

IN THE CIRCUIT COURT OF EIGHTEENTH JUDICIAL CIRCUIT  
DuPAGE COUNTY, ILLINOIS

#1(B)

JANNA ANDREJEVIC, et al., )  
 Plaintiffs, )  
 v. )  
 BOARD OF EDUCATION OF WHEATON- )  
 WARRENVILLE SCHOOL DISTRICT NO. 200, )  
 Defendant. )  
 ----- )  
 BOARD OF EDUCATION OF WHEATON- )  
 WARRENVILLE SCHOOL DISTRICT NO. 200, )  
 Third Party Plaintiff, )  
 v. )  
 SERVICE MASTER MANAGEMENT SERVICES, L.P., )  
 ARCON ASSOCIATES, INC., and THE LOMBARD CO., )  
 Third Party Defendants. )

No. 99 L 00671

FILED  
 06 MAR 21 PM 3:24  
 Clerk of the  
 18th Judicial Circuit  
 DuPage County, Illinois

CASE CLOSED  
 JUDGE'S INIT. *[Signature]*

**DISMISSAL ORDER**

THIS CAUSE coming on to be heard by Agreement of the parties, due notice having been served, and the Court being fully advised herein.

IT IS HEREBY ORDERED that the above-captioned matter has been settled. All matters in controversy, including all third party actions, having been resolved. This matter is hereby dismissed with prejudice. The Court shall retain jurisdiction over this matter for purposes of settlement, administration of minor Plaintiffs' probate estates, and administration of minor Plaintiffs' settlement monies on deposit in bank accounts subject to further order of Court.

ENTER: \_\_\_\_\_ 3-21, 2006  
 \_\_\_\_\_  
 JUDGE *[Signature]*

PHILIP R. SHELDON  
DEPUTY CLERK

Atty No. 35837  
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 City Chicago  
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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DuPAGE COUNTY, ILLINOIS

7900

JANNA ANDREJEVIC, individually, and as parent, )  
guardian and next friend of HELEN ANDREJEVIC, a minor, )  
and KATHERINE ANDREJEVIC, a minor; et al., )

Plaintiffs, )

-vs- )

No. 99 L 671

BOARD OF EDUCATION OF WHEATON-WARRENVILLE )  
SCHOOL DISTRICT No. 200, DuPAGE COUNTY, )  
ILLINOIS, a Local Unit of Government, )

Defendant. )

BOARD OF EDUCATION OF WHEATON-WARRENVILLE )  
SCHOOL DISTRICT No. 200, DuPAGE COUNTY, )  
ILLINOIS, a Local Unit of Government, )

Third Party Plaintiff, )

-vs- )

SERVICE MASTER MANAGEMENT SERVICES, L.P.; )  
ARCON ASSOCIATES, INC.; and THE LOMBARD CO., )

Third Party Defendants. )

FILED  
05 SEP - 1 AM 9:13  
CLERK OF THE  
19TH JUDICIAL CIRCUIT  
DU PAGE COUNTY, ILLINOIS  
*Chao Kalamandros*  
*Dee*

**PLAINTIFFS'**  
**VERIFIED PETITION FOR APPROVAL OF GLOBAL SETTLEMENT,**  
**AND DISTRIBUTION OF SETTLEMENT PROCEEDS**

NOW COME the Plaintiffs, by and through counsel, and, for their verified petition for approval of global settlement, and distribution of settlement proceeds, state as follows:

**I. The Plaintiffs.**

The Plaintiffs in this lawsuit are students at the Johnson Elementary School who have been allegedly exposed to poor environmental conditions on the Johnson School premises and/or on the surrounding site, and their parents.

