Statement by Bonnie J. Campbell on Behalf of Defendants in People of the State California, et al. v. Atlantic Richfield Company, et al.

The following may be attributed to Bonnie J. Campbell, spokesperson for the defendants in the California litigation. Campbell is the former Attorney General of Iowa and led the U.S. Department of Justice's Office on Violence Against Women during the Clinton Administration.

In *People of the State California, et al. v. Atlantic Richfield Company, et al.,* set to go to trial July 15, 2013, ten California cities and counties ask the court to declare that lead paint in or on privately owned residential buildings within their jurisdictions is a public nuisance that requires extensive abatement. A string of judicial decisions around the country and the legal principles cited in these rulings, however, confirms that this public nuisance lawsuit is without factual or legal merit.

This lawsuit is puzzling on numerous fronts. There is no public nuisance. California's Childhood Lead Poisoning Prevention Program, including its emphasis on education and maintenance, is a public health success story that has resulted in a dramatic reduction in blood lead levels in California's children.

Blood lead levels are at historic lows in California and are lower than national averages. Regulatory efforts and prevention programs – programs funded in part by defendants in the lawsuit – have worked and help to continue to drive blood lead levels in California towards zero.

Plaintiffs in this case claim that defendants promoted the use of white lead pigments in residential paint during the first half of the last century knowing it would create the alleged public nuisance today. This is wholly untrue, as the historical record shows. When interior lead-based paint was made in the early decades of the 20th century, it was a legal product in great demand because it was washable and durable, and the currently reported risks to children were unknown and unknowable.

Knowledge of its risks evolved over a century and changed dramatically after 1970. Perhaps the best way to assess what was understood is to examine the views expressed contemporaneously by public health officials who were on the front lines in treating lead exposure and wrote about their findings in widely circulated public journals. The fact is, armed with all that was known about risks from lead paint, no public health agency advised consumers not to use lead-based paint in homes until 1951, when the Baltimore Health Department (assisted by funding from the lead industry) confirmed a new source of lead risk – peeling and chipping lead paint in deteriorated inner-city housing. In response to this newly suspected risk, the companies did the right thing. Industry funded the no-strings-attached research that confirmed the risk. The companies then voluntarily ceased marketing lead-based interior paint decades ahead of federal action.

Current risks were not understood until very recently. In the early 1960s, public health officials set a blood lead "level of concern" at a level six times higher than the level later established in 1991. And, as recently as the early 1970s, at a time when it was still considered normal for children to consume some lead, the American Academy of Pediatricians in 1972 adopted a child per day lead consumption standard that, with the benefit of today's knowledge, is now considered dangerous.

This litigation is puzzling because California's own data show that lead-based paint is not today contributing to community-wide blood lead levels. It's puzzling as well because certain cities and counties are pursuing this action against former manufacturers when those cities and counties have stated that they have no or very few cases of children's ingestion of lead requiring intervention, and have failed to use all of the funds allocated to them for elevated blood lead level prevention programs. Further, the plaintiffs' argument is at odds with public health officials in California, including plaintiff county and city health officials, many of whom have said they were never even consulted before the lawsuit was filed.

Just what led to the California suit being filed? Since 1987, trial lawyers have recruited plaintiffs in scores of lawsuits against former manufacturers of lead pigment or paint. Initially, plaintiffs asserted negligence

and product liability claims. But, when these claims were rejected by the court, plaintiffs' attorneys switched course and began filing public nuisance claims against the former manufacturers. Eight public nuisance claims resulted. Claims in seven other states have either been voluntarily dismissed or rejected by the courts or juries. That leaves just one remaining public nuisance case -- the California case.

The remedy sought by the plaintiffs – extensive abatement of lead paint – is unnecessary. There is no public nuisance or need for extensive abatement. Both the U.S. Environmental Protection Agency and California's Department of Health Care Servicers say that lead paint, if well maintained and intact, typically poses no public health risk. Further, abating intact lead paint can be dangerous because it disrupts paint that is otherwise posing no risk, and creates lead dust accessible to children. The remedy is contrary to established laws and policies, and at odds with every federal statute, California law and local ordinance applicable to lead. California explicitly puts the obligations on landlords to prevent or abate lead-based paint hazards. The state does not require abatement of well-maintained, intact lead-based paint on any surface.

Tellingly, the plaintiffs' suit seeks extensive abatement of lead paint, including removal and replacement of all doors and windows with lead paint, declaring it a public nuisance, yet specifically exempts their own public buildings, including schools, their lead water pipes, roads, incinerators, and parks from the requirement for abatement.

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