IN THE CIRCUIT COURT OF KANKAKEE COUNTY, ILLINOIS
21ST JUDICIAL CIRCUIT

EDITH QUICK, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Cause No. 01-L-147
	)	
SHELL OIL COMPANY, et. al.,	)	
	)	
Defendants.	)	

REPORT, FINDINGS AND RECOMMENDATIONS OF THE CLASS SETTLEMENT ADMINISTRATOR AND MOTION FOR APPROVAL AND ORDER OF DISBURSEMENT OF SETTLEMENT FUNDS

Now comes Thomas M. Ewert, class Settlement Administrator, and reports to this Court his findings and recommendations regarding the distribution of Settlement Funds, and requests that this Court enter an Order for distribution of the Settlement Funds in the manner and for the reasons stated herein.

PROCEDURAL HISTORY

This case arises out of a rupture of a Shell Oil Company underground pipeline and the subsequent spill of gasoline containing MTBE in Limestone Township, Kankakee County, Illinois. On December 13, 2007 an Order was entered Conditionally Certifying the Settlement Class and Preliminarily Approving the Settlement. On December 18, 2007, Thomas M. Ewert, petitioner herein, was appointed as the Settlement Administrator with the duties enumerated in the Settlement Agreement. On March 26, 2008 an Order was entered Approving Settlement and Final Judgment and, no appeals having been taken, on April 28, 2008 became a final order.

NOTICE TO POTENTIAL CLAIMANTS

Plaintiffs' counsel sent notice to as many potential members of the class as were able to be determined. Publication giving notice of the settlement and advising potential class members of the claim procedure was made in the *Kankakee Daily Journal*. A web site was established where a copy of the Settlement Agreement could be found and forms for making a claim for a portion of the Settlement Funds could be obtained. A toll free number was acquired and staff was hired to answer questions concerning the right to make a claim and the procedure for doing so.

Among its provisions, the Settlement Agreement resulted in a Settlement Fund containing $26,000,000 to compensate members of the class for certain enumerated damages. In the settlement agreement, class members were defined as follows:

> *[A]ll current owners of real property in the Outer Area and Core Area, as defined on the map attached [to the Settlement Agreement], and all people who resided or owned property within the Core Area from November 1, 1988, up to the date that the Final Approval order is signed by the Court.* Settlement Agreement at p. 4.

Thus, the agreement divided the class members into two distinct groups: Core Area and Outer Area. These groups, made up of owners and occupiers of land, were established based upon the geographic proximity of their property to the site of the spill, and the impact that the spill had upon the property. A description and map of the Core Area and Outer Area boundaries was attached to the Settlement Agreement.

The criteria for evaluating claims are contained in the Settlement Agreement on page 9, at paragraph D. These criteria were set out in general terms. Paragraph A, Section V of the Settlement Agreement also provides: "The Settlement Funds shall be distributed by the Settlement Administrator. . . based upon written material and claims supplied by and for each claimant, and based upon written criteria developed in consultation with Class Counsel . . . ." Consistent with these provisions, and in consultation with counsel for the Plaintiffs, a reasonable and fair basis for evaluating the claims was established and will be discussed *infra*.

CLAIMS SUBMITTED

Approximately 1,400 claims were submitted prior to the Court-imposed deadline of February 14, 2008. Only a small number of potential claimants opted-out of the Settlement Agreement.

Evaluating the claims was complicated in some instances. Numerous claimants presented claims for multiple properties on the same form. Similarly, claims were made for property previously owned and property currently owned all on the same form. Claimants sometimes made their claim in their own name when the County records indicated that the property was held in a trust, in joint tenancy or tenancy in common, or in the name of a corporation. The claim form requested the claimant supply a copy of their deed or title insurance policy and PIN, but this information was not provided by most claimants. Thus, it was often difficult to locate the property, ascertain its ownership, verify the market value established by the assessor, or determine the number of acres contained in a tract. Frequently, the requested assessed value and tax information was not included and other important questions were often not adequately answered or were not answered at all.

As a result of these and other issues, a great deal of time was necessarily expended to locate each property, verify its location as in either the Core or Outer Area, verify its ownership and verify the period of ownership. We acquired internet access to the GIS mapping software and the property tax records from Kankakee County. Using the GIS software and the property tax records, each claim was reviewed and checked in an attempt to ensure that it was located either in the Outer Area or Core Area. Efforts were made to eliminate duplicate claims and verify the ownership of the property, the time period of ownership, the assessed value of the property, and the number of acres contained within each claimant's parcel.

While the Settlement Agreement makes provision for diminution in property value, almost no one supplied any "before" and "after" valuation numbers. Of the few claims that supplied such a number the majority consisted of mere personal opinion, unsupported by any data.

Under the terms of the Settlement Agreement, claimants were entitled to make a claim for the expense of bottled water used in lieu of drinking their well water. This prompted a wide array of responses in the claim forms, ranging from no request for payment to wildly different estimates of the cost incurred for bottled water. In addition, claims were submitted for “water treatment systems.” While this is an element that may be encompassed in the Settlement Agreement, these “water treatment systems” were often water softener systems together with a claim for salt to power them. They also included claims for systems to remove iron or odor from the water. According to the consulting experts, the aforementioned “water treatment systems” and “iron or odor” removing systems have nothing to do with removing MTBE from drinking water and are, therefore, not compensable damages under the terms of the Settlement Agreement.

CLAIMS NOT WITHIN GEOGRAPHICAL BOUNDARIES

After reviewing all of the submittals, it was determined that some claimants were confused or mistaken about the area covered by the settlement. These claims were for properties that were not within the Core Area or Outer Area. In each case, a letter was sent to such a claimant notifying them that their property was not covered by the terms of the Settlement Agreement. In addition, a detailed map delineating the streets surrounding the Core Area and the Outer Area, along with a written description of the boundaries of both, was provided to each person determined to be unqualified to receive compensation. Further, each claimant was given an opportunity to challenge our determination that they were not qualified by contacting the Settlement Administrator in writing. (A sample of the letter sent to this class of claimants is attached as Exhibit A). Only one challenge was received by the Settlement Administrator.

Those claims that were denied as being unqualified for this reason are noted on the attached review and calculation sheets. It is recommended that the Court deny these claims.

OUTER AREA CLAIMS

A. SCOPE OF THE SETTLEMENT AGREEMENT

The Settlement Agreement defines "Outer Area" class members as:

> *[A]ll current owners of real property in the Outer Area… from November 1, 1988 up to the date that the Final Approval Order is signed by the Court.* Settlement Agreement at p.4.