After various dismissals with and without prejudice, the following 49 persons remain as party Plaintiffs in this action:

- Miomir and Janna Andrejevic (Children: Helen and Katherine)
- Erica Barnes (Child: Niesha Anderson)
- Rick Brewer (Child: Tania)
- Robert Carolan (Child: Tyler)
- Vicki DeFrancisco (Children: Danny and Gino)
- Veronica Fukushima (Children: Briana and Milan)
- Sharon Gubser (Children: Tyler and Casandra)
- Robert and Patricia Huber (Nicole Saba)
- Barry and Patty Kenis (Child: Amanda)
- Charles and Gloria Langston (Children: Felicia and Cheyna)
- Sue Norton (Children: Ryan and Kyle)
- Michael and Christine Petrovich (Children: Michael and Mark Venice)
- Denise Pruett (Child: Sunshine Montano)
- Robert and Tracey Thompson (Children: Michael and Victoria)
- Mari Lou Vitale (Children: Joshua Abinal and Julie Vitale)
- Cindy Voda (Children: Lukas and Nicole)  
(Child: Daniel Wilson)

**II. Allegations Against the Defendant and Third Party Defendants.**

It is alleged in the Third Amended Complaint that the Defendant Board of Education of Wheaton-Warrenville School District No. 200 (“School Board”) *inter alia* failed to exercise ordinary care to maintain its property in a reasonably safe condition for the use of the Plaintiffs, and the School Board had actual or constructive notice of the existence of such unreasonably safe conditions to have taken measures to remedy or protect against such conditions, in violation of 745 ILCS 10/3-102(a).

More specifically, it is alleged that the Johnson School was built on a wetland, without the requisite permit from the Army Corps of Engineers. The school flooded multiple times, and the drinking fountains and air conditioning units leaked water onto the carpet, but the carpet was not properly dried. Moreover, the water pipes in the ceilings leaked water onto the ceiling tiles, but the

pipes were not repaired and the ceiling tiles were not replaced. These problems were not addressed for almost ten years, during which time toxic mold grew and spread throughout the entire school. To compound the problem, the ventilation system in the school was inadequate since the time the school was built, such that it could not adequately replace the polluted air with fresh air. The School Board has denied all of the foregoing allegations.

The School Board filed a Third Party Complaint against Service Master Management Services, L.P. ("Service Master"), Arcon Associates, Inc. ("Arcon") and the Lombard Company ("Lombard"). Arcon was the architect that designed the school. Lombard was the general contractor that built the school. And, Service Master cleaned and maintained the school.

It is alleged that the Third Party Defendants were negligent, as follows: (a) Arcon negligently designed the school, in that the HVAC system was initially inadequate, the outside grading was designed improperly, etc.; (b) Lombard negligently built the school, in that it did not address the specific problems associated with building on a wetland, failed to obtain proper permits, etc.; and (c) Service Master negligently cleaned and maintained the school, in that it failed to properly dry carpets after the school flooded, clean the school to address mold problems, etc.

The Amended Third Party Complaint contains counts for contribution and indemnification against some of the Third Party Defendants. The Third Party Defendants have denied all of the allegations against them in the Amended Third Party Complaint.

The Plaintiffs survived motions to dismiss their Complaint, and the School Board survived motions to dismiss its Amended Third Party Complaint. However, there are numerous affirmative defenses, and it is uncertain whether some or all of the causes of action may survive motions for summary judgment at the conclusion of discovery.

**III. Plaintiffs' Injuries.**

The Third Amended Complaint seeks compensatory damages for the Plaintiffs' personal injuries and emotional distress only. There are no claims for financial damages.

The Plaintiff students are alleged to have suffered personal injuries due to their repeated exposures to the toxic environmental conditions at the school, as follows:

Helen Andrejevic — asthma, allergies, stomach problems, eczema, stomach aches, headaches, ear infections, sore throats starting in 1995.

Katherine Andrejevic — Headaches, eczema, stomach aches, allergies, strep infection in sinus cavity in 1997. Counseling starting in 2001 for post-traumatic stress.

Niesha Anderson — Asthma, ear infections, sore throats, headaches, strep throat starting in 1997. Allergies in 1996. Pneumonia in 2001.

Tania Brewer — Sinusitis, allergies, headaches, poor sleeping habits, asthma starting in 1992.

Tyler Carolan — Asthma starting in 1994, pneumonia starting in 1995, sinus infections starting in 1994.

Danny DeFrancisco — Strep throats, fatigue, headaches, loss of appetite starting in 1995.

Gino DeFrancisco — Ear infections, sinus problems, allergies starting in 1995.

Briana Fukushima — Flu-like symptoms, asthma, respiratory problems starting in 1991.

