

STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE, S.C.
STATE OF RHODE ISLAND, by and through :
SHELDON WHITEHOUSE, ATTORNEY GENERAL, :

Plaintiff, :

:v. :

:

LEAD INDUSTRIES ASSOCIATION, INC.; :
AMERICAN CYANAMID COMPANY; :
ATLANTIC RICHFIELD COMPANY; :
E. I. DUPONT DE NEMOURS AND COMPANY; :
THE O'BRIEN CORPORATION; :
THE GLIDDEN COMPANY; :
NL INDUSTRIES, INC.; :
SCM CHEMICALS; :
THE SHERWIN-WILLIAMS COMPANY; :
and JOHN DOE CORPORATIONS; :

Defendants. :

COMPLAINT

The State of Rhode Island (the "State"), by and through its Attorney General, Sheldon Whitehouse, brings this action for damages, civil penalties, injunctive relief, and other equitable relief and alleges, upon information and belief, the following:

I. PARTIES

A. Plaintiff

1. The State is a sovereign state of the United States. Sheldon Whitehouse is the duly elected Attorney General of the State. The Attorney General is the chief law enforcement officer and attorney for the State and brings this action on behalf of the State and in accord with his powers and duties as set forth in R.I.G.L. § 42-9-2 and at common law.

B. Defendants

2. Lead Industries Association, Inc. ("LIA") is a New York corporation with its principal place of business in the State of New York.

3. American Cyanamid Company ("American Cyanamid"), the successor-in-interest to the John R. MacGregor Co., is a Maine corporation with its principal place of business in New Jersey.

4. Atlantic Richfield Company ("Atlantic Richfield"), the successor-in-interest to International Smelting and Refining Company and Anaconda Lead Products Company, is a Delaware corporation with its principal place of business in California.

5. E. I. Du Pont de Nemours and Company ("Du Pont") is a Delaware corporation with its principal place of business in Delaware.

6. The O'Brien Corporation ("O'Brien"), the successor-in-interest to W.P. Fuller Company and Fuller-O'Brien, is an Indiana corporation with its principal place of business in Indiana.

7. The Glidden Company ("Glidden") is a Delaware corporation with its principal place of business in Ohio.

8. NL Industries, Inc. ("NL Industries"), formerly known as the National Lead Company, is a New Jersey Corporation with its principal place of business in Texas.

9. SCM Chemicals ("SCM"), the successor-in-interest to The Glidden Company, is a Delaware corporation with its principal place of business in New York.

10. The Sherwin-Williams Company ("Sherwin-Williams") is an Ohio corporation with its principal place of business in Ohio.

11. John Doe Corporations are business entities, both domestic and foreign, whose identities are presently unknown to plaintiff, but who can be described as certain manufacturers, distributors, and or trade organizations and other such entities that have, at times pertinent to the complaint, individually and/or jointly and/or through their agents, alter egos, subsidiaries, divisions or co-conspirators, manufactured, processed, marketed, promoted, supplied, distributed and/or sold Lead in the State and/or materially participated with, conspired with, assisted, encouraged, acted in concert with, aided and/or abetted one or more of the other Defendants in doing so.

12. American Cyanamid, Atlantic Richfield, du Pont, O'Brien, Glidden, NL Industries, SCM and Sherwin-Williams and their agents, servants, aiders and/or abettors and co-conspirators (collectively referred to herein as the "Manufacturing Defendants") manufactured, processed, marketed, promoted, supplied, distributed and/or sold all or substantially all lead products contained in paint and coatings (hereinafter "Lead") during the relevant time period.

13. From at least 1928 through the present, the LIA was the agent, servant, employee, alter ego, co-conspirator, aider and/or abettor of one or more of the Manufacturing Defendants and acted individually and/or within the scope of its agency, servitude, employment and conspiracy.

14. At all pertinent times, the LIA, American Cyanamid, Atlantic Richfield, du Pont, O'Brien, Glidden, NL Industries, SCM, and Sherwin-Williams, together with their agents, servants, employees, alter egos, co-conspirators and aiders and/or abettors (collectively "Defendants") acted individually and/or in the course of their agency, servitude, employment and conspiracy and in furtherance of the business of the Defendants and of the conspiracy.

