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ALLIANCE TO END CHILDHOOD LEAD POISONING

Governmental Lawsuits Against the Lead Industry

Who is suing the lead industry?

The State of Rhode Island; counties in California and Texas; and municipalities including Chicago, San Francisco, Oakland, Milwaukee, and St. Louis; school districts, in California, Mississippi, and Texas; and the New York City Housing Authority have filed or joined suits against the lead pigment manufacturers.

What basis do *governments* have for suing?

To date, the lead industry never has been held accountable for producing and profiting from a product it knew was harmful. Governmental bodies (and therefore taxpayers), on the other hand, have incurred significant costs stemming from the presence of lead-based paint in public and private buildings, including housing. Because states have a quasi-sovereign interest in protecting the health and well-being of their residents, they can sue to protect that interest. Governments also own buildings that have been painted with lead-based paint. They have and will continue to incur abatement costs to control and prevent lead hazards in those buildings.

What types of relief are the plaintiffs seeking?

Most of the lawsuits seek to recover public expenditures to detect and abate lead hazards, perform medical screening and treatment, and educate the public about the dangers of lead-based paint. In addition, the plaintiffs have requested punitive damages, on grounds that the defendants maliciously and intentionally concealed the hazards of lead-based paint.

The State of Rhode Island has requested that the defendants be ordered to detect and abate lead in all public and private buildings in the state that are accessible to children, and to fund screening and prevention programs, including a "corrective" public education campaign on the dangers of lead. Each of the governmental plaintiffs has requested that financial responsibility for past and future lead poisoning prevention programs be shifted to the defendants. By specifically requesting that defendants fund prevention programs, the plaintiffs will help to ensure that proceeds of the lawsuits are targeted for prevention, and do not end up in general state coffers, as was the case with many of the funds from the tobacco settlements. The suits do not specify a dollar amount of damages sought.

Some of the plaintiffs have requested additional unique types of relief. For example, the California counties have requested that the defendants be required to disgorge the ill-gotten gains they made as a result of their unfair and fraudulent business practices, and that they be prohibited from continuing to downplay the hazards of lead-based paint, for example,

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through the Lead Industries Association (LIA) production in 1999 of a self-serving video featuring *Sesame Street's* "Susan."

Who benefits if these suits succeed?

If these lawsuits succeed in forcing the lead industry to contribute significant resources to lead poisoning prevention, children and families will be the primary beneficiaries as lead hazards will be permanently eliminated from housing before children are poisoned. Taxpayers also will benefit, since they no longer will be required to pay for detecting and abating lead hazards, lead poisoning screening and treatment, special education programs for lead-poisoned children, etc. To the extent that this type of lawsuit encourages more responsible corporate behavior in the future, the public at large will benefit as well.

Are state and local governments exposing themselves to any risks by suing?

Not really. It is possible but improbable that the defendants could try to argue that the claims brought by plaintiffs are totally lacking in merit and frivolous, which could subject the plaintiffs to court sanctions if proven. However, no such claims by defendants have been raised, and most legal experts agree that these claims would be very unlikely to succeed if brought.

Haven't there already been successful suits awarding damages to lead-poisoned children? Why are these suits necessary?

There have been successful suits brought on behalf of lead-poisoned children, primarily against rental property owners (but not the lead industry). Those suits typically seek to compensate children who already have been poisoned on a case-by-case basis. These suits occasionally afford relief to small numbers of lead-poisoned children (*if* successful, and *if* the defendant has the resources to pay the damages). They do not create an opportunity for prevention beyond the case at hand, and do not direct resources to the core of the problem – lead-based paint hazards that are poisoning children in their homes. If the lead industry is not held financially responsible for the damage caused by lead-based paint, there is little hope that taxpayer funds will be sufficient for broad-scale, primary prevention in at-risk communities.

Are taxpayers paying big legal fees to wage these lawsuits?

No, taxpayers are not paying large fees to support these lawsuits. Private lawyers working with the governmental plaintiffs have taken these cases on a contingency fee basis, meaning that they will be paid only if they succeed either at trial or in settlement. The potential attorney fees for these cases are sizeable, however, the attorneys assume all the risk of a loss in a contingency fee case, including their expenses for research and investigation.

