

November 13, 2003

James M. Flynn
Clerk of the Appellate Division
Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625

Re: In Re: Lead Paint Litigation, A-001946-02T3

Dear Mr. Flynn:

Enclosed please find for filing the original and five (5) copies of applicant Alliance for Healthy Homes, American Public Health Association, New Jersey Citizen Action, Association for the Children of New Jersey, and Statewide Parent Advocacy Network's Notice of Motion for Leave to Appear as Amici Curiae and File a Brief In Support of Appellants' Appeal, Certification of Renée Steinhagen in Support of Motion for Leave, and proposed Order in the afore-captioned matter and filing fee. Please stamp an extra Notice of Motion and return in the self-addressed envelop.

If you have any questions about the matter, do not hesitate to contact me at 973-735-0523.

Thank you for your consideration of this matter.

Sincerely yours,

Renée Steinhagen
Renée Steinhagen

Enclosures

Cc: All attorneys

Public Interest Law Center of New Jersey
744 Broad Street, Suite 1600
Newark, New Jersey 07102

Phone: 973.735.0523
Fax: 973.642.8665
E-mail: newjersey@appleseed.net
Website: <http://www.appleseed.net/nj>

Renée Steinhagen, Esq.
NJ Appleseed Public Interest Law Center
744 Broad St., Suite 1600
Newark, NJ 07102
973-735-0523 phone
973-735-0524 fax

Attorney for Amici Curiae
Alliance for Healthy Homes;
American Public Health Association;
Association for the Children of New Jersey;
New Jersey Citizen Action;
Statewide Parent Advocacy Network

: :
: :
: SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
IN RE: : DOCKET NUMBER: A-001946-02T3
LEAD PAINT LITIGATION :
: CIVIL ACTION
: :
: NOTICE OF MOTION FOR LEAVE TO
: APPEAR AS AMICI CURIAE AND TO
: SUBMIT BRIEF ON BEHALF OF
: ALLIANCE FOR HEALTHY HOMES;
: AMERICAN PUBLIC HEALTH
: ASSOCIATION; NEW JERSEY CITIZEN
: ACTION; ASSOCIATION FOR THE
: CHILDREN OF NEW JERSEY;
: STATEWIDE PARENT
: ADVOCACY NETWORK
_____:

TO: James M. Flynn
Clerk of the Appellate Division
Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625

ON NOTICE TO:

COUNSEL FOR DEFENDANTS:

Rosemary J. Bruno, Esq.
Klett, Rooney Lieber & Schorling
550 Broad Street, Suite 810
Newark, New Jersey 07102

John M. Beilwoar, Esq.
Ezra D. Rosenberg, Esq.
Diane P. Sullivan, Esq.
Dechert
Princeton Pike Corporate Center
997 Lenox Drive
Building 3, Suite 210
Lawrenceville, New Jersey 08648

David W. Field, Esq.
Lowenstein Sandler PC
65 Livingston Avenue
Roseland, New Jersey 07068

Anne M. Patterson, Esq.
Riker, Danzig, Scherer, Hyland & Perretti, LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962

Lauren E. Handler, Esq.
Steven P. Benenson, Esq.
Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway
P.O. Box 1997
Morristown, New Jersey 07962

Andrew T. Berry, Esq.
John E. Flaherty, Esq.
Charles F. Rysavy, Esq.
Edward R. Schreiber, Esq.
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102

Ronald J. Levine, Esq.
Herrick, Feinstein
104 Carnegie Center
Princeton, New Jersey 08540

COUNSEL FOR PLAINTIFFS:

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

Michael P. Burakoff, Esq.
18 Bank Street, 4th Floor
Morristown, NJ 07960

Christopher M. Placitella, Esq.
Wilentz, Goldman & Spitzer
90 Woodbridge Center Drive
Woodbridge, NJ 07095

Michael Perrucci, Esq.
Fischbein, Badillo, Wagner & Harding
235 Frost Avenue
Phillipsburg, NJ 08865

Norman M. Hobbie, Esq.
Hobbie, Corrigan, Bertucio & Tashjy, P.C.
125 Wyckoff Road
Eatontown, New Jersey 07724

Motley Rice LLC
Fidelma L. Fitzpatrick, Esq.
John J. McConnell, Esq.
321 South Main Street
PO Box 6067
Providence, RI 02940-6067

PLEASE TAKE NOTICE that the applicants, proposed amici curiae Alliance for Healthy Homes, American Public Health Association, New Jersey Citizen Action, Association for the Children of New Jersey, and Statewide Parent Advocacy Network, hereby move, pursuant to R. 1:13-9, for leave to appear as amici curiae in this matter and to submit a brief in support of Appellants' appeal and in opposition to the decision below dismissing the Complaint in this matter.

Applicants, a group of local and national organizations dedicated to protecting the health and safety of children, have a special interest in eliminating childhood lead poisoning in New Jersey and thus are intimately involved in the subject matter of this litigation. In their brief, the applicants intend to address the magnitude of the problem in New Jersey, the impact of lead poisoning on children and the communities in which they reside, the need for the remedy provided by a common law nuisance claim, and the inapplicability of the preemption doctrine.

PLEASE TAKE FURTHER NOTICE that in support of their motion, amici will rely upon the Certification of Renée Steinhagen and the brief submitted thereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that oral argument is not requested.

Respectfully submitted,

NJ APPLESEED PUBLIC INTEREST LAW CENTER
Attorney for Applicant Amici Curiae

By: Renée Steinhagen
Renée Steinhagen

Dated: November 12, 2003

Renée Steinhagen, Esq.
NJ Appleseed Public Interest Law Center
744 Broad Street, Suite 1600
Newark, NJ 07102
973-735-0523 phone
973-735-0524 fax

Attorney for Amici Curiae
Alliance for Healthy Homes;
American Public Health Association;
Association for the Children of New Jersey;
New Jersey Citizen Action;
Statewide Parent Advocacy Network

_____	:	
	:	
	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
IN RE:	:	DOCKET NUMBER: A-001946-02T3
LEAD PAINT LITIGATION	:	
	:	CIVIL ACTION
	:	
	:	CERTIFICATION OF
	:	RENÉE STEINHAGEN IN
	:	SUPPORT OF MOTION FOR
	:	<u>LEAVE TO APPEAR AS AMICI</u>
_____	:	

I, RENÉE STEINHAGEN, hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and am the Executive Director of New Jersey Appleseed Public Interest Law Center, attorney for applicants amici curiae Alliance for Healthy Homes, American Public Health Association; New Jersey Citizen Action, Association for the Children of New Jersey, and Statewide Parent Advocacy Network in connection with this matter. I make this certification in support of applicants' motion, pursuant to R. 1:13-9, for leave to appear as amici curiae and to file

a brief in support of Appellants' appeal and in opposition to the decision below dismissing the Complaint.

