

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. BOX 093
Trenton, New Jersey 08625-0093
Attorney for Plaintiffs

By: Mark A. Fisher
Deputy Attorney General
Attorney ID: 043302006
Ph.: (609) 376-2735
Mark.Fisher@law.njoag.gov

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

Plaintiffs, :

v. :

ABB INSTALLATION PRODUCTS :
INC. as successor-in-interest :
to the ELASTIC STOP NUT :
CORPORATION OF AMERICA and :
AMERACE CORPORATION; HARVARD :
INDUSTRIES, INC., :
individually and as :
successor-in-interest to the :
ELASTIC STOP NUT CORPORATION :
OF AMERICA and AMERACE :
CORPORATION; HOVNANIAN :
ENTERPRISES, INC. as :
successor-in-interest to K. :
HOVNANIAN AT UNION TOWNSHIP I, :
INC.; FEDERAL INSURANCE :
COMPANY; "XYZ CORPORATIONS" :
1-10 (Names Fictitious); and :
"JOHN AND/OR JANE DOES" 1-10 :
(Names Fictitious), :

Defendants. :

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

CIVIL ACTION

COMPLAINT

Plaintiffs New Jersey Department of Environmental Protection ("DEP" or "Department") and the Administrator of the New Jersey Spill Compensation Fund (the "Administrator") (collectively, "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 Defendants ABB Installation Products Inc. ("ABB"), as successor-in-interest to the Elastic Stop Nut Corporation of America ("ESNA") and Amerace Corporation ("Amerace"); Harvard Industries, Inc., individually and as successor-in-interest to ESNA and Amerace ("Harvard"); Hovnanian Enterprises, Inc. ("Hovnanian Enterprises"), as successor-in-interest to K. Hovnanian at Union Township I, Inc. ("Hovnanian Union"); Federal Insurance Company ("FIC"); "XYZ Corporations" 1-10 (Names Fictitious); and "John and/or Jane Does" 1-10 (Names Fictitious) (collectively, "Defendants") allege as follows:

STATEMENT OF THE CASE

1. This is a civil action pursuant to the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24; the Brownfield and Contaminated Site Remediation Act ("Brownfield Act"), N.J.S.A. 58:B-1.3(a); the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 to -29; and the common law.

2. The Hickory Manor residential condominium buildings are located along Vauxhall Road in Union Township, New Jersey. The historic address of the Hickory Manor property ("Site") is 2330

Vauxhall Road, Union Township, Union County. Between 1940 and 1995, the Site was used for industrial purposes by ESNA and successors thereto. ESNA and its successors discharged trichloroethylene ("TCE") into the soil of the Site.

3. Real estate developer Hovnanian Union, a subsidiary of real estate developer Hovnanian Enterprises, purchased the Site in 1998 and failed to remediate the TCE contamination in the soil, contrary to representations it later made to DEP.

4. Despite Hovnanian Union's failure to rid the Site of dangerous levels of TCE and make the Site safe for human habitation, Hovnanian Union built 13 condominium buildings on the Site in 2000.

5. In 2009, the Department learned of the deficiencies in Hovnanian Union's remediation, finding significant concentrations of chlorinated solvent vapors, especially TCE, in the sub-slab soil under Hickory Manor condominium buildings.

6. Due to the health risks to the Site's residents, DEP used public funds to install vapor extraction systems and remove chlorinated solvent vapors from the soil under 11 of the 13 condominium buildings before they could intrude into the homes and potentially endanger residents.

7. The Department now brings this civil action against Defendants under the Spill Act, SRRA, Brownfield Act, and the common law: (1) to recover the costs Plaintiffs have incurred and

will incur to remediate the Site, including, but not limited to, all costs incurred in connection with the installation of the vapor mitigation systems at Hickory Manor; (2) to compel Defendants to continue investigations at the Site and remediate as necessary; and (3) for other related relief.

THE PARTIES

8. DEP is a principal department in the State of New Jersey's executive branch of government. The Department maintains its principal offices at 401 East State Street, Trenton, Mercer County, New Jersey. Pursuant to the authority vested in the DEP by the aforementioned statutes to protect human health and the environment, the Department is empowered to institute legal proceedings to recover costs incurred to remediate hazardous waste discharges using public funds and compel parties liable for the discharge of hazardous substances to remediate the contamination.

9. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). N.J.S.A. 58:10-23.11j. As the chief executive officer of the Spill Fund, the Administrator is authorized to approve and pay any cleanup and removal costs the Department incurs, N.J.S.A. 58:10-23.11f.c.-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.

10. Defendant ABB is the corporate successor-in-interest to ESNA and Amerace.

11. ABB is a Tennessee corporation and a wholly owned subsidiary of ABB Ltd., a foreign corporation organized under the laws of Switzerland.

12. The main business address of ABB is 305 Gregson Drive, Cary, North Carolina 27511-6496.

13. ABB was incorporated in the State of Tennessee on February 21, 1996, as Thomas & Betts Tennessee, Inc. The company was authorized to do business in New Jersey on April 22, 1996. The company changed its name to Thomas & Betts Corporation in May 1996. Thereafter, in September 2018, the company changed its name to ABB Installation Products Inc.

14. As a corporate successor of ESNA and Amerace, ABB is liable for ESNA's discharges of TCE at the Site from the early 1940s through mid-1985.

15. ESNA was incorporated in New Jersey on February 14, 1934, when it acquired all machinery and equipment used by C.A. Swanstrom and American Gas Accumulator Co. in the manufacture of elastic stop nuts.

16. ESNA's corporate address and principal place of business beginning in the early 1940s was that of the Site, namely 2330 Vauxhall Road, Union Township, New Jersey in Union County, also known as Block 5009, Lots 2 (part of Lot 2; formerly the westernmost portion of Lot 6), 3.01, 3.02, 6 and 8 on the Tax Map of Union Township, Union County.

17. ESNA commenced operations there after erecting a manufacturing building on the Site in 1940.

18. ESNA's business always centered on the manufacture and sale of specialty fasteners, known as elastic stop nuts.

19. ESNA sold its products for use in many commercial fields, such as train production, diesel engines, oil field equipment, mining equipment, electrical equipment, pneumatic tools, hydraulic presses, among others.

20. Over the years, the company's line of production and general organization remained the same. Its products were principally sold for the manufacture of aircraft.

21. In or about 1968, ESNA merged into Amerace. The new company was then known as Amerace ESNA Corporation and later changed to Amerace, with the ESNA business operating as a named division of Amerace.

22. Operations conducted by Amerace's ESNA division were like those conducted by ESNA.

23. Amerace and its predecessors owned the Site until April 12, 1985.

24. Amerace was incorporated in the State of Delaware in 1946. The company was authorized to do business in New Jersey in June 1957.

25. Defendant Harvard Industries, Inc., f/k/a Harvard Brewing Co., Inc., f/k/a Harvard Investors, Inc. ("Harvard") is a

party to this action both individually and as a successor-in-interest to ESNA and Amerace.

26. In April 1985, Harvard acquired Amerace's ESNA division from Amerace. Harvard also acquired the Site from Amerace on April 12, 1985.

27. Harvard was incorporated in the State of Delaware in 1932. The company was authorized to do business in New Jersey in March 1959.

28. The asset-purchase agreement resulting in the sale of the ESNA business and Site from Amerace to Harvard triggered the Environmental Cleanup Responsibility Act or "ECRA," N.J.S.A. 13:1K-6 to K-14, which led to the discovery of the contamination in 1984.

29. Amerace entered an Administrative Consent Order with the Department effective March 28, 1985 ("Amerace Remediation Agreement") under ECRA case number E84329. Amerace sold the Site and ESNA business at the Site to Harvard prior to satisfaction of ECRA's requirements.

30. In connection with the sale and ECRA requirements, Harvard assumed responsibility to remediate the Site pursuant to the Amerace Remediation Agreement.

31. Defendant Hovnanian Enterprises is the corporate successor-in-interest to Hovnanian Union.

32. Hovnanian Union was incorporated in the State of New Jersey on June 14, 1996 and operated as a subsidiary of Hovnanian Enterprises.

33. Hovnanian Enterprises, a Delaware corporation, was authorized to conduct business in the State of New Jersey on August 3, 1983. Its corporate headquarters is 90 Matawan Road, Fifth Floor, Matawan, NJ, 07747.