In addition, the criteria for compensation for qualified Outer Area claims were set forth in paragraph D on page 9 of the Settlement Agreement. It requires that the Settlement Administrator make recommendations that provide Class Members in the Outer Area with an amount sufficient to:

> *(i) test well water on their properties for MTBE for such time as the Settlement Administrator determines is reasonably necessary to assure that any risk of MTBE contamination in the Outer Area arising from the pipeline spill is negligible;*
>
> *(ii) compensate Class Members in the Outer Area for the inconvenience and annoyance of such testing; and*
>
> *(3) provide potable water should such testing show the presence of MTBE reasonably attributable to Shell's pipeline spill, through filtration or other appropriate measures.*

B. UNQUALIFIED OUTER AREA CLAIMS

1. Claimants who are not current owners of real estate within the Outer Area.

The definition of an Outer Area class member clearly requires that a claimant be a current owner of real estate within the geographical boundaries of the Outer Area. This definition is significantly different than that of a Core Area claimant. As verified by Plaintiffs' counsel, the intent of the Settlement Agreement was that Outer Area class members with legitimate claims only qualify to receive compensation if they currently own real property within the Outer Area boundaries.

A number of people who submitted claims as Outer Area claimants were past owners of property within the Outer Area, or were currently renting property in the Outer

Area. In each of these cases, a letter was sent to the claimant informing them that, pursuant to the terms of the Settlement Agreement, they were not eligible to receive compensation. Each letter quoted the Settlement Agreement and explained the express language. Each person whose claim was denied in this way was given an opportunity to contact the Settlement Administrator in writing if they disagreed with the determination. A sample of this letter is attached as Exhibit B & C. No disagreement with the determination of the Settlement Administrator was ever received.

Those claims that were denied as being unqualified for these reasons are noted on the attached review and calculation sheets. It is recommended that the Court deny these claims.

2. Properties that have no well.

A number of claims were submitted by residents in the Outer Area who owned vacant lots or farm ground. Many of these properties do not have wells on them. In addition, a number of claimants in the Outer Area were connected to the Aqua Illinois water system. However, the Settlement Agreement terms applicable to Outer Area claimants are limited to well water testing (and issues ancillary to well water testing). Thus, each of the claimants fitting in this classification were notified, in writing, that under the terms of the Settlement Agreement they did not have a claim. The notification letters quoted the terms of the Agreement and attempted to explain the basis for denial of the claim. Each person was given an opportunity to contest the denial by submitting a written objection to the Settlement Administrator. A sample of this letter is attached as Exhibit D. No contest was ever received by the Settlement Administrator.

Those claims that were denied as being unqualified for this reason are noted on the attached review and calculation sheets. It is recommended that the Court deny these claims.

B. QUALIFIED CLAIMS

1. Well Water Testing

The Settlement Agreement contemplates compensation to Outer Area class members for well water testing "for such time as the Settlement Administrator determines is reasonably necessary …." Settlement Agreement at p. 9. In order to determine a

reasonable amount of time, expert opinions were obtained from David R. Larson, Head, Hydrogeology Section, Illinois State Geological Survey, Champaign, Illinois, and, from H. Allen Wehrmann, P.E. Director, Center for Groundwater Science, Illinois State Water Survey, Champaign, Illinois.

Each expert was provided with the express language of the Settlement Agreement and was requested to provide their opinion regarding what would constitute a reasonable amount of time for testing to continue. In addition, the experts were asked to determine how many tests should be done to assure that there no longer existed any reasonable risk of MTBE contamination. The experts were informed that the spill occurred in 1988 and that no evidence was provided establishing that a well in the Outer Area had tested positive for MTBE. Lastly, both experts were supplied with a notebook that compiled all the testing that was available from the Plaintiffs' counsel concerning past well testing for MTBE in both the Core and the Outer Area.

After studying this problem the experts submitted a written report and recommendations to the Settlement Administrator. The experts based their recommendations on their educational background, experience and knowledge in the field of groundwater contamination, the testing results and other information supplied, the time lapse, their understanding of the ground water in the Outer Area, and the underground soil composition. The experts both concluded that one (1) additional test should be made of each well in the Outer Area in order to satisfy the criteria set forth in the Settlement Order. Copies of the expert report of Dr. Larson and Dr. Wehrmann are attached hereto as Exhibit E. It is recommended that the Court adopt the conclusions of the experts and find that one (1) additional test should be made of each well in the Outer Area.

Further, based on a review of the claim forms, discussions with the Plaintiffs' counsel and limited discussions with claimants, it has been determined that there may exist in the minds of many of the area residents a mistrust of past laboratory reports. Indeed, one laboratory that did testing in the area of the spill was joined as a defendant in this case. The express language of the Settlement Agreement provides that sufficient funds for testing be provided to the Outer Area class members, and allows the claimants to select the testing company that they are confident will provide accurate results. It is

recommended that the Court approve the distribution of funds for well testing and allow each claimant to select a testing company. It is further recommended that each Outer Area claimant be given a period of 90 days to test the well(s) and report to the Settlement Administrator if MTBE's exist. A failure to test and report will result in a forfeiture of any right to compensation for the "provision of potable water."

In determining an amount of reasonable compensation for well testing, a number of independent laboratories were contacted, and a list of three who appear competent to perform the appropriate tests is attached hereto as Exhibit F. The most expensive laboratory selected charges slightly less than $125 to perform the test. Therefore, it is recommended that the Court approve the payment of $125 to each qualified Outer Area claimant for well testing and that each be provided with a list of the testing companies that the claimants may consider using.

2. Compensation for Inconvenience and Annoyance of Testing.

Next, the terms of the Settlement Agreement provide for compensation to Outer Area class members "for the inconvenience and annoyance of such testing." This would include time and aggravation resulting from the process of collecting and submitting a test sample.

Each claimant will be required to contact a laboratory to obtain a collection kit, collect the sample in a very specific manner, refrigerate the sample before transmission to the laboratory, and return the sample to the laboratory in packaging designed to keep the sample cool. Clearly this is somewhat complicated, time consuming, annoying and inconvenient. There is surely an "emotional" annoyance as well because of the uncertainty that surrounds the whole process. It is therefore recommended to the Court that each qualified Outer Area claimant be compensated with the additional sum of $1,000 for "inconvenience and annoyance."