2. The applicants constitute a group of local and national nonprofit organizations that are dedicated, as part of their respective missions, to protect the health and safety of children. Each of the applicants has a specific interest in eliminating childhood lead poisoning in New Jersey and across the country; and, each has devoted a considerable portion of its organization's time and resources to eradicate the public health problem in children caused primarily by exposure to lead in paint in furtherance of the public interest.

3. The Alliance for Healthy Homes works to protect children from lead and other home environmental health hazards. A national, non-profit public interest organization, the Alliance advocates for policy solutions and builds the capacity of communities to prevent in-home hazards from harming the health of children, their families, and all residents. The Alliance is working to ensure that state and government lawsuits hold the lead industry accountable for problems stemming from lead-based paint are structured to maximize public health benefits.

4. The American Public Health Association (APHA) is the oldest and largest organization of public health professionals in the world, representing more than 50,000

members from over 50 occupations of public health. APHA brings together researchers, health service providers, administrators, teachers, and other health workers in a unique, multidisciplinary environment of professional exchange, study, and action. APHA is concerned with a broad set of issues affecting personal and environmental health, including federal and state funding for health programs, pollution control, programs and policies related to chronic and infectious diseases, a smoke-free society, and professional education in public health. APHA's mission is to improve public health for everyone. In 1997, APHA adopted a resolution on the "Responsibilities of the Lead Pigment Industry to Support Efforts to Address Lead Poisoning" which declared APHA's support for "efforts to increase the resources devoted to lead abatement, reduction of lead hazards in housing, and community-based prevention and health education " and for "efforts to raise such resources through a variety of means including litigation against manufacturers of products that contain lead (such as lead manufacturers), legislation, negotiation, and fees". (APHA Policy Number: 9704, January 1, 1997)

5. New Jersey Citizen Action (NJCA), is New Jersey's largest independent citizen watchdog organization with over 100 affiliated labor, tenant, senior, religious, environmental, and community groups representing 60,000

family members. NJCA organizes around consumer issues that affect low and moderate-income people in New Jersey. It is governed by a 15 member Board of Directors comprised of leaders of its affiliated organizations. NJCA has devoted full-time staff and resources to lead poisoning prevention for the last nine years of its twenty-one year history. Its efforts have included pushing for New Jersey's Universal Screening Law, conducting educational seminars for hundreds of parents and community leaders, creating financing remedies for the high cost of lead abatement, and organizing coalitions to combat lead poisoning. It seeks to participate in this litigation because it has become familiar with just how vast the problem of lead poisoning is in New Jersey and how few resources there are on a state and municipal level to combat it. NJCA firmly believes that the lead paint industry must meaningfully contribute to the solution in the same order of magnitude as federal, state, and local governments and their community partners have.

6. The Association for Children of New Jersey (ACNJ) has been the voice for children, dedicated to advancing children's rights and to improving programs and policies for New Jersey's children and families. In the health arena, ACNJ was actively involved in the passage of New Jersey's universal lead screening law and New Jersey's state

health insurance program, initially KidCare and then New Jersey FamilyCare.

7. The Statewide Parent Advocacy Network of New Jersey, Inc. (SPAN) is a non-profit organization whose mission is to empower families, inform and involve professionals and other individuals interested in the healthy development and educational rights of children, and enable all children to become fully participating and contributing members of their communities and society generally. SPAN's primary focus is on those children and families who are at greatest risk due to poverty, disability, discrimination based on race, sex, language, or immigrant status, family composition, or other special circumstances. SPAN provides information, training, technical assistance, leadership development, and advocacy for children ages 0-21 and their families. SPAN is concerned with the issues of lead poisoning and prevention because of the negative impacts on the health and mental health of children who are exposed to lead. Children with lead poisoning are more likely to develop disabilities and have special health care needs. SPAN is a member of several anti-lead coalitions at the state and local level, and provides assistance to the families of children who have been poisoned by lead on health and educational resources to address their children's special needs. SPAN

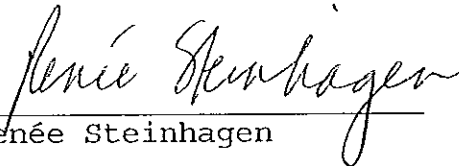
knows from its experience with individual families and on a policy level that more resources need to be directed at lead hazard control and removal of lead hazards from properties to prevent future children from being lead poisoned.

8. As described above, each of the applicant amici has a special interest in this litigation insofar as each seeks justice for the many children and their families whose lives have been irreparably damaged by exposure to lead. Their respective interests originate from their organizational missions, their tireless advocacy on behalf of vulnerable children, and their dedication of resources toward increasing awareness and public action to reduce lead paint hazards and protect at-risk children from becoming exposed to lead.

9. As a result of their respective missions and activities, each of the applicants is intimately involved in the subject matter of this litigation. In their brief, they accordingly intend to address the magnitude of the lead poisoning problem in New Jersey, the impact of lead poisoning on children and the communities in which they reside, the need for the remedy provided by a common law nuisance claim, and the inapplicability of the preemption doctrine to the case at hand.

10. For the foregoing reasons, I respectfully request that this Court grant applicants' motion for leave to appear as amici curiae and submit a brief in support of Appellants' appeal. A copy of the proposed brief is attached hereto as Exhibit A.

11. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Renée Steinhagen

Dated: November 12, 2003

Renée Steinhagen, Esq.
NJ Appleseed Public Interest Law Center
744 Broad Street, Suite 1600
Newark, NJ 07102
973-735-0523 phone
973-735-0524 fax

Attorney for Amici Curiae
Alliance for Healthy Homes;
American Public Health Association;
Association for the Children of New Jersey;
New Jersey Citizen Action;
Statewide Parent Advocacy Network

IN RE: :
LEAD PAINT LITIGATION :
: SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
: DOCKET NUMBER: A-001946-02T3
: CIVIL ACTION
: CERTIFICATE OF SERVICE

I, RENÉE STEINHAGEN, hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and am the Executive Director NJ Appleseed Public Interest Law Center, attorney for applicant amici curiae Alliance for Healthy Homes, American Public Health Association, New Jersey Citizen Action, Association for the Children of New Jersey, and Statewide Parent Advocacy Network in connection with this matter.

2. On November 13, 2003, I caused to be filed an original and five (5) copies of the following documents

with Mr. James Flynn, Clerk of the Appellate Division,
Hughes Justice Complex, 25 Market Street, Trenton, New
Jersey 08625:

Notice of Motion for Leave to Appear as Amici Curiae
and to Submit Brief on Behalf of Alliance
for Healthy Homes, American Public Health
Association, New Jersey Citizen Action,
Association for the Children of New Jersey,
and Statewide Parent Advocacy Network;

Certification of Renée Steinhagen, Esq. In Support
of Motion for Leave with proposed Brief of
Amici Curiae Alliance for Healthy Homes,
American Public Health Association, New
Jersey Citizen Action, Association for the
Children of New Jersey, and Statewide Parent
Advocacy Network;

Proposed Order; and
Certification of Service.

3. I also caused to be served, by regular mail on
November 13, 2003, two (2) copies of the above-referenced
documents on the following counsel in this matter:

COUNSEL FOR DEFENDANTS:

Rosemary J. Bruno, Esq.
Klett, Rooney Lieber & Schorling
550 Broad Street, Suite 810
Newark, New Jersey 07102

John M. Beilwoar, Esq.
Ezra D. Rosenberg, Esq.
Diane P. Sullivan, Esq.
Dechert
Princeton Pike Corporate Center
997 Lenox Drive
Building 3, Suite 210
Lawrenceville, New Jersey 08648

David W. Field, Esq.
Lowenstein Sandler PC
65 Livingston Avenue
Roseland, New Jersey 07068

Anne M. Patterson, Esq.
Riker, Danzig, Scherer, Hyland & Perretti, LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962

Lauren E. Handler, Esq.
Steven P. Benenson, Esq.
Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway
P.O. Box 1997
Morristown, New Jersey 07962

Andrew T. Berry, Esq.
John E. Flaherty, Esq.
Charles F. Rysavy, Esq.
Edward R. Schreiber, Esq.
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
Ronald J. Levine, Esq.
Herrick, Feinstein
104 Carnegie Center
Princeton, New Jersey 08540

COUNSEL FOR PLAINTIFFS:

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

Michael P. Burakoff, Esq.
18 Bank Street, 4th Floor
Morristown, NJ 07960

Christopher M. Placitella, Esq.
Wilentz, Goldman & Spitzer
90 Woodbridge Center Drive
Woodbridge, NJ 07095


Michael Perrucci, Esq.
Fischbein, Badillo, Wagner & Harding
235 Frost Avenue
Phillipsburg, NJ 08865

Norman M. Hobbie, Esq.
Hobbie, Corrigan, Bertucio & Tashjy, P.C.
125 Wyckoff Road

Eatontown, New Jersey 07724

Motley Rice LLC
Fidelma L. Fitzpatrick, Esq.
John J. McConnell, Esq.
321 South Main Street
PO Box 6067
Providence, RI 02940-6067

4. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



RENÉE STEINHAGEN

Dated: November 13, 2003

IN RE:

LEAD PAINT LITIGATION

:
:
: SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
: DOCKET NUMBER: A-001946-02T3

:
:
: CIVIL ACTION
:
:
:
:

BRIEF IN SUPPORT OF MOTION TO APPEAR AS AMICI CURIAE AND ON
BEHALF OF AMICI ALLIANCE FOR HEALTHY HOMES; AMERICAN PUBLIC
HEALTH ASSOCIATION; NEW JERSEY CITIZEN ACTION; THE
ASSOCIATION FOR THE CHILDREN OF NEW JERSEY; AND STATEWIDE
PARENT ADVOCACY NETWORK

NJ APPLESEED PUBLIC INTEREST LAW CENTER
744 Broad St. - 16th Floor
Newark, NJ 07102
973-735-0523 phone
973-735-0524 fax

Attorney for Amici Curiae
Alliance for Healthy Homes; American
Public Health Association; New Jersey
Citizen Action; Association for the
Children of New Jersey; and Statewide
Parent Advocacy Network

On the brief:

Renee Steinhagen

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICI CURIAE	1
PRELIMINARY STATEMENT	4
PROCEDURAL HISTORY	6
STATEMENT OF FACTS	6
ARGUMENT	7
I. IN DETERMINING THIS APPEAL, THE COURT MUST CONSIDER THE MAGNITUDE OF THE LEAD POISONING PROBLEM IN NEW JERSEY	7
II. THE IMPACT OF LEAD POISONING ON CHILDREN, TOWNS, AND HOMEOWNERS IS SEVERE AND LONG LASTING	10
III. A PUBLIC NUISANCE CLAIM IS UNIQUELY SUITED TO SOLVE THE EPIDEMIC LEAD POISONING PROBLEM IN NEW JERSEY	13
IV. THE NEW JERSEY LEAD PAINT ACT DOES NOT PREEMPT THE GOVERNMENT ENTITIES FROM BRINGING THIS SUIT	18
V. APPELLANTS' COMPLAINT MUST BE PERMITTED TO PROCEED IN ORDER TO FURTHER THE INTERESTS OF NEW JERSEY'S CHILDREN	23
CONCLUSION	26

TABLE OF AUTHORITIES

CASES

PAGE(S)

<u>Mayor and Council of Borough of Rockaway v. Klockner,</u> 811 F.Supp. 1039 (D.N.J. 1993)	13, 17
<u>Township of Cherry Hill v. N.J. Racing Comm'n,</u> 131 N.J. Super. 125 (N.J. 1974)	14
<u>NAACP v. Acusport, Inc.,</u> 2003 WL 21689641 (E.D.N.Y.)	14, 16
<u>Ajamian v. Township of North Bergen,</u> 103 N.J. Super. 61 (1968)	19-20
<u>James v. Arms Technology, Inc.,</u> 359 N.J. Super. 291 (N.J.App.Div. 2003)	15, 17-18, 19
<u>Camden County Bd. of Chosen Freeholders v. Beretta</u> <u>U.S.A. Corp.,</u> 123 F.Supp. 245 (D.N.J. 2000)	15
<u>Fred v. Mayor,</u> 10 N.J. 515(1952)	18

