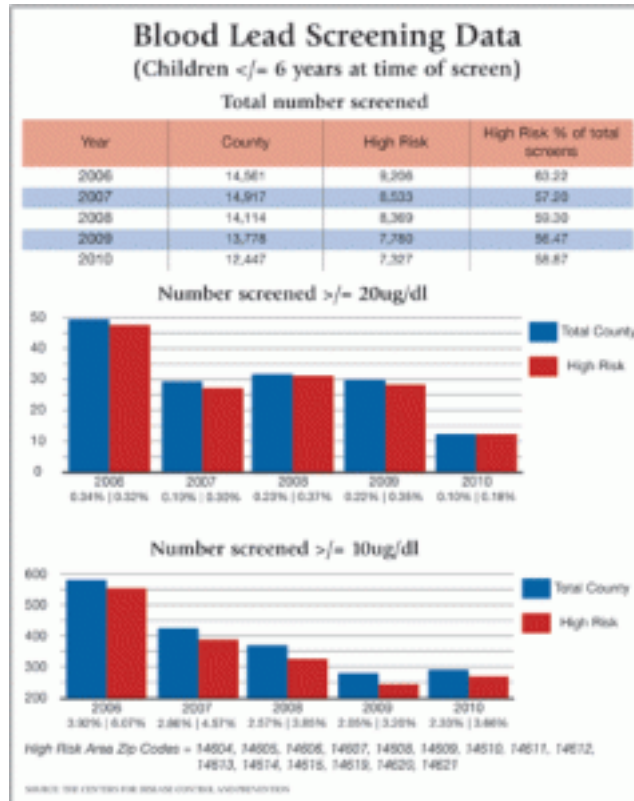


# Declines seen in lead poisoning litigation

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Lead litigation has generally declined in Rochester over the past several years, although new recommendations by a committee of the Centers for Disease Control and Prevention could tighten lead poisoning standards.

In January, the CDC's Advisory Committee on Childhood Lead Poisoning Prevention recommended, based on available studies, that children be treated for lead poisoning based on a blood level of five micrograms per deciliter. Currently, children are treated after a blood lead level of 10 micrograms per deciliter.

Right now, administrators at the CDC and the Department of Health and Human services are reviewing the recommendations, a process that could take up to a year, said Jay Dempsey, a spokesman for the agency. Even if the CDC adopts the recommendations, the Monroe County Department of Public Health may not be able to follow them due to budget constraints, said John Ricci, the agency's senior public health educator. He said the department would follow the lead of the New York State Department of Health, and it's not yet known, when, or if, they would change their policy.

However, several years ago, Monroe County was among the first to treat children for lead with a blood level of 10 micrograms per deciliter, even though the standard at the time was 20. Lead is a neurotoxin that particularly affects children, often causing learning disorders and behavioral problems. It can also affect the body's cardiovascular, endocrine and immune systems. There is no known cure.

The U.S. banned lead paint in 1978, but houses built before that time often contain the hazardous substance, which breaks down into dust and has become the main source of contamination in children. According to the 2010 Census, the state of New York has the oldest housing stock in the country. The

median home is about 58 years old (the District of Columbia's median age is about four years older.) Rochester courts have seen a large number of personal injury lawsuits as a result of the poisoning — often parents of poisoned children suing former landlords for failing to maintain chipping paint on doors and windows. In 2006, because of the sheer volume of cases, then Administrative Justice Thomas Van Strydonck assigned all the cases to Justice Matthew Rosenbaum.

However, the rate of child poisoning in Rochester has decreased significantly in the past several years, thanks in large part to community efforts and better testing. All children ages 1 and 2 must get tested now according to New York law, and the Health Department investigates the homes or other possible exposure points for children with elevated blood levels.

No matter what policy changes take place, the rate of lead litigation in Rochester probably won't change, said Justice Rosenbaum, now the sole lead litigation justice in the Seventh Judicial District.

“We have become more advanced scientifically in how we handle lead paint litigation,” he said. “I think the attorneys, the parties involved, and the various municipalities have learned how lead can possibly affect children, and landlords have learned to take care of things where they have a responsibility, and also where they should be protected for things they didn't do.”

This past September, a lead case grabbed headlines when plaintiff Ashley Hicks received a \$221,000 verdict.

Although that trial garnered a lot of media attention, there hasn't been any major increase in the number of lead cases or any major decrease in the time it takes to settle them, Justice Rosenbaum said.

Justice Rosenbaum has handled 778 lead cases in the past six years. Only two cases went to trial, and one settled during trial. So far 29 lead litigation cases have been filed in 2012, compared to 181 in 2011 and 124 in 2010.

Since he recently took on the commercial bar and now has a docket of over 1,000 cases, (with most judges having around 300), Justice Rosenbaum will hand over the lead cases to another jurist later this year. Justice Rosenbaum said he would like to have a smooth transition and is unable to say exactly when that will happen.

In the end, due to statutory requirements, home remediations, and increased awareness, lead poisoning will continue to decline, he said.

“I believe there will be an elimination of any lead paint litigation, at least in upstate New York, in about I'd say a dozen years,” said Justice Rosenbaum.