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ARCO, DuPont Can't Shed Lead Paint Claims

By [Beth Winegarner](#)

Law360, San Francisco (April 8, 2013, 7:07 PM EDT) -- A California judge on Monday refused to toss claims that Atlantic Richfield Co. and [DuPont Co.](#) misled consumers about the dangers of lead-based paint, finding there was enough evidence that DuPont promoted lead paint without health warnings and that ARCO's predecessor sold it in-state.

In a sweeping ruling on four motions in the case, Santa Clara Superior Court Judge James Kleinberg sided with the state of California's arguments at every turn. He rejected ARCO's motion for summary judgment arguing the plaintiffs hadn't proven that its alleged predecessors International Smelting & Refining Co., Anaconda Lead Products Co. and others made or sold lead paint in California or that they had identified anyone who purchased and used it on residential buildings.

Judge Kleinberg said the plaintiffs had shown that ARCO's predecessors widely advertised lead paint pigments, that ARCO facilitated sales in California and that ARCO's sales data shows that it sold white lead to at least 36 companies in California.

“A trier of fact could reasonably find that the regular advertisements and sales presence in California, combined with circumstantial evidence of sales therein, constitute more than de minimis conduct by ARCO's predecessors and were more likely than not substantial factors in the presence of lead in the prosecuting entity jurisdictions,” the order said.

He also threw out DuPont's motion for summary judgment, in which the co-defendant argued that in 2006, the California Court of Appeal held that liability in the case was based on the defendants' “promotion of lead for interior use with knowledge of the hazard that such use would create,” and DuPont hadn't done so. But DuPont interpreted the appeals court ruling incorrectly, according to Judge Kleinberg.

“The distinction the Court of Appeal made here was not between promoting lead for interior versus exterior use, but intentional promotion of lead paint with knowledge of its dangers versus mere production of lead paint and/or failure to warn of a defect,” the order said.

ARCO, DuPont and co-defendant [Sherwin-Williams Co.](#)'s motion for discovery sanctions, in which they argued that the state had failed to comply with court orders to produce evidence, met a similar fate. Judge Kleinberg said he wasn't aware of any findings that the plaintiffs had violated a discovery order, and that remaining discovery issues were being worked out with a discovery referee, Judge Eugene F. Lynch.

ARCO argued in another motion for summary judgment that it didn't promote, make or sell lead paint or lead pigment, and that it hadn't inherited the liabilities of its predecessors, including the International Lead Refining Co. and the Anaconda Lead Products Co. ARCO insisted that its liability was limited to what International Smelting & Refining Co. would face if it still existed.

Judge Kleinberg sided with the state's argument that the motion was procedurally improper because a ruling on

the motion would not completely dispose of the liability issues, due to ARCO's duty as a successor to International Smelting & Refining Co.

Attorneys for the defendants did not immediately respond to requests for comment Monday. Attorneys for the plaintiffs could not be reached for comment.

California filed its fourth amended complaint in March 2011 on behalf of the people of the state of California, alleging that the defendants' production and sale of lead-based paint created a public nuisance and seeking complete abatement of all lead from public and private homes, buildings and properties within the plaintiff's jurisdiction.

The first recorded case of a child with lead poisoning dates back to 1907, giving the defendants ample evidence that the toxin poses a health hazard, according to the suit. However, the defendants and others promoted lead paint, claiming that it provided health benefits instead, the complaint says.

The defendants are represented by John W. Edwards II, Gillian Garrett, Robert A. Mittelstaedt, Peter N. Larson, Paul M. Pohl, Charles H. Moellenberg Jr. and Cynthia H. Cwik of [Jones Day](#).

The case is People of the State of California v. Atlantic Richfield Co. et al., case number 1-00-CV-788657, in the Superior Court of California, County of Santa Clara.

--Editing by Elizabeth Bowen.

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