STATUTES

<u>N.J.S.A. 26-2Q-1</u>	7-10, 12, 24
<u>N.J.S.A. 26-2-137.4</u>	20
<u>N.J.S.A. 24:14A-5</u>	7, 17
<u>N.J.S.A. 24:14A-7</u>	21
<u>N.J.S.A. 24:14A-8</u>	21

RULES

<u>R. 1:13-9</u>	1
------------------------	---

OTHER AUTHORITIES

<u>Prosser & Keeton on the Law of Torts,</u> § 90 at 643 (5th ed. 1984)	14
New Jersey Department of Health and Senior Services, "Childhood Lead Poisoning in New Jersey," Annual Report Fiscal Year 2002	8-13, 20- 22
ELIZABETH BLACKMAR, <i>Accountability for Public Health,</i> in HIVES OF SICKNESS, PUBLIC HEALTH AND EPIDEMICS IN NEW YORK CITY 54 (David Rosner, ed. 1995)	5
Centers for Disease Control, Morbidity and Mortality Weekly Report, vol. 46, no. 7 (1997)	9

INTEREST OF AMICI CURIAE

Pursuant to R. 1:13-9, the special interests asserted by amici are as follows:

The Alliance for Healthy Homes works to protect children from lead and other home environmental health hazards. A national, non-profit public interest organization, the Alliance advocates for policy solutions and builds the capacity of communities to prevent in-home hazards from harming the health of children, their families, and all residents. The Alliance is working to ensure that state and government lawsuits to hold the lead industry accountable for problems stemming from lead-based paint are structured to maximize public health benefits.

The American Public Health Association (APHA) is the oldest and largest organization of public health professionals in the world, representing more than 50,000 members from over 50 occupations of public health. APHA brings together researchers, health service providers, administrators, teachers, and other health workers in a unique, multidisciplinary environment of professional exchange, study, and action. APHA's mission is to improve public health for everyone.

In 1997, APHA adopted a resolution on the "Responsibilities of the Lead Pigment Industry to Support

Efforts to Address Lead Poisoning" which declared APHA's support for "efforts to increase the resources devoted to lead abatement, reduction of lead hazards in housing, and community-based prevention and health education" and for "efforts to raise such resources through a variety of means including litigation against manufacturers of products that contain lead (such as lead manufacturers), legislation, negotiation, and fees". (APHA Policy Number: 9704, January 1, 1997)

New Jersey Citizen Action, NJCA, is the state's largest independent citizen watchdog organization with over 100 affiliated labor, tenant, senior, religious, environmental, and community groups representing 60,000 family members. We work to organize around consumer issues that affect low and moderate-income people in New Jersey. We are governed by a 15 member Board of Directors comprised of leaders of our affiliated organizations. NJCA has devoted full time staff and resources to lead poisoning prevention for the last nine years of our twenty-one year history. That includes pushing for a New Jersey's Universal Screening Law, conducting educational seminars for hundreds of parents and community leaders, creating financing remedies for the high cost of lead abatement, and organizing coalitions to combat lead poisoning. We are

signing this friend of the court brief because we have become familiar with just how vast the problem of lead poisoning is in NJ and how few resources there are on a state and municipal level to combat it. We truly believe the lead paint industry must meaningfully contribute to the solution in the same order of magnitude that the federal, state, and local governments and their community partners have.

The Association for Children of New Jersey (ACNJ) has been the voice for children, dedicated to advancing children's rights and to improving programs and policies for New Jersey's children and families. In the health arena, ACNJ was actively involved in the passage of New Jersey's universal lead screening law and New Jersey's state health insurance program, initially KidCare and then New Jersey FamilyCare.

The Statewide Parent Advocacy Network of New Jersey, Inc. (SPAN) is a non-profit organization whose mission is to empower families and inform and involve professionals and other individuals interested in the healthy development and educational rights of children, to enable all children to become fully participating and contributing members of our communities and society. SPAN's primary focus is on those children and families who are at greatest risk due to

poverty, disability, discrimination based on race, sex, language, or immigrant status, family composition, or other special circumstances. SPAN provides information, training, technical assistance, leadership development, and advocacy for children ages 0-21 and their families. SPAN is concerned with the issues of lead poisoning and prevention because of the negative impacts on the health and mental health of children who are exposed to lead. Children with lead poisoning are more likely to develop disabilities and have special health care needs. SPAN is a member of several anti-lead coalitions at the state and local levels, and provides assistance to families of children who have been lead-poisoned on health and education resources to address their children's special needs. We know from our experience with individual families and on a policy level that more resources need to be directed at lead hazard control and removal of lead hazards from properties to prevent future children from being lead poisoned.

PRELIMINARY STATEMENT

Several counties and municipalities in New Jersey have brought this lawsuit on behalf of their citizens in pursuit of a solution to the problem of lead poisoning among their children. The impact of lead poisoning on children and

society as a whole is staggering. In children, an elevated blood lead level can cause permanent brain and kidney damage, learning disabilities, and behavioral disorders. For society, lead poisoning results in generations of children whose potential is thwarted and significant monetary costs needed to fund programs to combat the disease at all levels from screening, treatment, and abatement programs to educational and mental health programs.

The damage must stop. Government entities have a responsibility to protect the public welfare against those companies whose conduct has poisoned the environment including through litigation, if necessary. This suit is rooted in long-standing principles of common law public nuisance, a cause of action that is uniquely suited to protect the public health and welfare. In fact, in his 1842 report on sanitary reform, John Griscom, a physician and New York City inspector, "urged that the definition of public nuisance 'be extended to the correction of interior conditions of tenements when dangerous to health and life. The latter should be regarded with as much solicitude as the prosperity of citizens.'"¹ In light of all the

¹ ELIZABETH BLACKMAR, *Accountability for Public Health, in HIVES OF SICKNESS, PUBLIC HEALTH AND EPIDEMICS IN NEW YORK CITY* 54 (David

scientific research conducted on the topic of childhood lead poisoning and the recognition of the dangers that it poses to health and life, there can be no doubt that the most vulnerable members of the citizenry, children, need protection from lead's destructive impact.

