

Metro Team of Alfieri and DiMarco oppose lead paint summary judgment motion

Lucinda H. Alfieri (Partner-White Plains) and Erik DiMarco (Partner-New York) successfully opposed a plaintiff's motion for summary judgment in New York State Supreme Court, New York County (Manhattan) in a lead paint exposure case. Wilson Elser represented a landowner sued on behalf of an infant-plaintiff who allegedly suffered lead exposure. The exposure allegedly occurred during the plaintiff's tenancy at premises where lead violations were found.

The plaintiff's counsel argued that they had established liability under the presumed notice provisions of New York City's Local Law I. Therefore, the counsel argued, the plaintiff was entitled to summary judgment on liability. The court agreed with Wilson Elser that the plaintiff had failed to establish causation, as a matter of law, namely that the infant-plaintiff's elevated blood lead levels were the result of exposure from the subject premises and not from any of other source.

The court held that while there were certain undisputed facts that the plaintiff had demonstrated in order to establish liability, the presumption, under the statute, did not negate the necessity of establishing the element of causation.

The court further held that although lead poisoning itself is an actionable injury, it does not give rise to an "evidentiary leap" that the lead poisoning was the proximate result of exposure to the lead found in the apartment. The court went on to state that it was the plaintiff's burden to prove, as a matter of law, that the exposure to lead at the apartment and the resulting elevated blood lead level was a substantial factor in causing the plaintiff's alleged injuries.