fees may be a percentage of the value of the settlement in this case. See Brundidge v. Glendale Federal Bank, 659 N.E.2d 909 (Ill. 1995) (trial court in

class action has discretion to award fees on either a percentage basis or lodestar basis). "The vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common-fund cases." Manual for Complex Litigation (Fourth) § 14.121 at 187 (footnotes omitted). That method is particularly appropriate here, because the primary reason for not adopting a percentage approach (fees are deducted from the class settlement fund) is not present in this case.

The case was originally filed in this Court in December 2001, then was heavily litigated in state and federal courts for over six years. In 2005, defendants removed the case to federal court, where it was transferred to a Multi-District Litigation (MDL) proceeding involving MTBE contamination of groundwater in more than 160 cases from around the country. Despite the late arrival of the case in the MDL, the federal court granted plaintiffs' motion to make this case a focus case (with priority over other cases). Motions to Certify the Class were filed in federal and state courts, and the federal court granted plaintiffs' Motion to Certify the Class on January 3, 2007. After a settlement was negotiated, the parties sought and obtained remand from the federal court to this Court. Class Counsel's attorneys' fees were negotiated separately from the settlement, and only after the settlement had been reached, and will not be paid out of the Settlement Fund.

The amount of Class Counsel's attorneys' fees and expenses agreed to by the parties, $9.5 million, is reasonable in light of the above, and is approved by the Court. Defendants shall pay these fees and expenses concurrently with payment of the Settlement Fund.

K. Claim Forms.

The Court has been advised and hereby finds that approximately 37 Claim Forms, shown on the list attached hereto as Exhibit B, were filed after the deadline of February 14, 2008. To

preserve the rights of those persons and to promote the basic intent of the Settlement Agreement in an equitable manner, the Court finds that it would be fair and reasonable for the Administrator to accept all Claim Forms filed after February 14, 2008, which have been received by the Administrator as of the date of this Order.

L. Appeals from this Order.

(1) Appeal Bonds and Deposit of the Settlement Fund by Shell Oil Company.

If any appeal is taken from this Order, Shell shall deposit $26,000,000 into the Settlement Fund as required by the Settlement Agreement. If an appeal is taken by any person or entity other than Shell, then the Court shall consider setting an appeal bond by taking into account the value of the amount deposited by Shell and the expected rate of interest to be received over the term of the appeal. If an appeal is taken by Shell, then the Court shall compute the appeal bond or other security to be posted by taking into account interest which would have been received on the funds at a statutory rate of interest.

(2) Effect on the Administration of the Settlement by a Pending Appeal.

No distributions shall be made from the Settlement Fund until after the time to appeal has run. If any appeal is taken from this Order, the appeal will suspend the distribution of the Settlement Fund to claimants. For that reason the Court finds and recommends that any such appeal should be heard upon an expedited basis, and suggests that the Appellate Court consider the appeal on an expedited basis.

M. Retention of Jurisdiction by the Court.

Any questions regarding enforcement of the settlement agreement should be resolved in a reasonably quick and expeditious manner in a coordinated judicial administration. The Court,

therefore, retains jurisdiction over all controversies that arise under the Settlement Agreement.

N. Finality.

This Court hereby makes an express written finding that pursuant to Illinois Supreme Court Rule 304(a) there is no just reason for delaying either enforcement or appeal of this Order as to all matters other than claims for personal injury.

DATED THIS 26th DAY OF MARCH, 2008

ENTER: _____
JUDGE

All claims and causes of action asserted by Plaintiffs and Class Members, other than those for personal injury, are therefore dismissed with prejudice.

