

County Held Partly Liable in Lead Paint Verdict

BY JOHN CAHER

ALBANY -- In apparently the first verdict in New York State in which a municipality has been found liable for failing to properly supervise lead abatement, a Supreme Court jury has awarded \$1.8 million to an 8-year-old girl, with 30 percent of the sum to come from Albany County.

The size of the verdict is in itself noteworthy as it ranks among the highest in the state, and is possibly the highest upstate. But the fact that the jury found Albany County had assumed a special duty to shield Sierra-Dawn Lafontaine from lead poisoning could dramatically raise the stakes in lead litigation, attorneys said.

"What is happening is plaintiff's counsel are targeting county governments," said counsel for the County, John W. Bailey, of Ainsworth, Sullivan, Tracy, Knauf, Warner & Ruslander in Albany. The principle reason, he said, is that many landlords are either underinsured or uninsured, so plaintiff's counsel "are obviously looking for entities that can pay a judgment."

However, until this verdict in *Sierra-Dawn Lafontaine v. Nicholas Franzese and Eileen Franzese*, that approach had not been successful.

Peter Danziger, an attorney with the Albany firm O'Connell and Aronowitz and lead counsel for the plaintiff's litigation team, said it makes perfect sense to hold the County liable since it has assumed the responsibility of overseeing lead abatement.

"The County has been affirmatively negligent in improper inspection and improper abatement," Mr. Danziger said. "Clearly, they have established a special duty by taking control of a blatant and dangerous health hazard."

At trial, Mr. Danziger established that Ms. Lafontaine was living with her family in a 100-year-old home in Cohoes, a small city north of Albany. The dwelling was owned by Nicholas and Eileen Franzese.

After elevated lead levels were detected in the then-16-month-old girl in September 1992, an Albany County public health nurse visited the apartment and discovered chipping and peeling paint. The child's mother was advised to scrape and repaint the areas, and then wet-mop and clean the apartment with a special vacuum to keep lead dust from spreading.

However, the landlord was not notified nor required to undertake lead abatement because the level of poisoning had not exceeded the hazard threshold of 20 micrograms of lead per deciliter of blood.

A week later, Sierra's lead level was beyond the danger point and the landlord was contacted and ordered to abate within 14 days. The abatement, however, took several weeks and, according to the plaintiff, was poorly supervised by the County. By November 1992, the girl's blood lead level had risen to an even higher plateau, 23, according to Mr. Danziger.

At trial, plaintiff's counsel presented evidence that the girl suffers from permanent brain damage, learning disorders and other disabilities. The jury seated before Supreme Court Justice Joseph C. Teresi awarded \$500,000 for past pain and suffering, \$300,000 for future economic loss, and \$1 million for future pain and suffering.

"Sierra will suffer for the rest of her life as a result of the irresponsible actions of the landlords and the failure of the County of Albany to protect her from lead poisoning," said Mr. Danziger, whose firm has filed 25 lead-poisoning lawsuits upstate against landlords and counties. "This award will help Sierra, and hopefully will serve as a warning to other landlords and counties that children and adults are entitled to lead-safe housing and lead-safe workplaces."

However, Mr. Bailey questioned whether Ms. Lafontaine suffered from lead poisoning at all, and suggested **that** the girl's handicaps are genetic rather than environmental. In any case, he said the verdict will be appealed to the Appellate Division, Third Department.

"It has been our contention all along that the County cannot be held liable in these cases, just like a county cannot be held liable if the sheriffs don't prevent a bank robbery." Mr. Bailey said. "We were simply carrying out the mandates of the State Legislature. If this ultimately forms the basis of municipal liability, the financial threat to municipalities is extremely serious."

Also on the plaintiff's litigation team were Stephen R. Coffey and Mo Athari, of O'Connell and Aronowitz, and David McMorris and Neil Leifer, of Thornton, Early & Naumes of Boston, Mass. Mr. Bailey was assisted by Rebecca Slezak of his firm. The Franzeses were represented by John A. Stevens, of Williamson, Clune & Stevens of Ithaca.