34. Hovnanian Union acquired the Site from Defendant Harvard on June 15, 1998.

35. In 1998, Hovnanian Union entered into a Remediation Agreement with the Department entitled "AMENDMENT TO THE AMERACE REMEDIATION AGREEMENT," wherein Hovnanian Union assumed the obligations to remediate the Site.

36. In the early 2000s, Hovnanian Union and/or entities affiliated with Hovnanian Union, and/or its parent company, Defendant Hovnanian Enterprises, redeveloped the Site as condominiums for residential use. ("Hovnanian Union" includes any such related but unidentified entities of either Hovnanian Union or Hovnanian Enterprises involved in the development and sale of Hickory Manor condominiums, where applicable).

37. Prior to that, in September 1999, Hovnanian Union established the Hickory Manor Condominium Association, Inc., to manage the common areas of the Site upon which the condominium

units were erected, among other things. Hovnanian Union owned the Site and was the seller of the new residential condominium units.

38. Defendant FIC is a stock insurance company incorporated in the State of Indiana and has a principal place of business located at 202B Halls Mill Road, Whitehouse Station, New Jersey, 08889.

39. On or around September 15, 2009, FIC issued an Environmental Site Liability Insurance policy to Hickory Manor Condominium Association, Hovnanian Union, Hovnanian Enterprises, Inc. and Harvard (upon information and belief, incorrectly named in the policy as "Harvard Enterprises, Inc.")

40. FIC issued an Endorsement to the policy on January 6, 2010. According to Item 5, Insured Site(s) and Address(es), the site/address insured by this policy is 2330 Vauxhall Road, Union, NJ 07083 as described in the legal description in the purchase and sale agreement between Harvard and Hovnanian Union.

41. As the insurer to the insured entities covered under the Environmental Site Liability Insurance policy and its endorsements, FIC bears financial responsibility for any claims for costs of cleanup, civil penalties, or damages suffered by the State, or damages suffered by any injured person.

42. Defendants, "XYZ Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which

are corporate successors to, predecessors of, insurers of, or are otherwise related to, Defendants and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances discharged at the Site.

43. Defendants, "John and/or Jane Does" 1-10, these names being fictitious, are natural individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to Defendants and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances discharged at the Site.

GENERAL ALLEGATIONS

44. Trichloroethylene (TCE) is a hazardous substance as defined in N.J.S.A 58:10-23.11b.

45. Exposure to TCE has been linked to kidney dysfunction, respiratory tract irritation, and cognitive and neurological degeneration.

46. TCE vapor was the predominant hazardous substance discovered to be intruding into the homes of the Hickory Manor residents at the Site.

47. TCE was historically used as a solvent in the machining industry to degrease metal parts during production.

48. On-site discharge was a common practice for disposal of spent chlorinated solvents, especially in the 1940s and through the 1950s.

49. The TCE vapors in the sub-slab beneath the Hickory Manor homes were present in the soil because of historical industrial operations on the Site; namely, the production of precision-machined specialty fasteners called elastic stop nuts.

Industrial Operations and Post-Industrial Use at the Site

50. The elastic stop nut fasteners manufactured at the Site were sold under the brand Elastic Stop Nut Corporation of America or ESNA, the company that held a patent on this fastener. The ESNA acronym also doubled as a trade name for ESNA and the successors-in-interest that continued the product line - Amerace and Harvard.

51. ESNA erected a production facility in 1940 on the Site. ESNA and successors Amerace and Harvard manufactured ESNA brand fasteners there until 1995.

52. Thousands of gallons of TCE were used in the production of ESNA fasteners yearly and consistently over the five-plus decades ESNA operated at the Site.

53. From the onset of its operations, ESNA utilized a 2,000-gallon above-ground storage tank, staged immediately outside of the manufacturing building, for the purpose of storing virgin TCE product.

54. Other large tanks containing TCE were staged inside the facility and some were buried underneath the building floor from which TCE was piped to the machinery for use.

55. Since 1940, when the ESNA building was constructed and operations began through 1995, ESNA, Amerace and Harvard used chlorinated solvents, including TCE, tetrachloroethylene ("PCE") and 1,1,1-Trichloroethane ("1,1,1-TCA"). The ESNA fastener production operations resulted in the discharge of TCE, PCE, 1,1,1-TCA, and other hazardous substances, such as petroleum products and heavy metals (e.g., cadmium), onto the Site.