II. JURISDICTION AND VENUE

15. This court has personal jurisdiction over each Defendant. Defendants, individually, jointly and/or through their agents, alter egos, subsidiaries, divisions and/or co-conspirators, manufactured, processed, marketed, promoted, supplied, distributed and/or sold Lead in the State or for use in the State and/or materially participated with, conspired with, assisted, encouraged, acted in concert with aided and/or abetted one or more of the other Defendants in doing so. These actions occurred within and outside the State and caused injury within and to the State.

16. In addition to the common-law and equity, this Court has jurisdiction under the provisions of the Rhode Island Unfair Trade Practice and Consumer Protection Act , R.I.G.L. §§ 6-13.1-1 et seq.

III. CONDUCT ALLEGATIONS

17. Lead is an inherently dangerous product.

18. Lead is hazardous because exposure of children to Lead causes severe and permanent injuries, including, but not limited to learning disabilities, decrements in intelligence, and deficits in a wide range of neuropsychological functioning, including visual motor skills, fine motor skills, verbal skills, attention and concentration, memory, comprehension and impulse control. It can also cause coma, seizure and death.

19. Although the use of Lead was banned for residential use in the United States in 1978, Lead is still present in and on many homes, schools, hospitals and other public and private buildings throughout the State. The presence of Lead in these buildings poses a health hazard to citizens of the State.

20. The Defendants knew and/or should have known since the early 1900's that Lead is hazardous to human health.

21. Beginning in at least 1904, Lead was recognized by the Defendants and members of the medical and scientific community, but not the general public, as a source of childhood lead poisoning. For example:

a. In 1904, before it became a manufacturer of Lead, Sherwin-Williams published an article warning that "white lead is poisonous in a large degree, both for the workmen and for the inhabitants of a house painted with white lead colors."

b. By at least 1912, National Lead excluded women and children from working in its white lead processes because of risk of lead poisoning.

c. In 1917, an account of a case of childhood lead poisoning was published in the United States. Before that date, numerous reports of childhood lead poisoning were published in other countries.

d. Between 1904 and 1955, scores of articles were published in medical and scientific literature relating to the health hazards of Lead exposure.

22. The Defendants also had actual knowledge that Lead is hazardous to human health.

23. The Defendants also had knowledge and obtained knowledge of the hazards of their Lead products through membership and involvement in trade associations.

24. For example, during the 1930's, National Lead, Sherwin-Williams, and Glidden were Class A members of the National Paint, Varnish & Lacquer Association ("NPVLA"):

a. In 1939, all Class A members received a memo from NPVLA with the words "CONFIDENTIAL Not for Publication" appearing in the heading. This memo put its members on notice that Lead is toxic to humans.

b. The 1939 NPVLA memo also put its members on notice that their failure to warn of those hazards or their attempts to conceal truth about the nature of their product would expose them to liability.

25. The Manufacturing Defendants also had knowledge and obtained knowledge of Lead's hazardous properties through the LIA, which was organized in 1928. For example:

a. By 1931, each of the Manufacturing Defendants (except du Pont) was a member of the LIA.

b. By 1930, the LIA had internally acknowledged the dangers of Lead on children's toys and furniture.

c. By 1933, the LIA internally suggested that its members consider discontinuing the use of Lead on children's toys and furniture. Nevertheless, the Defendants continued to market and/or promote Lead for use on interiors, furniture, schools, hospitals, and areas that were readily accessible to children.

d. In 1952, the LIA published a treatise entitled Lead in Modern Industry in which the LIA acknowledged that interior and exterior Lead-containing paints create a risk of childhood lead poisoning.

