

The Law Firm of
PHILIP STEPHEN FUOCO
24 Wilkins Place
Haddonfield, NJ 08033
(856) 354-1100
Attorneys for Plaintiffs

MARC J. MIGNANO and JENNIFER L.
MCGUCKIN-MIGNANO, as parents and Guardians ad
Litem of ISAAC J. MIGNANO, a minor, on his behalf
and for all others similarly situated,

Plaintiffs

v.

JIM SULLIVAN, INC., NAVILLUS GROUP, LLC, JIM
SULLIVAN REAL ESTATE SERVICES, INC., JAMES
SULLIVAN III, JAMES SULLIVAN IV,
ACCUTHERM, INC., PHILIP J. GUILIANO, KIDDIE
KOLLEGE DAYCARE & PRESCHOOL, INC.,
STEVEN and BECKY BAUGHAM, JULIE and
MATTHEW LAWLOR,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY

DOCKET NUMBER

**CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Introduction

1. This is a class action brought on behalf of all children who attended the Kiddie Kollege Daycare & Preschool located at 162 Station Avenue, Franklinville, New Jersey.

2. Through this class action, plaintiffs seek to obtain declaratory, injunctive and equitable relief to mitigate the exposure of the class to toxic mercury, including a court supervised program of medical surveillance.

3. The dangers of mercury exposure cannot be overstated. As noted by the U.S. Department of Health & Human Services in its Agency for Toxic Substances and Disease Registry (ATSDR):

When elemental mercury is spilled or a device containing mercury breaks, the exposed elemental mercury can evaporate

and become an invisible, odorless toxic vapor. This is especially true in warm or poorly-ventilated rooms or spaces.

It is not uncommon for children to break fever thermometers in their mouths. Mercury that is swallowed in such cases poses a low risk in comparison to the risk of breathing mercury vapor.

The nervous system is very sensitive to all forms of mercury. Methylmercury and metallic mercury vapors are more harmful than other forms, because more mercury in these forms reaches the brain. Exposure to high levels of metallic, inorganic, or organic mercury can permanently damage the brain, kidneys, and developing fetus. Effects on brain functioning may result in irritability, shyness, tremors, changes in vision or hearing, and memory problems.

Short-term exposure to high levels of metallic mercury vapors may cause effects including lung damage, nausea, vomiting, diarrhea, increases in blood pressure or heart rate, skin rashes, and eye irritation

Venue

4. Venue is proper in this court as plaintiffs seek legal and equitable relief as described in the landmark decision Ayers v. Jackson Twp., 106 N.J. 557 (1987).

5. Venue is proper in this county since the exposure occurred in Franklin Township, Gloucester County, New Jersey.

The Parties

6. Plaintiffs Marc J. Mignano and Jennifer McGuckin-Mignano bring this action as parents and Guardians ad Litem of their son Isaac J. Mignano, a minor, who attended the Kiddie Kollege Daycare & Preschool for approximately 18 months beginning in 2004.

7. Defendant Jim Sullivan, Inc. is the current nominal owner of real property currently designated: Block 4111, Lot 1, 162 Station Ave, Franklin Township, Gloucester County, (hereinafter “the site”) having nominally purchased the property from Navillus (Sullivan spelled

backwards) Group, LLC in August of 2002.

8. Defendant Jim Sullivan Real Estate Services, Inc. was instrumental in transforming the site into a day care facility and acted as agent for defendants Jim Sullivan III, Jim Sullivan IV and Jim Sullivan, Inc.

9. Defendant Navillus (Sullivan spelled backwards) Group, LLC was the nominal owner of the site from June 1997 until August 12, 2002, at which time it nominally sold the site to Jim Sullivan, Inc.

10. Upon information and belief, Jim Sullivan Inc., Jim Sullivan Real Estate Services Inc. and Navillus (Sullivan spelled backwards) Group, LLC are facade entities and the alter egos of defendants Jim Sullivan III and Jim Sullivan IV, who dominate these entities to such an extent that they have no separate factual or legal existence from these two individuals.

11. Defendants Jim Sullivan III and Jim Sullivan IV are citizens of the State of New Jersey and are the current *de facto* owners of the site, and have been since at least 2001.

12. Defendant Accutherm, Inc. is a corporation which formerly specialized in manufacturing thermometers and related instruments at the site and which was the nominal owner of the site between June 1984 and at least June 1997.

13. Philip J. Giuliano is an individual, currently residing at 4736 Capt. John Smith St., Williamsburg, Virginia. Mr. Giuliano was the owner of Accutherm at the time of its operations at 1600 South Delsea Drive, Franklin Township, Gloucester County.