Those Outer Area class members who are qualified to receive compensation for testing, inconvenience and annoyance are noted in the attached review and calculation sheets along with a recommendation of the amount of compensation for each qualified claimant. In a few instances, the amount recommended for an award is not $1,125 due to the fact that claimants had more than one well or shared a well with a neighbor. After

consulting with Plaintiffs' counsel, it was determined that when a person had multiple wells, they did not suffer any substantial additional inconvenience and annoyance and so the sum of $1,000 for that element remained the same. However, the amount allocated for well testing was increased in proportion to the number of wells located on the claimant's property. Further, where a well was shared with a neighbor, it was determined that the amount for the testing should be shared between the multiple owners. In the case of shared wells, it was also determined that each owner would be subject to the same amount of inconvenience and annoyance. Therefore, for shared wells, each owner should be compensated with $1,000. When a claimant owned multiple parcels within the Outer Area, each with a well, an award was made for the cost of testing each well and for inconvenience and annoyance for each parcel.

3. Provision of Potable Water in the event wells test positive for MTBE.

Finally, the Settlement Agreement requires that if any person in the Outer Area has a well that tests positive for the presence of MTBE, a distribution from the Settlement Fund should be made to "provide potable water … through filtration or other appropriate measures." Settlement Agreement at p. 9. While no evidence has been presented of a well in the Outer Area testing positive for MTBE during the last 20 years, and the consulting scientists do not believe that any well will test positive, it is recommended that funds be held in reserve to cover the cost of installing MTBE removal systems should they become necessary.

CORE AREA CLAIMS

A. SCOPE OF THE SETTLEMENT AGREEMENT

The Settlement Agreement defines Core Area class members, as:

> *[A]ll current owners of real property in the . . . Core Area . . . and all people who resided or owned property within the Core Area from November 1, 1988 up until the Final Approval Order … signed by the Court.* Settlement Agreement at p. 4.

Unlike the Outer Area, this language allows for claims by current *and* previous owners, and present and past renters. The result of this language is that distributions must be apportioned between Core Area claimants for a single parcel.

The basic criteria set forth in the Settlement Agreement on page 9, paragraph "D," states that the Settlement Fund should be distributed to:

> *(1) reimburse Class Members within the Core Area for any and all damages they have claimed or may have claimed for any and all damages as a result of the release of MTBE and/or gasoline, or any of its components or breakdown products, from a former Shell pipeline which forms the basis for the Litigation, (including, but not limited to, claims for diminished property value, unreimbursed past and future costs of obtaining alternative water such as water bills or payment for bottled water, past and future lost rent, nuisance, past easements and access, costs for connections to water mains, investments in private wells and interference with quiet enjoyment of property). . . . ."* (*Emphasis added*).

Each of these factors were considered in determining the compensation for Core Area claimants and are discussed, *infra*.

B. DIMINISHED PROPERTY VALUE

The first issue addressed was the "diminished property value" resulting from the gasoline spill and subsequent contamination. Under Illinois law, the "diminished property value" is the difference between the value of the property at its highest and best use immediately before the occurrence and immediately after the occurrence. In determining the diminished property value, consideration was also given to unique characteristics of the parcel determined by a real estate appraiser and information derived from the claim forms. In addition, basic parameters described below were established and implemented to arrive at the recommended distribution.

1. Highest and best use.

For purposes of implementing the Settlement Agreement, highest and best use was defined as "that use which would give the property its highest cash market value (on

the date in question) … This may be the actual use of the property or a use to which it was then adaptable and which would be anticipated with such reasonable certainty that it would enhance the market value on that date." Illinois Pattern Jury Instruction No. 300.84. In determining the highest and best use and fair cash market value, consideration was given to a "reasonable probability of rezoning," as explained in *Department of Transportation v. First Bank,* 631 N.E.2d 1145, 1151-52 (1st Dist. 1992). The analysis of claims also considered the following criteria: (1) legal permissibility, (2) physical possibility, (3) financial feasibility, and (4) maximum profitability.

2. Fair Cash Market Value

Once the determination of highest and best use of the parcel before and after the occurrence was resolved, a decision was made regarding the fair cash market value at the highest and best use before and after the spill. That value is defined as the price which a willing buyer would pay in cash and a willing seller would accept, when the buyer is not compelled to buy and the seller is not compelled to sell. *Illinois State Toll Highway Auth. v. Heritage Standard Bank & Trust Co.,* 552 N.E.2d 1151, 1156 (2d Dist. 1990).

3. Practical issues considered

A number of practical issues were also considered in determining the "diminished property value," one of which was: When did the property lose value ? Clearly, some owners of the land near where the spill occurred, were aware of the spill immediately. However, this is not necessarily true for every landowner because release of the information concerning the spill and its effect on the ground water was not immediate. The timing of the flow of information and the inconsistencies in the reports pertaining to the level of contamination in the area make it virtually impossible to estimate the impact of the spill on the market value as of the date of the spill. Subsequent to the time of the spill and the contamination, there were numerous reports and contradicting claims as to the extent of the problem and the remediation efforts. It was also unknown how much gas spilled, where it leaked to, and how much gas remained to be recovered. Many people claimed to not have known about the spill and the potential contamination until this case

was settled. Further, there are many claimants in the Core Area that still have wells which they are using that are not contaminated.

On the other hand, at some point, there was a significant amount of news coverage of the event and the Attorney General filed a lawsuit against Shell. A number of wells began testing positive for MTBE — including the community well that serviced Oakdale Acres, Village Green, Lynn Gardens and Hillside subdivisions. In 1994 these communities were connected to Aqua Illinois municipal water by Shell and at Shell's expense. This lawsuit was filed seven years ago and reports concerning it have been in the media.

4. Real Estate Appraisal Analysis

As discussed, *supra,* there was little information supplied by claimants with respect to diminution in value of their real estate. Further, it is the opinion of the Settlement Administrator that no claimant has submitted any persuasive evidence on the issue of "diminished property value."

Initial inquires by the Settlement Administrator revealed little evidence for any "across the board" diminution in value for land in the Core Area. In fact, there were indications that this is a popular, growing, and desirable area of the county in which to live. It has been suggested that property values in the area have increased more than in some areas of the county not located near the spill.

Given the practical considerations and the scope of the "diminished property value" issue, a well-qualified real estate appraiser with knowledge and experience in evaluating property values was consulted to analyze this question. Mr. Jay M. Heap, a licensed State Certified General Real Estate Appraiser, Certified Illinois Assessing Officer and a State Accredited Affiliate of the Appraisal Institute, was retained to study the market and perform an analysis. Mr. Heap concluded that the diminution in value of the property in the Core Area that can be linked to the 1988 Shell gasoline spill is an amount less than 5%. The summary pages of his analysis are attached as Exhibit G.

5. Proration of Damages

A determination of the "diminished property value" is the first step in implementing the terms of the Settlement Agreement. Next, the issue is how the damages should be divided between past and present owners, and the weight given to the duration of ownership. Of paramount concern was achieving the ultimate goal of the Settlement Agreement: to fairly and reasonably compensate claimants.

