

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE**

**BEATRICE HOLT, individually and as)
surviving spouse and next of kin of her)
husband, HARRY HOLT, deceased; SHEILA)
HOLT-ORSTED, individually and as natural)
mother of JASMINE ORSTED, a minor;)
BONITA HOLT; O'BRIAN HOLT;)
BRANDON HOLT; PATRICK HOLT,)
individually and as natural parent of)
BIANCA BENTLEY, a minor, and PATRICK)
HOLT, JR., a minor; DEMETRIUS HOLT;)
and DAVID BROWN; all individually and as)
next of kin of HARRY HOLT, deceased,)**

Plaintiffs,

v.

**SCOVILL, INC., n/k/a SALTIRE INDUSTRIAL)
INC.; ALPER HOLDINGS USA, INC.;)
COUNTY OF DICKSON, TENNESSEE;)
CITY OF DICKSON, TENNESSEE;)
BETSY L. CHILD, COMMISSIONER OF THE)
TENNESSEE DEPARTMENT OF)
ENVIRONMENT AND CONSERVATION; and)
SUSAN R. COOPER, COMMISSIONER OF)
THE TENNESSEE DEPARTMENT OF)
HEALTH,)**

Defendants.

**Case No.: 3:07-cv-00727
JUDGE HAYNES**

SECOND AMENDED COMPLAINT

COME NOW the above-captioned Plaintiffs for their Complaint against Defendants Scovill, Inc., n/k/a Saltire Industrial, Inc. ("Saltire"); Alper Holdings USA, Inc. ("Alper"); County of Dickson, Tennessee ("County of Dickson"); City of Dickson, Tennessee ("City of Dickson"); Commissioner Child of the Tennessee Department of Environment and Conservation ("TDEC"); and Commissioner Cooper of the Tennessee Department of Health ("TDOH"); and state as follows:

1. This is an action for declaratory, injunctive, and monetary relief brought by Plaintiffs to redress the harm caused by their exposure to the toxic chemical trichloroethylene (“TCE”) and other chemicals. This action is also brought to redress the harm caused by intentional racial discrimination in the decision by certain Defendants to notify white property-owners of known TCE contamination, but not to notify Plaintiffs, who are African-American. This action is further brought to redress the harm caused by intentional racial discrimination in the decision by Defendant City of Dickson to locate its dumpsite and landfill in a predominantly African-American community.

2. This case arises out of Defendant Saltire’s disposal of toxic wastes at the Dickson County Landfill and at other locations in the vicinity, including at Saltire’s manufacturing facility on Schrader Lane in Dickson, resulting in Plaintiffs’ exposure to contaminated water from no later than 1968 to 2000 (the “Exposure Period”). This case also arises under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.*, because of the failure to warn, failure to exercise due care, and failure to follow the requirements of the Tennessee Solid Waste Disposal Act by Defendants County of Dickson and City of Dickson. As a result of Defendants’ unlawful acts, Plaintiffs have suffered, and will suffer in the future, property damage, personal injury, and death.

3. This case also arises under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; and 42 U.S.C. § 1983, as a result of intentional racial discrimination against Plaintiffs by Defendants County of Dickson, City of Dickson, and the Commissioners of TDEC and TDOH, in the decision by those Defendants not to notify

Plaintiffs of the known risk of exposure to TCE, while promptly notifying similarly situated white families of the risk of TCE contamination in their water sources; and in the decision by the City of Dickson to locate its dumpsite and landfill in a predominantly African-American community.

4. The action by Beatrice Holt on behalf of Harry Holt, deceased, is by virtue of the Tennessee Wrongful Death Act, Tenn. Code Ann. § 20-5-106(a), for herself and other Plaintiffs as next of kin, for loss of consortium under that Act and related case law.

JURISDICTION AND VENUE

5. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States; by 28 U.S.C. § 1343(a)(3) because Plaintiffs seek to redress the deprivation of rights secured by the Constitution and Acts of Congress providing for equal rights; by 28 U.S.C. § 1343(a)(4) because Plaintiffs seek to recover damages and to secure equitable and other relief under Acts of Congress protecting civil rights, including the Civil Rights Act of 1871, as amended and codified at 42 U.S.C. § 1983; by 28 U.S.C. § 1334(b), in that this action arises in or relates to a bankruptcy case under Title 11; and by 28 U.S.C. § 1367(a), because any state-law claims are so related to the claims within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution.

6. Declaratory and injunctive relief is sought as authorized by 28 U.S.C. §§ 2201 and 2202.

7. Venue is proper in the District Court for the Middle District of Tennessee under 28 U.S.C. §§ 157(b)(5), 1391(b), and 1412.

PARTIES

8. Plaintiff Harry Holt, now deceased, resided in and was a citizen of Dickson County, and suffered property and personal damage until his death in January 2007.

