

# Milne Law Offices

Attorneys at Law  
60 Centre Street, P. O. Box 722  
Dover, Mass. 02030

Chris A. Milne, Esq.  
CAMilne@childtrust.com

Telephone: (508) 785-8300  
Facsimile: (508) 785-8020

April 2, 2008

By Hand

Clerk, Maura S. Doyle  
Supreme Judicial Court for Suffolk County  
John Adams Courthouse, 1<sup>st</sup> Floor  
One Pemberton Square- Suite 1-300  
Boston, MA 02108-1707

Re: *Sullivan et al. v. CJAM*; SJ-2007-M002 and SJ-2006-0176  
**Request for status hearing**

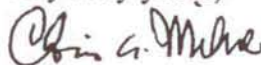
Dear Clerk Doyle:

Enclosed please find for filing in both of the above referenced matters a copy of correspondence delivered on this date to counsel for the defendant.

Plaintiff, Clerk-Magistrate of the Cambridge District Court, and plaintiff, Massachusetts Academy of Trial Attorney's, respectfully request a Status Hearing with the Special Master to discuss defendant's failure to relocate the Cambridge District Court and concerns about disturbance of asbestos in the Sullivan Courthouse, as set forth in the enclosed letter. Kindly bring this request and the enclosed to the attention of the Special Master.

Thank you for your kind attention to this matter

Very truly yours,



Chris A. Milne, Esq.

cc: Counsel of record

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*Via email and US mail*

David A. Guberman, Esq.  
Office of the Attorney General  
Government Bureau  
One Ashburton Place, Room 2019  
Boston, MA 02108

*Via email and US mail*

Mr. Richard M Zielinski, Esq.  
Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110

Re: Sullivan et als. v. CJAM, SJ-2007-M002 and SJ-2006-0176

Dear David and Richard,

I send this letter on behalf of the plaintiff Clerk-Magistrate of the Cambridge District Court and Plaintiff, Massachusetts Academy of Trial Attorneys (MATA). As you are aware, the Middlesex Superior Court and Middlesex District Attorney's Office have moved out of the Edward J. Sullivan Courthouse (hereinafter Sullivan Courthouse). As of this time the Cambridge District Court is being left behind at the Sullivan Courthouse. The defendant CJAM is in breach of his promise to relocate all of the occupants of the Sullivan Courthouse. Additionally, as set forth below, information and documentation is needed with regard to the imminent plan to relocate the entire operations of the Cambridge District Court to lower floors in the Sullivan Courthouse.

Very little information has been provided on the defendant CJAM's failure to relocate the Cambridge District Court and the asbestos hazards associated with the recently planned move of the entirety of the Cambridge District Court to lower floors of the Sullivan Courthouse. In this letter I will lay out the obligation of the CJAM as to the relocation of the Cambridge District Court and what information has been made available. I will also lay out the Stipulation entered into by the parties relative to the

management of the asbestos in the building until the planned move that was supposed to have occurred by December 2007. Lastly this letter will make a specific request for information and documentation.

Once this information is received the plaintiff Clerk-Magistrate of the Cambridge District Court and plaintiff Massachusetts Academy of Trial Attorneys will decide whether it is necessary to seek assistance of the Court and the Office of the Attorney General of the Commonwealth of Massachusetts<sup>1</sup> in obtaining the relocation of the Cambridge District Court for necessary asbestos abatements, elevator repairs, heating and ventilation upgrades and other work at the Sullivan Courthouse.

***Failure to Relocate the Cambridge District Court from the Sullivan Courthouse.*** In reliance on defendant's promise of an expedited relocation from the Sullivan Courthouse of all court operations from the building, plaintiffs' have so far limited requested information to the management of the asbestos during that limited time period. However, at all times, central to this entire case and the Court's continuing oversight of the Sullivan Courthouse, has been the reliance on the defendant CJAM's promise of an expedited relocation from the asbestos laden building. In fact, in a sworn affidavit by Defendant CJAM filed with the full SJC in August 2006 and ten with the Single Justice in January 2007, defendant, sought dismissal of the lawsuit by the Court for the reason that all court operations, including the Cambridge District Court, would be relocated from the Sullivan Courthouse by December 2007.<sup>2</sup> Defendant argued that this case was moot because the courthouse workers would be moved out of the Sullivan Courthouse by the end of 2007.<sup>3</sup>

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<sup>1</sup> In recognizing that the Attorney General would have standing to bring a nuisance action relative to the conditions at the Edward J. Sullivan Courthouse the SJC stated "In an action for [an] injunction the question is whether the activity itself is so unreasonable that it must be stopped." Sullivan et als. v. CJAM, 448 Mass. 15, 34 (2006).