56. Beginning in 1940, and continuing until at least 1985, vast quantities of TCE were used during the production of fasteners at the Site.

57. For example, in 1981, Amerace reported using 28,000 gallons of TCE for degreasing at the Site.

58. TCE and other chlorinated solvents used in the fastener production process, namely PCE and 1,1,1-TCA, were discharged onto the soil at the Site during the respective periods of ownership and operation of the Site by ESNA, Amerace, and Harvard.

59. TCE was the predominant chlorinated solvent used in the ESNA production operations, but by 1987, Harvard (then the owner of the Site and operator of the fastener business) had switched from TCE to 1,1,1-TCA.

60. TCE was discharged into the soil at the Site until the mid-1980s in the ordinary course of those production operations.

61. In approximately 1984, environmental investigations began on the Site. Amerace triggered its obligations under ECRA, N.J.S.A. 13:1K-9, when it sought to sell the Site.

62. Amerace owned the Site and the ESNA fastener business when the TCE contamination was discovered.

63. Amerace commenced remediation but sold the property to Harvard in 1985.

64. Harvard executed an Administrative Consent Order with the Department on March 28, 1985 and assumed the remediation obligations for the Site.

65. Harvard ultimately sold the Site before the remediation was complete to Hovnanian Union.

66. Hovnanian Union purchased the property in 1998 and took over the remediation of the Site for the purpose of building Hickory Manor condominiums. To that end, it entered an "Amendment to the Remediation Agreement," wherein it assumed the remediation obligations for the Site.

67. Hovnanian Union owned the Site when the investigation and remediation ceased in 1999, following the Department's issuance of a No Further Action letter ("NFA") dated May 5, 1999.

68. DEP issued the NFA in reliance on the representations of Hovnanian Union and its environmental contractor that the Site required no further remediation.

69. The remediation activities that took place between 1984 and 1999 were conducted by various environmental contractors and consultants hired by Amerace, Harvard, and Hovnanian Union.

70. DEP relied on the data obtained and information provided by the environmental contractors and consultants working on behalf of Amerace, Harvard, and Hovnanian Union.

71. The last of the reports documenting remediation activities by Defendants at the Site was a 1999 "Remedial Action Report" from EcolSciences, submitted to DEP on behalf of Hovnanian Union.

72. In the 1999 Remedial Action Report ("RAR"), Hovnanian Union claimed that the Site was remediated, but that claim later proved to be inaccurate.

73. Nonetheless, in 2000, Hovnanian Union proceeded with the construction of the Hickory Manor residential condominium complex in the ESNA building's footprint.

74. Thirteen condominium buildings, with a total of two hundred twenty condominium units, were built and sold by Hovnanian Union and are presently situated on the Site.

TCE Contamination at the Site

75. DEP first learned of TCE contamination at the Site in 1984. The discovery of TCE triggered the commencement of a fragmented remediation undertaken by private parties until 1999, but which has not been completed.

76. In March 1984, Union Township initiated an investigation into groundwater contamination following a citizen's complaint of chemical odors emanating from a sanitary sewer in the vicinity of Commerce Avenue, Union Township. The Union Township Health Officer contacted Amerace to sample its supply or production wells.

77. As part of Union Township's investigation, water from Production Wells #1, #2, and #3 at the Site was sampled. Since 1940, these deep production wells were used to supply water for the ESNA operations.

78. The production well sampling was performed by the Union Township Department of Health and Environmental Protection. Groundwater was analyzed for volatile organic substances.

79. Analytical results for water samples collected from the supply wells revealed that TCE was present in groundwater at concentrations up to 9,100 micrograms per liter (ug/L) - more than 9,000 times above the Department's Ground Water Corrective Action Criteria for TCE of 1.0 ug/L.

80. In December 1984, Amerace's environmental contractor at the time, Dan Raviv, identified areas of concern ("AOCs") and collected sediment samples of "sludge" in pits and trenches inside

the ESNA building, as well as soil samples from various AOCs at the Site. The AOCs included a degreaser pit area and the plating area located inside the building, and other AOCs located outside of the building.

81. Amerace reported to the Department that TCE and PCE were present in the sludge samples at concentrations up to 35,000 milligrams per kilogram (mg/kg) and 7,800 mg/kg, respectively, at AOCs located inside the manufacturing building.

