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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION and
THE ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION
FUND,

Plaintiffs,

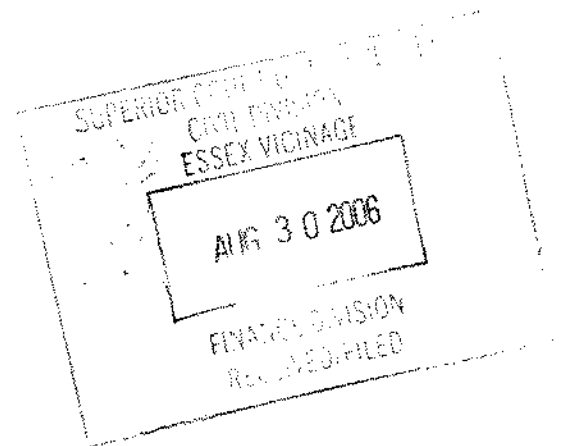
v.

ALLSTATE LEATHER CORPORATION.;
FDR INDUSTRIES, INC.; "ABC
CORPORATIONS" 1-10 (Names
Fictitious); and "JOHN DOES"
1-10 (Names Fictitious),

Defendants.

Civil Action

COMPLAINT



Plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") ("the Plaintiffs"), having their principal offices at 401 East State Street in the City of Trenton, County of

Mercer, State of New Jersey, by way of Complaint against the above-named defendants ("the Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, as a result of the discharge of hazardous substances at the Joseph Roller Leather Company Site in Irvington Township, Essex County.

2. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Roller site. Further, the Plaintiffs seek an order compelling the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Roller site, including restoring any injured resource to its pre-discharge condition, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

THE PARTIES

3. Plaintiff DEP is a principal department within the Executive Branch of the State government, vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

4. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, for which plaintiff DEP is vested with the authority to protect this public trust and to seek compensation for any injury to the natural resources of this State. N.J.S.A. 58:10-23.11a.

5. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

6. Defendant Allstate Leather Corporation ("Allstate") is a corporation, organized and existing under the laws of the State of New York, with a principal place of business located at 636 Greenwich Street, New York, New York, 10014. Allstate purchased the Roller Site from the Joseph Roller Leather Company, Inc. ("Roller") in April 1983 and continued its ownership of the Site

until Irvington Township foreclosed on the property in October 2004.

7. Defendant FDR Industries, Inc. ("FDR") is a New York corporation with a principal place of business located at 670 Broadway, 5th Floor, New York, NY 10012. FDR was authorized to conduct business in New Jersey on January 19, 1972. That authorization was revoked in December 1980. FDR owned the Roller Property from August 1975 through April 1983, when it conveyed the property to Allstate.

8. Defendants "ABC Corporations" 1-20, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint, certain of which were either previous owners and operators of the site and/or the corporate successors to previous owners and operators of the site, or are otherwise related to previous owners and operators of the site.

9. Defendants "John Does" 1-20, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom were owners and/or operators of the site, were partners of, or principals of, previous owners and/or operators of the site and/or their successors, including one or more of the ABC Corporation defendants.

AFFECTED NATURAL RESOURCE

Ground Water

10. Ground water is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

11. Not only does ground water serve as a source of potable water, it also serves as an integral part of the State's ecosystem.

12. Ground water provides base flow to streams and other surface water bodies, and influences surface water quality and wetland ecology and the health of aquatic ecosystems.

13. Ground water provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

14. Ground water is a unique resource that supports the State's tourism industry, and is also used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

15. There are more than 6,000 sites in New Jersey confirmed as having ground water contaminated with hazardous substances.

GENERAL ALLEGATIONS

16. The Roller site consists of approximately 1.2 acres of real property located at 500 Chancellor Avenue, Irvington Township,

Essex County, New Jersey, this property being also known and designated as Block 188, Lot 6, on the Tax Map of Irvington Township ("the Roller Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 020826.

17. From 1937 through 1986, defendants Allstate, FDR and one or more of the ABC Corp. defendants, owned the Roller Property, during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included volatile organic compounds, metals, petroleum hydrocarbons, semi-volatile organic compounds, and polychlorinated biphenyls.

18. From 1937 through 1986, defendants Allstate, FDR, one or more of the ABC Corp. defendants, and one or more of the John Doe defendants, also operated a leather manufacturing plant at the Site the operation of which involved the storage and handling of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included volatile organic compounds, metals, petroleum hydrocarbons, semi-volatile organic compounds, and polychlorinated biphenyls.

19. The remedial investigation of the Roller Property commenced in 1986, when then owner, Roller, went out of business

and subsequently filed for Chapter 7 bankruptcy thus triggering the provisions of Environmental Cleanup Responsibility Act ("ECRA"), now known as the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14.

20. Between 1986 and 1991, Roller, through its trustee 498 Chancellor Avenue Liquidating Corporation, exhausted its available assets conducting remedial work at the Site. Such work included asbestos removal, demolition of the office building, drum removal and waste classification, closure of the 10,000 gallon fuel oil tank and the two 550 gallon solvent tanks, and installation of three groundwater monitoring wells.

21. On December 19, 1994, plaintiff DEP issued a Spill Act directive ("Directive One") to defendants Allstate, FDR, and others pursuant to N.J.S.A. 58:10-23.11f.a., directing the Defendants and others to fund the remedial investigation of the Site.