Many non-governmental organizations are also working diligently to assist families impacted by lead poisoning and advance primary prevention. This is a national public health problem about which the Alliance for Healthy Homes; the American Public Health Association; New Jersey Citizen Action; the Association for the Children of New Jersey; and Statewide Parent Advocacy Network have invested considerable effort to catalyze awareness and action to protect children from lead poisoning.

This lawsuit, however, targets the source and cause of the public nuisance. The lead companies named as parties caused and contributed to the creation of the public nuisance and bear responsibility for creating the solution. These lead companies acted carelessly and with complete disregard for the health and safety of the children of New Jersey. Yet, they have utterly failed to help resolve the

Rosner, ed. 1995) (quoting John Griscom, "Annual Report of the Interments of the City and County of New York for the Year 1842, with Remarks thereon and a Brief View of the Sanitary Conditions of the City," Board of Assistant Alderman, *Documents*, 9 no. 59, 175-176.)

problem; they refuse to accept a scintilla of responsibility for the harm to children that they have caused. In essence, these lead pigment companies ask this Court to immunize them from liability as a matter of law by upholding the dismissal of this case, leaving the burden of lead poisoning on government, social service organizations, and lead poisoned children and their families. This Court must not sanction their outrageous display of corporate irresponsibility.

After over a century of denying the toxicity of lead and then sidestepping responsibility by blaming others, it is time for these companies to become part of the solution.

PROCEDURAL HISTORY

Amici hereby rely upon the procedural history set forth in Appellants' brief.

STATEMENT OF FACTS

Amici hereby rely upon the statement of facts set forth in Appellants' brief.

ARGUMENT

- I. IN DETERMINING THIS APPEAL, THE COURT MUST CONSIDER THE MAGNITUDE OF THE PROBLEM OF LEAD POISONING IN NEW JERSEY

The New Jersey Legislature has found that:

- Lead poisoning is the most prevalent environmental health problem facing children in New Jersey today; (N.J.S.A. 26-2Q-1.)
- . . . the effects of lead poisoning in children include learning disabilities, mental retardation, behavioral disorders, hyper-irritability, lack of coordination, loss of appetite, vomiting, abdominal pain, convulsions, permanent brain damage and death; (N.J.S.A. 26-2Q-1.)
- lead poisoning is caused by environmental exposure to lead and the most significant sources are lead-based paint in older housing and lead-laden dust and soil; (N.J.S.A. 26-2Q-1.) and
- [T]he presence of lead paint upon the interior of any dwelling or upon any exterior surface that is readily accessible to children causing a hazard to the occupants or anyone coming in contact with such surfaces is . . . a public nuisance. (N.J.S.A. 24:14A-5.) (Emphasis added.)

The New Jersey Legislature could not ignore the serious and debilitating effects of lead poisoning on the children of this state and their families, and is doing what it can to address this terrible disease and its most common source, lead-based paint. Through the Lead Paint Act, the Legislature has charged local boards of health in New Jersey and the medical community with the challenging tasks of screening children for lead poisoning, tracking

homes with lead hazards, and creating safe housing by abating those hazards.

"The Department of Health estimates that over 177,000 children under the age of five in New Jersey are at high risk of lead poisoning. . . ." N.J.S.A. 26-2Q-1. In 2002, 5,457 children in New Jersey had levels greater than 10 µg/dL. See New Jersey Department of Health and Senior Services, "Childhood Lead Poisoning in New Jersey," Annual Report Fiscal Year 2002 at 20, Fig. 2 (hereinafter "2002 Annual Report"). However, this figure is a "snapshot" and fails to account for previously poisoned children whose levels have returned to less than 10µg/dL. While a decreasing blood lead level is a step in the right direction for a child's health, the neurological damage that has occurred while the blood lead level was elevated is irreversible. "[E]very county in the State had children with elevated test results, including at least one child with a test result [greater than or equal to] ≥20 µg/dL." Id. at 16. Because lead poisoning is primarily caused by lead-based paint, and that paint is present in housing throughout New Jersey, "all children in the State are at risk." Id. at 57.

One of the most disturbing aspects of lead poisoning is that a child is most in danger in his or her home. A

home should be a place of safety and sanctity, where children are protected from the insults and perils of the outside world. But in homes where lead paint has been applied to the walls and woodwork, the children are living amidst poison. "The Department of Health estimates that approximately 65% of New Jersey's housing stock may contain lead-based paint, representing a potential public health hazard of alarming magnitude." N.J.S.A. 26-2Q-1. Therefore, the majority of housing in New Jersey is unsafe for children because of the harm or threat of harm posed by lead-based paint.

Lead poisoning strikes innocent children at a critical point in their development - between 6 months and 6 years of age. (2002 Annual Report at 57.) In fact, exposure often occurs when children simply behave as children - by crawling on the floor, pulling themselves up by holding onto windowsills, and engaging in normal hand-to-mouth behavior.

While the number of lead-poisoned children and the prevalence of lead-based paint in housing reflect the fact that lead poisoning can and does impact children and families of all backgrounds, the reality is that lead poisoning affects lower income and minority children at

substantially higher percentages. "[C]hildren living in urban areas are at the highest risk, due to the concentration both of older housing, which is more likely to have lead-based paint, and low-income housing," (2002 Annual Report at 8.) African-American children are **five times** more likely to be lead poisoned than children of other races and low-income children are **eight times** more likely to be poisoned. Centers for Disease Control, Morbidity and Mortality Weekly Report, vol. 46, no. 7 (1997). Combating lead poisoning is important to advancing social justice because the disease most impacts minority and distressed communities. Perhaps not surprisingly, the communities hardest hit by lead poisoning most lack the resources to address the problem.

Despite the plans and programs instituted by legislation and the tireless efforts of medical professionals and community groups, childhood lead poisoning is still "the most prevalent environmental health problem facing children in New Jersey today." (N.J.S.A. 26-2Q-1.) New Jersey municipalities must have the opportunity to exercise their longstanding rights to bring an action for common law public nuisance against the lead companies, whose conduct is at the source of this environmental health problem.

