



NEW YORK CITY LAW DEPARTMENT
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Press Release

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For Immediate Release

**STATE'S HIGHEST COURT UNANIMOUSLY RULES LOCALITIES
CANNOT BE SUED FOR HELPING TO ALLEVIATE LEAD POISONING**

COURT REAFFIRMS LONGSTANDING RULE LIMITING CLAIMS AGAINST MUNICIPALITIES

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New York, March 25, 2004 – Today, New York State's highest court – the Court of Appeals – unanimously dismissed two lawsuits brought against local governments by parents of children who had suffered lead poisoning. The plaintiffs had alleged negligence by local health departments in dealing with the abatement of lead paint in the plaintiffs' apartments. By a 7-0 vote, the Court rejected this argument.

In one of the cases, *Ashley Harris v. NYC*, Department of Health and Mental Hygiene (DOH) officials had inspected an apartment, found lead-paint violations and ordered the landlord to abate them. The landlord relocated the Harris family while he performed the abatement. The DOH public-health sanitarians inspected the work and found that the violations were cleared. In addition, a DOH public-health advisor visited Ashley Harris' mother to inform her about nutritional and hygienic measures to lessen the effect of lead paint, such as feeding Ashley foods rich in iron and calcium, and washing Ashley's hands and toys as well as the floors to eliminate lead paint and dust. The plaintiffs had alleged that the City assumed liability because of its outreach efforts and actions.

The Court of Appeals held that even if, in retrospect, the municipal employees may have carried out their duties imperfectly, "that is not the test" and if it were, "municipalities in all their governmental functions would be insurers of the safety of their citizens and [would] be open to liability whenever it can be shown that they could have or should have done better." The Court was "cautious about opening the public purse" if the government does not directly cause the plaintiffs' injuries – here, private landlords owned the apartments containing lead paint. The Court also reaffirmed the limits on City liability in many other types of negligence cases, such as claims that the police did not protect a plaintiff from injury directly caused by a criminal.

The Court of Appeals also upheld the longstanding rule that limits municipal liability in such cases. The Court explained that a plaintiff may not get money damages for a municipality's alleged negligence in the performance of a governmental function, such as public health, unless the plaintiff establishes a "special relationship" with the municipality. The Court found that the plaintiffs did not meet their "heavy burden" of proving a "special relationship" because, in dealing with the plaintiffs, the local officials "did not go beyond the mandates of the lead paint laws." The Court pointed out that it had found a "special relationship" allowing municipal liability only in "several of the most egregious situations."

"Providing health education to parents of young children is essential to the prevention of childhood lead poisoning," said Jessica Leighton, Assistant Commissioner for Environmental Disease Prevention for the New York City Department of Health and Mental Hygiene. "Furthermore, such education is mandated by State law. The Court's unanimous decision allows the Health Department to continue to provide important lead poisoning prevention services to at-risk children."

“The Court emphasized how important it is that municipalities have funds and discretion to provide these critical public services,” Janet L. Zaleon, the lead attorney on the case, added. “Had the Court ruled differently, it could have had a profoundly chilling effect.” Zaleon is a Senior Counsel in the Law Department’s Appeals Division. The case was handled at the lower court level by office’s Tort Division.

In addition to the *Ashley Harris* case involving New York City, the Court also decided the case of *Maria Nancy Pelaez v. Laura Seide*, a companion case from Putnam County which raised the same legal issues. In both cases, the Court found that the governments actions did not warrant the imposition of liability.

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