Additional information is available at www.aeclp.org.

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Case Summaries:
Government Lawsuits Against the Lead Industry

The following are some examples of cases that have been brought by governmental entities:

State of Rhode Island v. Lead Industries Association et al.: Rhode Island became the first state to sue the lead industry in October 1999. The state alleges that the defendants knew that their products were hazardous and that safe alternatives existed, yet they misrepresented their products as safe. Among the examples of self-interested, irresponsible behavior outlined in the complaint are the lead industry's concerted efforts to thwart labeling requirements, even after the industry acknowledged the dangers of lead-based paint. The Attorney General has attempted to ensure that any relief awarded in the lawsuit is targeted to preventing lead poisoning by requesting the court to order the defendants to detect and abate lead hazards in the state's public and private buildings, to fund a public awareness campaign, and to pay for detection and screening of lead poisoned children.

The state achieved two major legal victories in getting the case to trial. On April 2, 2001, Superior Court Justice Michael Silverstein denied defendants' motion to dismiss, upholding the state's standing to protect the public health, most notably, the Attorney General's right to sue on the basis of public nuisance. The court also ruled that the state can proceed to prove that defendants violated Rhode Island's Unfair Trade Practice and Consumer Protection Act; that they conspired to conceal the hazards of lead-based paint; and that they are liable under tort law theories (for damages to public buildings only), unjust enrichment and indemnity. The court dismissed the state's claim for special education costs (in deference to the state legislature's constitutional authority over financing education), and its tort law claims as they relate to private buildings (citing individuals' rights to sue). To read the court decision on the motion to dismiss, see www.courts.state.ri.us/superior/pdf/99-5226.PDF.

On February 5, 2002, Judge Silverstein granted the state's request to focus the first phase of the trial on the central claim against the defendants: that lead-based paint in public and private buildings constitutes a public nuisance. The trial on the public nuisance issue began on September 4, 2002. Following seven weeks of testimony, jurors were unable to reach a unanimous verdict and Judge Silverstein declared a mistrial on October 29, 2002. In December 2002, the parties requested the judge to rule on the public nuisance issue as a matter of law. He declined to rule in favor of either party in March 2003. He declined to rule in favor of either party in March 2003. The case likely will be retried in the next several months.

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County of Santa Clara v. Atlantic Richfield Co. et al.: In March 2000, Santa Clara County initiated a class action lawsuit on behalf of all public entities in California that have incurred costs associated with lead-based paint exposure. Santa Cruz, Solano, Alameda and Kern counties, as well as the City and County of San Francisco, the City of Oakland and a number of municipal agencies in those cities have since joined the suit.

This case is unique in several respects: It is the first *class action* lawsuit filed against the lead pigment manufacturers by a governmental entity. The complaint accuses the lead industry of *continuing* to mislead the public regarding the hazards of lead-based paint, a recent example being the Lead Industries Association's (LIA) 1999 video on childhood lead poisoning. Exhibits to the complaint include lead industry ads, among them a 1941 LIA ad that proclaims, "*the more white lead, the better the paint.*"

The County alleges that the industry knew lead was harmful, and was aware of safe alternatives, but continued to manufacture and market lead-based pigments through the 1970s. The complaint details the lead industry's marketing efforts targeted at children, as well as its concerted campaign to thwart governmental regulation. In addition to compensatory and punitive damages, the complaint seeks disgorgement of defendants' profits and an injunction prohibiting defendants' continuing wrongful conduct.

In December 2000, a California Superior Court judge rejected the lead industry's argument that the plaintiffs' fraud claim was time-barred, and also ruled that the government services doctrine (which the defense argued prohibits governmental entities from recovering the costs of public services) did not apply in this case. In September 2001, the court dismissed plaintiffs' public nuisance claim, but ruled that plaintiffs can seek to recover damages to public property on grounds of strict products liability and negligence, and can pursue their claims of fraud and concealment, and violations of California's Business & Professions Code.

