

July 27, 2010

Public Justice's *amicus* advocacy just helped win a major access to justice victory against the lead pigment industry and other huge corporate wrongdoers! Trying to avoid liability for the public health dangers posed by lead paint, lead pigment manufacturers tried to disqualify attorneys hired on a contingent-fee basis by California cities and counties to prosecute public nuisance cases. But access to justice will not be denied. **The California Supreme Court just held in *Santa Clara v. Superior Court* that government entities may pursue public nuisance litigation against the lead pigment industry with assistance from private attorneys hired on a contingent-fee basis.**



More than twenty years ago, we filed the first lawsuits in the nation designed to hold the lead pigment industry accountable for the massive public health crisis caused by the marketing and sale of lead-based paint. Those initial cases were unsuccessful, but they laid the groundwork for a series of public nuisance lawsuits filed by government entities seeking cleanup costs from the industry and alleging that the industry promoted lead paint for interior use while knowing that such use was hazardous to human health.

Four years ago, the State of Rhode Island -- represented by the State Attorney General and private attorneys retained on a contingency-fee basis -- won a verdict against three major lead pigment manufacturers, with the jury finding the defendants responsible for creating a public nuisance and forcing them to clean more than 300,000 homes of lead contamination. The first jury to hear the evidence said the companies have to pay. But the Rhode Island Supreme Court overturned the verdict and the defendants are still trying to avoid accountability every way they can.

In California and other states, the lead pigment industry attempted to avoid responsibility by moving to disqualify the contingency fee attorneys retained by the government entities to help seek justice for the public they represent and protect. Without the assistance of contingency fee attorneys, the government entities would lack both the resources and expertise to seriously litigate against the giant, billion-dollar industry. A trial court in California sided with the industry, holding that contingency fee attorneys could not be retained by or co-counsel with the government in public nuisance actions because their incentives are incompatible with the standard of neutrality to which attorneys representing the government must adhere.

We think -- and argued in *amicus* briefs before the Court of Appeal and Supreme Court -- that the trial court's rule would immunize the lead industry and other huge corporate wrongdoers from liability for endangering the public health. The tobacco industry, for example, could never have been sued by the states without contingency fee representation.

Yesterday, the California Supreme Court held, as we had urged, that cities and counties can hire private attorneys on a contingent-fee basis as long as the public entities' in-house

counsel retain control over all critical discretionary decisions in the litigation. The Court also clarified what elements of control must be specified in retention agreements between government entities and attorneys hired on a contingent-fee basis to prosecute public-nuisance abatement actions.

To read the decision in *Santa Clara v. Superior Court*, Case No. S163681, [click here](#).

To read our *amicus* brief, [click here](#).

Congratulations and thanks to the plaintiffs' counsel and to Public Justice's Victoria Ni for her work with me on the brief. Congratulations and thanks to you, too, for helping make this important victory possible.

Together, we must -- and will -- preserve access to justice for all. - Arthur

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