

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

CHARLES GRASLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CHEMTOOL INCORPORATED,)	
)	Case no. 2021 L 162
Defendant/Third-Party Plaintiff,)	
)	
v.)	
)	
HOLIAN INSULATION COMPANY, INC.)	
)	
Third-Party Defendant.)	

ORDER

On May 30, 2023, the court entered order allowing leave for the plaintiffs to file a second amended complaint. The order stayed filing subparagraph (f), section IV of the complaint because it is a prayer for punitive damages against the defendant, Chemtool. Pursuant to section 2-604.1 of the Code of Civil Procedure, a briefing schedule was entered and a hearing on the prayer for punitive damages was held on August 11, 2023. (735 ILCS 5/2-604.1). In pertinent part, section 2-604.1 provides:

The court shall allow the motion to amend the complaint if the plaintiff establishes at such hearing *a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages.*

Id. (emphasis added).

Whether the circumstances pled demonstrate a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages is a question of law to be decided by the court. *Stojkovich v. The Monadnock Building*, 281 Ill.App.3d 733, 742 (1st Dist. 1996). It is well

settled that mere inadvertence, mistake, errors of judgment and the like establish ordinary negligence and are not sufficient to support a prayer for punitive damages. *Loitz v. Remington Arms Co.*, 138 Ill.2d 404, 415 (1990). Because punitive damages are not compensation but punishment and deterrence, the circumstances must allege conduct giving rise to some element of outrage usually associated with the commission of a crime. *Id.* The conduct must be outrageous, either because the defendant's acts are done with an evil motive or because they are done with reckless indifference to the rights of others. *Id.* at 416. In this context, willful and wanton behavior is that which approaches the degree of moral blame attached to intentional harm because the defendant has deliberately inflicted a highly unreasonable risk of harm upon others by acting with conscious disregard of and for their health and safety. *Id.*

In the instant matter, the plaintiffs have alleged willful and wanton behavior by Chemtool. (See Second Amended Complaint, ¶¶ 61-81). The legal conclusion that Chemtool's behavior was willful and wanton is supported by a litany of factual allegations concerning its institutional knowledge of the lack of a fire suppression system or failure to employ reasonable fire risk mitigation measures in its Rockton facility. Many of these allegations are supported by evidence already obtained through discovery and which will likely be admissible at trial.

Without rehashing the facts of the matter, it is undisputed that the Chemtool plant in Rockton, Illinois, manufactured industrial lubricants and that it regularly used heated petroleum derived oil in the manufacturing process. The process employed large tanks in which the oil was heated and an insulated piping system to move the heated oil from the heating tanks for use in manufacturing. It is also undisputed that the fire which is the subject of this suit began in a manufacturing area of the facility when a crack in the piping system lead to a leak of vaporized hot oil which ignited. This fire, which began the morning of June 14, 2021, destroyed the entire

facility and burned for nine days. The fire also resulted in the temporary evacuation of every residence, business, school or church within a one-mile radius of the plant, as well as the issuance of public health and safety advisories for all within a three-mile radius.

In their second amended complaint, the plaintiffs specifically allege that Chemtool knew of the ever-present risk and danger of fire in its Rockton facility. Aside from the intrinsic risk of fire, it is alleged that, in the five years preceding the fire, the Rockton plant had experienced at least one small fire or fire alarm, as well as hot oil leaks or overflow of hot oil in the manufacturing areas. More specifically, despite the risk of fire, Chemtool knew it had no fire suppression system inside the manufacturing area of the plant and it had been expressly counseled by a fire safety consultant and its own liability insurer that a fire suppression system should be installed. Both had expressly warned Chemtool that the risk of fire was exacerbated by the use of flammable insulation on the hot oil piping system. Chemtool had also been advised that the lack of a fire suppression system and the use of flammable insulation were violations of local fire codes. (See Winnebago County, Illinois, Code of Ordinances (Apr. 26, 2023), Ch. 46, Art. II, §§ 46-26, *et seq.*). Lastly, it is alleged that Chemtool had actual knowledge that, without adequate fire safety measures, there was a likelihood in the event of a fire, the resultant injury could be not only substantial but catastrophic.

These allegations of notice from outside agencies is supported by the pleading of additional notice from its sister Lubrizol subsidiary, Paratherm, which manufactures heat transfer fluids and consults on heat transfer technology. Paratherm had issued publications regarding fire safety and hot oil piping systems. Hot oil piping systems are synonymous with heat transfer systems. The Paratherm publication is further evidence of both Chemtool's and Lubrizol's knowledge of deficiencies in fire safety measures in the Rockton plant. Nearly a year before the fire, it had

independently recommended the installation of a fire suppression system in the manufacturing areas of the Rockton plant as well as replacement of the flammable materials on the hot oil piping system with non-wicking (fire retardant) insulation.