<sup>2</sup> On the 29<sup>th</sup> July of 2006, as we all awaited oral argument before the full Supreme Judicial Court, the CJAM released a in public statement which set forth a plan "to relocate courthouse operations [from the Edward J. Sullivan Courthouse] by the end of 2007 . . . [in order to] complete courthouse renovations." In August of 2006 and again in January of 2007 defendant Mulligan unsuccessfully filed an affidavit with the SJC seeking dismissal of the case stating in a sworn affidavit "I believe this case is now moot . . . I now have a plan to relocate building occupants." CJAM stated "the current plan is to relocate the court operations by the end of 2007 . . .". Currently, over a year and half after this sworn affidavit was first filed with the SJC and nearly three years after the initial promise to relocate the occupants, there is no planned date for the relocation of the Cambridge District Court.

<sup>3</sup> For example, at the Special Master's hearing held on February 2, 2007 the Hon. Edward M. Ginsburg (Ret), Special Master in Sullivan et als. v. CJAM, SJ-2007-M002, concluded the hearing with the following remarks:

Thus, having received from the Administrative Office of the Trial Court no firm information on the status of the move of the District Court, plaintiffs recently made a Freedom of Information Act request of DCAM. On March 13, 2008, I received a response from my FOIA request to DCAM that no documents will be produced in response to my request for "a copy of the lease and status of the signing of the lease for the property in Medford . . . [and] the timeline for the relocation of the Cambridge District Court." DCAM has stated in the attached letter that "the lease you seek a copy of is exempt from disclosure until after the execution of the lease." See attached letter dated March 13, 2008 from DCAM. Thus, we were able to confirm that the lease for the relocation of your to Medford had not been signed but have been denied access to any other information..

In its decision the SJC commented on the merits of defendant's assertion, which is again now made by DCAM in its March 13<sup>th</sup> letter, that documents sought were not public records and not discoverable. The SJC stated: "We note that discovery, by its nature, is quite broad. [Citation omitted] 'The public records law does not restrict this breadth.' [Citation Omitted]" Sullivan at n. 11. This discovery, if necessary, would include "the right to obtain complete, accurate and timely information about proposed work in the Sullivan Courthouse so that they [plaintiffs] can pursue appropriate recourse before any work is performed." Central to the proposed work now is the reasonableness of CJAM's efforts and the details of future plans relative to the relocation of the Cambridge District Court. However, the last information was provided nearly five months ago despite repeated requests for updates by the Cambridge District Court as to the status and timing of the relocation.

CJAM Robert Mulligan and CJ Linda Connolly wrote on November 20, 2007 that the "Medford site . . . would be preferable to any other possible option and would allow us to move forward as quickly as possible to relocate you from the Edward J. Sullivan Courthouse." They further wrote "[i]f the selection of a temporary District Court site can be finalized by the end of this year, the goal would be to relocate the District Court before the end of 2008." CJAM Mulligan and CJ Connolly further stated in the November 20, 2007 memo "[i]f the terms of a Lease Agreement can be agreed upon, the proposal anticipates that the space would be ready for occupancy within nine months from the final approval of the lease." See attached memo to "Cambridge District Court Employees", dated November 20, 2007.

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"Give everybody notice and you have openness. You'll get through the next twelve or fifteen months. Then whatever happens to that building and however it's done that's your problem. Their out of it and whenever they are told they can come back they'll come back . . ."

Nearly four months have passed since this memo and still the lease for Medford remains unsigned. No reasons for this delay have been given by CJAM Mulligan or CJ Connolly to the Cambridge District Court employees or to members of the bar who practice in this court or to members of the public.

