NPCA Victorious in Shell Oil Litigation; Judge Upholds California's Childhood Lead Poisoning Prevention Act Fee Allocation

NPCA scored a victory for industry with a California Superior Court's tentative decision which rules against Shell Oil in favor of the State of California and intervenor NPCA. When the decision becomes final in the near future, the Superior Court will have upheld the constitutionality of California's Childhood Lead Poisoning Prevention Act, and the fee regulations that apportion 85% of the fee to the leaded gasoline industry and 14% to the paint industry. Since the amount in controversy for the paint industry was approximately an extra $15 million per year, the savings for the paint industry, if the decision is upheld on appeal, will yield over $75 million in the next five years alone.

The Childhood Lead Poisoning Prevention Act (CLPPA) of 1991 has assessed fees of approximately $18 million a year on the gasoline and coatings industries over the past 12 years to underwrite the costs of running the state's lead poisoning prevention program. In 1997, the California Supreme Court examined the constitutionality of these fees, ruling in *Sinclair Paint Company v. State Board of Equalization* that the CLPPA imposed bona fide regulatory fees, not taxes, and that the fees' purpose (to mitigate the actual or anticipated adverse effects of the fee payers' operations) was consistent with California law.

The court's favorable decision followed a two week trial in Sacramento during which the parties' presented evidence on whether the gasoline industry or the paint industry should pay the lion's share of the $20 million yearly regulatory fee assessed on the industries by the Childhood Lead Poisoning Prevention Program. In its decision, the Court adopted NPCA's theories across the board, ruling that the burden addressed by the Act is environmental lead contamination and not cases of lead poisoning at the higher levels. The court's conclusion was fatal to Shell's case because Shell failed to present any evidence under the relevant standard.

Plaintiff Shell Oil brought this action *(Equilon Enterprises LLC dba Shell Oil Products US vs. California State Board of Equalization and California Department of Health Services)* in 2005 seeking a refund of the $3,910,359.10 in Child Lead Poisoning Prevention Act fees assessed against Shell in 2002. NPCA successfully intervened in the suit in order to oppose Shell's demand that the allocation be changed to place virtually the entire financial burden of the program on the coatings industry.

In particular, in weighing the credibility of the evidence, the Court specifically found that the correspondence and evidence established that the key Shell experts had a "predetermined mindset of the results of the study, prior to engaging in any research." NPCA counsel played a critical role by drawing out this fact in cross examination of Shell's expert who wrote most of the report. The Court also ruled, as NPCA requested, that under the evidence presented, the allocation was fair under the environmental lead contamination standard.

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