Harris County, Texas v. Lead Industries Association et al.: Harris County, Texas sued the lead industry on May 2, 2001 for damages to county buildings, alleging strict liability, negligence, fraudulent misrepresentation, public nuisance, restitution and conspiracy in connection with defendants' promotion of lead-based paint and pigments. This case is on hold pending resolution of an appeal underway in a case brought by the Spring Branch Independent School District (see discussion under *Houston Independent School District v. Lead Industries Association, et al*., below).

City of Chicago v. American Cyanamid Co., et al.: On September 5, 2002, the City of Chicago launched the largest case filed to date against lead pigment manufacturers for damages stemming from lead-based paint. Chicago has more lead-poisoned children than any city in the country and almost any state, with well over 26,000 children poisoned during 2000 and 2001 alone.

The suit is unique in that it relies solely upon a public nuisance cause of action. Chicago maintains that the presence of lead-based paint in areas accessible to children unreasonably jeopardizes their health and safety. The city seeks to require the defendants to establish and fund an abatement program in order to eliminate the public nuisance.

The City of Chicago also claims that for decades, the defendants knowingly marketed a dangerous product, and therefore they should be liable for punitive damages. In addition, the city seeks to recover the costs it has borne as a result of the presence of lead-based paint in areas accessible to children.

City of Milwaukee v. NL Industries Inc. and Mautz Paint: On April 9, 2001, the City of Milwaukee filed suit against National Lead Industries (NL Industries) and Mautz Paint, a local paint producer and seller, seeking compensatory and punitive damages, as well as abatement of lead hazards in Milwaukee homes and restitution for the city's abatement-related expenditures. The suit is unique in its targeting of only two defendants. The complaint alleges, among other things, that at a 1937 conference, industry doctors described how to "make the blood clear of evidence, so as to defeat litigation," and even suggested removing a man's teeth so there would be no "lead line for 'the shyster lawyer' to see."

The City of Milwaukee seeks relief from both defendants on grounds of continuing public nuisance, restitution and conspiracy. In addition, the city has claimed that Mautz Paint is liable for negligent and strict liability failure to warn. On October 15, 2001, the judge dismissed a false advertising claim against Mautz Paint, but ruled that the city can seek to prove a conspiracy by defendants resulting in a public nuisance. In November 2001, Sherwin-Williams acquired Mautz Paint.

St. Louis v. Lead Industries Association et al.: The City of St. Louis sued the lead pigment manufacturers in January 2000 to recover its costs to treat lead poisoned children and abate lead hazards in public and private homes and buildings. The suit claims that the defendants manufactured and marketed lead pigments despite their knowledge of the hazards, and accuses the defendants of failing to test their products adequately and warn of their dangers. The complaint includes claims for public nuisance, product liability, negligence, fraudulent misrepresentation, conspiracy, unjust enrichment, and indemnity, and seeks compensatory and punitive damages as well as injunctive relief. The defendants were unsuccessful in their attempts to have the case heard in federal court.

The defendants filed a motion to dismiss, which was heard by the Circuit Court for the City of St. Louis in November 2001. In an 88-page order issued a year later, Judge Margaret Neill upheld all but the city's claim for indemnity. She ruled that the alleged widespread presence of lead-based paint in the city's housing stock presents a "very serious and pervasive threat to the public health as well as an environmental hazard and therefore qualifies as a public nuisance." She also ruled that the city unquestionably has standing to assert all the claims in the complaint, and that the city may seek to satisfy the product identification requirement through discovery.

In Re: Lead Paint Litigation: During December 2001, more than twenty public entities in New Jersey, including Newark and Union County filed suits against the lead industry on grounds of fraud, public nuisance, conspiracy, unjust enrichment and indemnity. The plaintiffs requested that defendants be required to fund programs for detection and abatement of lead-based paint in public and private homes and buildings, medical screening and monitoring, and public education on the hazards of lead-based paint. In February 2002, Supervising Mass Tort Judge Marina Corodemus ordered that the cases be consolidated in the Mass Tort Section of the Middlesex County Courthouse. On November 4, 2002, Judge Corodemus dismissed the cases, on grounds that the public nuisance approach violated New Jersey's laws and constitution, and other grounds. While ruling that the municipalities lack authority to bring the suit, she noted that the Attorney General has the right to abate a public nuisance and to bring suit in cases where the public interest is concerned. Plaintiffs are planning an appeal. Additional information is available at www.judiciary.state.nj.us/mass-tort/index.htm.