82. TCE and PCE were present in soil at concentrations up to 8.8 mg/kg and 2.0 mg/kg, respectively, at AOCs located outside of the manufacturing building.

83. Between December 1984 and January 1985, Amerace collected soil samples and reported to the Department that TCE was present in soil at concentrations up to 8.0 mg/kg.

84. After Harvard had taken over the remediation, soil samples were collected at depths just below the concrete floor of the manufacturing building from multiple locations, including the oil room, machining areas, and degreasing areas. Harvard reported that analytical results for soil samples exhibited TCE concentrations ranging from 5.0 mg/kg to 130 mg/kg.

85. The presence of TCE-contaminated soil directly beneath the building slab, coupled with petroleum hydrocarbons, indicates that the concrete in these sludge pit areas was permeated by TCE.

The porosity of concrete allows TCE and TCE waste to move through it and into the ground.

86. In its January 1999 Remedial Action Report, Hovnanian Union reported that it had addressed eighteen areas of potential environmental concern, including those previously identified by Harvard and others. Hovnanian Union further reported that approximately 5,650 tons of soil and fill material were excavated and removed from the Site.

87. However, Hovnanian Union knowingly left behind or ignored TCE-contaminated soil, which subsequently endangered the health of the Hickory Manor residents and required DEP action.

88. In its January 1999 Remedial Action Report, Hovnanian Union reported that in determining disposal or re-use of soils excavated from the Site, soils were characterized as hazardous or non-hazardous wastes using the Toxicity Characteristic Leaching Procedure. Soils determined to be hazardous were reportedly disposed of off-site, while other soil and building debris were re-used at the Site.

89. Available documentation indicates that construction and debris material from the demolition of the manufacturing building was crushed and re-used as backfill at the Site.

90. TCE-impacted soil near surface grade was not remediated where TCE was present at concentrations below the residential soil cleanup criteria, which at the time was 23 mg/kg. The January

1999 Remedial Action Report documented that Hovnanian Union left soil contaminated with TCE between concentrations of 14 to 16 mg/kg at the Site.

91. Hovnanian Union's report states that soil contaminated with TCE between concentrations of 14 to 16 mg/kg was left behind because it did not pose a risk to groundwater.

92. The report represented that since depth to groundwater at the Site is approximately 27 feet below the area of impacted soils, this was not a threat to the water below.

93. However, Hovnanian Union was aware of the risk of TCE vapor rising from the soil and intruding in the residential buildings it was constructing on the Site yet did not mitigate this risk.

94. Hovnanian Union represented to DEP that a vapor barrier would be installed to protect Hickory Manor residents from exposure to TCE vapors, but it did not install such a barrier nor take any other protective measures.

95. Had Hovnanian Union installed a vapor barrier, Hickory Manor residents would have had protection against TCE vapors that Hovnanian Union knew posed a threat.

96. Because Hovnanian Union did not install a vapor barrier or otherwise abate the known risk to Hickory Manor residents from the TCE contamination in the soil, DEP expended substantial public funds to eliminate the danger.

DEP's Action to Protect Residents of Hickory Manor

97. In 2009, the Department discovered that TCE was being released from the ground at the Site as a vapor at levels above remedial action triggers established by the Department and the U.S. Environmental Protection Agency.

98. In June 2009, the Department initiated vapor intrusion investigations at the Site. Thirteen indoor air samples and thirteen sub-slab, soil gas samples were collected in, and beneath, three residential structures located on the Site. The Department's analytical results for sub-slab soil gas samples exhibited TCE concentrations ranging from 34 to 4,100 ug/m³, many times greater than the Department's residential soil gas screening level for TCE of 27 ug/m³.

99. The Department's analytical results for indoor air samples exhibited TCE concentrations up to 49 ug/m³, above the Department's residential indoor air screening level for TCE of 3.0 ug/m³ and the Department's residential indoor air, rapid action level of 4.0 ug/m³.

100. From September 10, 2009 through December 29, 2009, the Department conducted additional vapor intrusion investigations in residential structures located on the Site. The Department's analytical results for sub-slab soil gas samples exhibited TCE concentrations up to 140 ug/m³ and PCE concentrations up to 44

ug/m³. The Department's residential soil gas screening levels for TCE and PCE are 27 ug/m³ and 34 ug/m³, respectively.