14. Upon information and belief, defendant Giuliano was personally involved in the mercury contamination occurring at the site to such an extent as to render him personally liable under New Jersey law. Among other things, Mr. Giuliano was personally ordered by the New

Jersey Department of Environmental Protection to remove the contamination and was personally liable for these clean up costs under governing New Jersey law.

15. Defendant Kiddie Kollege Daycare & Preschool, Inc. (hereinafter “Kiddie Kollege”) is, upon information and belief, a New Jersey corporation with its principal place of business at the site.

16. Defendants Steven and Becky Baughman are, upon information and belief, citizens of the State of New Jersey and the current owners and operators of Kiddie Kollege Daycare & Preschool and operated it on the site until the school was closed on July 28, 2006.

17. Defendants Julie and Matthew Lawlor are, upon information and belief, currently citizens of the State of North Carolina, who founded and operated Kiddie Kollege Daycare & Preschool on the site between 2004 and the time Kiddie Kollege was purchased by defendants Steven and Becky Baughman.

Facts Giving Rise To the Cause of Action

18. The site, originally designated Block 137, Lot 10, Franklin Township and also known as 162 Station Avenue, Franklinville, New Jersey, has been a known toxic waste site for almost two decades.

19. Mercury has been a known contaminant at the site since at least 1987, when high levels of the element were found in the blood of employees of Accutherm.

20. Thereafter numerous governmental agencies at the local, county and state level learned of toxic levels of mercury at the site.

21. For example, in September of 1994 - 12 years ago - Midlantic Bank, the mortgage holder of the site, initiated an environmental investigation of the site.

22. Upon information and belief, Midlantic conducted this investigation to determine if the site was safe enough for them to foreclose on the site and take title.

23. Midlantic Bank's environmental investigation revealed extremely toxic levels of mercury vapor and free phase mercury. Indeed, the concentration of mercury vapor was three times the level considered safe for employees.

24. Midlantic Bank did not foreclose on their mortgage, apparently determining it was financially wiser to take a loss on the mortgage rather than take ownership of a site laden with poisonous mercury.

25. Navillus ("Sullivan" spelled backwards) Group, LLC owned, operated, and controlled by Jim Sullivan, had no such misgivings.

26. After obtaining two tax certificates, Navillus purchased the site for back taxes.

27. Midlantic Bank, while not wanting to accept title to the site, repeatedly advised the Gloucester County Health Department of the hazardous and toxic conditions existing at the site.

28. Midlantic also repeatedly attempted to have the owners of the site and governmental entities post the following warning on the site:

29. Though the above symbols accurately reflected the dangers at the site, no one ever placed the signs at the site.

30. Prior to the sale of the toxic site to Navillus (“Sullivan” spelled backwards), Accutherm never took any action to remediate the site.

31. Nor did Accutherm’s owner, Guiliano, who, upon information and belief, was personally ordered by the New Jersey Department of Environmental Protection to remediate the site.

32. Incredibly, despite a barrage of warnings; and being repeatedly implored by Midlantic Bank to at least warn the public of the dangers, Accutherm and Guiliano did nothing.

33. Nor did any state, county, or local entity make any effort to protect the public - other than write letters to the defunct Accutherm, and Guiliano.

34. Accutherm filed for bankruptcy and sold the site to Navillus (“Sullivan” spelled backwards); Guiliano moved to Williamsburg, Virginia.

35. Navillus Group, LLC, Jim Sullivan, Inc., Jim Sullivan III, Jim Sullivan IV, and Jim Sullivan Real Estate Services, Inc. have, upon information and belief, been aware of the complete history of the site over the last 20 years, including the fact that it was a thermometer factory operated by Accutherm and Guiliano.

36. Indeed, Jim Sullivan III, according to his attorney and spokesperson, is a “lifelong member of the [Franklinville] community.”

37. In addition, Jim Sullivan III and Jim Sullivan IV, Jim Sullivan, Inc. and Jim Sullivan Real Estate Services, Inc. have their offices next door to the site, less than 75 yards away, with an unobstructed view of the site.

38. Upon information and belief, these offices have been next to the site for many years.

39. A reasonably intelligent person, being a lifelong member of the community, could not have missed the fact that Accutherm manufactured thermometers at the site.

40. A reasonably intelligent person, being a lifelong member of the community, could not have missed the fact that the site was never subject to any clean up or remediation.

41. A reasonably intelligent person would know that mercury was used in the manufacture of thermometers.

42. A reasonably intelligent person would have known that mercury is a toxic substance.

43. A reasonably intelligent person, being a lifelong member of the Franklinville community, would have known the toxic condition of the site.

