

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of the Application of NEW YORK CITY  
COALITION TO END LEAD POISONING, *et al.*

Petitioners-Plaintiffs

for a Judgment pursuant to Article 78 and § 3001 of the  
Civil Practice Law and Rules

-against-

PETER VALLONE, as Speaker of the New York City  
Council; *et al.*

Respondents-Defendants.

Index No. 120911/99

**REPLY AFFIRMATION OF JOHN F. ROSEN, M.D.,  
IN SUPPORT OF PETITION AND MOTION FOR PRELIMINARY INJUNCTION**

JOHN F. ROSEN, M.D., a physician authorized by law to practice in the State of New York, hereby affirms the following as true under penalty of perjury pursuant to CPLR § 2106:

1. My background and professional qualifications are set forth in my initial affidavit in this proceeding, sworn to on October 7, 1999.

2. I have reviewed the November 5, 1999, Affidavit of New York City Health Commissioner Neal Cohen ("Cohen Aff."), and the two studies upon which Dr. Cohen relies in offering his testimony to the Court. These studies are: Amitai Y., Brown, M.J., Graef, J.W., and Cosgrove, E., "Residential Deleading: Effects on Blood Lead Levels of Lead-Poisoned Children," Pediatrics 88(5):893-97, 1991, and Charney, E., Kessler, B., Farfel, M., and Jackson, D., "Childhood Lead Poisoning: A Controlled Trial of the Effect of Dust-Control Measures in Blood Lead Levels," N. Enl. J. Med. 309:1089-93, 1983. They are annexed to Dr. Cohen's testimony as Exhibits 1 and 2 respectively.

3. To begin, I respectfully must point out that the Court should not conclude from these studies, as Dr. Cohen asserts, that "abatement of intact lead paint could actually increase the risk of lead exposure." Cohen Aff. at ¶ 10. Instead, the conclusion from these studies is that improper work practices and the lack of proper lead dust controls will often result in the increase of lead contaminated dust and children's blood lead levels, sometimes dramatically. On the other hand, the careful removal of lead paint is effective in reducing children's blood lead levels and the dust lead levels in their homes.

4. These outcomes are not dependent on whether the paint is peeling or intact; instead, they are dependent on the amount of care used (1) in preparing the work area, (2) in using proven safe work practices, (3) in properly cleaning the work site at the work's conclusion, and (4) in

verifying that the work site is safe for re-occupancy by having an independent party conduct sufficient lead dust clearance tests.

5. The first study, "Residential Deleading: Effects on Blood Lead Levels of Lead-Poisoned Children," was published in 1991 and reported on work practices that were used in Massachusetts in 1984 and 1985.

6. At the time, Massachusetts required landlords to remove or permanently cover lead paint that was loose and peeling or present on a chewable surface below 4 ft. Furthermore, many of the work practices reported in the study were outlawed by Massachusetts in 1988. The prohibited practices included: dry abrasive blasting, on site use of methylene chloride (a caustic stripping agent), and the use of propane torches (which causes the lead in paint to vaporize).

7. In addition, while Massachusetts inspectors stressed to contractors performing lead paint removal that it was important to remove children from the work area and to cleanup when work was completed, the study reported that "these instructions were not uniformly followed."

8. In the Massachusetts study, children's blood lead levels were measured before, during and after lead paint abatement.

9. One finding of the Massachusetts study was that the method of deleading directly effected the outcome, with an increase in blood lead levels associated with dry scraping and sanding and a decrease in blood lead levels associated with "deleading" by replacing or permanently covering lead painted surfaces.

10. Another finding of the study was that the "overall effect of deleading is a significant decrease in [children's blood lead] levels."

11. In fact, the study concluded that–

[d]espite the immediate hazard associated with deleading described in this study, the overall long-term effect of deleading is positive and results in a significant decrease in PbB in lead-poisoned children.

(Emphasis added)

12. As I explained above, dry scraping, the use of methylene chloride and the use of propane torches were outlawed by Massachusetts over a decade ago. These and other unsafe practices are also prohibited under the federal Department of Housing and Urban Development (HUD) Guidelines, which were issued in 1992, and by the New York City Health Code § 173.14, which is consistent with the HUD Guidelines.

13. The second study relied on by Dr. Cohen, in my opinion, does not address his concern at all. The study was conducted in 1981 and reported in 1983 in the City of Baltimore and the results of the study showed that a focused lead dust control program can reduce blood lead levels more than standard lead removal practices, which at the time did not include rigorous lead dust containment and clean up. In fact, the abatement practices were similar to the ones identified in the Massachusetts study and their use was prohibited in Baltimore in 1987.

14. Furthermore, a series of articles from the Kennedy/Krieger Institute in Baltimore show that as remediation of lead paint has become increasingly comprehensive and strict, the net effect on reducing blood lead values has become more dramatic.

15. Another point I must make about the Massachusetts study is that in 1988 the State imposed new, strict regulations on lead abatement methods, including the requirement that residents are barred from reentering the work area until it has been

found safe by a licensed lead paint inspector. Measures such as these, which limit the child's exposure to lead during deleading, should be strictly imposed.

In contrast, under the so-called "interim controls" in Local Law 38, there is no mandate that an independent third party conduct appropriate lead dust clearance tests after cleanup.

16. In fact, a recent study just published in the American Journal of Public Health, Sargent, et al, "The Association Between State Housing Policy and Lead Poisoning in Children, Am. J. of P. Health," 89(11):1690-95 (1999), has shown the profound difference in public health outcomes as result of strict controls such as those imposed by Massachusetts. A copy of the Sargent study is annexed to this affidavit. The study compared similar counties in Massachusetts and Rhode Island, with similar housing stock, populations, etc., and found that the incidence of blood lead levels greater than 20  $\mu\text{g/dL}$  was over three times higher among residents in Rhode Island than in the Massachusetts. *Id.*, at 1692 (Table 1). Moreover, the incidence of levels over 30  $\mu\text{g/dL}$  was four times higher. The difference was largely attributed to the strict requirements of lead abatement in Massachusetts.

17. Also, I find Paragraph 10 of Dr. Cohen's affidavit particularly ironic. While on the one hand Dr. Cohen speaks of a "growing consensus" and "numerous studies" to support his position, on the other hand he relies on studies that were conducted almost 20 years ago, ignoring more recent research such as the 1999 Sargent study mentioned above.

Dated: Bronx, New York  
November 10, 1999

/s/ John F. Rosen  
JOHN F. ROSEN, M.D.