9. Plaintiffs Beatrice Holt, Demetrius Holt, and David Brown currently reside in and are citizens of Dickson County, and have suffered property and/or personal damages. Plaintiffs Sheila Holt-Orsted and Jasmine Orsted currently reside in Dickson County about half the year and have suffered damages.

10. Plaintiffs Patrick Holt, Bianca Bentley, and Patrick Holt, Jr., are former residents of Dickson County and currently reside in Davidson County, Tennessee, and have suffered damages.

11. Plaintiffs Bonita Holt, O'Brian Holt, and Brandon Holt are former residents of Dickson County and currently reside in Montgomery County, Tennessee, and have suffered damages.

12. During the Exposure Period, Plaintiffs all resided in or were citizens of Dickson County, Tennessee.

13. All Plaintiffs are African-American.

14. Defendant Saltire is a Delaware corporation with its principal place of business in New York, New York. From 1964 to 1985, Saltire operated a manufacturing facility on Schrader Lane in Dickson County. In August 2004, Saltire filed for bankruptcy under Chapter 11 of the Bankruptcy Code.

15. Defendant Alper is a Delaware corporation with its principal place of business in New York, New York. Alper owns one hundred percent of the stock of

Saltire. Alper and Saltire have the same business location at 800 Third Avenue, New York, New York. Saltire has no employees, officers, or board members separate from those of Alper. Alper is the alter ego of and controls the assets of Saltire, and has diverted Saltire's assets in such a manner as to leave Saltire grossly undercapitalized. In July 2007, Alper filed for bankruptcy under Chapter 11 of the Bankruptcy Code.

16. Defendant County of Dickson is a municipality organized and existing under the laws of the State of Tennessee; is the owner and operator of the Dickson County Landfill on Eno Road in Dickson County, Tennessee ("Landfill"); and is responsible for maintenance of the Landfill in compliance with all applicable state and federal laws.

17. Defendant City of Dickson is a municipality organized and existing under the laws of the State of Tennessee, and is the owner of the land where the Landfill is located.

18. Defendants Commissioner of TDEC and Commissioner of TDOH (collectively, the "State Defendants") administer departments of the State of Tennessee and were charged with, among other duties, ensuring that state agencies complied with federal laws regarding operation and use of federally approved landfill at the state and municipal levels. Prior to 1991, TDEC and TDOH were part of the same Department, known as the Tennessee Department of Health and the Environment (TDHE). In 1991, the environmental programs of TDHE were transferred to a new Department, TDEC, and the health programs remained in a Department that was renamed TDOH.

FACTS

19. Harry Holt resided at the property located at 340 Eno Road, in Dickson, Dickson County, Tennessee (the “H. Holt Property”) from 1973 until his death in January 2007 at age 66. From at least 1961 to 1973, Mr. Holt lived at the home of his parents (the “R. Holt Property”), immediately adjacent to the H. Holt Property. The domestic water supply for the Holt residence was, until 2000, provided by groundwater wells on the premises. Mr. Holt was diagnosed with prostate cancer on December 2, 2002. Mr. Holt was diagnosed with heart condition in October 2003 which is related to his exposure to TCE. Mr. Holt died of cancer in January 2007, which is related to his exposure to TCE.

20. Plaintiff Beatrice Holt is age 61 and was married to Harry Holt until his death in January 2007. She has resided at the H. Holt Property since 1973. From 1961 to 1973, Mrs. Holt lived at the R. Holt Property. She was diagnosed with cervical polyps in September 2002.

21. Plaintiff Sheila Holt-Orsted is age 46 and is the daughter of Harry and Beatrice Holt. Sheila Holt-Orsted was born in 1961 and lived at the R. Holt Property until moving next door to the H. Holt Property in 1973. Sheila Holt-Orsted grew up at the H. Holt Property and currently lives there about half the year. Sheila Holt-Orsted was diagnosed with breast cancer in April 2003.

22. Plaintiff Jasmine Orsted is a minor, age 13, (date of birth April 23, 1994) and is the natural daughter of Sheila Holt-Orsted. Jasmine Orsted has resided on the H. Holt Property intermittently since she was an infant and currently lives there about half the year. Jasmine Orsted suffers from a speech impediment and excessively dry skin.

23. Plaintiff Bonita Holt is age 41 and is the daughter of Harry and Beatrice Holt. Bonita Holt was born in 1965 and lived at the R. Holt Property until moving next door to the H. Holt Property in 1973. Bonita Holt was diagnosed with stomach polyps and gastrointestinal disorder in 2000.

24. Plaintiff O'Brian Holt is age 20 and is the natural son of Bonita Holt. O'Brian Holt has resided on the H. Holt Property intermittently, and visited frequently, since he was an infant. O'Brian suffers from Attention Deficit Hyperactivity Disorder.