The easiest claim to decide is a claim from a property that was owned at the time of the spill and still owned by the same person today. Such owners should be entitled to the entire amount of the award for diminution in value because of the spill.

However, there are also many cases were the property has changed hands multiple times during the approximate 20 year period with which we are dealing. In these cases, the most thoughtful approach is to look at what elements of damage each owner has suffered and make awards based upon those elements suffered by each owner in the chain of ownership. In the case of diminution of value, one would expect that the first seller in the chain after the spill would have suffered this damage. On the other hand, some properties sold after 1988 and in those cases it is possible neither the seller nor the purchaser knew that the well on the property was contaminated. In these cases, perhaps both parties should have known or the selling price should have been affected by the publicity, the stigma or the general knowledge in the area. However, based on the claim forms for properties that had multiple owners, virtually every buyer said they had no knowledge of the contamination and every seller says they had to sell for a reduced price.

Consideration was given to acquiring appraisals and selling prices for each qualified property. However, this option was determined to be cost prohibitive, counterproductive and contrary to the spirit of the Settlement Agreement. Equally impractical would be to hear the testimony of the claimants and make findings of fact based upon the credibility of the witnesses.

There are many instances where people chose to move into the Core Area and knew or should have known that there was a well water contamination problem. We have claims from home owners who built within the last few years and who are now asking to be compensated for the diminished value of their home. However, they arguably suffered no loss. If they bought a lot, they bought it at a discounted rate. If they built a home knowing it was in an area that was affected by the spill, knowing that they

would lose their well, knowing they may need bottled water, and knowing they have stigma attached to their home's location, arguably they cannot now reasonably claim damage.

One of the goals of a settlement is to avoid additional expense and resolve the matter in an expeditious manner. For this and the foregoing reasons, a formula was created to calculate the diminution in value based upon the length of time that the claimant has owned or resided on the property. The "formula approach" is practical, efficient, fair, reasonable and consistent with the spirit of the Settlement Agreement. The "diminished property value" element of damage is based on a mathematical calculation considering the length of time each claimant in the chain of ownership owned the property during the 20 years in question.

For example if Claimant A owned the property in 1988 and sold it to Claimant B in 1998, each would have owned it for approximately one half the time period with which we are dealing. By using the formula approach, each would end up with one half of damages for diminution in value. (It should be noted that the formula approach rounded all calculations to the nearest year and used an even 20 years for the time period over which the damages were calculated.) Given the number of claims with which we are dealing, the gross lack of data supplied by claimants and the pressures to conclude this project inexpensively and quickly, I recommend that the Court adopt this approach.

6. Property Values

a. Improved Property

For most improved property we have the assessed valuation of the property available through the Kankakee County's Assessor's Office. In the interest of efficiency and practicality, the current market values were determined using figures provided by the Kankakee County Assessor's Office. These figures were available through our online connection to county records and were sometimes supplied by the claimant. With the assessor's records, a fair and reasonable approximation of the property's current value was obtained, where applicable. Further, if the current values are higher than the values on the date of the spill or the date that the loss occurred, the uniform application of this approach to properties within the Core Area should eliminate any significant disparity.

While some may argue that their property (or others' property) has been assessed too high or too low, use of the assessed value is a fair approximation of the property's value. (If indeed a claimant has been assessed too low and is therefore getting less of the Settlement Funds, at least they have had the benefit of saving on their tax bill.) In the case of property that was sold by a claimant during the past 20 years, the value as of that date of sale was used when it was available from the Assessor's Office.

b. Agricultural Property

While the use of tax bills to arrive at market value works reasonably well for many properties, it was determined that it would not work for farm land. Farm land has a tax appraisal which is based on a productivity index produced by the State. Thus, unlike non-farm property, the assessed valuation of farm ground for real estate tax purposes is not related to its market value.

Virtually no claimant supplied the market value of their farm ground on the claim form. Once again, in the interest of fairness and efficiency, appraiser Jay Heap was requested to provide an expert opinion as to the value, on a per acre basis, of the farm ground in the Core Area. He concluded that the current average value of farm ground in the Limestone Township area is approximately $5,000 per acre. Using Mr. Heap's opinion and the number of acres contained in the property as shown on the tax bill, we arrived at a current land value for each claimant with farm property. While there may be cases where claimants disagree with the compensation, this approach complies with the spirit of the Settlement Agreement and it is recommended that this approach to determining market value be approved by the Court.

c. Unassessed Property

There are a number of properties in the Core Area that do not have assessed values. These properties consist of Churches, parks, municipal or township land, schools, etc. For these properties, Mr. Heap provided his opinion regarding the diminution in value. The findings relating to each of these "unique" properties are contained in the individual review and calculation sheets for the specific property. It is recommended that

the conclusions reached for each of the "unassessed properties" be approved by this Court.

C. OTHER ELEMENTS OF DAMAGE

As to the other elements of damage enumerated in the Settlement Agreement, in consultations with Plaintiffs' counsel, criteria have been established to make distributions. In addition to general criteria, some specific cases warranted variance or modification to accommodate a unique situation. Variances or modifications were made only where reasonableness, necessity and fairness dictated that the criteria were inadequate. However, in the vast majority of cases the general criteria were considered to be fair.

1. Purchase of alternate water

One element of damage set forth in the Settlement Agreement is the purchase of alternate water, particularly bottled water. Very few people, in relation to the number of claims, asked to be reimbursed for the purchase of bottled water. Of those who made a request, few had receipts. Instead, most claims were based on estimates, and the claimants' estimates of the cost varied greatly.

In the interest of practicality and fairness to all claimants, several purveyors of bottled water were contacted and requested to provide an estimate of the cost to deliver bottled water for a period of one year to a family in Limestone Township. Those estimates are attached as Exhibit H. The estimates consistently approximate $300 per year. Therefore, for those people who made a claim for bottled water, an award of $300 per year was made for each of the years that they were required to (or claim to) have purchased water. In consultation with the Plaintiffs' counsel, it was determined that the amount of this award should be capped at $1,200. It was also determined that this award should not be made to renters who were not forced into the circumstance of having to purchase bottled water. Finally, it was determined that this award should be made to a past owner or current owner, regardless of whether receipts or supporting documents were filed with the claim. However, where no claim was made for bottled water, no award was made.

