SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE CITY OF NEW YORK and THE NEW YORK CITY HOUSING AUTHORITY,	)	
Plaintiffs,	)	Index No. 14365/89
- against -	)	IAS Part 39
LEAD INDUSTRIES ASSOCIATION, INC., et al.,	)	(Justice Freedman)
Defendants.	)	

AFFIDAVIT OF ROBERT R. BRUHN

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN DIEGO)

Robert R. Bruhn, being first duly sworn, deposes and says:

1. I was an employee of The Sherwin-Williams Company from 1937 through 1981. I reside in Ramona, California. I have personal knowledge of every fact stated in this Affidavit.

2. In January 1937, I began my employment with Sherwin-Williams as a messenger in the Allied Research Laboratories in Chicago, Illinois. A few months later in 1937 I became a laboratory assistant. The Allied Research Laboratories, which Sherwin-Williams organized in approximately 1935, provided technical research for Sherwin-Williams and all of its affiliated companies.

3. From 1938 to 1942, I worked at the Gloucester, New Jersey titanium dioxide pilot plant evaluating its product. Then I returned to the Allied Research Laboratories and worked there for the next 16 years. During my tenure there, I assisted in the formulation of paints, tested paint formulations, attended technical conferences and seminars, participated in industry organizations such as the American Society for Testing and Materials, and conducted a variety of paint research. From approximately 1958 through 1961, I worked as an industrial salesman for industrial accounts for the John Lucas affiliated company. My territory during that time included New York City. In 1961, I became the forest products manager for Sherwin-Williams and technical liaison, working in the Oakland plant. From 1963 to 1969, I held supervisory positions in the Oakland laboratory. In 1969 I became Oakland plant manager, while continuing to function as West Coast technical manager and forest product manager. In approximately 1970, I added responsibility for supervising the laboratories in Los Angeles and Garland, Texas. In 1973, I became Manager of Reliability for the corporation and moved to Cleveland. In 1979, I was appointed plant manager for Spray-On products. In 1981, I became a member of an engineering task force addressing environmental issues, and then later in 1981, I retired.

4. I attended Thornton Junior College and the University of Chicago. My formal education was terminated after three years of college because of financial limitations. In those three years, I majored in accounting and chemistry. During the course of my employment, I received additional training in statistics and quality control technique.

5. Sherwin-Williams made white lead carbonate only at a plant in Chicago, Illinois. White lead pigment accounted for a tiny fraction, no more than 5%, of the company's total sales of all kinds of organic and inorganic pigments and dyes. Moreover, the sale of pigments and dyes was a minor percentage of the company's overall product sales. Sherwin-

Williams' business concentrated principally on the manufacture and sale of ready-mixed paints. Sherwin-Williams sold only miniscule amounts of white lead in oil, for the same reason.

6. During the time that Sherwin-Williams used white lead carbonate in some of its paints, the company purchased some white lead carbonate from other companies, such as Eagle-Picher and Carter. It did not make enough white lead to fill all of its requirements.

7. From the time that I joined Sherwin-Williams in January 1937, white lead pigment was used almost exclusively in exterior or non-residential paints. I do not know of any interior residential paint then made and sold by Sherwin-Williams that used white lead carbonate as its pigment. Likewise, white lead in oil from at least that same time forward was intended almost exclusively for exterior use. White lead in oil could take up to a week to dry thoroughly inside a house and, therefore, was too slow in drying for interior use. Any label or other instruction giving directions for the use of white lead in oil for interior painting was simply an accommodation to those painters who had not adapted to the use of ready-mixed paints and for their own reasons preferred to continue to use white lead in oil. For example, white lead in oil was very slick and easy for painters to brush. Painters also wanted to preserve their craft by using white lead in oil, which they mixed and tinted themselves. Again, my colleagues at Sherwin-Williams and I would not have expected any interior residential use of white lead in oil, absent special specifications. Sherwin-Williams did not promote or advertise, to my knowledge, the use of white lead in oil for the interiors of residences. Sherwin-Williams was much more interested in promoting its ready-mixed interior paints, virtually all of which used non-lead pigments. The company had no reason to push, and did not push, the use of white lead in oil or the use of white lead pigment in interior residential paint at any time during my employment with Sherwin-Williams.

8. I have been informed that formula cards show that certain formulations of Family Paint from the mid-1930s to mid-1940s contained white lead pigment and indicated interior or exterior use on wood and metal. Though I do not recall these formulations, Family Paint was a low-cost second grade, general utility paint, intended for small repainting work. It is not the kind of paint that NYCHA would have used, or Sherwin-Williams would have recommended to NYCHA, for interior painting. The production and sale of Family Paint was in decline during this time.

9. Sherwin-Williams sold very little paint for public projects using federal specifications. Because Sherwin-Williams bore the additional expense of research, development and testing for its paints, it could not compete on price against smaller paint manufacturers that could formulate paints using federal specifications without the extra research, development and testing expense.

10. Federal paint specifications during the 1930s-50s seemed to prefer traditional, time-tested paints using white lead pigment or white lead in oil, rather than the then-current technology. As an illustration, I met on several occasions with Dr. Fred Browne, who was the senior chemist at the Forest Products Laboratory, located in Madison, Wisconsin, for the U.S. Department of Agriculture. Dr. Browne was then one of the Federal government's top and most influential experts on paint technology and formulation. Dr. Browne was a proponent of the use of white lead pigment in house paints. Even though I and others at Sherwin-Williams tried to convince Dr. Browne that our ready-mixed paints were superior to white lead in oil, Dr. Browne said that he would not and could not change his position, because he was on record in his published articles stating that white lead in oil was the preferred paint.

11. Sherwin-Williams sold very little paint or pigments in the New York City area. It could not compete with the paint manufacturers in the New York City area that could

sell their product with less overhead and shipping costs. Despite the size of the New York City paint market, it was always one of Sherwin-Williams' smaller market areas. Therefore, neither any national market data for pigment production or sales nor any average based on national production or sales data for white lead carbonate would provide any reliable or reasonably accurate estimate of Sherwin-Williams' share of the sale of white lead carbonate in New York City. Any use of national data or an average based on national data would put Sherwin-Williams' share of the New York City market much too high.

12. During my tenure in the Allied Research Laboratories, I worked closely with its Director, Maurice Van Loo, and Sollace Coolidge, the head of the Auxilliaries Division, which made and sold pigments and dyes. Both gentlemen were men of integrity with impeccable reputations for honesty in the business community. When I first joined the company, Mr. Van Loo instructed me in the company's philosophy always to develop and sell a top quality product, and he pointed me to Sherwin-Williams' code of business principles. To my knowledge, based on my years of working with these gentlemen and other company executives, there was no agreement or conspiracy between Sherwin-Williams and any other manufacturer to conceal the health risks of lead paint or pigment to children in order to continue to sell or promote those products. Nor did anyone decide not to warn of those risks after they were known. In fact, there was no knowledge or awareness by the persons with whom I worked during the 1930s-40s of the health risks to children from interior lead paint as later developed during the 1950s and thereafter. Finally, Sherwin-Williams never represented or warranted that lead-based paints or pigments were safe for children to eat.

13. Sherwin-Williams' lead pigments were always during my employment labeled as containing lead, as were all paints containing lead compounds. Sherwin-Williams did not conceal that its lead paints and pigments contained lead.

Further affiant sayeth naught.

Robert R. Bruhn

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Sworn to and subscribed before me on this 20 day of March, 1999.

Notary Public

RANDALL D. SMITH
COMM. # 1192968
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
COMM. EXP. SEPT. 6, 2002