Paragraph 70 of the second amended complaint includes an exhibit, a slide from a PowerPoint presentation from September 20, 2020, nine months before the fire. The slide is part of an internal presentation to the parent entity, Lubrizol, entitled “Project Justification.” It provides a simple risk-benefit analysis supporting the recommendation that a fire suppression system be installed at the Rockton plant. That document notes that the plant had no fire suppression system in manufacturing areas of the plant and reiterates all of the warnings discussed above. In conclusion, it characterizes the risk of injury resulting from any fire as, “up to including total facility/property loss, significant business interruption, and loss of life.”

Count II also alleges that despite its knowledge of both the risk of fire and of substantial injury in the event of fire, Chemtool did nothing to mitigate the risk of substantial injury while pondering the installation of a fire suppression system. It is alleged that Chemtool could have but chose not to employ low cost stopgaps, such as the installation of automatic shut off valves which would stop the flow of hot oil into or out of the area of a fire, or simply shutting down production and the flow of hot oil during maintenance on the piping system.

Chemtool asserts that the allegations are taken out of context. It argues that prior instances of fires or accidents involving the hot oil piping system are limited, two in eight years, and dissimilar from the accident which caused the 2021 fire. (Chemtool Response, p. 5). The two prior incidents in the Rockton facility involved a forklift accidentally hitting and triggering a fire alarm, and a hot oil tank overflowing during maintenance. Chemtool avers that these prior accidents are

so dissimilar from the accident that caused the fire here, it cannot be charged with the notice needed to support a showing of recklessness or conscious disregard of risk.

To make this argument Chemtool relies on authority which stands for the proposition that in order to support an award of punitive damages the defendant must have had and disregarded prior actual notice of the specific condition leading to the injury. See *Churchill v. Norfolk & W. Ry. Co.*, 73 Ill.2d 127, 143 (1978) (Evidence of prior accidents at the same railway crossing supports punitive damages.); see also, *Homewood Fishing Club v. Archer Daniels Midland Co.* 239 Ill.App.3d 102, 117-18 (4th Dist. 1992) (Evidence of insufficient storm water holding facilities where spill was not caused by failure of storm water holding facilities will not support punitive damages award.).

Chemtool and the authority upon which it relies misses the mark. Chemtool is arguing that it did not have notice of a very specific dangerous condition. This assumes that the unforeseeable risk was that an outside maintenance contractor would inadvertently cause a crack in a valve in the hot oil piping system by inappropriately using a scissor lift. On the other hand, the plaintiffs allege the obvious and inherent risk which Chemtool disregarded is that when, not if, fire broke out, it quite foreseeably would result in substantial, potentially catastrophic injury.

“At the risk of stating the obvious, the danger of fire is foreseeable in virtually any context.” *Bartelli v. O’Brien*, 307 Ill.App.3d 655, 661 (2d Dist. 1999). Where there are inoperable fire suppressors, the danger of a fire spreading beyond its source to nearby buildings is also foreseeable. *Id.* Moreover, under these circumstances the likelihood of injury is substantial. *Id.* Thus, under common law, where a landowner does provide fire extinguishers, it has a duty to assure those extinguishers are properly maintained and operable. *Id.* at 662.

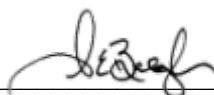
In the instant case, it is well-pled that Chemtool knew and disregarded the risk and foreseeability of a fire as well as the substantial likelihood of injury to both property and people. Whether the fire in a chemical plant starts in a warehouse or on the manufacturing floor, if there is no operable fire suppression system and no mitigating safety measures, it is foreseeable that it will result in, “total facility/property loss, significant business interruption, and loss of life.” (Second Amended Complaint, ¶ 70).

Therefore, the court finds that the allegations of the second amended complaint, paragraphs 61 through 81, establish a reasonable likelihood that the plaintiffs will be able to prove facts at trial which would support an award of punitive damages. Accordingly, the plaintiffs’ motion for leave to include a prayer for punitive damages in the *ad damnum* clause of count II of their second amended complaint is granted.

For the foregoing reasons, it is ordered as follows:

- a. The plaintiffs are given leave to file subparagraph (f), the prayer for punitive damages against Chemtool, of section IV, Request for Relief, of the previously filed second amended complaint, *instanter*:
- b. Chemtool has previously been granted an extension of time until August 15, 2023, in which to file its answer or otherwise plead in response to the plaintiffs’ second amended complaint. Therefore, defendants Chemtool and Holian should each file responsive pleadings on or before August 15, 2023 which include a response to subparagraph (f);
- c. On motion of the parties, the deadline for completion of discovery conducted pursuant to Illinois Supreme Court Rules 213(f)(1) and (f)(2) shall be extended to January 31, 2024; and
- d. All pending motions will be continued to September 29, 2023, at 11:00 a.m. in courtroom 3 of the Boone County Courthouse or via Zoom, I.D. #963 9791 8024, at which time the parties shall report to the court on the status and progress of discovery.

Dated: 8/14/2023



Judge Stephen E. Balogh