26. Not only did the Defendants possess knowledge of the hazards posed by Lead, but they were aware that the problem of lead poisoning was most critical in poor communities and that state welfare programs would be forced to bear the burden. For example:

a. In 1955, Manfred Bowditch ("Bowditch"), the LIA's Director of Health and Safety, published the following to all LIA members:

childhood lead poisoning is common enough to constitute perhaps my major "headache," this being in part due to the very poor prognosis in many such cases, and also to the fact that the only real remedy lies in educating a relatively ineducable category of parents. It is mainly a slum problem with us, estimated by Kehoe to run into four figures annually, and as we have no monopoly on either substandard housing or substandard mentalities in the USA

b. In a 1958 LIA Quarterly Report that was distributed internally to LIA members, Bowditch published the following letter from Huntington Williams, M.D., Baltimore Commissioner of Health to the Mayor of the City of Baltimore:

A tragic note was struck in the city's health picture on Monday of this week when a two-year old child died of lead paint poisoning.

* * *

Any preventable death is a tragic circumstance, but in lead paint poisoning in children the outlook is bleak for those who do not recover from the disease. There may be permanent brain damage and paralysis, and the child becomes a life-long drain on the family, if it can bear the expense and the mental strain, or on the community.

c. Despite this letter, in the same Quarterly Report, Bowditch propounded that:

[o]ne can readily understand why, to the operator of a smelter in California or a lead products plant in Texas, the doings of slum children in our eastern cities may seem of little consequence, and it is with the hope of emphasizing the adverse effects on the Lead Industries, in terms of continuing detrimental publicity, of the extremely difficult problem of childhood lead poisoning.

d. Again, in the same 1958 Quarterly Report, Bowditch noted the following:

Childhood Lead Poisoning - The seemingly unending problem of lead poisoning in small children, mainly confined to the slums of our older cities, is a continuing subject of study and preventive effort.

* * *

[I]t must be borne in mind that every such case is a potential source of most damaging publicity, and that many of the surviving children may be permanently mentally retarded.

27. The Defendants also knew and/or should have known that there were, at all relevant times, safer alternatives to the use of Lead.

28. Despite their knowledge that Lead, when used as intended, was likely to cause injuries to residents in the State and to the State itself, the Defendants continued to manufacture, process, market, promote, supply, distribute and/or sell Lead, failed to warn the residents of the State and/or the State itself of the hazardous nature of Lead, and failed to adequately test Lead.

29. The Defendants intentionally, fraudulently, and/or negligently misrepresented and/or failed to disclose the hazardous nature of Lead and intentionally, fraudulently and/or negligently misrepresented products containing Lead as safe.

30. The Defendants engaged in promotional campaigns that failed to disclose the dangers of using and exposing children to Lead. Further, the Defendants misrepresented Lead as a product that fostered health and well-being, and that could be used safely on interior and exterior surfaces where the presence of children was likely.

31. For example, National Lead's publication, *Dutch Boy Painter*, misrepresented that Lead is safe and actually beneficial to humans. The publication claimed, among other things, the following:

- In 1923, "Lead Helps to Guard Your Health."

- In 1923, "While lead is invaluable in assuring comfort and proper sanitation, its best-known and most widespread use is as white-lead in paint."

- In 1927, "There is no cause for worry when fingerprint smudges or dirt spots appear on a wall painted with Dutch Boy white lead . . . painted walls are sanitary, cheerful and bright."

- In 1923, "If a wall is covered with a good water proof coat of paint such as produced with white-lead-oil, its smooth surface is easily washed and need never afford a resting place for germs. That is why every inch of surface in a hospital is painted."

- In 1928, "In short we recommend pure lead paint without reservations as a safe, time-tested paint to use on your house."

- In 1932, "One hundred pounds of heavy paste white-lead thinned with two gallons of flattening oil make a good heavy body paint suitable [for use in nurseries]."

32. For example, Sherwin-Williams followed a similar course of concealment, deception and misrepresentation. Despite its knowledge, Sherwin-Williams' advertisements for its Lead-containing paints failed to disclose the dangers of using and exposing children to these products and misrepresented the product:

- In a 1924 advertisement for Lead-containing paint, Sherwin-Williams claimed "Cousin Susie says her health improved instantly" after painting her home with Lead-containing paints.