22. On December 27, 1994, defendant Allstate informed plaintiff DEP that it was unable to comply with Directive One, thus requiring plaintiff DEP to perform the remedial investigation for the Site, and the assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Roller Property. To the best of Plaintiffs' knowledge, defendant FDR did not respond to Directive One.

23. On July 17, 1996, plaintiff DEP issued a second Spill Act directive ("Directive Two") to defendants Allstate, FDR, and others

pursuant to N.J.S.A. 58:10-23.11f.a., directing the Defendants and others to fund the remedial investigation of the Site.

24. From 1995 through 2002, plaintiff DEP performed a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which plaintiff DEP investigated the nature and extent of the contamination at the Site.

25. Sampling results from the remedial investigation revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water, and soils at the Site, which substances include volatile organic compounds, metals, petroleum hydrocarbons, semi-volatile organic compounds, and polychlorinated biphenyls.

26. On or around September 28, 1998, plaintiff DEP approved a Remedial Action Selection Report for the Site soils pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E-5.2, which described the proposed remedial action for soils, and how plaintiff DEP determined the proposed remedial action is the most appropriate alternative for the Site.

27. The remedial action that plaintiff DEP approved for the Site soils primarily provided for the disposal of the soil/debris mound, installation of an asphalt cap to cover the entire Site, fencing around the Site and appropriate institutional controls.

28. On or around September 4, 2002, following additional ground water investigation, plaintiff DEP approved a remedial

action for ground water pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E-5.2, which described the proposed remedial action for ground water and how plaintiff DEP determined the proposed remedial action is the most appropriate alternative for the Site.

29. The groundwater remedy that plaintiff DEP approved for the Site entailed the establishment of a Classification Exemption Area ("CEA") and Well Restriction Area ("WRA") with natural attenuation. Additional groundwater monitoring to establish that contaminant concentrations have achieved compliance with Ground Water Quality Criteria ("GWQC") was not required because the Site is in a non-ground water use area.

FIRST COUNT

Spill Act

30. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 29 above as though fully set forth in its entirety herein.

31. Each defendant is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

32. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Roller Property.

33. Plaintiff Administrator has certified, and may continue to certify, for payment, valid claims made against the Spill Fund

concerning the Site, and, further, has approved, and may continue to approve, other appropriations for the Site.

34. The Plaintiffs also have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Roller Property.

35. The costs and damages the Plaintiffs have incurred, and will incur, for the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

36. Defendants Allstate, FDR and one or more of the ABC Corp. defendants are the dischargers of hazardous substances at the Roller Property, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Roller Property. N.J.S.A. 58:10-23.11g.c.(1).

37. Defendants Allstate, FDR, one or more of the ABC Corp. defendants, and one or more of the John Doe defendants as the owners of the Roller Property at the time hazardous substances were discharged there, also are persons in any way responsible for the discharged hazardous substances, and are liable, jointly and

severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Roller Property. N.J.S.A. 58:10-23.11g.c.(1).

38. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., plaintiff DEP may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any other unreimbursed costs or damages plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

39. Pursuant to N.J.S.A. 58:10-23.11q., plaintiff Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Spill Fund.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all cleanup

and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Roller Property, with applicable interest;

- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Roller Property;
- c. Order defendants Allstate, FDR, and certain of the ABC Corps. defendants to reimburse the Plaintiffs, jointly and severally, without regard to fault, in an amount equal to three times the cleanup and removal costs the Plaintiffs have incurred for the Site;
- d. Enter declaratory judgment against defendants Allstate, FDR, and certain of the ABC Corps. defendants jointly and severally, without regard to fault, in an amount equal to three times any cleanup and removal costs that the Plaintiffs will incur for the Site;
- e. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the

Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Roller Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource.

- f. Award the Plaintiffs their costs and fees in this action; and
- g. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Public Nuisance

40. Plaintiffs repeat each allegation of paragraph nos. 1 through 39 above as though fully set forth in its entirety herein.

41. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

42. The use, enjoyment and existence of uncontaminated natural resources are rights common to the general public.

43. The groundwater contamination at the Site constitutes a physical invasion of public property and an unreasonable and

substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

44. As long as the ground water remains contaminated due to the Defendants' conduct, the public nuisance continues.

45. Until the ground water is restored to its pre-injury quality, the Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean ground water.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Roller Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as

a result of the discharge of hazardous substances at the Roller Property;

- c. Enter judgment against the Defendants, compelling the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Roller Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource.
- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

46. Plaintiffs repeat each allegation of paragraph nos. 1 through 45 above as though fully set forth in its entirety herein.

47. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

48. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Roller Property.

49. As long as the ground water remains contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

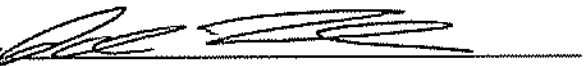
WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Roller Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Roller Property;
- c. Enter judgment against the Defendants, compelling the Defendants to perform, under plaintiff DEP's oversight,

or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Roller Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource.

- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Adam B. Lavinthal
Deputy Attorney General

Dated: August 29, 2006

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Adam B. Lavinthal, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b) (2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any non-party known to the Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to the Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b) (2).

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

Adam B. Lavinthal
Deputy Attorney General

Dated: August 29, 2006

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