II. THE IMPACT OF LEAD POISONING ON CHILDREN, TOWNS, AND HOMEOWNERS IS SEVERE AND LONG LASTING.

There is no cure for lead poisoning. Once lead is absorbed into the human body, it attacks the kidneys, the brain and the nervous system. (2002 Annual Report at 57.) That damage is permanent and irreversible; no prescription medication or surgical procedure can reverse lead's adverse effects. The Centers for Disease Control has established 10µg/dL of lead in blood as the level of concern - the level at which lead causes damage. However, "even low levels of lead exposure can cause subtle neurological changes, reduced concentration and attentiveness, reduced I.Q. scores, behavioral problems, and learning disabilities." N.J.S.A. 26-2Q-1. This is why controlling lead hazards before children are poisoned is so critical. However, because of a lack of resources, the state does not inspect a single home until after it receives notice that a child is poisoned there.

The Physicians Lead Advisory Committee (PLAC), established by the New Jersey Department of Health and Human Services (DHSS), has expressed its frustration with the emphasis on screening in lieu of prevention; the committee noted that "using children to detect lead hazards through identifying the children already exposed is not

good public policy." (2002 Annual Report at 36.) This is especially true in light of "recent research that has shown that treatment of children with lead poisoning, while reducing their blood lead levels, does not result in improvements in the neurological damage caused by their exposure." Id. Thus, despite the fact that efforts to control lead hazards can be targeted based on factors such as housing age, income levels, and lead poisoning prevalence, nothing is done until a child is permanently injured. This is a morally bankrupt approach to public policy.

Not only are lead poisoning's physical, mental, and emotional manifestations devastating to the child and his or her family as they attempt to cope on a day-to-day basis with this disease, they also impact the child's future. "Children who have suffered from the adverse effects of lead exposure for an extended period of time are frequently in need of special health and educational services in order to assist them to develop to their potential as productive members of society." (2002 Annual Report at 57.) "[T]hese problems persist and can adversely affect the child's chances for success in school and life." N.J.S.A. 26-2Q-1. These special accommodations can put a financial and emotional burden on the family. They also strain the

cities and towns where these children reside because these children require services and programs that drain the resources of local school systems, health programs, and juvenile justice systems.

Due to the strict mandates of the New Jersey Lead Paint Act, lead poisoning imposes a tremendous cost on homeowners as well. Under the current statutory scheme, homeowners are saddled with the enormous financial burden attributable to the presence of lead paint in their homes. The cost of lead paint abatement is often prohibitive, costing between \$10,000 and \$15,000 to abate one unit of housing in New Jersey. (2002 Annual Report at 28.) These numbers often drive homeowners to perform a minimal amount of work themselves, often in an unsafe manner, which may further expose the current residents and does not permanently protect future residents. In high-risk properties in marginal and distressed communities, unless all lead paint is removed from a home in a safe manner, the presence of that lead continues to be a hazard.

Furthermore, homeowners are generally on their own when it comes to financing; "there is very limited private or public funding to assist property owners with lead abatement." (2002 Annual Report at 28.) The amount of time that an owner must dedicate to making their property lead

free is also burdensome. "[I]t can take several years to complete abatement of a property where lead hazards have been identified." (2002 Annual Report at 27.) As the years pass, more children may inhabit that home, with increased risks of lead poisoning. Considering the time it can take to complete a single abatement, it is clear that without more funding, children will continue to be used as "lead detectors" in New Jersey and this public health crisis will persist.

**III. A PUBLIC NUISANCE CLAIM IS UNIQUELY SUITED TO
SOLVE THE EPIDEMIC LEAD POISONING PROBLEM IN NEW
JERSEY.**

The cities and counties in New Jersey who have brought this case against the lead companies do have a long-standing cause of action available to them for resolving this public health problem that plagues their children. As government entities acting in their representative capacities, they are uniquely well positioned to bring an action for public nuisance, which would allow hazardous properties to be inspected and abated before a child is poisoned.

A public nuisance "consists of an unreasonable interference with the exercise of a right common to the general public." Mayor and Council of Borough of Rockaway v. Klockner, 811 F.Supp. 1039, 1056 (D.N.J. 1993) (citing

Jersey City Redevelopment Authority v. PPG Industries, 655 F.Supp. 1257, 1265 (D.N.J. 1987)). It "applies to that class of wrongs which arise from [a persons] own improper, indecent, or unlawful personal conduct, working an obstruction or injury to a right of another, or of the public and producing material annoyance, inconvenience, discomfort or hurt." Township of Cherry Hill v. N.J. Racing Comm'n, 131 N.J. Super. 125, 657 (N.J. 1974) (citing 66 C.J.S., Nuisances, §1).

Public nuisance law has been applied to cases where the magnitude of the harm is sufficiently widespread that it affects common law rights belonging to the general public. The goal underlying a public nuisance claim is to solve the problem that is harming the public. It is unique in that way - the objective is not to compensate the victims through money damages, but to direct the resources contributed by the wrongdoer to addressing the root of the problem. With thousands of children poisoned last year alone and lead paint present in 65% of all homes in the state, it is clear that the problem is pervasive.

A public nuisance cause of action is also unique because it is usually best accomplished by a government entity on behalf of the public. "A state actor is both in

the best position and has a responsibility to protect the public that has entrusted it with their representation." NAACP v. Acusport, Inc., 2003 WL 21689641 *36 (E.D.N.Y.). "Redress of the wrong to the community must be left to its appointed representatives." W. Page Keeton et al., Prosser & Keeton on the Law of Torts, § 90 at 643 (5th ed. 1984). It is a long standing principle that government entities have a unique power to address harms common to the public. "[A] municipality's right to abate a nuisance is derived from its 'police power.' A municipal body also has a common-law right to abate a public nuisance by summary proceedings." James v. Arms Technology, Inc., 359 N.J. Super. 291, 325 (N.J.App.Div. 2003); See also Camden County Bd. of Chosen Freeholders v. Beretta U.S.A. Corp., 123 F.Supp. 245, 265 (D.N.J. 2000).

