

# New York Law Journal

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## LEAD POISONING

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**VERDICT: \$1.4 million**

Eridania Mendoza, indiv. and as m/p/g of Dania Mayi v. 1551 St. Nicholas L.L.C. and New Realty Management, Inc. 115537/99

July 2

New York Supreme

JUDGE: Kibbie F. Payne

ATTORNEYS: Evan Goldberg of Trotman, Glaser & Lichfman, P.C., Manhattan for plaintiff;  
Kenneth S. Ross of Garbarini & Scher, Manhattan for defendant.

**FACTS:** In May 1999, Dania Mayi, age 2, was diagnosed with a lead level of 31. She lived in an apartment, owned and managed by 1551 St. Nicholas L.L.C. and New Realty Management, Inc. The Department of Health inspected the apartment and found lead paint violations. Ms. Mayi's parents stated that their complaints about peeling paint were not answered. 1551 St. Nicholas and New Realty contended that they were reasonable in their maintenance of the apartment, and painted every three years as required by law. They said that they did not receive notice of peeling paint. They also said that because Ms. Mayi's parents testified that the paint had not started peeling until December 1998, that there was no lead poisoning before that time.

**INJURIES:** Lead poisoning causing speech impairment, attention deficit disorder, and impaired academic functioning. Ms. Mayi said that she will not be able to graduate high school. 1551 St. Nicholas and New Realty argued that she had shown signs of a speech disorder at 18 months, when the lead level was within the limits set forth by the Center for Disease Control. They asserted that about 5 percent of all children experience such speech delays due to a congenital condition.

Their expert testified that medical studies showed that the cognitive deficiencies associated with lead exposure were slight. They also contended that because she was enrolled in regular kindergarten, she could succeed in high school.

Note: Per *Andon v. 302-304 Mott Street Associates, 94 N.Y.2d 740* and *Monica v. Milevoi, 252 A.D.2d 260*, the court precluded reference to records that mentioned her father's speech delays, on the grounds that the information was privileged, the records did not have sufficient reliability, the source of the information was not identified, lead poisoning for him could not be excluded, the relevance to Ms. Mayi's condition was not established, and the admission of such evidence would result in a mini-trial for her father.

**VERDICT:** \$1.4 million. Breakdown: \$35,000 for past pain and suffering; \$500,000 for future pain and suffering; \$825,018 for future lost earnings. \$130,000 for Eridania Mendoza for loss of services.