Milan Fukushima — Flu-like symptoms, asthma, respiratory problems starting in 1994.

Tyler Gubser — Allergies, asthma, respiratory difficulties starting in 1993.

Casandra Gubser — Ear infections, sinus infections, strep throat, respiratory difficulties starting in 1990.

Nicole Saba — Headaches, stomach aches, tiredness starting in 1996. Rashes, ear infections (exact dates unknown). Wart in 1998.

Amanda Kenis — Headaches starting in 1995. Difficulty breathing starting in 1996.

Felicia Langston — Aggravation of pre-existing asthma starting in 1996.

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Cheyne Langston — Body rashes, eye irritations, runny nose starting in 1994.

Ryan Norton — Seizures in 1996.

Kyle Norton — Strep throats in 1997. Headaches, nausea in 1996-97.

Michael Venice — Cold and flu like symptoms, allergies, sinus infections, headaches starting in 1994.

Mark Venice — Cold and flu like symptoms, allergies, sinus infections, headaches starting in 1994.

Sunshine Montano — Stomach aches, ear infections, pharyngitis, runny nose, allergy circles under eyes, altered behavior starting in 1998.

Michael Thompson — Strep throat infections, pneumonia, allergies, headaches, bronchitis starting in 1991.

Victoria Thompson — Bronchitis, strep throat infections starting in 1990.

Joshua Abinal — Headaches, nausea, irritated eyes, ear infections, eczema, allergies starting in 1993.

Julie Vitale — Headaches, nausea, irritated eyes, ear infections, eczema, allergies starting in 1996.

Lukas Voda — Headaches, sore throats, fatigue, sinusitis starting in 1991.

Nicole Voda — Rhinitis, asthma, headaches, sore throats, fatigue, sinusitis, tonsillitis, bronchitis starting in 1990. Tonsillectomy in 1996.

Daniel Wilson — Allergies, asthma, sinus infections starting in 1992.

The Plaintiff parents are also alleged to have sustained personal injuries and emotional distress due to their exposures to the school environment.

**IV. Terms of the Settlement.**

After extensive negotiations involving the Court's assistance, the parties reached a global settlement of this matter. This global settlement is fair and in the best interest of the Plaintiffs, and Plaintiffs' counsel recommends that the offer be accepted.

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Plaintiffs have agreed to settle with all parties according to the following material terms:

- (a) The School Board shall pay a lump sum cash payment of \$225,000; Lombard shall pay a lump sum cash payment of \$65,001; Arcon shall pay a lump sum cash payment of \$85,000; and Service Master shall pay a lump sum cash payment of \$85,000, for a total gross settlement amount of \$460,001;
- (b) The gross settlement amount shall be divided between the Plaintiffs, as set forth in Exhibit A;
- (c) Plaintiffs shall release their claims against the Defendant and Third Party Defendants.

Plaintiffs' counsel is not aware of the existence of any medical liens.

In their contingency fee retainer agreement, each Plaintiff (the parents individually, and the parents on behalf of their children) agreed to pay to Plaintiffs' counsel a sum equal to one-third ( $\frac{1}{3}$ ) of the gross amount recovered, plus reimbursement of litigation expenses incurred by counsel. This equates to an attorney's fee of \$153,333.67. This fee is entirely reasonable considering this case has been pending for over 5 years, during which time Plaintiffs' counsel spent approximately 3,000 hours (a) successfully briefing and arguing numerous motions to dismiss and motions to certify issues for appeal, (b) engaging in extensive class certification briefing (encompassing approx. 5,000 pages of briefs and exhibits) with a hearing before the Court, (c) assisting 74 Plaintiffs in answering Defendant's Interrogatories (53 questions), Defendant's Class Action Interrogatories (118 questions), Defendant's Request to Produce Documents (56 questions), and Third Party Defendants' Class Action Interrogatories (144 questions) for a total of 27,454 questions and answers, (d) preparing for and attending the depositions of 49 Plaintiffs, (e) reviewing approximately 250,000 documents, including architectural and construction documents for the school, documents concerning the environmental testing performed in the school, documents concerning the remediation performed in the school, meeting minutes from School Board and Internal Air Quality

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Committee meetings, and medical records for each Plaintiff, (f) attending approximately 40 Court hearings.

