

July 22, 1971

Mr. Robert L. Comboy
Industrial Hygienist
Loss Prevention Dept.
Liberty Mutual
378 Stuart Street
Boston, Mass. 02117

Dear Mr. Comboy:

The question raised in your letter of July 20 was brought to my attention by Dr. Cole, a while ago.

It is, of course, a difficult task to anticipate the behavior of people, especially of children, in such a way as to head off actions which a little later give alleged cause for damage suits, especially those in which insurance companies are involved. Some time ago I was an expert witness in an utterly worthless suit in New York City, which was settled out of court (but at the suggestion of a judge). The threat allegedly involved in a jury trial to a settlement of \$200,000. One can see that rational considerations have no part, whatever, in such matters, in relation to the threat of lead poisoning, or poisoning by a number of agents which people generally regard with extreme apprehension. For such reasons as this, I hesitate to conclude that the threat offered by an article composed of lead or containing lead, when introduced into the households of the nation, is negligible. The question of the actual hazard is irrelevant, since the imagination of a lay person is not influenced thereby, in the face of some illness which happens to appear at a time which permits some suspicion as to its cause.

This sounds silly and it is silly, and I feel apologetic for stating the silly case, but the "silly case" becomes the case at issue, and there is no measuring stick by which it can be reduced to sensible dimensions. That is my experience, and, therefore, I answer you honestly. I would advise your customer accordingly.

The actual likelihood of a toxic event in association with the ordinary use of these icicles is indeed negligible. Only a very small amount of lead can be absorbed (scarcely a measureable amount) over a period of weeks or months through swallowing these icicles. A child who had one or more of them in his possession, and held it in his mouth (as children will) much of the time over a period of weeks might absorb a significant quantity. I have a small lead Indian in my desk that seems to have been the cause of the death of a child in Indianapolis. (No joke is involved in this suggested threat of a North American Indian in Indianapolis). This child had this toy which she carried about, mostly in her mouth, for weeks. There was no doubt as to the greatly increased lead content of this deceased child's body, whose terminal illness (by history) resembled lead encephalopathy, and no other cause of death was found at necropsy.⁷

If I were the company involved, I would make these things, if possible, out of aluminum. I think it unwise to make small things, for use in the household, out of

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metallic lead or out of materials which contain lead, if the same function or purpose can be served by the use of a material which, in human experience generally, is regarded as harmless.

If I were your company, I would consider the possibility of a senseless, expensive suit for damages, and make my insurance correspondingly expensive. I cannot tell how expensive. This, you will have to judge on a gamble.

Sincerely yours,

Robert A. Kehoe, M.D.
Professor Emeritus of
Occupational Medicine

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