25. Plaintiff Brandon Holt is age 19 and is the natural son of Bonita Holt. Brandon Holt has resided on the H. Holt Property intermittently, and visited frequently, since he was an infant. Brandon Holt suffers from Attention Deficit Hyperactivity Disorder.

26. Plaintiff Patrick Holt is age 43 and is the son of Harry and Beatrice Holt. Patrick Holt was born in 1964 and lived at the R. Holt Property until moving next door to the H. Holt Property in 1973. Patrick Holt suffers from deficient immune system.

27. Plaintiff Bianca Bentley is a minor, age 15 (date of birth February 28, 1993), and is the natural daughter of Patrick Holt. Bianca Bentley has resided on the H. Holt Property intermittently, and visited frequently, since she was an infant. Bianca Bentley currently suffers from severe psoriasis of the skin.

28. Plaintiff Patrick Holt, Jr., is a minor, age 7 (date of birth December 3, 1999), and is the natural son of Patrick Holt. Patrick Holt, Jr., has resided on the H. Holt property intermittently, and visited frequently, since he was an infant. Patrick Holt, Jr., currently suffers from skin ailments and severe allergies.

29. Plaintiff Demetrius Holt is age 40 and is the daughter of Harry and Beatrice Holt. Demetrius Holt was born in 1966 and lived at the R. Holt Property until moving next door to the H. Holt Property in 1973. Demetrius Holt grew up on, and currently resides at, the H. Holt Property. Demetrius Holt suffers from sleep apnea.

30. Plaintiff David Brown is age 18 and is the natural son of Demetrius Holt. David Brown has resided on the H. Holt Property intermittently since he was an infant, and currently resides at the H. Holt Property. David Brown suffers from severe allergies.

31. The City of Dickson opened a city dump and landfill on Eno Road in 1968. The small African-American population in Dickson County, less than 5% of the County's overall population, had been historically concentrated on Eno Road in the immediate vicinity of the location that Defendant City of Dickson chose for its dumpsite and landfill in 1968.

32. The Landfill was an unregulated disposal area until 1972 when the State of Tennessee accepted its construction and operation plan per the Regulations governing Solid Waste Processing and Disposal in Tennessee. The Division of Sanitation and Solid Waste Management ("DSSWM") issued a permit for the Landfill that same year. During the years the property operated as a city dump, it accepted a variety of industrial and domestic wastes.

33. In 1977, the City of Dickson sold the Landfill to Dickson County to be used as a sanitary landfill. At that time, the Landfill accepted only industrial waste permitted by the DSSWM and domestic waste.

34. The City continues, to the present, to own at least part of the land on which the Landfill is located.

35. The Holt groundwater well (“Holt well”) is located approximately 500 feet from the Landfill and the Plaintiffs resided within that area during the Exposure Period. Each Plaintiff used well water for all domestic purposes, including drinking, cooking, bathing, gardening, clothes and dish washing, from the time they moved to the area until June 2000.

36. Defendant Saltire, through its Schrader Automotive Group division, operated a manufacturing facility (the “Schrader Facility”) in Dickson County, Tennessee, on Schrader Drive during the period from 1964 through 1985. Saltire leased the facility during the same period from the County of Dickson.

37. Saltire generated hazardous wastes by its operations in Dickson, including trichloroethylene (“TCE”), which was used as a solvent and degreaser for machinery, and metalplating sludges with high concentrations of heavy metals.

38. TCE is listed as a hazardous (F001) waste under the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*, and is a contaminant within the meaning of § 1401(6) of the Safe Drinking Water Act, 42 U.S.C. § 300f(6). TCE is toxic and can be dangerous if ingested in water, absorbed through the skin or breathed through the air. TCE can volatilize when water in which it is contained is exposed to the air, thereby creating toxic fumes. TCE is heavier than water, and therefore tends to flow quickly through groundwater and pollute deep groundwater sources such as wells. The United States Environmental Protection Agency (“EPA”) has found no acceptable level for TCE in the environment, and for that reason has established a Maximum Contaminant Level (“MCL”) of 5 parts per billion for TCE in groundwater, and an MCL Goal of 0 (zero) parts per billion.

39. Saltire routinely disposed of drummed wastes, including TCE, in the Dickson County Landfill from as early as 1968. Saltire also disposed of its hazardous wastes at other locations in the vicinity of the Landfill, including at the Schrader Facility. Saltire's interim permit status under RCRA was revoked in 1986.

40. The stored drums from Saltire are now disintegrating and the waste is draining into the groundwater under the Landfill and at other disposal locations in the vicinity.

41. By no later than November 1988, the State Defendants and the County of Dickson were aware of TCE contamination in Plaintiffs' well. A November 1988 test of Plaintiffs' well, conducted by the State Defendants, showed the presence of TCE at 3.5 parts per billion. Despite an MCL Goal of 0 (zero) for TCE in groundwater, the State Defendants sent Harry Holt a letter on December 8, 1988, stating: "your water is of good quality for the parameters tested." The County of Dickson received a copy of this letter. The County of Dickson did not communicate to Plaintiffs any warning regarding the presence of TCE in the Holt well.