This attorney's fee equates to approximately \$51.11 per hour for Plaintiffs' counsel.

Plaintiffs' counsel petitions the Court for this agreed-upon contingency fee, pursuant to Rule 10.01(e) of the Rules of Practice of the Circuit Court for the 18<sup>th</sup> Judicial Circuit ("Local Rules").

As part of a Partial Settlement Agreement entered into between Tom Zimmerman, Jerry Stern and the firm of Stern Hölstein & Zimmerman, P.C. ("SHZ"), SHZ assigned its attorney's fee interest in the *Andrejevic* case to Mr. Zimmerman (See, Par. 6(a) of the SHZ Agreement, attached as Exhibit E). As set forth in Par. 6(a) of the Agreement, SHZ's interest was 20% of Mr. Zimmerman's share of the attorney's fees. Mr. Zimmerman is the only attorney remaining on the case, and the anticipated gross attorney's fees are \$153,333.67 (i.e. one-third of the gross settlement proceeds of \$460,001). Thus, SHZ's interest in the attorney's fees is \$30,666.73.

Pursuant to the Agreement entered into between Barbara Stackler and SHZ, Ms. Stackler was to receive two percent (2%) of SHZ's net attorney's fee for each contingency fee case where a lawsuit was filed between January 1, 1999 and June 15, 2000 (See, Par. 7(b) of the Stackler Agreement, attached as Exhibit F). The *Andrejevic* case is included in this list of cases attached to the Stackler Agreement (See, List of Cases, attached to Exhibit F). Thus, Ms. Stackler's share of the attorney's fees is \$613.33 (i.e. 2% of SHZ's interest).

Additionally, Plaintiffs' various counsel has incurred \$10,173.62 in litigation costs and expenses associated with this matter, as set forth in Exhibit B. Plaintiffs' counsel seeks reimbursement of these costs and expenses, pursuant to the terms of the contingency fee retainer agreements which state that Plaintiffs' counsel shall be reimbursed for such costs and expenses

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advanced by counsel. Each Plaintiff shall bear the expenses in a pro rata proportion to their individual settlement amounts, as set forth in the pro rata analysis in Exhibit B.

The net amount distributable to the Plaintiffs from this settlement is \$296,493.71, to be distributed to each Plaintiff as set forth in Exhibits A and C.

**V. Probate Issues.**

This Court shall hear this Verified Petition, pursuant to Rule 10.01(b) of the Local Rules, as the settlement relates to a pending case for personal injury.

**A. Adult Plaintiffs.**

The following Plaintiffs have reached the age of majority (i.e. 18 years old):

Miomir Andrejevic, Janna Andrejevic, Erica Barnes, Rick Brewer, Tania Brewer, Robert Carolan, Vicki DeFrancisco, Danny DeFrancisco, Veronica Fukushima, Briana Fukushima, Sharon Gubser, Tyler Gubser, Casandra Gubser, Robert Huber, Patricia Huber, Barry Kenis, Patty Kenis, Charles Langston, Gloria Langston, Sue Norton, Ryan Norton, Kyle Norton, Michael Petrovich, Christine Petrovich, Michael Venice, Denise Pruett, Robert Thompson, Tracey Thompson, Michael Thompson, Victoria Thompson, Mari Lou Vitale, Cindy Voda, Lukas Voda, Nicole Voda, Daniel Wilson (See, Exhibits A, C, D).

Accordingly, their settlement amounts may be paid directly to them.

**B. Minor Plaintiffs Whose Net Amounts Are \$10,000 or Less.**

Pursuant to Rule 10.01(l) of the Local Rules, if the net amount distributable to a minor Plaintiff who is fourteen (14) years of age or older exceeds \$750.00 and is \$10,000.00 or less, the Court in its discretion may order the amount distributed on behalf of the minor to be deposited into a financial institution approved by the Court.

Local Rule 10.01(l) applies to the following minor Plaintiffs:

Niesha Anderson, Tyler Carolan, Milan Fukushima, Nicole Saba, Amanda Kenis, Felicia Langston, Cheyna Langston, Mark Venice, Sunshine Montano, Joshua Abinal, Julie Vitale (See, Exhibits A, C, D).