- In 1936, Sherwin-Williams proclaimed that its Lead-containing "Semi-Lustre" paint was "[u]nexcelled for bathrooms . . . kitchens . . . stairways . . . nurseries . . . recreation rooms . . . all woodwork."

33. For example, Glidden, despite its knowledge, failed to disclose the dangers of using and exposing children to Lead in their advertising, and actively marketed its Lead-containing paint for use in areas accessible to children, and misrepresented the health effects of its products:

- In 1936, after noting that "[p]aint brings . . . sanitation to the school," Glidden specified "Florenamel" and "Jap-a-Lac," both Lead-containing paints, for school classrooms.

- In 1936, Glidden described a play area painted with Lead-containing paint as "[a] good idea for giving small tots a safe, pleasurable place to play." Lead-containing "Jap-A-Lac" paint was recommended for children's furniture. Lead-containing Florenamel paint was specified for the floor.

34. Through the LIA, each Defendant knowingly, intentionally, fraudulently and/or negligently omitted adequate warnings about lead paint and coatings hazards, concealed information about the deleterious effects of Lead and deceived consumers, and local, state and federal regulators.

35. Despite the Defendants' knowledge regarding the hazards of Lead, the Defendants failed to disclose the dangers of using and exposing children to Lead. Instead, for decades the Defendants represented Lead as a safe product that fostered health and well-being and promoted Lead for use in areas inhabited by children. In addition, they knowingly, intentionally, fraudulently and/or negligently attempted to mislead the public about Lead's harmful effects on children.

36. For example, the LIA conducted an extensive promotion campaign for Lead. It stressed that this campaign was necessary because "[w]hite lead is . . . constantly subject to attack from the health standpoint". The LIA used the campaign to "help offset the constant threat of anti-lead legislation and propaganda."

37. The LIA knowingly, intentionally, fraudulently and/or negligently conducted and/or sponsored misleading advertising and promotions for Lead. For example,

a. A 1934 article in Lead, published by the LIA, discussed the use of Lead on the interiors of a Connecticut school. In promoting Lead for interiors, the article noted that "[t]he fifteen years of service of white lead interior is more remarkable when it is considered that it is in a school, where wear and tear on painted walls is generally great."

b. In the September 1939 issue of Lead, the LIA promoted the use of Lead paint for interior walls, including those in children's bedrooms in low income housing.

c. In 1952, the LIA published Lead in Modern Industry that claimed that "white lead adds more desirable qualities to paint than any other white pigment and has practically no undesirable qualities to nullify its advantages."

d. In a separate chapter of the same publication, the LIA acknowledged that interior and exterior lead paints could create a risk of childhood lead poisoning. Yet, the LIA misrepresented the risk as minimal:

However, since most inside paints and paints used by manufacturers on children's furniture or toys contain no lead, a hazard usually exists only if children are allowed to chew outside paint

surfaces, like porch railings, or if parents inadvertently repaint furniture with outside house paint.

e. The LIA continued to distribute *Lead in Modern Industry*, containing these misrepresentations, through at least 1959.

38. The LIA also sought to suppress any unfavorable publicity about Lead without regard for the truth of such reports and despite its own knowledge about the hazards posed by Lead. For example:

a. A paper was presented in September 1946 at the Seventh Annual Congress on Industrial Health, authored by Felix Wormser, the first secretary and treasurer of the LIA. In that paper, entitled "Facts and Fallacies Concerning Exposure to Lead," Wormser, despite his knowledge that Lead was hazardous to human health, stated that "[c]onsidering the thousands and thousands of homes painted and protected with white lead and the rare and doubtful occurrence of any lead poisoning to the public because of its use, I think that the record here is also in favor of lead."

b. The Report of the 1954 Annual Meeting of the LIA lays out some of the suppression activities undertaken by the LIA:

Hygiene: The following is a summary of our principal activities in the field of lead hygiene in 1953. The importance of this work is tremendous in preventing undue discrimination against lead.