42. In July 1991, EPA sampled the Holt water well as part of an investigation into possible groundwater contamination in the area. The test revealed TCE contamination at 26 parts per billion, well above the MCL of 5 parts per billion. A second test taken shortly after revealed TCE contamination at 3.9 parts per billion. On December 3, 1991, EPA sent Harry Holt a letter stating: "There were no constituents detected which exceed EPA's National Primary Drinking Water Regulations or any other health-based criteria. As such, use of your well water should not result in any adverse health effects."

43. By no later than December 1991, the State Defendants were aware of the July 1991 test results of Plaintiffs' well water, but the State Defendants never warned Plaintiffs regarding the risks to property and human health caused by TCE contamination. Certain employees of the State Defendants expressed concerns internally about the July 1991 test results and the December 1991 reassurance to Plaintiffs that their water was safe, but those concerns were never communicated to Plaintiffs.

44. In May 1993, Saltire's environmental consultants tested twenty-nine residential water wells within one mile of the Saltire facility. TCE was detected at levels above the MCL in nine of the twenty-nine wells sampled. Employees of TDEC and Saltire's environmental consultants immediately contacted these residents, warned them to cease using their well water, and provided them with bottled water for drinking and cooking. Each family so notified is white. Plaintiffs were not contacted, were not warned to cease using well water, and were not provided bottled water at this time.

45. During July and August of 1993, the homes of the nine white families whose wells had shown the presence of TCE were connected to the City of Dickson's municipal water supply. Plaintiffs' home was not connected to the City of Dickson's municipal water supply at this time.

46. In or around September 1994, Defendant County of Dickson learned of TCE contamination at a surface water source near the Landfill known as Sullivan Spring. At least two families drawing residential water from Sullivan Spring were immediately notified by Defendant County of Dickson of the presence of TCE and were connected to the City of Dickson's municipal water supply. Each family so notified is white. Plaintiffs were not warned by the County of Dickson, which knew of TCE contamination

in Plaintiffs' well dating back to at least 1988. Nor were Plaintiffs connected to the City of Dickson's municipal water supply at this time.

47. By no later than February 1997, Defendants TDEC and the City of Dickson were aware of TCE contamination in a City well adjacent to the H. Holt property. Neither TDEC nor the City of Dickson warned Plaintiffs at this time that TCE was detected in a City well directly adjacent to their property.

48. Not until October 2000 were Plaintiffs connected to the City of Dickson's municipal water supply. Plaintiffs were not at this time warned of the risk to their health of TCE exposure, and were never warned by any of the Defendants of the risks of their exposure to TCE.

49. Members of the Holt family were exposed to hazardous levels of TCE through ingestion, absorption and inhalation on a daily basis from 1968 to the present.

50. Due to the long-term exposure to TCE caused by Saltire's contamination of the Landfill and Holt well, Plaintiff Harry Holt suffered from cancer and heart conditions until his death in January 2007, which was related to his exposure to TCE; Plaintiff Sheila Holt-Orsted suffers from breast cancer; Plaintiffs Beatrice Holt and Bonita Holt likely suffer from an increased risk of cancer as evidenced by the detection of cervical and stomach polyps; Plaintiff Patrick Holt suffers from deficient immune system; Plaintiffs O'Brian Holt, Brandon Holt, and Jasmine Orsted have suffered neurological injuries; Plaintiffs David Brown and Patrick Holt, Jr., suffer from severe allergies; Plaintiffs Bianca Bentley, Jasmine Orsted, and Patrick Holt, Jr., suffer from skin disorders; and Plaintiff Demetrius Holt suffers from sleep apnea. All Plaintiffs

potentially suffer from additional existing health effects not yet known. All Plaintiffs are at increased risk of future adverse health effects not yet manifested.

51. Due to the long-term exposure to TCE caused by Saltire's contamination of the Landfill and the Holt well, all Plaintiffs have been, and are, reasonably afraid for their own future health and the health of their families. Plaintiffs have incurred and will continue to incur medical expenses due to testing, treatment, and possible future treatment for exposure to contaminated water.

52. As a result of the knowledge that they and their loved ones have consumed hazardous chemicals, thereby causing injury and death, Plaintiffs have suffered and will continue to suffer great emotional distress.

53. Plaintiffs have also been injured by the diminution of the value of their property due to Saltire's contamination of the Landfill and subterranean waters in the area, including the Holt well.

CAUSES OF ACTION

Count I (Trespass)

Plaintiffs hereby incorporate Paragraphs 1-53 as if they were fully set forth herein and further state:

54. Saltire, by its use of TCE and spillage of TCE into the Landfill and other locations in the vicinity, has caused the contamination of Plaintiffs' groundwater and drinking water supply by permitting TCE to spill from the stored drums onto the Landfill and other locations, and to encroach on Plaintiffs' property.