101. The Department's indoor air samples exhibited TCE concentrations up to 270 ug/m³ and PCE concentrations up to 9 ug/m³. The Department's residential indoor air screening levels for TCE and PCE is 3 ug/m³. The Department's residential indoor air rapid action levels for TCE and PCE are 4 ug/m³ and 30 ug/m³, respectively.

102. From 2010 through 2013, the Department expanded the vapor intrusion investigation and collected additional sub-slab soil gas and indoor air samples at the Hickory Manor Condominium Complex. The Department's sub-slab soil gas and indoor air samples showed that a vapor concern condition or an immediate environmental concern condition was present in eleven of thirteen structures at the Hickory Manor Condominium Complex and, thus, that mitigation was necessary.

103. The Department installed soil vapor extraction systems or sub-slab depressurization systems ("mitigation systems") in eleven of the thirteen condominium buildings within the Hickory Manor Complex.

104. The Department's efforts have successfully reduced TCE and PCE concentrations in the indoor air to non-detectable levels.

105. The Department continues to evaluate indoor air quality and conduct operation and maintenance of the mitigation systems to

ensure the immediate environmental and vapor concern conditions remain mitigated.

106. The Department also continues to periodically monitor the two buildings at the Hickory Manor Complex where indoor air mitigation systems were not installed.

107. The Department has incurred significant cleanup and removal costs for the Site and continues to accrue costs for the ongoing mitigation and remediation activities that it is conducting.

108. On or about September 11, 2019, DEP issued a Directive and Notice to Insurers ("Directive") to the Defendants to reimburse DEP for the costs of the vapor mitigation systems and to conduct additional remediation of the Site.

109. Defendants ABB, Hovnanian Enterprises, and Federal Insurance all responded, but none agreed to comply with the requirements of the Directive.

110. The Defendants have not reimbursed the Plaintiffs for the cleanup and removal costs expended at the Site; nor have they agreed to fund or perform any future remedial activities.

COUNT I

**Spill Act
(All Defendants)**

111. Plaintiffs repeat and incorporate each of the preceding paragraphs as though set forth in their entirety herein.

121. Any person who discharges a hazardous substance or is in any way responsible for any hazardous substance, shall be liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.(1), except as otherwise provided in N.J.S.A. 58:10-23.11g12, which is not applicable here.

122. Under the Spill Act, the Department 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); and for any other unreimbursed costs the Department incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

123. The Administrator is authorized under the Spill Act to bring an action in the Superior Court for any unreimbursed costs paid from the Spill Fund pursuant to N.J.S.A. 58:10-23.11q.

124. The costs that Plaintiffs have incurred, and will incur, for the remediation of the Site are "cleanup and removal costs"

within the meaning of N.J.S.A. 58:10-23.11b., and are recoverable pursuant to N.J.S.A. 58:10-23.11u.b.(2), (4), and (5).

125. TCE is a "hazardous substance" as defined by 58:10-23.11b.

126. Defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

127. Pursuant to N.J.S.A. 58:10-23.11g.c., Defendants are jointly and severally liable for the aforementioned cleanup and removal costs, without regard to fault.

128. ABB, as successor-in-interest to Amerace and ESNA, is responsible to the Department for payment of these costs. Pursuant to the Spill Act, N.J.S.A. 58:10-23.11g.c, ABB, as a successor-in-interest to parties liable under the Spill Act, is a person in any way responsible for the hazardous substances discharged at the Site, and is liable for all cleanup and removal costs the Department has incurred as a result of the hazardous substances discharged by ESNA and Amerace at the Site between 1940 and 1985.

129. Pursuant to the Spill Act, N.J.S.A. 58:10-23.11g.c, Harvard and its corporate successors are, in an individual capacity and as successors-in-interest to ESNA and Amerace, dischargers and/or persons in any way responsible for the hazardous substances discharged at the Site, and are liable for all cleanup and removal costs the Department has incurred as a result of the hazardous substances discharged at the Site.

130. Pursuant to the Spill Act, N.J.S.A. 58:10-23.11g.c, Hovnanian Enterprises, as successor-in-interest to Hovnanian Union, is a person in any way responsible for the hazardous substances discharged at the Site, and is liable for all cleanup and removal costs the Department has incurred as a result of the hazardous substances discharged at the Site.

