

FOLLOWING BARTLIT BECK WINS IN MILWAUKEE AND RHODE ISLAND, OHIO DISMISSES LEAD PAINT PUBLIC NUISANCE CASE



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In April 2007, the State of Ohio filed suit against NL Industries, Inc., and other former manufacturers of lead pigment and lead paint, alleging that these companies had created a state-wide public nuisance. On February 6, 2009, after nearly two years of litigation, recently-elected Ohio Attorney General Richard Cordray announced that he was voluntarily dismissing the suit. He stated that his decision was based on an assessment of "the law, facts, and adverse legal rulings in these types of cases nationally."

Bartlit Beck's attorneys have played a leading role in securing the adverse rulings against governmental entities which have brought public nuisance actions against former lead pigment manufacturers. In *City of Milwaukee v. NL Industries, Inc., et al.*, the City sought \$160 million in damages stemming from the presence of lead paint in private residences in Milwaukee. In June 2007, **Don Scott**, Andre Pauka and John Hughes of Bartlit Beck tried the case to a jury and secured a complete defense verdict for NL. John Hughes has handled the appeal. Late last year the Wisconsin Court of Appeals issued its opinion affirming the jury's verdict and, significantly, finding that "the evidence reflected that the nuisance was unknown to NL Industries until after its conduct had ceased."

In *Rhode Island v. LIA, et al.*, Don Scott, along with Sean Grimsley, steered the appeal of the only jury verdict against former lead pigment manufacturers. Following the jury's verdict, the State sought to require the defendants to pay for an abatement program estimated to cost over \$2.4 billion. In July 2008, the Supreme Court of Rhode Island unanimously overturned the jury verdict. In ordering that judgment be entered in defendants' favor, the Supreme Court found that "the State has not and cannot allege any set of facts to support its public nuisance claim" and held that "however grave the problem of lead poisoning is in Rhode Island, public nuisance law simply does not provide a remedy for this harm."

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ATTORNEYS

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