2. Past increased water costs

Another element of damage is past increased cost of water resulting from connection to the Aqua Illinois water system. Counsel for the Plaintiffs, Mr. Yurgine, has calculated the average approximate additional cost to be $250 per year. Mr. Yurgine's estimate is based on the average water bill for an Aqua Illinois customer, which was advised to be $40 per month. The estimate considers the amount of time a pump will run, the electrical cost to run the pump, and the life of the pump. In consultation with the Plaintiffs' counsel, it was determined that this amount should be capped at $1,000. Once again, this methodology is recommended because it is practical, reasonable, and fair. This distribution also applies to past owners during the time that they owned the property. It does not apply to renters since counsel believes that renters had various options and that their monthly rental payments reflected any adjustments that should be made in this regard. It does not apply to a purchaser of a property which was connected before the time it was purchased, since the purchaser knew that he would be paying for a commercial supply of water at the time he bought the property.

3. Future cost of water

Under the terms of the Settlement Order, all Core Area members will be connected to Aqua Illinois water, and the Settlement Agreement contemplates that they should be compensated for the increased cost of this water. However, the Agreement does not suggest a time frame for this compensation.

For the reasons mentioned above, the additional cost was determined to be $250 per year. In addition, after consulting with Plaintiffs' counsel, it was the consensus opinion that the compensation should be for a 10 year period. Thus, it is recommended that each current owner who is losing their well and being connected to the Aqua Illinois system be awarded $2,500 for this element of damage. It was also considered that some claimants bought property after it had already been connected to a public water supply. Since they knew that they were going to be buying water from a public source at the time of their purchase of the property, it was the consensus of counsel that no award should be made in those cases. Similarly, some Core Area claimants were connected to a community well before the spill and became connected to a different source (through

Aqua) after contamination was found in their well. Because it was determined that the cost of water was not significantly altered by the spill, no award for future water costs was provided to these claimants.

It is recommended that the Court adopt the methodology explained herein for calculating the future cost of water.

4. Past and future loss of rent

The Settlement Agreement specifically provides for the consideration of past and future loss of rent. Only one claim has been made for this element, which is consistent with Mr. Heap's opinion that this is a desirable place to live and there is no obvious stigma or fear of living in the area. The one claim was made for a period of less than 6 months during which a home remained vacant, allegedly because of a lack of clean water supply. It is recommended that this claim be allowed.

5. Cost of past water testing

While it is not a specific element of damage listed in the Settlement Agreement, a number of claimants requested reimbursement for water testing paid for personally. This claim is encompassed by the following language of the Settlement Agreement: "all damages as a result of the release of the MTBE."

Some claimants provided proof of testing. Many who asked to be reimbursed did not. However, all of the claims were sworn and the amounts claimed, whether actual or estimated, were within a range determined to be reasonable when compared with estimates obtained from testing companies. Therefore, it is recommended that an award be made for past testing expenses when claimed and without regard to the claimant's status as the owner, or former owner.

5. Loss of investment in well

Another significant element for reimbursement was the loss of the owner's investment in a well. Under the terms of the Settlement Agreement, all current wells are to be capped and Aqua water is to be installed. In some cases, wells had been previously capped and the property had already been connected to the Aqua Illinois system. Many

of the well improvements on the properties in the area are old and owners did not provide information about well installation costs. Others were purchased with the well already in existence. Furthermore, the quality of the wells in the area varies. Some old wells are shallow and would not conform to modern standards. Others are particularly deep because water was harder to reach.

Given these considerations, and trying to reach a practical and workable approach to compensate claimants for this element of damage, multiple well drilling companies were contacted. Each company was familiar with the Limestone Township area and had installed wells in the area. Each provided an estimate to drill a well, install a pump, pressure tank and the necessary electrical devices. The average estimate was $6,000. See Exhibit I attached.

It is recommended that an award for the estimated value of a well be made to all current owners who have a well, regardless of whether it is in use or not.

7. Nuisance and interference with quiet enjoyment

Two of the final elements of damage delineated in the Settlement Agreement are "nuisance" and "interference with quiet enjoyment." After careful review and analysis, there are several different classes of persons who experienced differing degrees of "nuisance" and "interference with quiet enjoyment" of their property.

a. Named Plaintiffs

This first class of persons who experienced a degree of "nuisance" and "interference with quiet enjoyment" is the group of named Plaintiffs. The named Plaintiffs first went to Mr. Joseph Yurgine complaining of the contamination of their well water. They risked their personal money paying filing fees and other legal costs. They were required to answer interrogatories and be deposed. They spent hours working on this case with their counsel and gathering material to help him prepare this case that ultimately resulted in this Settlement. There would be no settlement without their expenditure of time and effort in this matter. It is, therefore, recommended that each named plaintiff be awarded the additional sum of $25,000 in compensation for this "nuisance" factor.

b. Claimants with Community Wells

Another group of claimants lived in subdivisions with a "community well." These subdivisions are: Oakdale, Hillside, Lynn Gardens and Village Green. The well that serviced these subdivisions became contaminated with MTBE relatively early on in the history of this event. People in these subdivisions lived for a time with contaminated water. They had to drink bottled water and work with Shell and Aqua Illinois to get their homes connected to a safe, MTBE-free, water source. They suffered the emotional trauma of learning that for some period of time they were drinking water contaminated with MTBE. Since each did not have a personal well, they do not have a claim for the loss of a well like many Core Area claimants.

Taking all these factors into account, it was determined that the "nuisance" factor as it relates to this group is significantly different than it is to many other Core Area claimants. Therefore, as to claimants in these subdivisions, it is recommended that each be awarded "nuisance" and "loss of quiet enjoyment" damages in the amount of $250 per year for each of the years that they lived in these subdivisions after 1988. It is further recommended that this amount not be given to any member of the Core Area group who moved into any of these subdivisions after 1994 when all of the homes in these subdivisions were connected to Aqua Illinois, an MTBE free water source, since these members did not experience these added elements of "nuisance" and "interference with quiet enjoyment."

Lastly, there are a few residents of these subdivisions who had private wells. Since these residents are being compensated for the loss of that well and for the additional future cost of municipal water, it is recommended that they not be awarded this additional sum for "nuisance."

c. Proximity to Spill

A few claimants suffered a different or unique "nuisance" and "interference with quiet enjoyment" as a result of the spill. Those were the claimants who lived in closest proximity to the spill along 4000 W. Road. Remediation work still continues at the site of the spill with accompanying coming and going of vehicles, lights and noise. It is recommended that the claimants located within this area be awarded an additional $250 per year calculated in the same way as for those living in the subdivisions identified above.

d. General Damage

As to all other claimants, it has been determined that they experienced a lesser amount of "nuisance" and "loss of quiet enjoyment." Therefore, it is recommended that they be awarded $150 per year for the time that they lived in a property in the core area. It is also recommended that this amount be awarded to the claimants described in paragraph b and c, in addition to the nuisance amounts therein described.

e. Vacant Land

As to owners of vacant land, it is recommended that they receive no award for this element of damage. Since they maintained no presence on this property, they were not subjected to the elements of "nuisance" and "loss of quiet enjoyment" that residents were required to endure.

f. Renters

Renters of property in the Core Area also endured some "nuisance" and "loss of quiet enjoyment." However, renters had the option of terminating their lease or leaving at the end of any given lease period. Since they chose to remain, it is the consensus of the Plaintiffs' counsel and the Settlement Administrator, and our recommendation to the Court, that the claim of all renters, irrespective of the time that they rented, be limited to $500.

