

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

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

Petitioners-Plaintiffs-Respondents,

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-Appellants.

New York County  
Clerk's Index No.  
120911/99

**AFFIDAVIT OF EVELYN A. MAUSS, Sc.D.  
IN OPPOSITION TO  
RESPONDENTS-DEFENDANTS-APPELLANTS'  
MOTION FOR A STAY**

State of New York }  
County of New York } :ss.:

EVELYN A. MAUSS, Sc.D., being duly sworn, states as follows under oath:

1. I am an Adjunct Professor of Physiology at New York University and a Science Consultant to the Natural Resources Defense Council. I hold a doctorate in microbiology from The Johns Hopkins University School of Hygiene and Public Health (1941). My *curriculum vitæ* is attached.

2. I make this affidavit in opposition to respondents-defendants-appellants' ("appellants") motion for a stay of the Judgment entered below on February 22, 2001. This affirmation is based upon my own personal knowledge.

3. I have been an active advocate on public health policy concerning lead poisoning prevention in New York City since the 1960s, including membership of the organizing committee for the seminal National Conference on Lead Poisoning in Children held in March 1969 at Rockefeller University. I have testified to the New York City Council at numerous hearings on proposed lead paint legislation and on budgeting items related to lead and children's health. I also submitted an affidavit in support of the underlying petition in this proceeding. See September 21, 1999, Affidavit of Dr. Evelyn A. Mauss, in Volume 1 of Appendix to Petitioners-Plaintiffs-Respondents' Opposition to Respondents-Defendants-Appellants' Motion for a Stay.

4. I have reviewed the March 12, 2001, Affidavit of Dr. Jessica Leighton, annexed to appellants' motion. As I read her affidavit, Dr. Leighton claims that recent data released by her employer, the New York City Department of Health (DoH), proves that Local Law 38 of 1999 ("Local Law 38") has had a demonstratively more positive impact on public health than prior law.

5. Dr. Leighton's inference is insupportable for several reasons. First, with over six decades of professional work in the field of public health, I feel competent to say that the temporal relationship posited by Dr. Leighton is highly speculative. As I understand it, Local Law 38 went into effect until November 13, 1999. A significant impact on childhood blood lead levels is extremely unlikely to have occurred so promptly after a change in public policy.

6. Dr. Leighton's conclusion that Local Law 38 is responsible for decreasing blood lead levels stands in rather stark contrast to her views in an article she co-wrote and published little more than a year ago: Susan Klitzman and Jessica Leighton, "Decreasing Childhood Lead Poisoning in New York City: 1970-1998," Journal of Urban Health: Bulletin of the New York Academy of Medicine, Volume 76 No. 4 (December 1999) at 542, annexed as Exhibit 119. In that article, Dr. Leighton, after noting the "dramatic declines" since 1970 of lead poisoning in New York, explained rather differently the reasons for the steady decline:

The decline in the incidence of childhood lead poisoning in New York City coincides with national trends and has been attributed to regulatory bans on the use of lead in gasoline, paint, food and beverage cans, and plumbing.

Id., at 542.

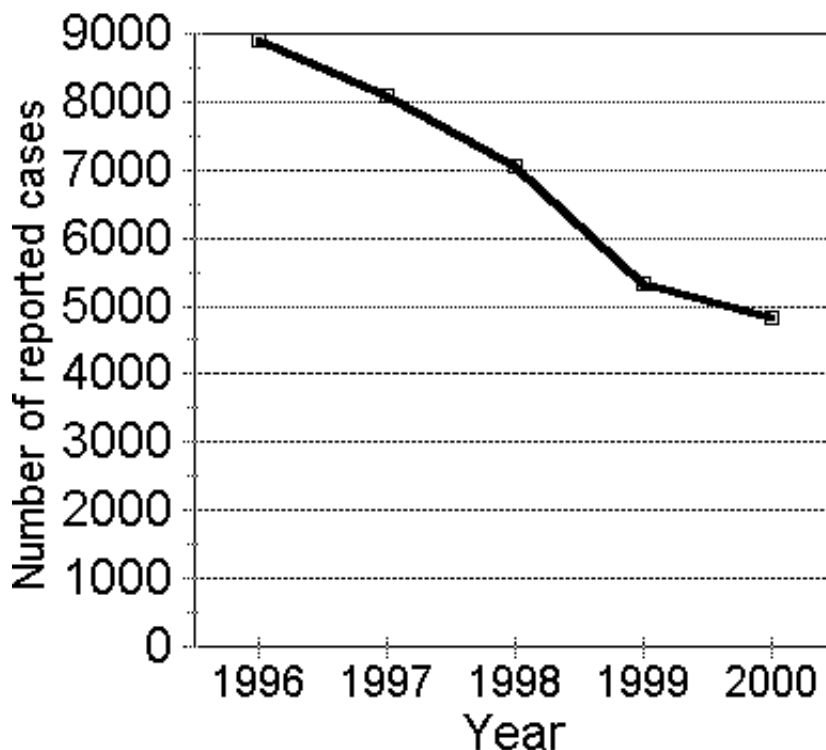
7. Thus, as Dr. Leighton would seem to be the first to admit, the relevant inquiry is not whether the number of lead poisoning cases has gone down -- since they have consistently decreased for the past 30 years -- but rather, the rate of decline. As stated above, while I do not believe that the DoH data can in fact establish a statistically significant impact based on a single year of Local Law 38 being in effect, the DoH data provided are at best inconclusive. Using the figures provided in the DoH press release attached as Exhibit J to Dr. Leighton's affidavit, I calculate the following changes in the rate of decline in the number of reported cases of lead poisonings, based on the number of children with reported blood lead levels of 10 micrograms of lead

per deciliter of blood or above (:g/dL) (the "level of concern" as defined by the federal Centers for Disease Control):

| Year | Children w/ Blood lead levels $\geq 10$ :g/dL | Rate of decline from prior year |
|------|---|---------------------------------|
| 1996 | 8921  |                                 |
| 1997 | 8101  | 9%                              |
| 1998 | 7058  | 13%                             |
| 1999 | 5325  | 25%                             |
| 2000 | 4831  | 9%                              |

Plotting these data indicates a flattening of the downward slope of the absolute number of elevated blood lead levels in the year since Local Law 38 went into effect:

**Reported Cases of Children 6 months - < 6 years with Blood Lead Levels  $\geq 10$  :g/dL**



Thus, while DoH presents five years of declining lead poisoning statistics, DoH's own data indicate the greatest rate of decline

of absolute numbers of elevated blood lead levels occurred in the two years prior to Local Law 38 going into effect. However, neither Dr. Leighton's affidavit nor the exhibit she relies upon provides data on the number of children screened during the last five years. Without these figures, it is impossible to calculate the rate of decline in prevalence of elevated blood lead levels during the last five years, rendering Dr. Leighton's inference based on just one year's worth of data essentially meaningless.

8. In conclusion, the court should deny appellants' motion. Setting sound public health policy calls for careful, balanced study. If the City's legislative body violated the law by rushing to quick conclusions without the benefit of an environmental impact statement, there is even less basis for this Court to do the same.

/s/ Evelyn A. Mauss  
EVELYN A. MAUSS, Sc.D.

Subscribed and sworn before me  
this 20<sup>th</sup> day of March, 2001.

/s/  
NOTARY PUBLIC