1. Childhood lead poisoning continues to be our major 'headache' and source of adverse publicity. Threats of poison labeling regulations for lead paints have come from health authorities in New York, Chicago, and some other cities. We are working with the Paint Association to combat these moves .

2. The research on childhood plumbism at Johns-Hopkins, supported by our grant of \$10,000 was completed in October and a report is expected momentarily.

3. Results of similar work, supported by us for a number of years at Harvard, will soon be published in two papers in the *American Journal of Diseases of Children*. These findings and those in item 2 should provide us with valuable facts useful in combating the movements reported in 1.

* * *

9. Our investigation, including over 150 analyses of water from red-lead-painted tanks, has enabled us to stop publication of a paper somewhat unfavorable to red lead and secure a promise of revision.

* * *

13. Adverse publicity at the rate of 30 to 40 newspaper items per month has appeared on the effects of lead on children, adults, livestock and wildfowl. Wherever possible these have been followed up with a view to correcting misconceptions and misstatements, often with gratifying results.

c. The LIA developed a 'health and safety division.' Despite its name, the division's concern was the financial success of the LIA's member companies and not the health and safety of the general public, as evidenced in the following excerpt from the LIA's 1958 Quarterly Report:

Directly or indirectly, the intent of all our health and safety work is to be of service to industry, but certain of its components are so specifically of that nature as to warrant mention in this category. Outstanding here has been the effort to forestall the publication by the Public Health Service of a report inevitably damaging to the 50-year-old custom of coating the interiors of potable water tanks with red lead paint, a proposal reactivated last fall by the producer of a competitive paint.

d. The following excerpt from the LIA's 1959 Annual Report emphasizes the mission and role of the 'health and safety' division:

I want to stress one other important phase of our activities. That is our health and safety work. I can not overemphasize its importance. The toxicity of lead poses a problem that other nonferrous industries generally do not have to face. Lead poisoning, or the threat of it, hurts our business in several different ways. While it is difficult to count exactly in dollars and cents, it is taking money out of your pockets every day.

* * *

I hope you will agree with me that our health and safety activities are not just an altruistic public service. They can also mean just as much in dollars and cents to you as any market or product development or research program can.

39. Some of the primary targets of the LIA's campaign of misrepresentation and omission were state and federal regulators, and one of its goals was to prevent regulation of Lead. For example:

a. In a 1956 LIA report, Bowditch credited the health and safety division with thwarting government attempts to impose labeling requirements on a product that Bowditch knew to be toxic and poisonous:

This has been quite successful to date, with the elimination of objectionable wording from a labeling requirement of the U.S. General Services Administration the most recent episode. Modification of the New York City lead paint labeling regulation was secured by means of American Standard 266.1, prepared by a committee of the American Standards Association, sponsored by the Lead Industries Associations.

b. Similarly, in its 1962 Quarterly Report, the LIA once again credited itself with thwarting government attempts to impose labeling requirements on a product that it knew to be toxic, poisonous and deadly:

7. Poison Labels: In cooperation with the National Paint, Varnish and Lacquer Association approval was obtained from the Food and Drug Administration to drop panel poison labels from lead-containing paint. We were able to satisfy the F.D.A. that lead paints are not poisonous under the Federal Hazardous Substances Labeling Act.

40. At all relevant times, the conduct of the Defendants was wilful and reckless to a degree that warrants an award of punitive damages.

41. As a direct and proximate result of these and other wrongful actions by the Defendants, the State has suffered substantial damages, including, but not limited to, the costs of discovering and abating Lead, the expenditure of State funds to detect lead poisoning and provide medical and/or other care of lead poisoned residents of the State, the costs of education programs for children suffering injuries as a result of Lead exposure and the costs of education programs for residents of the State due to the dangers present as a result of Lead in

the State. These costs continue to mount as residents of the State continue to be exposed to Defendants' Lead.

IV. CAUSES OF ACTION

COUNT ONE

(Public Nuisance) 42. The State realleges and incorporates herein by reference the foregoing paragraphs of its complaint.