55. Alper, as the alter ego of Saltire, is liable to Plaintiffs for the wrongful conduct of Saltire.

56. Plaintiffs have at no time given their consent to the pollution of the groundwater of their property, and such pollution is an unlawful entry upon Plaintiffs' land.

57. By the leaking from Saltire's drums stored on the Landfill and at other locations, Saltire has trespassed and continues to trespass on Plaintiffs' property.

58. As a direct and proximate result of Defendants' trespass, the Plaintiffs have suffered personal injury.

59. As a direct and proximate result of Defendants' trespass, Plaintiff Beatrice Holt, individually and as surviving spouse and next of kin of her husband, Harry Holt, has additionally suffered a diminution in the value of her residential property value and the value of the improvements connected thereto.

Count II (Battery)

Plaintiffs hereby incorporate by reference Paragraphs 1-59 as if they were fully set forth herein and further state:

60. Saltire stored and disposed of TCE in a reckless and wanton manner without regard to the welfare of the Plaintiffs, who resided in close proximity to the Landfill.

61. Alper, as the alter ego of Saltire, is liable to Plaintiffs for the wrongful conduct of Saltire.

62. Saltire knew that its reckless and wanton storage and disposal practices were substantially certain to cause Plaintiffs to endure an offensive and harmful contact with TCE.

63. Saltire's reckless and wanton disposal practices did cause Plaintiffs to endure, without their consent, an offensive and harmful contact with TCE.

Count III (Permanent Nuisance)

Plaintiffs hereby incorporate by reference Paragraphs 1-63 as if they were fully set forth herein and further state:

64. The leaking of Saltire's drums of TCE onto the Landfill and other locations constitute a permanent nuisance in that the releases have caused contamination of the groundwater under Plaintiffs' property that will persist for an indefinite time, interfering with Plaintiffs' reasonable use and enjoyment of their property.

65. The interference with Plaintiffs' use and enjoyment of their property is the direct result of Saltire's negligent storage of TCE in the drums on the Landfill and other locations. This failure to prevent the escape of hazardous wastes from the drums and Landfill has resulted in the permanent migration of TCE into the water table underlying Plaintiffs' property, creating a hazard to the life and well-being of all surviving Plaintiffs.

66. Alper, as the alter ego of Saltire, is liable to Plaintiffs for the wrongful conduct of Saltire.

67. As a direct and proximate result of Defendants' unabated and negligent contamination of the groundwater under their land, Plaintiffs have suffered personal injuries or death.

68. As a direct and proximate result of Defendants' unabated and negligent contamination of the groundwater under their land, Plaintiff Beatrice Holt, individually and as surviving spouse and next of kin of her husband, Harry Holt, has additionally

suffered a diminution in the value of her residential property and the value of the improvements connected thereto.

Count IV (Negligence)

Plaintiffs hereby incorporate by reference Paragraphs 1-68 as if they were fully set forth herein and further state:

69. Saltire owed Plaintiffs and Plaintiffs' decedents a duty to refrain from action that caused Plaintiffs and Plaintiffs' decedents to be unreasonably exposed to chemicals which can cause personal injury, economic harm, and an increased risk of illness.

70. TCE is an ultrahazardous substance, and Saltire knew of the dangerous nature of the substance.

71. Saltire owed a duty of care to Plaintiffs in the use, storage, and disposal of TCE.

72. Saltire breached its duty of care by negligently disposing of TCE and by failing to investigate possible releases of TCE from the Landfill and other disposal sites.

73. Alper, as the alter ego of Saltire, is liable to Plaintiffs for the wrongful conduct of Saltire.

74. As a direct and proximate result of Saltire's negligence, Plaintiffs have suffered personal injuries or death.

75. As a direct and proximate result of Saltire's negligence, Plaintiff Beatrice Holt, individually and as surviving spouse and next of kin of her husband, Harry Holt, has additionally suffered a diminution in the value of her residential property and the value of the improvements connected thereto.

Count V (Wrongful Death)

Plaintiffs hereby incorporate by reference paragraphs 1-75 as if they were fully set forth herein and further state:

76. Saltire failed to exercise due care to prevent the contamination of Plaintiff Harry Holt's water well and his resulting exposure to TCE.

77. Alper, as the alter ego of Saltire, is liable to Plaintiffs for the wrongful conduct of Saltire.

78. As a proximate result of Saltire's failure to exercise due care, Harry Holt was exposed to hazardous levels of TCE through ingestion, absorption, and inhalation on a daily basis for thirty-nine years. This exposure to TCE was a cause of Mr. Holt's death from cancer in January 2007.

