



Attorney General, Private Groups, Target Lead Exposures

LITIGATION

By DENNIS PFAFF, October 27, 2005

Lead exposures from two very different sources—jewelry and Mexican manufactured candy—were targeted in lawsuits filed this summer by Attorney General Bill Lockyer and private plaintiff organizations. What the cases have in common is that both the candy and the jewelry are marketed to children.

Many of the defendants in the litigation were originally identified in 60-day notices sent by Oakland's Center for Environmental Health. In each of his two lawsuits, the attorney general is pursuing both Proposition 65 warning claims and alleged violations of Business and Professions Code § 17200. CEH is also pursuing lawsuits against many of the same defendants, plus some not named by Lockyer, either under Proposition 65, Section 17200, or both.

For example, Lockyer filed a Proposition 65 and Section 17200 lawsuit June 22 in Alameda Superior Court against a number of large retailers. The lawsuit said the exposure occurs when "adults and children handle or use jewelry." The defendants included Federated Department Stores; J.C. Penney Corporation, Inc.; Nordstrom, Inc. and Wal-Mart Stores, Inc., among others.

The next day, CEH filed its own lawsuit against a substantially larger set of defendants, but one that included many of the companies named in Lockyer's lawsuit. Virtually all of the defendants named in both jewelry lawsuits were the subject of 60-day notices sent by CEH in December 2003 and in March.

Meanwhile, San Francisco plaintiff As You Sow filed its own jewelry case alleging both Proposition 65 and § 17200 violations against yet another set of defendants, including retailer Gottschalks Inc. That complaint stems from 60-day notices AYS sent in May. In September, Lockyer moved to consolidate all three cases.

Mexican Candy

The other set of lawsuits targets Mexican candy manufacturers. The complaints accuse the companies of failing to warn customers of alleged lead exposures from their candies and wrappers. Lockyer and CEH filed separate lawsuits on July 9 in Los Angeles Superior Court. Los Angeles City Attorney Rockard Delgadillo and Alameda County District Attorney Thomas Orloff joined Lockyer as plaintiffs in the attorney general's case.

CEH's lawsuit targets a subset of the defendants named in Lockyer's case. But while the attorney general makes both Proposition 65 and Section 17200 claims, CEH is pursuing claims only under the

latter law. Both lawsuits claim that both the candy and its wrappings expose consumers, who are mostly children, to lead. The candy contains chili powder and tamarind, which—the lawsuits allege—become contaminated with lead when the ingredients are first processed and then during manufacturing. Consumers, and especially children, are also allegedly exposed to lead when they lick the wrappers or their fingers after handling the packages.

In a July 9 statement the National Confectioners Association said that their "members' Mexican candy products are safe and enjoyable to eat. These products comply fully with all food safety laws, including U.S. Food and Drug Administration regulations and World Health Organization guidelines. Our members' products also comply fully with Mexican food safety requirements."

In the 60-day notices filed in May, CEH named a number of United States based distributors and retailers who were not sued. The Natural Resources Defense Council also filed a number of notices at the same time against both American and Mexican companies, not all of them named in the lawsuits filed in Los Angeles. NRDC has not filed a complaint.

Meanwhile, a community-based group in San Diego, Environmental Health Coalition, filed 60-day notices in June against many of the same companies targeted in the lawsuits launched by the attorney general and CEH. And they recently filed a similar complaint in Los Angeles Superior Court.

In September, CEH also filed a second set of notices against a different group of potential defendants. San Francisco attorneys Mark Todzo, Eric Somers and Howard Hirsch of the Lexington Law Group represent CEH in both sets of litigation. Harrison Pollak, a deputy attorney general, signed Lockyer's complaint in the jewelry case, while Kathryn Egolf, also a deputy attorney general, signed the state's lawsuit in the candy matter. Suzanne Bevash of Del Mar represents EHC.