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\$1.5 MILLION HEALTH MONITORING FUND SET UP NJ'S KIDDIE KOLLEGE CASE - RULING FINDS GOVERNMENT AGENCIES, CURRENT OWNER AND REALTOR LIABLE by Jan Hefler - Philadelphia Inquirer

Press Release

In Woodbury, NJ Superior Court Judge James E. Rafferty created a \$1.5 million fund Tuesday to provide long-term medical monitoring for more than 100 babies and children who attended the toxic Kiddie Kollege day care in Gloucester County.

Judge Rafferty held the state, the county, Franklin Township, and the building owners negligent for allowing Kiddie Kollege to open inside a former thermometer factory in February 2004. He ordered them to contribute to the fund, which will provide neuro-psychological testing for the children through their mid-20s.

The Franklinville day care was found to contain mercury vapors, which can cause brain and kidney ailments, in concentrations 30 to 50 times the acceptable level, the judge said.

Litigation over class-action lawsuits filed by the children's parents dragged on for more than four years. Rafferty issued his ruling Tuesday in a packed Woodbury courtroom, following a trial late last year to determine liability and the need for monitoring.

Though none of the children have developed serious symptoms, the parents said testing would bring peace of mind.

Medical experts hired by the government entities testified that testing would be a waste of money because there is no evidence that mercury exposure causes latent problems.

But the judge agreed with the doctor hired by the children's lawyers, David Hartman, who testified that some of the inhaled mercury is deposited in the brain and remains there.

Rafferty assessed most of the blame on Franklin Township, which granted permits and a certificate of occupancy for the day care, and Jim Sullivan 3d and his family businesses, which acquired the bankrupt factory in a tax foreclosure.

Sullivan, a real estate broker, failed to properly investigate and clean the contamination before leasing the building to a day care, the judge said.

"It was not deliberate, but it was certainly negligent," Rafferty said. He also found that Franklin Township employees had knowledge of the contamination and failed to "warn and protect" the children.

Neither the factory owner who polluted the building nor the day care's operators were negligent, the judge said.

The Sullivan family and Franklin Township each must provide \$525,000 toward the \$1.5 million fund; the county must pay \$300,000; and the state \$150,000, Rafferty said. He said the county health department, state Department of Environmental Protection, and state Department of Health and Senior Services neglected to perform their duties to protect the public from known contaminants.

He dismissed the governments' arguments that they were immune from lawsuits because they have

limited resources and would be unable to function if they were liable for every failure.

State Deputy Attorney General Randall Weaver would not comment on whether the state would appeal. The Sullivans and day-care operators agreed in October to settle with the plaintiffs for \$1 million. On Tuesday, minutes before the judge delivered his verdict, the county agreed to settle for \$950,000. Pettit said some of the money would go into the children's fund and some could be used for the plaintiffs' legal fees.

The judge will decide at a future date how much the plaintiff's lawyers will be paid and who should contribute.

To see the full article, [click here](#).

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Corporate Headquarters

215 West Church Road
King of Prussia, PA 19406
Phone: (610) 265-1510
FAX: (610) 265-0687
E-mail: RTENV@AOL.COM
World Wide Web: [HTTP://RTENV.COM](http://RTENV.COM)

**24 HOUR
URGENT LINE SERVICE
800-725-0593**

New Jersey

Suite 306, Pureland Complex
510 Heron Drive, P.O. Box 521
Bridgeport, NJ 08014
Phone: (856) 467-2276
FAX: (856) 467-3476

Southwest Pennsylvania

591 East Maiden Street
Washington, PA 15301
Phone: (724) 206-0348
FAX: (724) 206-0380

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