

particularly true in class action litigation. *See, e.g., Isby v. Bayh*, 75 F. 3d 1191, 1196 (7th Cir. 1996) (“Federal courts naturally favor the settlement of class action litigation.”); *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F. 2d 884, 888–89 (7th Cir. 1985) (noting a general policy favoring voluntary settlements of class action disputes); *Armstrong v. Brd. of School Directors of the City of Milwaukee*, 616 F. 2d 305, 312 (7th Cir. 1980), *overruled on other grounds by Felzen v. Adreas*, 134 F. 3d 973 (7th Cir. 1998) (“It is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement.”).

4. The issue facing the Court at this stage is whether the proposed settlement falls within the range of what ultimately might be approved as fair, reasonable, and adequate, so as to justify providing notice to the Class and scheduling a final approval hearing. *See Armstrong*, 616 F.2d at 313. When deciding whether to preliminarily approve a settlement, courts in this Circuit consider five factors: (1) “the strength of plaintiffs’ case compared to the amount of defendants’ settlement offer”; (2) “an assessment of the likely complexity, length and expense of the litigation”; (3) “an evaluation of the amount of opposition to settlement among affected parties”; (4) “the opinion of competent counsel”; and (5) “the stage of the proceedings and the amount of discovery completed at the time of settlement.” *Isby*, 75 F.3d at 1199.

5. Defendants agree that the proposed settlement in this case satisfies these factors and therefore should be preliminarily approved.

6. If this case were to proceed to trial, Plaintiffs would not only have to prove that SRC was negligent in running the refinery, but also that such negligence caused the explosion. SRC refutes that it was negligent or that its actions caused the explosion, and would vigorously defend itself throughout the remainder of this litigation. Indeed, the only so-called “evidence” of negligence that Plaintiffs could point to in the Complaint was the U.S. Chemical Safety and

Hazard Investigation Board's report, which does not prove negligence and is not admissible at trial. *See* 42 U.S.C. § 7412(r)(6)(G) ("No part of the conclusions, findings, or recommendations of the Board relating to any accidental release or the investigation thereof shall be admitted as evidence or used in any action or suit for damages arising out of any matter mentioned in such report.").

7. Even if Plaintiffs could put forth evidence of negligence, then each of their class members would still also have to prove causation and damages via mini-trials during which each class member must separately come forward with individualized evidence. These mini-trials will require, among other things, sworn testimony and cross examination of each class member, document productions, and, possibly, third-party witnesses. Plaintiffs undoubtedly would struggle to bring forth this evidence, let alone succeed in proving causation and damages during the mini-trials. Further, the costs and fees incurred in litigating these mini-trials would far outweigh the minimal evacuation-related damages that class members allegedly incurred that were not already compensated by SRC's Reimbursement Program.

8. The Parties undertook sufficient discovery to enable them to engage in meaningful settlement negotiations and understanding of the strengths and weaknesses of their respective positions. The Parties have taken fact and expert discovery and briefed numerous motions in this case, including motions to dismiss, class certification, and Defendants' partial summary judgment motion. At this stage in the litigation, the Parties have a balanced and knowing view of settlement.

9. Based on the foregoing, and because the proposed settlement is fair, reasonable, and sufficient to warrant that notice and a final approval hearing be held, Defendants respectfully

request that the Court enter the preliminary approval order that accompanies Plaintiffs' Motion for Preliminary Approval of Class Action Settlement [ECF No. 246-7].

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