City of New York, et al. v. Lead Industries Association et al.: In 1989, the New York City Housing Authority (NYCHA) and others filed an action against lead pigment manufacturers and the LIA alleging market share liability, conspiracy, alternative liability and enterprise liability for their collective efforts to conceal the hazards of lead-based paint. Initially, the complaint sought more than $2.7 million in damages for costs incurred by NYCHA on lead abatement in hundreds of housing developments.

For years, the defendants successfully delayed any discovery by plaintiffs, while at the same time conducting massive discovery of their own. Plaintiffs' significant discovery burdens, as well as other substantive obstacles to some of plaintiffs' claims have reduced the current case to claims involving only two housing developments. The judge in the case found in September 1999 that it would be premature to apply market share liability to the case. Defendants' motions to dismiss NYCHA's restitution, indemnity and fraud claims have been denied.

Houston Independent School District v. Lead Industries Association et al.: Two school districts in Texas, Houston and Spring Branch, were the first in the country to bring suits against the lead pigment industry for damages caused by the use of lead-based paint in schools and other district facilities. The school districts allegedly used lead-based paint on walls, lockers, railings and windows. The suits, filed in June 2000, allege strict liability for defective products; failure to warn; fraudulent misrepresentation; and conspiracy to conceal the dangers of lead-based paint and thwart regulation. The plaintiffs are seeking payment for abatement and/or remediation of school buildings and other facilities. In addition, they requested punitive damages on account of defendants' alleged malice and deliberate disregard of the hazards associated with their products.

In an apparent attempt to discourage other school districts from filing suit, lawyers for the lead industry contacted the Silsbee Independent School District in October 2000, advising the district that the lawsuits are "without merit and not in the best interest of Texas school districts." Liberty, El Paso and Brownsville Independent School Districts subsequently filed suits similar to those brought by the school districts in Houston and Spring Branch.

In June 2002, the trial court judge in the Spring Branch case ruled in favor of NL Industries on its motion for summary judgment. NL argued that plaintiffs cannot prove that the company's lead-based paint is present in the district's facilities. Spring Branch, which had submitted lay and expert witness statements to show that NL produced the lead pigment in its facilities, will seek to have the ruling reversed. The Spring Branch case is somewhat unique in that most of the buildings at issue were constructed after 1958. At that time, NL allegedly was the sole producer of white lead basic carbonate, so the district voluntarily dismissed the other defendants from the case. The cases filed by Houston, Liberty, and Brownsville Independent School Districts and Harris County, Texas have been suspended pending a resolution of NL's liability in the Spring Branch case. The El Paso case was withdrawn, but may be refiled if the Spring Branch decision is reversed.

These cases differ from others brought by governmental entities, in that the Texan plaintiffs are seeking to pinpoint which companies manufactured the lead-based paint in specific public facilities. Other governments have alleged that the widespread harm caused by lead-based paint in public and private buildings constitutes a public nuisance for which the lead pigment manufacturers are responsible.

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Guide to Legal Issues: Suits Against the Lead Industry

What causes of action have been invoked in the lawsuits?

Numerous claims have been put forward to hold the lead industry accountable.

Public nuisance: Public nuisance claims often are invoked in cases of widespread harm. The State of Rhode Island and numerous cities, including Chicago, St. Louis, and Milwaukee have alleged that the companies created an environmental hazard that is interfering with the health, safety, comfort or convenience of their residents and constitutes a public nuisance.

Consumer protection law violations: Some governments have alleged that the companies violated laws protecting consumers by concealing the hazards of lead-based paint and misleading consumers and the public.

Strict liability: Many of the plaintiffs have claimed that defendants are strictly liable (i.e. liable without regard to fault). Strict liability can arise if a company produces a product that is unreasonably dangerous because it is designed defectively or does not carry adequate warnings, or both.

