

R.I. wins right to retry lead lawsuit -- A ruling allows the attorney general to pursue the state's case against eight paint manufacturers.

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PROVIDENCE -- Superior Court Judge Michael A. Silverstein ruled yesterday that Atty. Gen. Patrick Lynch may retry the state's precedent-setting lawsuit against eight of the nation's big paint companies. The state alleges that the companies created a public nuisance when they sold the lead-based paints two generations ago that now poison about 3,000 Rhode Island children annually. The companies insist the paints are only troublesome when not properly maintained. The state's first trial of the paint companies ended last fall with a hung jury. The trial was the most ambitious effort yet to force the paint companies to help pay for the problems caused by lead paints. It was closely followed by financial analysts, child advocates and community leaders across the country. Lawyers for two defendants argued yesterday for dramatically altering the lawsuit and going ahead with one comprehensive trial based on the 100 houses in Rhode Island that are alleged to have poisoned the most children.

Silverstein denied that motion and ruled that the state may proceed by retrying the first phase of its original suit asserting that the presence of lead paint throughout Rhode Island amounts to a public nuisance. If the state prevails, it plans to move on to subsequent trials establishing liability and damages.

Special Asst. Atty. Gen. Neil F.X. Kelly said the state would be ready to go to trial the first week of January. The defendants said they wouldn't be ready until the first week of April. Silverstein said he would rule on the trial date and other trial issues June 19.

Attorney John Tarantino, representing Atlantic Richfield, said that his client wants to go to trial over the 100 worst houses in Rhode Island and if the state can't prove its case with those, it probably doesn't have a case." I want to try the 100 worst, and I believe I'm going to win that case," said Tarantino. "We want to end this with a judgment. We're getting blamed for what happened in these properties in [the trial] and in the press, but we're not allowed to defend ourselves." Tarantino said he could be ready to go to trial in the spring. Attorney Donald Scott, representing NL Industries, said his client also supported the 100-house trial. But attorneys Michael T. Nilan and Laura Ellsworth, representing, respectively, Millennium Inorganic Chemicals and Sherwin-Williams Inc., disagreed with the 100-property case, saying it would take too long to try.

But they asked Silverstein to demand that the state focus its case so the companies can properly defend themselves." The state's case is like saying loud noises in New York City at rush hour are a public nuisance," Ellsworth said. Where do you go from there?

she asked. Silverstein asked both sides if they could somehow merge the state's case with the new proposal from Tarantino. Both said that would be impossible. Attorney Fidelma Fitzpatrick of Motley Rice, which is helping the state try its case, argued that it would be preposterous to focus on 100 houses when evidence indicates that some 90,000 houses in Rhode Island have lead paint on them. "Is this about a particular paint on particular houses poisoning particular children?" Fitzpatrick said. "Or is it about the public-health crisis in Rhode Island caused by lead-based paints?"

Kelly called on Silverstein to set the earliest trial date possible. The soonest the state can be ready, he said, is Jan. 5. "This is a priority for the attorney general," Kelly said. "The health, safety and welfare of the children of Rhode Island is at stake. So we need to try the case as soon as possible." Tarantino said that Scott is scheduled for a big trial in Kansas that starts in January, so the defense would like to wait until early April to start the Rhode Island lead paint trial.

The other defendants are American Cyanamid, E.I. du Pont de Nemours and Co., the O'Brien Corp. and Cytec Industries. Recap coverage of the state's lead-paint case, search a database of lead-paint complaints around Rhode Island and find ways to prevent lead-paint problems: <http://projo.com/extra/lead/>

Online at:

http://www.projo.com/news/content/projo_20030530_lead30.6ac3b.html