A perspective of how long ago the promised relocation of all courts operations was made, the history thereof and the MBA process is relevant to the unreasonableness of the current situation. The need to abate the asbestos at the Sullivan Courthouse was first stated in writing in May 2000 by the then CJAM in a document obtained years later by the employees due to their own investigation. Sullivan at 18-19. The then CJAM asked “that DCAM undertake ‘all necessary steps to contain or abate the asbestos’”. Id. In 2004 substantial renovation including asbestos abatement were planned in a fully occupied building. Id. Faced with this the employees conducted their own investigation and learned that due to neglect in management of the building its occupants had been exposed to asbestos and as a group were at higher risk for Mesothelioma—a deadly cancer. There were widespread public concerns with the CJAM demanding to go forward with necessary asbestos abatements in an occupied building and the employees and the bar protesting.<sup>4</sup>

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<sup>4</sup> The Supreme Judicial Court recounts the details of these “widespread public concerns” in its decision. This history is the key to understanding the absolute need to finish the relocation of all court operations from the Sullivan Courthouse on an expedited basis:

The plaintiffs learned . . . [through a FOIA request in late 2004] that approximately 90,000 pounds of asbestos had been applied throughout the building as fireproofing insulation when the building was constructed in the late 1960's. Beginning in the 1980's and continuing through November, 2004, maintenance and renovation work was performed regularly without the implementation of any asbestos safety measures. These activities exposed building occupants, maintenance personnel, and outside contractors to friable asbestos . . . without any warnings of hazardous conditions.

. . . .

Once they learned about this plan [elevator replacement project including asbestos abatement], the plaintiffs consulted environmental and health professionals to assess the potential health hazards posed by the renovations. In December, 2004, a report from these professionals was delivered to the CJAM and stated as follows: "Neglect on the part of building owners has allowed [unmanaged friable asbestos] to exist for years. Although problems were identified in the early 1980's, to date there has been a) no inspection and identification of asbestos-

As the Supreme Judicial Court stated:

"By February, 2005 the plaintiffs had sought the assistance of the house of delegates of the Massachusetts Bar Association in obtaining redress for unhealthy and unsafe work conditions at the Sullivan Courthouse, including the filing of a lawsuit against the responsible officials. However, no action was taken because of the CJAM's ongoing promises to maintain transparency and to relocate the building occupants prior to the commencement of any asbestos abatement." See Sullivan v. CJAM 448 Mass 15, 29 (2006).

The promise of the defendant CJAM to move all court operations out of the building was made in May 2005 in direct response to Massachusetts Bar Associations findings that called for "the temporary relocation of the . . . building occupants before work is done on the scheduled elevator project or other asbestos abatements that are necessary in the building." All experts who testified at the MBA hearings agreed this is a building which continues to create a higher risk of Mesothelioma to the employees and attorneys who through are required to work and practice law at the courthouse. The only disagreement was on the degree on the increased risk of death by cancer. There was no disagreement on the existence of this risk caused by the asbestos and the Sullivan Courthouse and no disagreement on the long history of mismanagement of the asbestos. The MBA Committee in six hearings over a period of months heard CJAM Mulligan, his expert witnesses and DCAM and by a unanimous vote decided that the Sullivan Courthouse needed to be vacated for necessary asbestos abatements.

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containing material in the building, b) no description of the condition of this asbestos-containing material, c) no development and implementation of an operations [and] maintenance program, and d) no informing of those at risk, with asbestos training for custodians and maintenance personnel." The report further stated that such conditions "have created an unacceptable health risk for those who work in or occupy the building." The environmental and health professionals recommended, inter alia, that all asbestos be removed immediately from the Sullivan Courthouse, that an operations and maintenance plan be developed and implemented before the commencement of the asbestos abatement, and that building occupants be relocated for the duration of the abatement.

Despite all of this history, as has been part of the history of the management of the Sullivan Courthouse, employees need to use the Freedom of Information Act or listen for the latest rumor or read the newspaper to get information. For example, DCAM two weeks ago stated to Massachusetts Lawyers Weekly that the conditions at the Sullivan Courthouse are so bad that "It might make better economic sense to replace it altogether, which would make it vacant and up for sale." DCAM stated "The work done so far indicates that the scope of the work and costs of the needed rehab are much more than we envisioned."

To put it simply -- the conditions in at the Sullivan Courthouse are so bad we now learn the Commonwealth can't afford to fix the building and need to sell it at a give-away price (reportedly 40M) and yet the promise of relocation of the Cambridge District Court remains unfulfilled with no end in sight.