D. SUMMARY

The awards for the Core Area claimants vary depending on the elements of damage applicable to each claimant. Care was taken to evaluate each claim to determine whether it was unique and had different damages. In addition, consideration was given to dealing with other unique situations such as life estates, claims by divorced couples, claims by heirs of decedents, etc. Attached to this report are the review and calculation sheets containing recommendations for distribution to each Core Area claimant. Each reflects the sum of all damages using the criteria set forth herein. In addition, when a unique situation was encountered, it is noted on the work sheet and the recommendation for how it should be resolved is set forth in the comment section of the award.

CORE AREA CONTIGUOUS CLAIMANTS

As referenced, *supra*, Core Area claimants were described in the definition section of the Settlement Agreement, in the preamble of the Agreement, and again in paragraphs G and K of the Agreement, as those properties located closest to the site of the spill. They were also delineated on the map attached as "Exhibit B" to the Agreement. The criteria for apportioning the Settlement Funds are also significantly different for Core Area claimants and Outer Area claimants. It was clearly the intent of the Agreement to draw a line at some location where it was determined that any significant impact of the spill was no longer present.

However, in paragraph E on page 9, the Settlement Agreement takes up the issue of connecting homes to Aqua Illinois water. It requires Shell to run water mains and connect all homes in the Core Area to Aqua Illinois water. In this context, the Settlement Agreement states:

> *The Core Area includes properties directly contiguous to (i.e., across the street) from the boundaries of the Core Area as indicated on Exhibit B.*

This paragraph dealing with water connections is the only place in the Settlement Agreement that property contiguous with the Core Area is treated the same as a Core Area parcel. The obvious intent of this section was that since Shell was running water lines "down the street" anyway, these contiguous homes, for practical reasons, should also be connected. Further, a review of the claim forms reveals that one of the biggest areas of unhappiness with the Settlement Agreement is that Outer Area claimants are not getting a free connection to Aqua Illinois water.

A reasonable interpretation of the express language of the Settlement Agreement is that the intent of the drafters was not to expand or enlarge the Core Area, but simply to take a practical approach to water connections. Indeed, if this section is read any other way, it has unusual and unexpected results.

For example, there are cases where only one house in a subdivision is directly contiguous to the core area. In some cases it is the first home on a street of homes. In others, it is one or two homes whose back yards touch the core area. In at least one instance, there is a home on a "flag" shaped lot that is a long distance from the Core Area and faces on another road perpendicular to the boundary of the Core Area. In that case,

only a small amount of land actually is contiguous to the Core Area. On the road that this home faces, there are multiple homes closer to the Core Area which are not contiguous.

It may be practical to connect these homes to water – a benefit which the rest of the neighbors next door and further down the street will not receive. However, it is not reasonable to conclude that these homes suffered more damages than their neighbors.

The Plaintiffs' counsels were also consulted to determine the intent of this provision. Based on that consultation, it was clear that their intent was to limit the area of diminished value, nuisance, etc. to the Core Area and not to extend these elements of damage to the contiguous properties. Therefore, when establishing criteria for awards, it was determined that "core contiguous" claimants are entitled to be connected to Aqua water at Shell's expense. Since they are losing their investment in a well, they should be compensated for the value of their well. However, based on the express language and intent of the Settlement Agreement, this is the limit of the compensation for "core contiguous" claimants. In addition, there has been no credible evidence presented by any "core contiguous" claimant that they have or will suffer any loss in addition to the damages awarded herein.

Included in the attached review and calculation sheets are the Core Contiguous claims. Each is noted on the work sheet along with the recommended award for the loss of the value and investment in the well on these Core Contiguous properties. It is recommended that these awards be approved by the Court

HOLD BACK

The Settlement Agreement says that the claims shall be processed and completed in not more than three years and six months after the effective date of the Final Order. It also provides that the Court should determine any reserves that should be held until such time as the Court deems appropriate, until the 3 ½ years expires or that time period is extended by the Court.

The recommended hold back is as follows:

a. Well Tests Positive for MTBE ………………..$350,000

b. All Matters Resolved ……………………… $1,000,000

BALANCING THE PAYOUTS WITH THE FUNDS AVAILABLE
AND
DISTRIBUTION OF THE HOLD BACK

In order to distribute the Settlement Funds (less the hold back), the total amount of all awards was determined and that amount was compared with the amount of funds subject to distribution. It was determined that the total amount of all awards was less than the amount of funds available. Therefore, it is recommended that each claimant's award be increased in proportion to their share of the entire award. It is further recommended to this court that when this matter is terminated, the balance of the hold back at that time be distributed in the same proportionate manner.

CONCLUSION

A settlement, by its very nature, is a compromise. A settlement is neither the best case scenario for the plaintiff nor the worst case scenario should the case have gone to trial. A settlement contemplates that the claimant is giving up a potential right to be fully compensated. The goal of this, or any, settlement is to avoid the risk of litigation and to reasonably and fairly compensate the Plaintiffs. What each claimant would most like is for this spill to have never happened. That, of course, we can not change.

In reviewing the claim forms, it is clear that there are class members who are not happy with the terms of the settlement. Some believe that it should have been for more money. Many Outer Area residents think that they should be included in the Core, that they should be connected to Aqua Illinois water, and that they have suffered the same losses as Core Area claimants. However, each of the class members was afforded an opportunity to object to the terms of Settlement Agreement, which the Court ultimately approved. No appeal was filed. There are some who have made claims that are neither in the Core nor the Outer Area but believe that they have suffered damages and should be included. Neither this Court nor this Administrator had any control over these decisions. The Settlement Agreement was arrived at by extremely competent lawyers who were

fully aware of all the facts and evidence. It was approved in the form presented to the Court with little or no objection by any of the claimants. It must therefore be administered according to its terms.

Finally, perhaps every claimant will not be completely happy with the decision of the Settlement Administrator. Experiences during my twenty five years as a trial judge would suggest that those awarded the most will likely believe that they should have received more. Those awarded less will likely believe that they should have received as much as some other claimant. This is both the nature of every settlement and the circumstances of this particular case.