Negligence: The plaintiffs also claim that defendants were negligent, i.e., that they did not behave reasonably under the circumstances. The negligence claims are based upon the defendants' failure to warn the public about the dangers of lead-based paint, their failure to adequately test the safety of their products, and their continuing production and marketing of lead pigments when they knew (or should have known) that they were hazardous.

Indemnity: Several of the governmental cases include claims for indemnity, which would require the defendants to assume financial responsibility for the plaintiffs' past and continuing expenditure of funds for lead-based paint monitoring, maintenance, detection and abatement, and screening and treatment of poisoned children.

Unjust enrichment: Several governments also allege that the defendants have been unjustly enriched due to their payment for expenses related to lead poisoning and lead abatement. The governments have paid for these programs, while the defendants have refused to assume responsibility and instead have profited from the sale of lead pigments. The governments claim that these profits should be made available to deal with the public health crisis the defendants created.

Fraud and conspiracy: In most of the cases, plaintiffs allege that fraud and conspiracy underlie the defendants' conduct.

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Have governments waited too long to bring their claims?

Statutes of limitation do not bar suits by most states and some counties and cities. For example, Texas law provides that claims of the state and its political subdivisions, including school districts, are not barred by certain statutes of limitation. Principles of equity and fairness may require that statutes of limitation be suspended in some circumstances. For example, Santa Clara County has claimed that it was unable to discover the claims raised in its complaint because defendants fraudulently concealed and continue to minimize the problem. Not until the late 1990s, when the county's lead poisoning prevention programs were funded, was it able to grasp the extent and nature of the problem.

In any event, claims involving continuing or potential harm do not trigger statutes of limitation until the harm has been eliminated. The public nuisance claims, for example, will remain timely as long as potential lead-based paint hazards exist. When the hazards have been abated, i.e., the paint has been safely removed, any applicable statute of limitations would begin to run.

How can courts determine which companies are liable?

When states, counties and cities sue the lead industry, they may rely on principles of joint and several liability to establish that the conduct of each of the defendants caused harm to the government entity. Under this doctrine, a company may be held liable if it was a substantial factor (not the sole factor) in causing the harm to the plaintiff. If a number of defendants are held jointly and severally liable, each defendant legally is responsible for the entire amount of the plaintiff's damages (although in practice, liability typically is apportioned among the defendants).

In the context of the suits against the lead industry, the governments only need to prove that each lead pigment manufacturer was a substantial factor in causing it to incur expenses related to lead-based paint. Defendants also would be jointly and severally liable if they are found to have engaged in a conspiracy to conceal the hazards of lead-based paint.

Why are the some of the suits alleging a conspiracy by the industry?

When two or more parties work together to commit an unlawful act or to commit a lawful act through illegal means, they have engaged in conspiracy, which makes each party liable for the entire harm caused to a plaintiff as a result of the conspiracy. The lawsuits allege that the lead companies and their trade association conspired to conceal the dangers of lead-based paint, to mislead the public regarding the hazards, and to aggressively promote lead-based paint, despite their knowledge of its dangers. If the plaintiffs succeed in proving conspiracy, the lead companies will be jointly and severally liable for the damage, and the plaintiffs need not prove that a specific defendant's paint is responsible for their damages. This would not be the first time the lead pigment industry would be found to have conspired against the public interest. In 1953, the Federal Trade Commission found that the lead pigment industry had violated federal law by conspiring to fix prices.

Are these class action suits?

The lawsuit initiated by Santa Clara County has been brought on behalf of a class comprising all public entities in California that have incurred medical, educational or abatement costs stemming from lead-based paint. Several counties and two cities have joined that lawsuit as plaintiffs.

How are these cases different from previous unsuccessful suits against the lead industry?

Many of these recent cases have been filed by governmental entities, not individual plaintiffs. Governments bear broad responsibility for protecting public health and well-being, and are accorded expansive rights to fulfill that duty. Accordingly, governments have standing to pursue certain causes of action – such as public nuisance, equitable relief and consumer protection act violations – that may not be available to individual plaintiffs.