These municipalities have the power to act on behalf of the citizens of New Jersey; in fact, by virtue of their traditional police power, they are obligated to do so as government actors responsible for the public health and welfare. Government actors have the unique ability to enact uniform changes and remedies in order to best serve their constituencies. Under the current system, funding and limited resources make routine, proactive inspections and enforcement impossible. As a result, governments to

date have sought to minimize the effects of the harm, by retroactively offering medical intervention to poisoned children and attempting some abatement. Remedies available through a public nuisance cause of action would enable screening, inspections, enforcement, and abatement to be instituted proactively to prevent harm from ever occurring. Thus, a public nuisance approach is critical to enabling cities and counties to fulfill their responsibilities as protectors of the public.

However, these government actors are not the only parties who have worked toward eliminating childhood lead poisoning as a public health crisis. In the context of guns, another scourge on urban and suburban society, a court recognized the "three main elements of American societal organization that historically cooperated in the interest of the welfare of our people: (1) voluntary non-profit, religious, and other private associations of involved members of the community, . . .; (2) government, . . .; and (3) private entrepreneurial structures, [such as] manufacturers, importers, and distributors" NAACP v. Acusport, Inc., 2003 WL 21689641 *7. There is no question that the first two of those groups are actively and passionately involved in protecting the welfare of

children at risk for lead poisoning. The final group is noticeably absent.

At a most basic level, the lead companies named by the government entities in this suit are responsible for creating the public nuisance brought about by the widespread presence of lead-based paint in the state's housing stock. Absent the lead, paint in older homes would not present the toxic threat it does today. The lead industry produced the lead pigment in paint currently found in homes throughout the state. Despite this, these companies have fought every effort to include them in seeking solutions.

In short, these lead companies have created a public nuisance. Even the New Jersey Legislature found that "the presence of lead paint upon the interior of any dwelling or upon any exterior surface that is readily accessible to children causing a hazard to the occupants or anyone coming in contact with such surfaces is . . . a public nuisance." N.J.S.A. 24:14A-5. New Jersey's children and their families have a right to live in homes free from harm or the threat of harm. Lead-based paint in housing throughout the state presents "an unreasonable interference with the exercise of a right common to the general public." Mayor and Council of Borough of Rockaway v. Klockner, 811

F.Supp. 1039, 1056 (D.N.J. 1993) (citing Jersey City Redevelopment Authority v. PPG Industries, 655 F.Supp. 1257, 1265 (D.N.J. 1987)).

Despite their clear culpability, these lead companies have succeeded in laying the entire burden upon homeowners, who happen to purchase old homes with lead paint; municipalities, who are charged with redressing common harms; and poisoned children and their families. Unfortunately, both homeowners and municipalities are grossly under funded and thus, not in any position to adequately address the harms in a proactive way.

These lead companies, however, are well-positioned to assist municipalities with their goal of eliminating childhood lead poisoning. A New Jersey court has recently confirmed this state's "strong public interest in protecting the public," finding that gun manufacturers should not be insulated from liability by dismissal on the pleadings because it would undermine that important public policy. James, 359 N.J. Super. at 320. Just as in James, it cannot be seriously debated that New Jersey has a strong public interest in protecting its children from lead poisoning and its attendant costs. Such a policy would be

seriously undermined if these lead companies are insulated from liability for their irresponsible and willful conduct.

IV. THE NEW JERSEY LEAD PAINT ACT DOES NOT PREEMPT THE GOVERNMENT ENTITIES FROM BRINGING THIS SUIT

Many states have enacted statutes that seek to address lead poisoning. This legislative response is a starting point; but it is clear that a statutory scheme alone will not resolve New Jersey's lead paint problem. This legislation, or some form of it, has been in effect in New Jersey since 1971, and while the number of lead poisoned children has decreased during that 32 year period, lead poisoning remains the most serious environmental health problem affecting children in New Jersey. After more than three decades of prevention and enforcement efforts, children are still lead poisoned in New Jersey every day. This lawsuit is not inconsistent with the legislative intent and is not without regard for legislative prescription. See Fred v. Mayor, 10 N.J. 515, 521 (1952). To the contrary, the lawsuit will further the intent of the legislature by filling in the gaps in the legislative protocol for detecting and removing lead hazards and will provide much needed financial resources for under-funded local boards of health.

The Lead Paint Act does not preempt the common law claims for public nuisance in this case. The law of statutory preemption is clear in New Jersey - where "the law does not regulate the [] practices alleged in the complaint," the statute at hand does not preclude a party's right to bring a common law action for public nuisance. James, 359 N.J. Super. at 331 (quoting City of Cincinnati v. Beretta U.S.A. Corp., 768 N.E.2d 1136, 1143 (Ohio 2002)). The common law public nuisance cause of action that the municipalities brought in this case seeks to hold lead companies responsible for their unreasonable interference with rights common to the general public. The lead companies knew lead was toxic to human health in the early part of last century, but publicly misrepresented lead as safe for consumers. They marketed and promoted lead through sophisticated campaigns to increase the use of lead and failed to warn of its toxicity. These practices, as the municipalities alleged in their complaint, are not regulated by the statute and thus, the municipalities should be allowed to go forward to prove their case under common law public nuisance.

Furthermore, in this case, there is no explicit intent to preempt common law actions in the Lead Paint Act. Courts will not interfere with municipalities' police

powers to protect the public health and welfare and "[t]he right to abate a public nuisance is a common-law right which... exists in absence of statute." Ajamian v. Township of North Bergen, 103 N.J. Super. 61, 73 (1968). Moreover, preemption of a common law right to a cause of action or remedy without an explicit or implicit intention by the Legislature to do so is contrary to law and to sound public policy. See id.

Despite public health officials' tireless efforts, the legislative prescription for preventing poisoning, screening, detecting and removing lead hazards and treating the poisoned children is inadequate, especially considering the devastating and life-long effects of lead poisoning. In fact, children are used by this statute as "canaries in the coal mine;" children are allowed to live in old housing and only when their blood is screened for lead and an elevated level is detected, does the Legislature's program begin. A truly comprehensive solution demands that the source of the poisoning is eliminated before a child is poisoned. This lawsuit provides that level of prevention that the government entities cannot accomplish on their own, along with much needed financial resources that will fund real prevention efforts.