However, the methodology applied to distribute the Settlement Funds in this case is fair, reasonable and consistent with the express language and spirit of the Settlement Agreement. For all of the reasons stated herein, it is recommended that the Court enter an Order:

(a) Approving the distribution and hold back of the Settlement Funds as stated herein,

(b) Authorizing the Settlement Administrator to distribute funds and complete the administration of the Settlement Agreement as stated herein;

(c) Setting a date for the Settlement Administrator to report back to the Court on the progress of the distribution and the results of any positive tests for MTBE in the Outer Area; and

(d). Setting any future Court dates for a report by the Settlement Administrator on the final distribution and termination of this cause.

Respectfully submitted this __ day of November, 2008:

By:____

Thomas M. Ewert, Settlement Administrator

THOMAS M. EWERT
SETTLEMENT ADMINISTRATOR
QUICK V. SHELL CLASS ACTION
1415 BLACK ROAD
JOLIET, ILLINOIS 60435

Some date, 2009

Name of Claimant
Some Road
Kankakee, Illinois

EXHIBIT A

Re: PIN 07-0X-XX-XXX-XXX

Dear Claimants:

I have received and reviewed your claim. According to our investigation and the materials that you submitted, the property for which you are making a claim is neither in the Core nor the Outer area as defined by the Settlement Agreement. Therefore, your claim has been denied. I am enclosing a copy of a map that defines the boundaries of the area that are covered by the settlement agreement.

If you have any questions or believe that there has been an error made, please do not hesitate to contact my office in writing.

Very truly yours:

Thomas M. Ewert
Settlement Administrator

THOMAS M. EWERT
SETTLEMENT ADMINISTRATOR
QUICK V. SHELL CLASS ACTION
1415 BLACK ROAD
JOLIET, ILLINOIS 60435

Some date, 2009

Name of Claimant
Some Road
Kankakee, Illinois

EXHIBIT B

Re: PIN 07-0X-XX-XXX-XXX

Dear Claimants:

I have received and reviewed your claim. According to your claim form and the Kankakee County records I have reviewed, you are making a claim as a result previously owning the above noted property located in the "outer area" as defined by the Settlement Agreement.

The Settlement Agreement describes a person entitled to recover under this settlement as "all *current owners* of real property in the Outer Area and Core Area . . . and all people who reside or owned property in the Core Area . . . ." The Order makes no provisions for recovery by any person who previously owned property in the "outer area."

Therefore, pursuant to the terms of the Settlement Order, prior owners in the "outer area" do not qualify for compensation. Only the owners of "outer area" property have a claim for a portion of the settlement funds. I therefore regret to inform you that your claim has been denied.

If you have any questions or believe that there has been an error made, please do not hesitate to contact my office in writing.

Very truly yours:

Thomas M. Ewert
Settlement Administrator

THOMAS M. EWERT
SETTLEMENT ADMINISTRATOR
QUICK V. SHELL CLASS ACTION
1415 BLACK ROAD
JOLIET, ILLINOIS 60435
Some date, 2009

Name of Claimant
Some Road
Kankakee, Illinois

EXHIBIT C

Re: PIN 07-0X-XX-XXX-XXX

Dear Claimant:

I have received and reviewed your claim. According to your claim form and the Kankakee County records I have reviewed, you are making a claim as a result of renting the above noted property located in the "outer area" as defined by the Settlement Agreement.

The Settlement Agreement describes a person entitled to recover under this settlement as "all current *owners* of real property in the Outer Area and Core Area . . . and all people who reside or owned property in the Core Area . . . ." The Order makes no provisions for recovery by any person who rents in the "outer area."

Therefore, pursuant to the terms of the Settlement Order, renters in the "outer area" do not qualify for well testing or other compensation. Only the owners of "outer area" property have a claim for a portion of the settlement funds. I therefore regret to inform you that your claim has been denied.

If you have any questions or believe that there has been an error made, please do not hesitate to contact my office in writing.

Very truly yours:

Thomas M. Ewert
Settlement Administrator

THOMAS M. EWERT
SETTLEMENT ADMINISTRATOR
QUICK V. SHELL CLASS ACTION
1415 BLACK ROAD
JOLIET, ILLINOIS 60435

Some date, 2009

Name of Claimant
Some Road
Kankakee, Illinois

EXHIBIT D

Re: PIN 07-0X-XX-XXX-XXX

Dear Claimants:

I have received and reviewed your claim. According to the claim form that you filed for the above noted property and the Kankakee County records that I have reviewed, this property is in the "outer area." You note on your claim form you do not have a well on the above property.

The Settlement Agreement requires the Settlement Administrator to "provide Class Members in the Outer Area with an amount sufficient to: (i) test well water on their properties for MTBE for such time as the Settlement Administrator determines is reasonably necessary to assure that any risk of MTBE contamination in the Outer Area arising from the pipeline spill is negligible; (ii) compensate Class Members in the Outer Area for the inconvenience and annoyance of such testing; and (3) provide potable water should such testing show the presence of MTBE reasonably attributable to Shell's pipeline spill, through filtration or other appropriate measures."

Since there is no well on this property, the Settlement Order makes no provision for you for compensation. I therefore regret to inform you that your claim as to this property has been denied.

If you have any questions or believe that there has been an error made, please do not hesitate to contact my office in writing.

Very truly yours:

Thomas M. Ewert
Settlement Administrator

UNIVERSITY OF ILLINOIS
AT URBANA-CHAMPAIGN

Institute of Natural Resource Sustainability
Illinois State Water Survey

2204 Griffith Drive, MC-674
Champaign, Illinois 61820-7463

November 11, 2008

EXHIBIT E

Thomas M. Ewert
Settlement Administrator
One Dearborn Square, Suite 500
Kankakee, IL 60901

Re: Quick et al. v. Shell Oil Company et al., Kankakee County Case No. 01-L-147

Dear Mr. Ewert,

This letter is in response to your request for an opinion regarding domestic well testing with regard to MTBE contamination of groundwater as a result of a gasoline pipeline release in 1988 in Limestone Township, T.31N., R.11E., Kankakee County. In particular, you specifically asked, *"how many tests and over what period of time is testing reasonably necessary to be assured that the risk of MTBE contamination in the outer area is negligible?"* The outer area surrounds a "core" area within which MTBE was detected, yet no wells in the outer area have ever tested positive for MTBE in the 20 years since the release occurred.

As one might suspect in a location called Limestone Township, most wells in the area are completed in a limestone bedrock aquifer (actually the Silurian dolomite, a limestone-like rock). Review of our records shows that most wells in the area are less than 200 feet deep. The unconsolidated glacial drift above bedrock is typically less than 25 feet thick throughout this area and generally consists of fine-grained clay materials. Groundwater is derived from crevices and fractures in the highly-weathered upper bedrock surface and domestic well yields can commonly exceed 20 gallons per minute.