43. The Defendants created an environmental hazard that continues and will continue to unreasonably interfere with the health, safety, peace, comfort or convenience of the residents of the State, thereby constituting a public nuisance.

44. Through their creation of a public nuisance, the Defendants have derived monetary proceeds. Such proceeds, directly traceable to the Defendants' public nuisance acts, are subject to forfeiture and distribution.

45. As a direct and proximate result of the public nuisance created by the Defendants, the State has suffered and will continue to suffer substantial injuries and damages, as described above.

46. The Defendants are jointly and severally liable for the damage suffered by the State as a direct and proximate result of their conduct.

COUNT TWO

(Violation of R.I. Unfair Trade Practice and Consumer Protection Act)

47. The State realleges and incorporates herein by reference the foregoing paragraphs of its complaint.

48. The Defendants have violated the Rhode Island Unfair Trade Practice and Consumer Protection Act by, among other things:

- a. Making false and/or misleading statements that had, and have, the capacity, tendency or effect of deceiving or misleading Rhode Island consumers;
- b. Failing to state material facts regarding the dangers of exposure to Lead, the omission of which deceived or tended to deceive.

49. As a direct and proximate result of the Defendants' violation of the Rhode Island Unfair Trade Practices and Consumer Protection Act, the State has suffered and will continue to suffer substantial injuries and damages as described above.

50. The Defendants are jointly and severally liable for the damage suffered by the State as a direct and proximate result of their conduct.

COUNT THREE

(Strict Liability)

51. The State realleges and incorporates herein by reference the foregoing paragraphs of this Complaint.

52. The Manufacturing Defendants' Lead was expected to and did reach both the State and the residents of the State without substantial change in condition from its design, manufacture, distribution, marketing and/or sale by the Manufacturing Defendants.

53. When used in the manner in which it was intended to be used and/or for the purpose that it was reasonably foreseeable it would be used, Lead caused injuries to the State as described above.

54. The injurious nature of the Manufacturing Defendants' Lead was beyond the reasonable expectations of the ordinary consumer who purchased it, with the ordinary and common knowledge of the community as to its characteristics.

55. Manufacturing Defendants' Lead is and was unreasonably dangerous because of the defective design and/or manufacture of the Lead and/or the Manufacturing Defendants' failure to warn of the dangers associated with Lead.

56. As a direct and proximate result of the unreasonably dangerous nature of the Manufacturing Defendants' Lead, the State has suffered and will continue to suffer substantial injuries and damages as described above.

57. The Manufacturing Defendants are jointly and severally liable for the damage suffered by the State as a direct and proximate result of their manufacture and sale of a defective and hazardous product unaccompanied by proper and adequate warnings.

COUNT FOUR

(Negligence)

58. The State realleges and incorporates herein by reference the foregoing paragraphs of this complaint.

59. The Defendants owed a heightened duty of care in the manufacture, processing, marketing, promotion, supply, distribution and/or sale of Lead because their conduct directly impacted the health and welfare of the children of the State of Rhode Island.

60. Further, because Lead is a dangerous product or instrumentality, the Defendants were under a duty to exercise the highest degree of care which skill and foresight can attain, consistent with the practical conduct of their business.

61. The Defendants' were required to exercise the highest duty of care in the design, manufacture, distribution, promotion, marketing and sale of Lead and in warning of the dangers associated with their Lead.

62. The Defendants knew and/or should have known that Lead would cause harm to the State.

63. The Defendants breached their duties by, among other things:

a. selling Lead without warning the general public and/or the State of the dangerous characteristics thereof;

b. failing to adequately test the Lead; and/or

c. continuing to manufacture, promote, sell, distribute, and/or supply Lead when they knew, or in the exercise of ordinary care should have known, that Lead was harmful to children and other persons coming into contact with it.

64. As a direct and proximate result of the Defendants' conduct, the State has suffered and will continue to suffer substantial injuries and damages as described above.

65. The Defendants are jointly and severally liable for the damage suffered by the State as a direct and proximate result of their negligence.