44. Upon information and belief Jim Sullivan III is a reasonably intelligent person.

45. Upon information and belief Jim Sullivan IV is a reasonably intelligent person.

46. Navillus (“Sullivan” spelled backwards) Group, LLC knew, or should have known, the toxic nature of the site it purchased from Accutherm.

47. Jim Sullivan, Inc. knew, or should have known, the toxic nature of the site it purchased from Navillus Group, LLC.

48. Jim Sullivan Real Estate Services, Inc., Jim Sullivan III and Jim Sullivan IV so

dominated the ownership, operation and acts of Navillus Group, LLC. and Jim Sullivan, Inc. that these corporations had no separate existence, but were mere transparencies or conduits for these individuals.

49. Moreover, Jim Sullivan III (a/k/a “Jr.”) and Jim Sullivan IV (a/k/a III) were in actual control of, and participated with a high degree of personal involvement in, and/or had actual responsibility for, all relevant events that culminated in the use of this toxic waste site as a day care center.

50. This included, inter alia, Jim Sullivan signing zoning and other permit applications in his personal capacity, which stated expressly that the site would be used for a day care center.

51. Alternatively, Jim Sullivan Real Estate Services, Inc., Jim Sullivan III and Jim Sullivan IV were jointly and/or severally in a position to prevent the use of the site as a day care center, and failed to do so.

Class Action Allegations

52. Plaintiff Isaac brings this action as a class action pursuant to R. 4:32, on behalf of a class defined as:

All children who, at any time, were enrolled at, and attended, Kiddie Kollege Daycare & Preschool, Inc. located at 162 Station Avenue, Franklinville, New Jersey.

53. Plaintiff is unable to state the exact number of class members, but avers that, at most times since it’s opening, Kiddie Kollege had an enrollment of 30 or more children per session.

54. Thus, over the two years of its operation, 60-90 children were enrolled in and attended Kiddie Kollege.

55. The names and addresses of all class members are readily obtainable from the books

and records of defendants.

56. There are numerous common questions of fact affecting the rights of class members, including inter alia:

- a. the toxicity of the chemicals involved;
- b. the extent of knowledge of the various defendants;
- c. the significance of class members' exposure to mercury;
- d. the seriousness of any disease(s) associated with exposure to mercury;
- e. the relative increase in the chance of onset of disease during the time exposed to mercury;
- f. the value of early detection of any disease(s);
- g. whether exposure to mercury causes an increased risk of future bodily injury.

57. There are numerous common questions of law affecting the rights of class members, including, inter alia:

- a. whether Isaac and the class must suffer bodily injury to invoke medical surveillance;
- b. whether Isaac and the class must allege and prove causation, rather than exposure;
- c. whether drinking water that has been found to contain mercury is direct exposure to a toxic substance;
- d. whether medical surveillance to monitor the effect of exposure to mercury is reasonable and necessary;
- e. whether requiring defendants to test for mercury in the blood levels of Isaac and the class is reasonable and necessary;
- f. whether defendants breached their duty to exercise reasonable care to avoid foreseeable

harm to the class;

g. whether defendants have negligently allowed mercury to be emitted from the site;

h. whether defendants operated the facility in a manner that they knew, or should have known, would cause injury to plaintiff and the class;

k. whether defendants failed to employ reasonable precautions and safeguards to minimize or eliminate the damage that has been done, and is continually being done, as a result of mercury poisoning of the site.

58. Plaintiff is a member of the class he seeks to represent and his claims are typical of all class members in that plaintiff's claims arise from the same factual and legal basis as those of the class.

59. All members of the class, including plaintiff, have been damaged in the same manner by the actions complained of herein.

60. Plaintiff will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent himself and the class.

61. The infant plaintiff has no interest antagonistic to that of the class, has no current symptoms of any bodily injury that he can associate with defendant's actions, and does not bring the present action to recover for personal bodily injury.

62. The prosecution of separate actions by individual class members will create a risk of inconsistent or varying adjudications.

63. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

64. Defendants have acted and refused to act on grounds generally applicable to the entire

class, thereby making injunctive and equitable relief appropriate for the entire class.

Legal Claims

COUNT ONE

Injunctive Relief under Ayers v. Jackson Twp., 106 N.J. 557(1987) in the Form of a Court Administered Program for Medical Surveillance, Notice and Warning

65. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

66. Persons exposed to toxic chemicals have an increased risk of invisible genetic injury and/or an enhanced susceptibility to cancer.