131. Pursuant to N.J.S.A. 58:10B-1.3(a), Defendants are required to remediate the discharges at the Site.

132. FIC - as the issuer of the Environmental Site Liability Insurance policy and its endorsements, which provides insurance coverage to Harvard (incorrectly named as Harvard Enterprises, Inc.), Hovnanian Union, and Hovnanian Enterprises - bears financial responsibility for payment of these costs to the Department.

133. Pursuant to N.J.S.A. 58:10-23.11s, any claims for the costs of cleanup, civil penalties, or damages by the State, and any claim for damages by any injured person, may be brought directly against the bond, the insurer, or any other person providing evidence of financial responsibility.

134. FIC - as the issuer of the Environmental Site Liability Insurance policy and its endorsements - is directly liable and bears financial responsibility for any claims for the costs of cleanup, civil penalties, or damages by the State against Hovnanian

Enterprises, and Harvard and its corporate successors, whether or not such entities are still in business.

135. FIC's financial responsibility includes the costs incurred to remediate the hazardous substances that were discharged at the Site and into the lands and waters of the State.

136. Defendants are liable jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of discharges of TCE at the Site. N.J.S.A. 58:10-23.11g.c.(1).

137. XYZ Corporations 1-10, are dischargers and/or persons in any way responsible for discharged hazardous substances and are therefore liable jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(1).

138. John and/or Jane Does 1-10 are dischargers and/or persons in any way responsible for discharged hazardous substances and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(1).

WHEREFORE, Plaintiffs request judgment in their favor:

- a. Finding that Defendants discharged a hazardous substance at the Site, or are otherwise in any way responsible for the discharged TCE and PCE;
- b. Finding Defendants liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.(1);
- c. Ordering Defendants to reimburse Plaintiffs for all cleanup and removal costs Plaintiffs have incurred because of the discharge of hazardous substances at the Site, with interest as applicable.
- d. Finding Defendants liable in an amount up to three times the cleanup and removal costs that Plaintiffs have incurred, and will incur in the future, to install and maintain the vapor mitigation system at Hickory Manor, and to remediate the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11f.a.(1).
- e. Ordering Defendants to remediate the Contaminated Site in accordance with the Brownfield Act, N.J.S.A. 58:10B-1.3(a), and the SRRA, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- f. Awarding Plaintiffs any other relief this Court deems appropriate; and
- g. Reserving the right of Plaintiffs to bring a claim in the future for natural resource damages or groundwater

contamination arising out of the discharge of hazardous substances at the Site.

COUNT II

**Negligence
(Hovnanian Enterprises only)**

139. Plaintiffs repeat and incorporate each of the preceding paragraphs as though set forth in their entirety herein.

140. Hovnanian Union, the predecessor-in-interest to Defendant Hovnanian Enterprises, purchased the contaminated piece of Site to profit from the eventual sale of to-be-constructed residential condominiums.

141. Hovnanian Union agreed with DEP to assume responsibility for the remediation of the Site.

142. Despite its acceptance of responsibility for the remediation and the knowledge that the contaminated ESNA production facility footprint would soon be home to over 200 families, Hovnanian Union neglected to remediate the Site to make it safe for residential living.

143. Hovnanian Union knew of the potential risk TCE vapor could cause to Hickory Manor residents if it intruded into their homes.

144. Nonetheless, Hovnanian Union built the Hickory Manor Condominium Complex on contaminated land without appropriate engineering controls.

145. The danger the TCE vapor in the soil posed to Hickory Manor residents was reasonably foreseeable to Hovnanian Union.

146. Hovnanian Union had a duty to Hickory Manor residents and DEP to clean up the Site and use appropriate engineering controls so that residents would not be exposed to dangerous levels of TCE or other hazardous substances.

147. Hovnanian Union breached this duty by failing to remediate the TCE contamination on the property and failing to install any engineering controls to protect the Hickory Manor residents.

148. As a result of the breach of these duties, DEP expended millions in public funds to install TCE vapor mitigation systems years later when the health hazard was discovered.