The highly-fractured and shallow nature of the bedrock creates an excellent resource for water but, unfortunately, also makes it highly susceptible to surface and near-surface contaminants. A buried pipeline places a potential contaminant source in closer proximity to the aquifer fractures, allowing rapid transport of contaminants, in sometimes unpredictable directions, in the groundwater. MTBE is particularly troublesome in that it is fairly soluble in water, does not easily sorb to geologic materials, and does not readily

break down chemically or microbially in the environment. Therefore, MTBE is easily transported in groundwater and can persist for long periods underground, perhaps longer than more easily microbially-digestible gasoline compounds (e.g., benzene).

In the highly fractured aquifer system beneath Limestone Township, it appears groundwater transport of MTBE did occur, reaching from the leak site to wells over ½-mile away and transverse (perpendicular) to the expected northeasterly flow direction, based on the information sent to us. This movement may have been the result of fracture orientation and pumping well influences on natural hydraulic gradients.

These MTBE detections, however, occurred in wells within the core area – testing of wells in the designated outer core area has yet to reveal an MTBE detection. It has been nearly 10 years since most wells were sampled (May 1999). A selected set of wells was sampled (9 wells) in November 2001, and while it was not evident from the information sent as to exactly where those wells are located, only one well was found to have MTBE. That well is located at 5095 West 1000 North Road, which is within the core area.

Given MTBE's mobility and persistence in groundwater, and that is has been 20 years since the spill, we would not expect new detections to suddenly occur where they have not previously as long as prevailing hydraulic conditions remain unchanged. Therefore, it seems very reasonable that a) wells in the outer core area should be tested once more and b) no further testing is necessary if MTBE remains undetected in the outer core area.

Should you have further questions or comments, we are most willing to discuss them with you.

Best regards,

Allen Wehrmann
Allen Wehrmann, P.E., P.H.(GW), D.WRE
Head, Center for Groundwater Science
Illinois State Water Survey
University of Illinois at Urbana-Champaign
2204 Griffith Drive
Champaign, IL 61821

David R. Larson
David Larson, P.G.
Head, Hydrogeology Section
Illinois State Geological Survey
University of Illinois at Urbana-Champaign
615 E. Peabody Drive
Champaign, IL 61820

EXHIBIT F

Laboratories that test well water for the presence of MTBE:

1. PDC Laboratories, Inc.
   Peoria, Illinois
   Kurt Stepping
   309-692-9688
   800-752-6651
   Cost $116.00 (including shipping)

2. Underwriters Laboratories
   South Bend, Indiana
   Kelly Trott
   574-472-5545
   800-332-4345
   Cost $90.00 (including shipping)

3. ARDL, Inc.
   Mt. Vernon, Illinois
   Dean Dickerson
   618-244-3235
   Cost $105.00 (including cooler and shipping)

EXHIBIT G

Except from the Report of Jay M. Heap

Illinois State Certified Appraiser

THEORY AND ANALYSIS

In applying the Direct Sales Comparison Approach to this analysis, I have searched for and found sales of property in this immediate area prior to and immediately after and recently which helps in arriving at my opinion of value. I believe that this approach can be used with some confidence as it actually reflects the activities of buyers and sellers within the marketplace. Several of the sale examples included in this section were considered the most appropriate from the data which I have considered and thought to have the greatest bearing on my overall opinion.

One must keep in mind that in utilizing this approach, it does not mean that all properties are exactly alike; in fact, the opposite is true in that they are unique. Thus, adjustments must be made to the market data in order to compensate for differences between the subject property and the sales data.

In arriving at an opinion of the diminution, if any, on land values for the subject neighborhood, I have followed the Direct Sales Comparison Approach. Normally, classical appraisal theory contemplates three approaches, including the Cost Summation, Earnings or Income, and Direct Sales Comparison Approaches are available to support an opinion of value. I have considered neither the Cost Summation nor the Income Approach to be apropos to solve this appraisal problem or for the development of an opinion of market value for vacant land in this area at this point in time.

Because the property falls within what could be called a relatively plentiful class of property – vacant land – it is, therefore, not considered a single or special use and, as such, will apply with the premise underlying this principal of substitution generally stated as:

> When a properly is replaceable in the market, its value to be set by the cost of acquiring an equally desirable substitute property, the value of which tends to coincide with the value indicated by the actions of the market for comparable properties.

The application of the Direct Sales Comparison Approach then tends to recognize the replaceability of the property within the market place and would be an interpretation of the interactions of the informed buyers and sellers.

On the following pages are some of the more pertinent sales which I have considered within the general market area. In addition to these sales, I am also familiar with other transactions; however, these are, in my opinion, the most comparable.

FINAL RECONCILATION

Based upon my land sales analysis as well as reading several studies and cases regarding soil contamination, it was clear that after the spill there was limited sales data available indicating a stigma did exist. Based upon published data reported by local newspaper and radio stations during the time after the spill, efforts to clean up as well as provide water to affected residents seems to satisfy the thought process of buyers in the marketplace in Limestone Township, Kankakee County, Illinois. Many of the studies have indicated varying percentages of diminution in value to property in the direct and indirect area of a spill when the contamination becomes known. It was also noted that the longer the period of time between the spill, remediation and current date, the amount of diminution in value becomes a minimal percent, if any amount. **Based upon all of the above land sales analysis and review of multiple articles and studies, it is my opinion that the diminution to real estate values as of August 1, 2008 would be less than (5%) five percent for all land types in and around the affected area.**

Memorandum

To: Tom Ewert

From: Jay Heap

Date: November 17, 2008

Re: Kankakee County Class Action Settlement

Based upon our discussions and my previous analysis, I am and remain of the opinion that 5% diminution is reasonable and fair compensation for all properties. I would also submit that the farm land values may vary but the $5,000 per acre is reasonable and a fair value to utilize when determining the diminution for the acreage tracts.

Jay

EXHIBIT H

Green Valley Distributors

Hinckley Springs

The cost of supplying a typical 4 person family living in Limestone, Illinois for the period of one year is $300 per year.

EXHIBIT I

K&K Well Drilling
1155 N. Bridge Street,
Yorkville, Illinois 60560

The cost of a well and all the equipment necessary to supply a home with water cost on average of $5,980.

Illini Well and Pump
2748 County Line Road
Wilmington, Illinois 60481

The cost of a well and all the equipment necessary to supply a home with water cost on average of $6,000.

Seibring Well Drilling
7791 N 3090 W. Road
Manteno, Illinois 60950

The cost of a well and all the equipment necessary to supply a home with water cost on average of $6,000.