67. The existence of mercury in the air and water gives rise to a reasonable medical concern for the public health.

68. In this instance, the public health interest justifies judicial intervention.

69. The existence of this risk to plaintiff and the class requires abatement of the health hazard on reasonable terms as a precautionary and preventive measure.

70. Here, the class is in need of equitable relief in the form of a program of medical surveillance, periodic testing of bodily functions and tissue, education, and adequate notice and warning to protect class members from the dangerous conditions described herein.

71. By the acts alleged herein, Isaac and the class have suffered direct, severe and prolonged exposure to mercury, a toxic substance.

72. Because of the significance and extent of the direct exposure suffered by Isaac and the class, the need for medical surveillance is medically anticipated and necessary to prevent or mitigate serious future illness.

73. Equity demands that neither class members' parents, nor taxpayers, should have to bear the burden of funding such a program, which is made necessary by the conduct of defendants.

74. Accordingly, the class seeks an order directing that such a program be established, to be administered by the court under its equitable powers, with defendants being ordered to pay the costs associated with such a program, for as long as the court deems necessary.

COUNT TWO

Constructive Trust

75. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

76. Upon information and belief, all defendants have, or shortly will, make claims against the fund established by the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24, seeking to recover monies from this fund for lost profits, reimbursement of clean-up costs, and other costs associated with the presence of mercury contamination at the property and/or the closing of Kiddie Kollege.

77. Upon information and belief, each defendant may also seek indemnification, contribution and/or reimbursement from one or more of his or her co-defendants, seeking to recover lost profits, reimbursement of mercury clean-up costs, and other costs associated with the presence of mercury contamination at the property and/or the closing of Kiddie Kollege.

78. By the acts alleged herein, property has been, or will be, acquired by defendants under circumstances that dictate that they may not retain the beneficial interest in that property.

79. Specifically, as alleged herein, each defendant has committed wrongful acts,

including negligence, failure to warn, mistakes, and other wrongful acts sufficient to trigger the establishment of a constructive trust for the benefit of Isaac and the class under New Jersey law.

80. These wrongful acts have, or will, result in a transfer or diversion of property that unjustly enriches these defendants.

81. Equity requires that defendants be converted into trustees for Isaac and the class and that any monies obtained by defendants from the New Jersey Spill Compensation and Control Act fund, or through other claims for reimbursement and contribution for mercury clean-up costs, be held in trust for Isaac and the class.

COUNT THREE

Strict Liability Restatement (Second) Torts § 520

82. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

83. By the acts alleged, defendants are strictly liable for all harm to the class caused by their activities at the site.

84. Defendants knew or should have known that the operations at the site would create a high degree of risk to the person and property of plaintiff and the class.

85. These activities were not a matter of common usage and created a significant likelihood that any harm would be substantial.

86. Moreover, the activities conducted by defendants were not appropriate to the place where they were being conducted.

87. As defendants are aware, the prevailing environmental conditions virtually guaranteed

that toxic mercury remaining at the site would be carried into the person of the class members.

88. Despite these facts, defendants elected to conduct these activities in an inappropriate location, thereby becoming strictly liable for any and all damage and injury that these activities might cause.

89. The law of liability in New Jersey has evolved so that a landowner is strictly liable to others for harm caused by the dumping, dissemination or storage of toxic wastes on his property.

90. The dumping, dissemination and storage of mercury on the property was an abnormally dangerous activity sufficient to impose strict liability under New Jersey law.

91. By the acts alleged herein, defendants Accutherm, Inc. and Giuliano engaged in the dumping, dissemination and storage of mercury onto to the property for a number of years.

92. Defendants Accutherm, Inc. and Giuliano later abandoned the property without clean-up, after being notified by, inter alia, the New Jersey Department of Environmental Protection of the need for such clean-up.

93. Defendants Jim Sullivan, Inc., Navillus Group LLC, Jim Sullivan III and Jim Sullivan IV, owned and maintained the property in its contaminated state for several years without clean-up, eventually leasing the property for profit, after obtained zoning and other permits which specifically recognized that the property would be used as a day care facility.

94. Defendants Jim Sullivan, Inc., Navillus Group LLC, Jim Sullivan III, Jim Sullivan IV, Kiddie Kollege Daycare & Preschool, Inc. Steven and Becky Baughman, and Julie and Matthew Lawlor operated a day care center on an unremediated toxic waste site; an activity which it is submitted, constitutes an abnormally dangerous activity as a matter of law.

95. Plaintiff and class have suffered great injury to their person and property as a result of

these activities.