79. As surviving spouse, children, and grandchildren of Harry Holt, Plaintiffs are entitled to damages including medical, funeral, and burial expenses, as well as damages for the loss of Mr. Holt's life and the loss of Mr. Holt's reasonably expected net income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice.

Count VI (Claim for Punitive Damages)

Plaintiffs hereby incorporate by reference paragraphs 1-79 as if they were fully set forth herein and further state:

80. Saltire knew of the dangerous propensities of the TCE which it placed into the drums and stored on the Landfill and disposed of at other locations. Saltire knew or should have known of the inadequacies of its storage procedures, and of the inadequacies of the storage tanks, drums, and barrels to contain the hazardous waste.

81. As a result of its business operations, Saltire has knowingly, intentionally, wantonly, recklessly, willfully, and maliciously stored and disposed of TCE on the Landfill and at other locations in such a manner that it discharged into the groundwater of the neighboring property and underground water sources.

82. Saltire knowingly, intentionally, wantonly, recklessly, willfully, and maliciously failed to take the precautions necessary to prevent such contamination of the groundwater of surrounding property.

83. Alper, as the alter ego of Saltire, is liable to Plaintiffs for the wrongful conduct of Saltire.

**Count VII (Claim for Violation of the
Tennessee Governmental Tort Liability Act)**

Plaintiffs hereby incorporate by reference paragraphs 1-83 as if they were fully set forth herein and further state:

84. The County of Dickson and the City of Dickson are sued in their capacities as governmental entities under the Tennessee Governmental Tort Liability Act (“GTLA”).

85. The City of Dickson had a duty to notify Plaintiffs of dangers associated with large volumes of toxic and contaminated leachate that had accumulated on the City’s property and spread to the H. Holt Property. The City of Dickson also had a duty to monitor the disposal of TCE and other hazardous waste at the Landfill and other disposal sites. The City of Dickson further had a duty to investigate possible releases of TCE and other hazardous wastes from the Landfill and other disposal sites.

86. The City of Dickson breached its duties by failing to notify Plaintiffs of the release of toxic wastes from its property, of which the City became aware by no later

than February 1997; and by failing to monitor TCE disposal and investigate TCE releases from its property. These acts and omissions caused injury to Plaintiffs.

87. The County of Dickson had a duty to notify Plaintiffs of dangers associated with continued use of their well water after the County of Dickson had notice, by 1988, that the Holt well was contaminated with TCE. The County of Dickson also had a duty to maintain and operate the landfill in such a manner as to prevent the release of toxic chemicals.

88. The County of Dickson breached its duties by failing to notify Plaintiffs of the contamination of Plaintiffs' well with TCE, even though the County notified other persons who lived in and around the Landfill upon the detection of TCE in their water sources, and further removed those families from use of the contaminated water source.

89. The County of Dickson was negligent in performing its duties owed to the Holts and failed to exercise due care to prevent the contamination of the Holt well and their resulting exposure to the TCE.

90. The County of Dickson knew or should have known of the dangerous propensities of the TCE which was seeping from the drums stored at its Landfill. The County of Dickson knew or should have known of the inadequacies of the storage drums and barrels. The County of Dickson knew that TCE had entered the groundwater in high concentrations, and knew or should have known that the TCE was migrating into the groundwater surrounding the Landfill and that toxic concentrations of TCE were contaminating the groundwater of neighboring properties.

91. Despite their awareness of the Landfill's close proximity to Plaintiffs' home, and of the extensive TCE contamination of groundwater at the Landfill and other

locations, the County of Dickson and the City of Dickson failed to warn Plaintiffs of the presence of TCE and dangers associated with continued use of the well water for more than twelve years after the County of Dickson gained such awareness, and more than three years after the City of Dickson gained such awareness, in complete disregard for Plaintiffs' health and well-being.

92. The City of Dickson and the County of Dickson violated the Tennessee Solid Waste Disposal Act, Tenn. Code Ann. §§ 68-211-104(1), 68-211-104(3), & 68-211-104(4), by failing to maintain the Landfill in such a manner as to minimize the generation and accumulation of leachate in the Landfill and by allowing releases of leachate into the well water.

**Count VIII (Claim for Violations of Title VI
of the Civil Rights Act of 1964)**

Plaintiffs hereby incorporate by reference paragraphs 1-92 as if they were fully set forth herein and further state:

93. Title VI of the Civil Rights Act of 1964 was implemented to enforce the guarantees of the Fourteenth Amendment of the United States Constitution, and provides in pertinent part: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

94. Upon information and belief, the State Defendants, the County of Dickson, and the City of Dickson receive federal funding from various federal agencies, and must also comply with disparate impact regulations prohibiting discrimination. The Landfill received federal grants, funds and/or loans that were not a *de minimis* source of

income, and the State Defendants, the County of Dickson, and the City of Dickson were required to comply with Title VI mandates.