Past cases by individuals have been hindered because it is nearly impossible to pinpoint which of the defendants produced the lead pigment that caused the plaintiff's injuries. The governmental cases focus on the conduct of the lead industry in promoting, selling and distributing lead pigment for use in and on homes. By focusing on the individual and collective conduct of the defendants, the cases rely on joint and several liability and conspiracy claims to hold the industry accountable for the widespread harm it has caused.

Experience in the tobacco litigation may be instructive. For decades, the tobacco industry appeared unassailable in court, as plaintiffs lost case after case. It was not until significant numbers of states sued the companies for the public health costs of tobacco that they came to the negotiating table. It is true that industry will not back down easily, given the potentially enormous liability at stake. However, as more states, cities and counties launch suits, the likelihood that the lead industry will be held accountable for the damage it has caused will increase significantly.

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The Lead Industry's Track Record

Fairness requires holding the lead industry accountable for the costs of cleaning up the problem it created. Although the lead pigment manufacturers were aware of the dangers of lead-based paint, they aggressively promoted it as safe for use in homes, schools, hospitals, and nurseries, claiming that lead-based paint promoted health and sanitation. Indeed, the industry internally acknowledged the hazards of lead-based paint early in the 1900s, but concealed them from the public. For example, Sherwin-Williams published an article in 1904 warning that lead-based paint was poisonous both for workers and inhabitants of homes, and then began manufacturing and selling lead-based paint in 1910 after purchasing an interest in a lead mine.

Faced with mounting evidence during the first half of the 20th century of the hazards of lead-based paint, lead industry leaders attempted to rebut adverse research findings and continued to aggressively market lead-based paint. In addition, the lead industry lobbied heavily to thwart governmental efforts to regulate lead-based paint and require warnings. Similar to the tobacco companies, the lead industry targeted children through its advertising, producing and distributing Dutch Boy painting booklets and souvenirs, and urging paint store owners not to "forget the children."

Industry attempted to blame parents for failing to protect their children adequately from lead hazards through the 1950s. In 1957, the Lead Industries Association's health and safety director attributed the problem of lead poisoning to flaking paint in slums, concluding that the problem could only be addressed by ridding the country of slums and educating "relatively ineducable" parents. As late as 1959, lead poisoning was seen as "a headache" by the industry.

The industry's responses to the lawsuits have included denying and deflecting responsibility for causing lead poisoning:

"We voluntarily removed the lead in 1955."
The industry is fond of claiming that it stopped adding lead to interior paints when it learned that lead-based paint was dangerous. In fact, the lead pigment manufacturers knew that lead-based paint was hazardous long before 1955. The decision to push for adoption of a 1955 standard limiting the lead content in paint was a ploy to further delay government regulation. The self-serving standard allowed 10,000 parts per million of lead in paint, exempted exterior paints altogether, was completely voluntary, and lacked any means for tracking or enforcement.

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Moreover, it was largely a concession to market forces. By 1954, with lead-based paints losing market share to safer, better alternatives and with the expanding demand for lead in automobile fuel, it was a clever exit strategy for the lead industry to magnanimously participate in the adoption of this unenforceable standard.

The 1955 standard notwithstanding, these companies continued selling paint with lead in it, at reduced but still harmful levels. They did not stop until the government forced them to by banning lead paint in 1978. For the next 23 years — from 1978 to today — they have done virtually nothing to prevent children's exposure to toxic lead dust from paint, or to remove lead-based paint hazards from children's homes.

"It's not fair to sue now; lead paint has been banned for 20 years."
The fact that the federal government banned lead-based paint in 1978 has not prevented the product from continuing to cause serious damage to children's intelligence and behavior. Lead-based paint takes its toll every day as more children are poisoned, and it will continue to do so unless and until lead hazards are abated. Lead-based paint may no longer be on the shelves, but lead paint hazards in most older housing continue to poison generation after generation of young children.

"Property owners are to blame."
Home ownership carries with it responsibilities as well as rights, including the duty to maintain property in safe and habitable condition. Rental property owners properly are held accountable when they endanger children by failing to control lead hazards. However, property owners are not to blame for the fact that the paint in their homes is toxic. The lead industry, which for decades aggressively marketed lead-based paint as safe, bears sole responsibility for the toxic qualities of paint.