COUNT FOUR

**Public Nuisance
Restatement (Second) Torts § 821(c)**

96. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

97. By the acts and omissions alleged herein, defendants have created a public nuisance by substantially interfering with rights to which all class members are entitled as members of the public at large within the area of Franklinville affected by defendants' site.

98. Defendants' action in conducting these activities, and failing to mitigate the damages being caused by these activities, has been unreasonable and/or intentional and has caused significant health risks as well as substantial impairment of the rights of the general public to be free from contamination by toxic and noxious chemicals.

99. Pursuant to Restatement (Second) Torts §821(c), plaintiff and the class have standing to seek an injunction to abate this public nuisance and to require defendant to implement all reasonable safeguards to mitigate or eliminate the problems.

COUNT FIVE

Negligence

100. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

101. It was at all times foreseeable to defendants that the operation of the site at its present location, without adequate and reasonable safeguards, would cause injury to the person of plaintiff and the class as alleged herein.

102. Despite this, defendants failed to provide such reasonable safeguards and to take other reasonable actions that a prudent person under similar circumstances would have taken to eliminate or minimize such risk of danger to plaintiff and the class.

103. Each defendant owed a duty to take reasonable safeguards to avoid foreseeable harm to Isaac and the class.

104. Each defendant knew of facts, or would have known had they made reasonable inquiry, that indicated a high probability of danger arising from their actions and omissions.

105. Despite this, each defendant failed to undertake reasonable safeguards, make reasonable inquiry and/or to take other reasonable actions that a prudent actor under similar circumstances would have taken to eliminate or minimize such damages to Isaac and the class.

106. The conduct of defendants in the operation and maintenance of the site is both a proximate cause and a cause in fact of the substantial injuries inflicted, and continuously being inflicted, on plaintiff and the class.

107. By virtue of the negligent, reckless and/or intentional conduct of the defendants in the operation and maintenance of the site, the person and certain legally protected interests of

plaintiff and the class have been invaded. Ayers v. Jackson Twp., 106 N.J. 557, 592 (1987).

COUNT SIX

Battery

_____108. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

109. By the acts alleged herein, Isaac and the other members of the class have suffered a physical invasion of their persons and their bodily integrity.

110. This physical invasion was caused by defendants.

111. This physical invasion caused damage to Isaac and the class and was not authorized by the class, their parents or their guardians.

COUNT SEVEN

Punitive Damages

112. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

113. By the acts alleged herein, defendants Accutherm, Giuliano, Jim Sullivan Inc., Navillus Group LLC, Jim Sullivan III and Jim Sullivan IV have each committed willful, wanton and/or deliberate acts or omissions, with knowledge of a high degree of probability of harm, and reckless indifference to the consequences of such acts and omissions.

114. The infant plaintiff and his class members have suffered bodily invasion and bodily harm as a result of the aforesaid actions of defendants.

PRAYER FOR RELIEF

WHEREFORE, plaintiff asks this court to:

- a. Certify this matter as a class action pursuant to R. 4:32;
- b. Grant declaratory and injunctive relief to the plaintiff class, directing defendant to abate the nuisance and/or to take all reasonable and adequate steps needed to eliminate or mitigate this nuisance;
- c. Enter an order for injunctive relief establishing, under the court's equitable powers, and at defendants' expense, a court administered program for:
 - i. the inspection and, as needed replacement, of the personal property of the infant class members that may have been exposed to mercury contamination ;
 - ii. medical surveillance and special maintenance to reduce the health risks and other dangers associated with mercury contamination; and
 - iii. educational programs requiring, *inter alia*, defendants to distribute a court approved form of notice to the class which accurately advises of the hazardous nature of mercury and adequately advises them of the manner in which contamination may be recognized, eliminated or mitigated;
- d. Enter judgment in favor of each class member for the injuries suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;
- e. Award plaintiff reasonable attorneys' fees and costs;
- f. Award the class punitive damages as a result of the intentional, willful and reckless conduct of defendants, as appropriate;

g. Grant plaintiff and the class such other and further legal, equitable and declaratory relief as justice requires.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues.

CERTIFICATION

I hereby certify, pursuant to R. 4:5-1, that to the best of my knowledge, information and belief at this time the matter in controversy is not the subject of any other action pending in any court, nor of any pending arbitration proceeding, that no other action or arbitration is contemplated, and further that there are no other parties who should be joined in this action.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Philip Stephen Fuoco, Esquire is designated as trial counsel.

The Law Firm of
PHILIP STEPHEN FUOCO

BY: _____
Philip Stephen Fuoco
Joseph A. Osefchen

Dated: August _____, 2006