95. Upon information and belief, the City of Dickson in 1968 decided to put a landfill in a predominantly African-American neighborhood on Eno Road, where Plaintiffs then resided and continue to reside. The City of Dickson allowed the property to exist as an unregulated disposal area until 1972. The City of Dickson subsequently sold the Landfill to the County of Dickson, which continued to allow Saltire to improperly dispose of its hazardous waste into the Landfill next to Plaintiffs' property, resulting in Plaintiffs' injury and death. Plaintiffs have been harmed and continue today to be harmed by the City of Dickson's racially discriminatory siting decision.

96. The City of Dickson's decision to select a historically African-American population enclave within a nearly all-white county as the location for its dumpsite and landfill in 1968, injured Plaintiffs and constitute an act of intentional race discrimination in violation of Title VI of the Civil Rights Act of 1964, regulations promulgated to ensure compliance with that Act, and 42 U.S.C. § 1983.

97. The State Defendants were aware as early as November 1988 that Plaintiffs' well showed the presence of TCE near the regulatory limit, and further knew as early as July 1991 that Plaintiffs' well was contaminated at levels far above regulatory limits. The State Defendants did not warn Plaintiffs of the risk of harm, instead sending a letter in 1988 stating, falsely: "your water is of good quality for the parameters tested." Less than two years after the 1991 tests on Plaintiffs' well, in 1993, TDEC learned of TCE contamination in the wells of nine white families. TDEC immediately notified those families, warned them to cease using their well water, and provided them with

bottled water for drinking and cooking. The white families were also connected to the City of Dickson's municipal water supply. The State Defendants' acts and omissions caused Plaintiffs to incur serious injury and death.

98. The State Defendants' failure to inform Plaintiffs of the presence of TCE in their well water and failure to provide them with an alternate water supply, when such warnings and protective measures were immediately undertaken by the State Defendants for similarly situated white families, constitutes an act of intentional race discrimination in violation of Title VI of the Civil Rights Act of 1964, regulations promulgated to ensure compliance with that Act, and 42 U.S.C. § 1983.

99. Defendant County of Dickson was aware as early as November 1988 that Plaintiffs' well showed the presence of TCE near the regulatory limit. The County of Dickson did not warn Plaintiffs of the risk of harm from TCE exposure, and did not take any measures to protect Plaintiffs from further exposure. By no later than September 1994, Defendant County of Dickson learned of TCE contamination in the water supply of several white families. The County of Dickson immediately notified those families of the risk of harm, and those families were connected to the City of Dickson's municipal water supply. The County of Dickson's acts and omissions caused Plaintiffs to incur serious injury and death.

100. The County of Dickson's failure to inform Plaintiffs of the presence of TCE in their well water and failure to provide them with an alternate water supply, when such warnings and protective measures were immediately undertaken by the County of Dickson for similarly situated white families, constitutes an act of intentional race

discrimination in violation of Title VI of the Civil Rights Act of 1964, regulations promulgated to ensure compliance with that Act, and 42 U.S.C. § 1983.

101. Defendant City of Dickson was aware by no later than February 1997 that a City well adjacent to the H. Holt property was contaminated with TCE. The City of Dickson also knew or should have known that tests to examine TCE contamination at or from the Landfill – on property owned by the City of Dickson – had been underway for at least ten years by 1997. The City of Dickson did not warn Plaintiffs in 1997 that TCE was detected at the City well, adjacent to the H. Holt property. The City of Dickson did not provide Plaintiffs with an alternate water supply by connecting Plaintiffs to the City of Dickson’s municipal water source until 2000. The City of Dickson had arranged with the State Defendants and the County of Dickson to provide municipal water to the white families who were thought to be at risk of TCE exposure several years earlier, in 1993 and 1994. The City of Dickson’s acts and omissions caused Plaintiffs to incur serious injury and death.

102. The City of Dickson’s failure to inform Plaintiffs of the risk of TCE exposure by at least 1997, and the City of Dickson’s failure to connect Plaintiffs to the municipal water supply until 2000 – when such arrangements were made for similarly situated white families immediately upon learning of the risk of TCE exposure – constitutes an act of intentional race discrimination in violation of Title VI of the Civil Rights Act of 1964, regulations promulgated to ensure compliance with that Act, and 42 U.S.C. § 1983.

103. Unbeknownst to Plaintiffs, they continued to ingest and be exposed to well water containing TCE until 2000.

104. In taking the above described actions, the State Defendants, the County of Dickson, and the City of Dickson intentionally discriminated against Plaintiffs on the basis of their race. These Defendants' actions were taken with malice and/or reckless indifference to Plaintiffs' federally protected rights.

105. The State Defendants, the County of Dickson, and the City of Dickson have, acting under color of state law, subjected Plaintiffs to intentional discrimination under programs receiving federal financial assistance, on account of Plaintiffs' race, in violation of Title VI and 42 U.S.C. § 1983.