WHEREFORE, Plaintiffs request judgment in their favor:

- a. Finding that Hovnanian Union was negligent by failing to exercise due care in the remediation of the Site, and construction and sale of real estate to Hickory Manor residents;
- b. Finding Hovnanian Enterprises liable for any and all damages caused as a result of the negligence of Hovnanian Union;
- c. Ordering Hovnanian Enterprises to reimburse Plaintiffs for all costs Plaintiffs have incurred to install and maintain the vapor mitigation systems or otherwise respond to the danger created by Hovnanian Union's negligence;

- d. Awarding Plaintiffs any other relief this Court deems appropriate; and
- e. Reserving the right of Plaintiffs to bring a claim against Hovnanian Enterprises in the future for natural resource damages or groundwater contamination arising out of the discharge of hazardous substances at the Site.

COUNT III

**Unjust Enrichment
(All Defendants)**

149. Plaintiffs repeat and incorporate each of the preceding paragraphs as though set forth in their entirety herein.

150. Plaintiffs have expended and will continue to expend public funds to remediate the Site.

151. Plaintiffs' expenditure of public funds for the remediation of the Site has unjustly enriched Defendants, who are legally obligated to fully fund and/or perform the remediation.

152. Defendants have neither funded nor reimbursed Plaintiffs for any public expenditures made to conduct the remediation of the Site - in particular, the mitigation systems - thus receiving a substantial financial benefit to which they were not entitled.

153. It would be unjust for Defendants to retain the financial benefits that they derived at the expense and to the detriment of the Plaintiffs - namely, the costs Plaintiffs incurred to protect the residents of Hickory Manor from hazardous TCE vapors.

154. Furthermore, the inadequate remediation paved the way for Hovnanian Union to build Hickory Manor and sell the 220 condominium units.

155. Upon information and belief, Hovnanian Union profited from the sales of the 220 condominium units.

156. It would be unjust to allow Defendant, Hovnanian Enterprises to retain any profits Hovnanian Union made from the sale of condominium units it erected on a known contaminated property, endangering the residents. These are ill-gotten gains subject to disgorgement.

WHEREFORE, Plaintiffs request judgment in their favor:

- a. Finding that Defendants have been unjustly enriched by Plaintiffs' expenditure of public funds to perform the remediation, including the installation and maintenance of mitigation systems;
- b. Ordering Defendants to pay restitution to Plaintiffs for the amount by which they were unjustly enriched, which here equates to the costs Plaintiffs have incurred, and will incur, to perform the remediation of the Site, with applicable interest;
- c. Ordering Hovnanian Enterprises to disgorge all profits that have inured to the benefit of Hovnanian Union from the sale to the Hickory Manor condominium units;

- d. Entering judgment against Defendants for all other compensatory and consequential damages;
- e. Awarding the Plaintiffs such other relief as this Court deems appropriate; and
- f. Reserving the right of Plaintiffs to bring a claim in the future for natural resource damages or groundwater contamination arising out of the discharge of hazardous substances at the Site.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By:


Mark A. Fisher
Deputy Attorney General

DATED: 12/18/2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Mark A. Fisher, Deputy Attorney General, is hereby designated as trial counsel for 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 Plaintiffs at this time, nor is any non-party known to 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 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).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By:



Mark A. Fisher
Deputy Attorney General

DATED: 12/18/2020

Civil Case Information Statement

Case Details: UNION | Civil Part Docket# L-004206-20

Case Caption: NJ DEPT. OF ENV. PROTECTION VS ABB
INSTALLATION

Case Type: ENVIRONMENTAL/ENVIRONMENTAL COVERAGE
LITIGATION

Case Initiation Date: 12/18/2020

Document Type: Complaint

Attorney Name: MARK A FISHER

Jury Demand: NONE

Firm Name: ATTORNEY GENERAL LAW

Is this a professional malpractice case? NO

Address: 25 MARKET STREET PO BOX 93

Related cases pending: NO

TRENTON NJ 08625

If yes, list docket numbers:

Phone:

**Do you anticipate adding any parties (arising out of same
transaction or occurrence)?** NO

Name of Party: PLAINTIFF : NJ Dept. of Env. Protection

Are sexual abuse claims alleged by: NJ Dept. of Env. Protection?
NO

Name of Defendant's Primary Insurance Company

(if known): Unknown

Are sexual abuse claims alleged by: Administrator, NJ Spill Fund?
NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

**Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:**

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

12/18/2020

Dated

/s/ MARK A FISHER

Signed