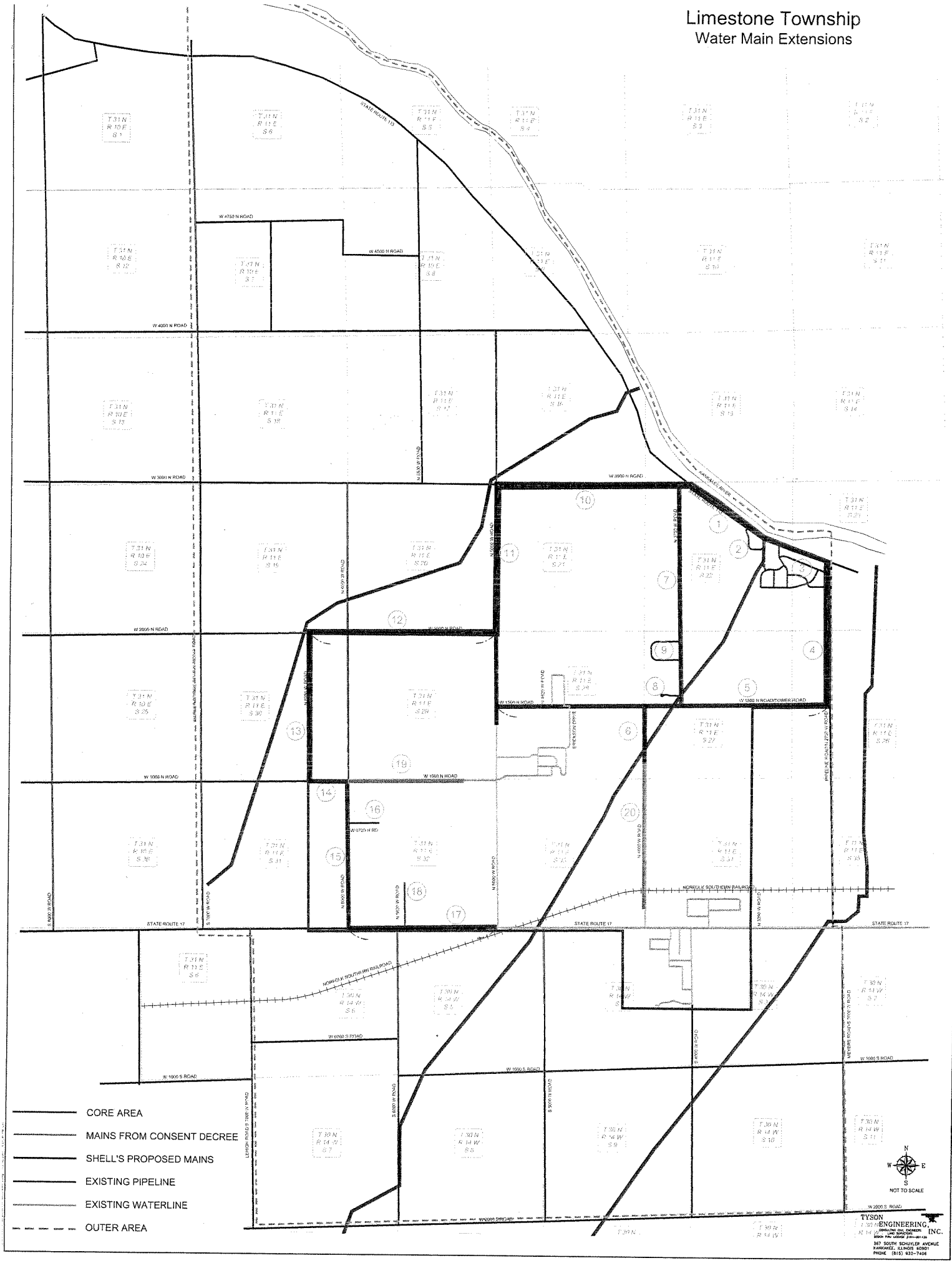

Limestone Township
Water Main Extensions
CORE AREA
MAINS FROM CONSENT DECREE
SHELL'S PROPOSED MAINS
EXISTING PIPELINE
EXISTING WATERLINE
OUTER AREA
NOT TO SCALE
TYSON ENGINEERING, INC.
357 SOUTH SCHUYLER AVENUE
KANKAKEE, ILLINOIS 60901
PHONE (815) 932-7406

EXHIBIT A

THE OUTER AREA

An area bounded on the south by W. 2000 S. Rd. beginning at 3000 W. Rd. and running west to 7000 W. Rd. then north to State Rte. 17 then west to S. 7000 W. Rd. then north to the Kankakee River then east along the middle of the Kankakee River to 2750 W. Rd. then south to State Rte. 17 then east to 3000 W. Rd. then south to W. 2000 S. Rd.

THE CORE AREA

An area bounded on the east by 2750 W. Rd. beginning at State Rte. 113 and running south to 1500 N. Rd. then west to a point directly north of 3290 W. Rd. then south to a point approximately one-half mile south of State Rte. 17 then west for approximately one mile then north to State Rte. 17 then west to a point approximately one-quarter mile west of N. 6000 W. Rd. then north to W. 2000 N. Rd. then east to N. 5000 W. Rd. then north to W. 3000 N. Rd. then east to State Rte. 113 then east along State Rte. 113 to N. 2750 W. Rd.

LIST OF CLAIMS SUBMITTED AFTER FEBRUARY 14,2008:

1. Sally Schmidt
2. Leonard and Denise Carta
3. Brad and Jane Hove
4. Todd and Amy Lund
5. David and Akiko Thorson
6. Donald and Jeanne Essington
7. Michael and Dawn Rink
8. Jon and Jean Hall
9. Don and Gail Fay
10. Brian and Sheri Elzinga
11. Michael and Teresa Owens
12. Rodney and Amy Middleton
13. Scott and Sandra Penrod and Lisa Dawn Stipp
14. Timothy and Brenda Bukowski
15. Marc and Kristi Wakat
16. Jason and Kellie Jarnagin
17. Paul Denault
18. Stephen and Denise Mitchell
19. Gary and Marianne Neuby
20. Richard and Rose Denault
21. Jose and Guadalupe Martinez
22. Richard Denault, Jr.
23. Chad and Tammy Altmyer
24. Don and Corrina Watson
25. Kent and Michele Keiser
26. Jay and Mary Hamilton
27. Frank Widick (on behalf of Lois J. Widick)
28. Jordan and Catherine Goodman
29. Robert and Brenda Perez
30. Ronald Winkel, Sr.
31. Kenneth and Karin Cote
32. Nikkeyma Hunt
33. Christa Alford
34. Kathy Schultz
35. Randy and Renee LeBeau
36. Illinois State Rifle Association
37. Estate of Martha Danhausen