In fact, research published by the CDC (*Morbidity and Mortality Weekly Report,* April 6, 2001) confirms that even the most responsible property owners cannot rid themselves of this nuisance. It points out that after lead-painted wood has been chemically stripped with a caustic (alkaline) material, the bare wood may still contain lead that can be released if the surface is disturbed, for example by sanding. This study documents that that even property owners who justifiably may think they have removed lead paint could still have potential hazards.

Are lawsuits necessary?

To date, the lead industry has refused to contribute significant resources to solving the problem it created. Instead, the industry has invested enormous sums in lobbying to dissuade cities and states from filing – $1 million in Milwaukee alone prior to that city's decision to sue. The industry has hired prominent Washington lobbying firms including Cassidy & Associates and Hill & Knowlton, as well as former US Attorney General Dick Thornburgh, former Maine Attorney General Andrew Ketterer, and former Members of Congress Alan Wheat and Martin Russo. Industry's favorite counter-proposal is to suggest spending more of other people's money. In Milwaukee, for example, the industry offered to use its lobbying clout to shift additional federal dollars to Milwaukee (at the expense of other cities receiving lead hazard control funds). At the national level, several paint

companies are using their influence to lobby for increased funding of lead-hazard control programs – at taxpayer expense.

What companies comprise the lead industry?

The recent suits are directed primarily at companies involved in the manufacture, distribution or sale of lead pigments, the lead component in lead-based paint. Well-known paint companies, including Sherwin-Williams have been sued. Some companies that produced lead pigments have been sold or have merged, so their successor companies inherited these legal responsibilities. American Cyanamid, Atlantic Richfield, O'Brien Corporation, SCM Chemicals, Cytec Industries, Millennium Inorganic Chemicals, Valspar Corporation and ConAgra Grocery Products Company all have been sued as successors to lead pigment producers. Additional defendants include companies prominent in the lead industry, such as E.I. Du Pont de Nemours and NL Industries (formerly National Lead, producer of Dutch Boy lead-based paint). Some jurisdictions also have sued local manufacturers and sellers of lead-based paint. The Lead Industries Association (LIA), the industry's trade group, also is named as a defendant in the lawsuits for its role in downplaying the dangers of lead poisoning and promoting the use of lead-based paint in residences, schools, and hospitals, despite clear knowledge of the hazards. In April 2002, the LIA, a defendant in nearly 40 cases against former manufacturers of lead-based paint, filed for bankruptcy under Chapter 7 of the Bankruptcy Code (liquidation). As a result, lawsuits in which the LIA is a defendant are stayed with respect to the LIA, but continue against other defendants.

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ALLIANCE TO END CHILDHOOD LEAD POISONING

Principles for Prevention

In order to ensure that the proceeds of lawsuits against the lead industry are dedicated to preventing lead poisoning and are targeted to benefit children at greatest risk, the Alliance urges that relief be shaped in accordance with the following principles:

- Monetary damages and relief awarded in successful lawsuits against the lead industry should be dedicated to protecting children – the class that defendants' actions have put most at risk – from lead poisoning.

- Lead poisoning protection efforts should focus on efficient and effective methods to prevent lead exposure *before* children are poisoned, instead of reacting to already-poisoned children. While medical monitoring, screening, and public health education remain part of lead poisoning prevention, by themselves they fall far short of preventing the problem once and for all by controlling lead hazards.

- Preventive solutions should be targeted to benefit children at highest risk – those living in older, poorly maintained housing in distressed communities.

- Abatement should be the preferred solution in highest risk communities. With the goal of eliminating the lead poisoning problem in distressed communities once and for all, full abatement of lead-based paint in housing should be instituted in high-risk areas.

- The specifics of the local situation must guide the design of remedies, since the crux of the problem varies from community to community.

- Lead poisoning prevention efforts should be anchored in community-based programs. Prevention efforts and initiatives need to be based in the affected high-risk communities themselves and take full advantage of opportunities for developing long-term capacity within them.

- Enforcement is a critical component of solutions used in tandem with subsidies to achieve prevention.

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