

**RESOLUTION
TOWNSHIP OF FRANKLIN
DEMANDING THAT THE TOWNSHIP'S INSURANCE COMPANIES SETTLE
LITIGATION WITHIN POLICY LIMITS
R-104-11**

WHEREAS, the Township of Franklin and various employees thereof have been made parties defendant in certain litigation arising out of the exposure of children and adults to elemental mercury at a daycare center commonly referred to as the Kiddie Kollege litigation; and

WHEREAS, the Township bargained for Environmental Joint Insurance Fund ("E-JIF") coverage and paid premiums for same providing indemnity coverage in the amount of \$1,000,000 in addition to defense costs; and

WHEREAS, the Township has also maintained policies of insurance through the Joint Insurance Fund ("JIF") in the amount of \$200,000 per occurrence and through the Municipal Excess Liability Fund ("MEL") in the amount of \$2,000,000; and

WHEREAS, under a continuous trigger theory of liability and in light of the facts and circumstances surrounding the Kiddie Kollege case, the Township contends it has the benefit of insurance coverage in the amount of \$600,000 through the JIF, an additional \$2,000,000 through the MEL, together with \$1,000,000 in indemnity from the EJIF; and

WHEREAS, the Township Committee, through its Solicitor and Conflicts Solicitor has received information from the Plaintiff class that the Kiddie Kollege litigation may be settled within the policy limits set forth above; and

WHEREAS, the Township Committee believes that in light of the pending petition to enter judgment and award counsel fees that a court imposed judgment, if not vacated and/or settled, could potentially result in a judgment against the Township in excess of the policy limits outlined above; and

WHEREAS, the Township further understands that the settlement by the County of Gloucester and the Sullivan defendants places an inordinate risk that a significant portion of a counsel fee award, or perhaps all of the counsel fee award, under 42 U.S.C. §1983 could be allocated against the Township as the only remaining governmental defendant which may be subject to the provisions of Title 1983; and

WHEREAS, the Township believes that a settlement at this point, that would include the vacation of the findings of fact and conclusions of law entered by the trial court

will eliminate issues of *res judicata* and collateral estoppel in the event of future claims for personal injury brought by individuals who may have been exposed to elemental mercury at Kiddie Kollege; and

WHEREAS, there are multiple plaintiffs who by virtue of their age at the time of exposure may bring claims into the future; and

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Franklin, County of Gloucester, State of New Jersey, that the Township Committee hereby demands that its insurers, the EJIF, JIF and MEL, acting individually or in combination settle the Kiddie Kollege litigation in an amount which is within the policy limits set forth above; and

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be served upon representatives of the EJIF, JIF and MEL within three days of the adoption of this Resolution; and

BE IT FURTHER RESOLVED, that the Township Solicitor and Conflicts Solicitor be and are hereby authorized to negotiate with representatives of the EJIF, JIF and MEL and to settle the above referenced matter within policy limits subject only to ratification by the Township Committee by official action.

ADOPTED at the regular meeting of the Township Committee of the Township of Franklin on Tuesday, June 14, 2011.

ATTEST:

TOWNSHIP OF FRANKLIN

CAROLYN TOY, CLERK

PATRICK DOUGHERTY, MAYOR

CERTIFICATION

I, Carolyn Toy, Clerk of the Township of Franklin, do hereby certify that the foregoing Resolution was presented and duly adopted by the Township Committee at a meeting of the Franklin Township Committee held on June 14, 2011.

CAROLYN TOY, CLERK