COUNT FIVE

(Negligent Misrepresentations and Omissions)

66. The State realleges and incorporates herein by reference the foregoing paragraphs of this complaint.

67. The Defendants owed a heightened duty of care in the manufacture, processing, marketing, promotion, supply, distribution and/or sale of Lead because their conduct directly impacted the health and welfare of the children of the State of Rhode Island.

68. Further, because Lead is a dangerous product or instrumentality, the Defendants were under a duty to exercise the highest degree of care which skill and foresight can attain, consistent with the practical conduct of their business..

69. The Defendants' owed this highest duty of care to the State to truthfully disclose their knowledge, and to otherwise be truthful and accurate, regarding the injurious nature of Lead.

70. The Defendants breached this duty by negligently making material misrepresentations and omissions regarding the injurious nature of Lead in their public pronouncements and communications.

71. The Defendants knew and/or should have known that the State and/or residents of the State would justifiably rely on these material misrepresentations.

72. The State and/or residents of the State did in fact justifiably rely upon these material misrepresentations.

73. As a direct and proximate result of the Defendants' negligent misrepresentations and omissions, the State has suffered and will continue to suffer substantial injuries and damages as described above.

74. The Defendants are jointly and severally liable for the damage suffered by the State as a direct and proximate result of their negligent misrepresentations and omissions.

COUNT SIX

(Fraudulent Misrepresentations and Omissions)

75. The State realleges and incorporates herein by reference the foregoing paragraphs of this complaint.

76. As set forth above, since at least the early 1900's, the Defendants had knowledge that Lead is hazardous to human health.

77. The Defendants had an affirmative duty to speak by virtue of their knowledge that full and equivalent information and data regarding the injurious nature of Lead were not within the reach of State and residents of the State even through the exercise of diligent attention, observation and judgments.

78. The Defendants through their own public pronouncements and communications fraudulently made affirmative misrepresentations and intentional omissions of material facts to the State and/or residents of the State regarding the injurious nature of their Lead.

79. Defendants knew that these material misrepresentations of fact were false and misleading.

80. Defendants intended that the State and/or residents of the State rely upon these material misrepresentations of fact, and the State and/or residents of the State did justifiably rely upon these material misrepresentations of fact.

81. As a direct and proximate result of the Defendants' fraudulent misrepresentations and omissions, the State has suffered and will continue to suffer substantial injuries and damages as described above.

82. The Defendants are jointly and severally liable for the damage suffered by the State as a direct and proximate result of their fraudulent misrepresentations and omissions.

COUNT SEVEN

(Civil Conspiracy)

83. The State realleges and incorporates herein by reference the foregoing paragraphs of this complaint.

84. Defendants knowingly, willingly and wantonly combined and agreed with one another to conceal the known hazards of Lead, to mislead the public and the government as to those hazards, and to market and promote the use of the product despite such knowledge of the hazards.

85. Defendants conspired for the purpose of unlawfully accomplishing the unlawful ends complained of and/or the purpose of unlawfully accomplishing the lawful ends complained of.

86. Defendants undertook substantial overt acts in furtherance of these purposes.

87. As a direct and proximate result of the Defendants' conduct, the State has suffered and will continue to suffer substantial injuries and damages as described above.

88. The Defendants are jointly and severally liable for the damage suffered by the State as a direct and proximate result of their conduct.

COUNT EIGHT

(Unjust Enrichment)

89. The State realleges and incorporates herein by reference the foregoing paragraphs of this complaint.

90. The State has paid for the medical and/or other costs of many of the State's residents who are or have been afflicted with lead poisoning and who are unable to provide for their own

medical care. These residents rely upon the State to provide their medical care and educational expenses, which places a burden on the taxpayers and the financial resources of this State.

91. The State's payment of these various costs, including health and/or other care, education, abatement and/or other costs associated with Lead conferred a benefit on the Defendants.

92. While the State paid for and continues to pay for the costs referenced in paragraph 90, the Defendants have derived and continue to derive direct and indirect revenues from the sale of Lead.