Count VIII (Claim for Violations of the United States Constitution)

Plaintiffs hereby incorporate by reference paragraphs 1-105 as if they were fully set forth herein and further state:

106. The actions of the City of Dickson as described above, in selecting a historically African-American population enclave within a nearly all-white county as the location for its dumpsite and landfill in 1968, have injured Plaintiffs and denied Plaintiffs the right to the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

107. The actions of the State Defendants, the County of Dickson, and the City of Dickson as described above, in failing to notify Plaintiffs of the risk of harm from TCE exposure and in failing to provide an alternate water source, when such warnings and protective measures were undertaken to protect similarly situated white families, have injured Plaintiffs and denied Plaintiffs the right to the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand the following:

1. That this case be tried before a jury of twelve;
2. That all claims against the County of Dickson and City of Dickson also be tried with a jury;
3. That judgment be entered against Defendants as requested herein;
4. That Plaintiffs be awarded sufficient damages to compensate them for their losses to personal health and property, as well as to punish the Defendants for that conduct determined to be actionable for an amount of punitive damages;
5. That all relief, both general and specific, to which Plaintiffs are entitled, be granted;
6. That Defendants be ordered to comply with all lawful directives of EPA and relevant state agencies in the testing and remediation of Plaintiffs' property;
7. That Defendants be ordered to keep Plaintiffs informed of all results of all testing done by Defendants on or near the site of the Landfill;
8. That all court costs and expenses, including consultants' fees and attorneys' fees, be paid by Defendants;
9. That any requested injunctive relief, as warranted by the evidence in the case, be awarded; and
10. That punitive damages be awarded.

Dated: October 10, 2007

Respectfully submitted,
BARRETT, JOHNSTON & PARSLEY

/s/ George E. Barrett
George E. Barrett
Edmund L. Carey, Jr.
David W. Garrison
217 Second Avenue North
Nashville, TN 37201
phone: 615-244-2202
fax: 615-252-3798
email: gbarrett@barrettjohnston.com

Joe R. Whatley, Jr.
Amy Weaver
Whatley, Drake & Kallas LLC
1000 Park Place Tower
2001 Park Place North
Birmingham, AL 35203
phone: 205-328-9576
email: jwhatley@whatleydrake.com

Debo P. Adegbile
Matthew Colangelo
**NAACP Legal Defense &
Educational Fund, Inc.**
99 Hudson Street, 16th Floor
New York, NY 10013
phone: 212-965-2268
email: mcolangelo@naacpldf.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on October 10, 2007, I served by fax and hand delivery a true and correct copy of the foregoing to the following party not currently listed among the Court's electronic filing users in this action:

Katherine K. Schulz
Counsel for Defendants Commissioners of TDEC and TDOH
Office of the Attorney General
Civil Litigation & State Services Division
425 Fifth Avenue North, 2nd Floor
Cordell Hull Building
Nashville, TN 37243
fax: 615-741-7327

I certify that on October 10, 2007, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon, in addition to co-counsel, the following currently listed electronic filing users:

William H. Farmer
Jones W. Luna
Jennifer L. Brundige
Counsel for Defendant City of Dickson
FARMER & LUNA PLLC
333 Union St., Suite 300
Nashville, TN 37201-1430

Teresa Reall Ricks
Counsel for Defendant City of Dickson
FARRAR & BATES LLP
211 Seventh Avenue North, Suite 420
Nashville, TN 37219-1823

Timothy V. Potter
Kirk Vandivort
Counsel for Defendant County of Dickson
REYNOLDS, POTTER, RAGAN & VANDIVORT PLC
210 E. College St.
Dickson, TN 37055-6805

Marilyn Simon
Counsel for Defendants City of Dickson and County of Dickson
MARILYN SIMON & ASSOCIATES
110 E. 59th St., 23rd Floor
New York, NY 10022-1330

Michael Dore
Michael S. Etkin
Timothy R. Wheeler
Counsel for Defendant Saltire Industrial, Inc. Creditors Liquidating Trust
LOWENSTEIN SANDLER PC
65 Livingston Ave.
Roseland, NJ 07068-1791

John S. Hicks
Carrie W. McCutcheon
Counsel for Defendant Saltire Industrial, Inc. Creditors Liquidating Trust
BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC
211 Commerce Street, Suite 1000
Nashville, TN 37201

William T. Ramsey
Counsel for Defendant Alper Holdings USA, Inc.
NEAL & HARWELL, PLC
150 Fourth Avenue North, Suite 2000
Nashville, TN 37219-2498

Dated: October 10, 2007.

/s/ Matthew Colangelo
Matthew Colangelo
NAACP Legal Defense & Educational
Fund, Inc.
99 Hudson St., 16th Floor
New York, NY 10013
212-965-2268

Attorney for the Plaintiffs