Screening efforts in the state are inadequate. The Legislature called for universal lead screening for all children ages six months through six years. N.J.S.A. 26:2-137.4. Unfortunately, this call has not been answered. In 2002, only 40% of all New Jersey children between the ages of six and 29 months were tested for lead. (2002 Annual Report at 4.) There are numerous shortcomings in the screening process, primarily due to the fact that the law places the lion's share of the burden on the already overloaded medical community. Children are not screened every year and may only be screened one time in the critical period between six months and six years of age. New Jersey has an abysmal screening rate - in 2002, more than 130,000 children less than three years old were not tested for lead at all. (2002 Annual Report at 8.) Thus, reported lead poisoning prevalence rates are unrealistically low because many children fall through the cracks in the screening process established under law.

The statutory system for home lead inspections is also lacking. The most glaring problem is that an inspection is not triggered at an address until a child is poisoned. See N.J.S.A. 24:14A-7 and N.J.S.A. 24:14A-8. By that time, the child, and possibly his or her siblings, has potentially suffered permanent brain and kidney damage before the local

board of health is able to take corrective action. But primary prevention is simply not a reality under the current scheme due to limited resources, financial and otherwise. A public nuisance approach, under which hazards are abated as part of the remedy, is a critical and necessary compliment to the work done by the statute.

Abatement also is not mandated under the statute until a child is poisoned in the home. Moreover, years often elapse before the lead is removed from the home. (2002 Annual Report at 27.) Difficulties in identifying and communicating with landlords, lengthy enforcement actions required against recalcitrant property owners, delays in contracting and scheduling work, and the inability of property owners to pay for abatement all work to slow the process. (2002 Annual Report at 27.) In fact, in 2002, only 37% of the abatements ordered actually were completed; in concrete terms, that translates to 226 New Jersey properties not abated that poisoned at least one child in 2002. There is no telling how many more children that property will poison in the future.

Furthermore, the provision in the statute that allows poisoned children to sue their landlords is hollow. These lawsuits afford limited, piecemeal relief to a few injured children. In fact, if a landlord does not have insurance

coverage for occurrences of lead poisoning on his or her property, poisoned children do not receive any remedy at all. The type of recovery afforded by suits by poisoned children against individual landlords does nothing to address the environmental health reality of childhood lead poisoning in New Jersey because proceeds of any recovery are not directed at the root of the problem - the presence of lead in housing.

This lawsuit against the lead companies that are responsible for the presence of lead in New Jersey's housing makes broad-scale primary prevention possible. The children of New Jersey - present and future - deserve no less. Continuing solely with the secondary prevention strategies provided for under the New Jersey statute guarantees that children will continue to suffer severe physical, emotional, and developmental delays because they will continue to be exposed to lead.

V. APPELLANTS' COMPLAINT MUST BE PERMITTED TO PROCEED IN ORDER TO FURTHER THE INTERESTS OF NEW JERSEY'S CHILDREN

The State of New Jersey and many of its municipalities acknowledge the importance of dealing with the problem of lead poisoning. They, individually, through legislation, and through local boards of health, have dedicated substantial resources to solving this disease, which

plagues thousands of children and their families every year. They have not only committed tax revenues, but also the time and effort of entire state and city departments to work on programs that address lead poisoning. Government entities must spend more on special education to accommodate children poisoned by lead. For the most part, these government entities can ill afford to expend these resources, and yet they have risen to the occasion and put forth the best effort within their means.

Other groups have also come to the table to help New Jersey's children and their families who are faced with a lifetime of challenges caused by their exposure to lead. Lead poisoning imposes burdens in many other arenas and on many other people. Parents of these sick children must confront both physical and developmental obstacles with their children. They face increased medical and educational expenses, such as testing and tutoring costs. Children with lead poisoning have less success in school, limiting their potential to earn a sustainable living. N.J.S.A. 26-2Q-1. As a result, lead poisoned children may be dependent on their parents well into adulthood - a further strain on the parents' financial situation.

The medical community also has embraced its role in defeating this epidemic problem. Medical professionals have developed screening programs for children and have worked in conjunction with the local boards of health in order to assist them in protecting the health, safety, and general welfare of New Jersey's children. The legislation has imposed significant burdens upon physicians - burdens they would not have to bear if these manufacturers had not introduced lead into their young patients' environment. The screening and follow-up with patients alone presents an onus on medical professionals.

In light of the fact that all these other members of society have devoted time, money and effort to address the problems associated with childhood lead poisoning, it is only fair and just that these lead companies, who profited immensely from their toxic product, also should contribute to the cause. For over one hundred years, these companies have denied that lead is toxic and shirked their responsibility for the harm that lead has caused, placing an unfair burden on all elements of society. They caused this crisis; it is time for them to become part of the solution. Government entities have struggled for years to make a dent in the problem, but severely constrained city and state budgets have minimized their success. The time

has come for these lead companies to pay their fair share of the solution by contributing resources to remove lead hazards before any more children are harmed.

Renée Steinhagen, Esq.
NJ Appleseed Public Interest Law Center
744 Broad Street, Suite 1600
Newark, NJ 07102
973-735-0523 phone
973-735-0524 fax

Attorney for Amici Curiae
Alliance for Healthy Homes;
American Public Health Association;
Association for the Children of New Jersey;
New Jersey Citizen Action;
Statewide Parent Advocacy Network

:
:
: SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
IN RE: : DOCKET NUMBER: A-001946-02T3
LEAD PAINT LITIGATION :
: CIVIL ACTION
:
: ORDER
_____:

This matter being brought before the Court on the motion of Renée Steinhagen, Executive Director of New Jersey Appleseed Public Interest Law Center of New Jersey, on behalf of applicants Alliance for Healthy Homes, American Public Health Association; New Jersey Citizen Action, Association for the Children of New Jersey, and Statewide Parent Advocacy Network for permission to appear as amici curiae and file a brief in support of Appellants' appeal, and the Court having considered the motion, and it appearing to the Court that said persons should be permitted to appear as amici curiae, and good cause appearing;

IT IS on this ____ day of November, 2003;

ORDERED that the aforementioned applicants for amici curiae status in this action are hereby given leave to appear as amici curiae and file a brief in support of Appellants' appeal seeking reversal of the decision below dismissing the Complaint.

Hon.

J.A.D.

This motion was ____ opposed, ____ unopposed