93. The revenue Defendants derived from the sale of Lead and from the State's payment of the various costs set forth in paragraph 90 continued after the sale of the Lead as the Defendants' reinvested this revenue.

94. The Defendants appreciated the benefit that the State conferred upon them by paying for the aforementioned costs associated with Lead, yet they continued to derive substantial revenue from the sale of Lead.

95. As a direct and proximate result, Defendants have been unjustly enriched to the extent that the State has paid and continues to pay these costs and to the extent that the Defendants have realized increased revenue from the sale of their Lead products.

96. The revenues that the Defendants' derived directly and indirectly from the sale of Lead before, during and after the sale of Lead is still in the Defendants' possession and is available to remedy the public health crisis that they caused.

97. The Defendants' conduct make it inequitable, unjust and unethical for them to retain the revenues they realized from the benefits conferred upon them by the State and/or the residents of the State.

COUNT NINE

(Indemnity)

98. The State realleges and incorporates herein by reference the foregoing paragraphs of this complaint.

99. As a direct and proximate result of the Defendants' conduct, the State was obligated to pay, has paid, and in the future will have to pay for the care of lead poisoned children and adults, education programs for children injured as a result of Lead exposure, abating Lead hazards, and other costs associated with the hazards created by the Defendants.

100. The State has a nondelegable legally imposed duty to pay the aforementioned sums even though it did not conduct itself in any wrongful manner in being so obligated to pay and in paying the aforementioned sums.

101. The State's expenditures for the aforementioned sums arose solely because of the Defendant's intentional, negligent and/or other wrongful conduct.

102. As between the State and the Defendants, the obligation to pay for care of lead poisoned children and adults, education programs for children injured as a result of Lead exposure, abating Lead hazards, and other costs associated with Lead should be borne by the Defendants.

COUNT TEN

(Equitable Relief to Protect Children)

103. The State realleges and incorporates herein by reference the foregoing paragraphs of this complaint.

104. The Defendants owed a heightened duty of care when manufacturing or supplying Lead because their conduct directly impacted the health and welfare of the children of the State.

105. The Defendants, for many years, misrepresented that Lead was safe and beneficial for use in areas inhabited or frequented by children, such as homes, schools and other structures. Both the State and residents of the State reasonably and justifiably relied upon these misrepresentations and purchased and applied, to their homes, schools, businesses and other buildings, paint and coatings containing the Defendants' Lead. The Defendants thereby created a longstanding environmental hazard to children, resulting in successive generations of children exposed to and injured by Lead.

106. It is necessary to abate the environment hazard caused by the Defendants' misrepresentations and resulting sales of Lead.

107. Granting equitable relief requiring the Defendants to aid in the education of the general public as to hazards posed by their products and to aid in the abatement of Lead hazards throughout the State is the only way to end the longstanding cycle of exposure, injury and permanent damage suffered by the children in this State. If such equitable relief is not granted, children in the State, will continue to be exposed to and injured by the Defendants' products and the State will continue to bear the costs associated with such exposures and injuries.

108. Thus, it is in the public interest to grant such equitable relief to protect children in the State.

RELIEF REQUESTED

WHEREFORE, the State of Rhode Island, by and through Sheldon Whitehouse, Attorney General requests that this Honorable Court issue an order and judgment against Defendants, jointly and severally, as follows:

1. Judgment against all Defendants for compensatory and punitive damages, plus interests, costs, and attorney's fees.
2. Judgment against Defendants for funding of a public education campaign relating to the continuing dangers posed by Lead, and for funding of lead-poisoning detection and preventative screening programs in the State;
3. Judgment ordering the Defendants to detect and abate Lead in all residences, schools, hospitals, and public and private buildings within the State accessible to children;
4. An order awarding the State such other extraordinary, declaratory and/or injunctive relief as permitted by law or equity as necessary to assure that the State has an effective remedy; and
5. For such other and further relief as the Court deems equitable, just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY.
STATE OF RHODE ISLAND,

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