In recognizing plaintiffs' right to a safe workplace and the right of the plaintiffs to enforce the promises of the CJAM the SJC wrote with regards to the Sullivan Courthouse "There is no question that 'asbestos is highly toxic and that the public health and welfare require strong and immediate action to abate its hazards.'" See Sullivan v. CJAM 448 Mass 15, 23 (2006). The Supreme Judicial Court continued: "[t]he plaintiffs have alleged sufficient facts to show that they are in danger of suffering serious harm as a direct result of the CJAM's purported breach of his statutory and common-law obligations. Moreover, although the plaintiffs do not allege that they have suffered actual harm, they are "not required to wait until [they are] injured before [they] can apply to a court of equity for relief," so long as the danger is reasonably imminent. *[Citation omitted]*. Accordingly, the plaintiffs have standing to bring the present action against the CJAM." The first step in deciding how to protect their right to a safe work place is access to the information and documents that are requested at the end of this letter.

***Concern over work that has the potential to disturb asbestos.*** Given the continued presence of the Cambridge District Court at the Sullivan Courthouse a plan based on safety to limit use of the elevators by the court employees, attorneys and the public has been devised. A great deal of good faith and forth responsiveness with regards to the O&M plan has occurred over the past year. Thus, although many aspects of the Stipulation have not been complied with neither have plaintiffs complained thereof nor sought enforcement by the Court. However, this plan raises great concern as to the potential for disturbance of asbestos. This plan, taken with the information set forth above, also raises great concern that there may be an undisclosed plan for a prolonged occupancy of the Sullivan Courthouse by the Cambridge District Court.

Among other things, defendant CJAM has agreed to provide, in accordance with Paragraph 1 of the stipulation filed with the Court, written notice of and information about any work at the Sullivan Courthouse that "has the potential for disturbing asbestos

containing material.”<sup>5</sup> The purpose of this agreement is found in the SJC decision and includes so as plaintiffs may “obtain complete, accurate and timely information about proposed work in the Sullivan Courthouse so that they [plaintiffs] can pursue appropriate recourse before any work is performed.” Sullivan at 23.

We understand this move of operations within the building is imminent and given the presence of friable asbestos throughout the building this move is of great concern to the employees and attorneys who practice in the Court.

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<sup>5</sup> As you are aware this term and the term “asbestos related activity” are used interchangeably in the Sullivan Courthouse Asbestos Operations and Management Plan. The term "asbestos related activity" is used in this O&M plan to include (1) any activity that involves cutting, abrading, sanding, and hammering walls, (2) moving of walls or moving and/or replacing ceiling tiles, (3) any activity that impacts the integrity of wall, floor or ceiling finishes, and (4) any activity that has the potential of creating dust from walls, floors or ceiling materials. This definition is taken from the "Tenant Agency Notification Letter" found at "Appendix A" of the "ACBM Operations and Maintenance Program" for the Edward J. Sullivan Courthouse in East Cambridge, Massachusetts. See also "Letter A-2, Outside Contractor Notification Letter" and "Letter A-3, Administrative Office Employee and Administrative Office Employee Notification Letter" which are also found at Appendix A of the buildings O&M Plan and are also attached hereto. These required notifications apply to "[a]ny work which has the potential to disturb asbestos [specifically including the above]."

***Request for Information and Documentation.*** At this time, plaintiff, Clerk-Magistrate of the Cambridge District Court and plaintiff, Massachusetts Academy of Trial Attorney's, through their attorney request a full briefing and all documentation relative to the relocation plans for the Cambridge District Court, including the feasibility of the Third District Court Building as a place to relocate the Cambridge District Court to on an expedited basis. Defendant CJAM is also asked to produce all written documentation which contains any information of this proposed move of the entire operations of the Cambridge District Court to lower floors of the Sullivan Courthouse specifically documents that concerning or relating to potential disturbance of asbestos and safety protocols that will be observed.

I am also copying this letter to the Special Master and Single Justice presiding over this case. The failure to relocate the Cambridge District Court and failure to provide information as to why this relocation has not occurred is a significant event which the Court is hereby made aware of. I have also on this date requested a Rule 16 Conference with the Special Master.

Respectfully,

Chris A. Milne, Esq.

Enclosure

cc. Maura S. Doyle, Clerk  
Supreme Judicial Court for Suffolk County  
Re: Sullivan et als. v. CJAM, SJ-2007M002 and SJ-2006-0176