

United States Supreme Court Denies Defendant Paint Companies Review of Lead Paint Poisoning Case (Plaintiffs Represented by CPM)

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On October 15, 2018, the United States Supreme Court declined to hear an appeal by Defendants Sherwin-Williams Company, ConAgra Grocery Products Company, and NL Industries, Inc. After an 18-year legal battle and a \$1.15 billion Judgment in 2013, this is a major victory for California children who have been poisoned by lead paint. Defendants promoted lead paint for use in the inside of homes with knowledge that such promotion would create a serious risk of harm to children. Defendants will finally be held responsible.

On September 4, 2018, Santa Clara County Superior Court Judge Thomas Kuhnle ruled that the abatement fund should be set at \$409 million to cover pre-1951 housing. The 10 cities and counties that are Plaintiffs will use these funds to remove lead paint hazards from pre-1951 homes, prioritizing homes occupied by low- and moderate-income families.

Nanci Nishimura of Cotchett, Pitre & McCarthy, LLP said “We are delighted that the Supreme Court did the right thing. The message is clear: We have to move this fund ahead to remove lead that is still poisoning children.”

Background

The lawsuit was initially filed in 2000 by then-Santa Clara County Counsel Ann Ravel, and nine other California cities and counties ultimately joined the litigation.

The cities and counties alleged that defendants ConAgra Grocery Products Company, NL Industries, Inc., and the Sherwin-Williams

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Practice Areas

Defective Products / Mass Torts

Municipal & Public Entity
Litigation

UNITED STATES SUPREME COURT DENIES DEFENDANT PAINT COMPANIES REVIEW OF LEAD PAINT POISONING CASE (PLAINTIFFS REPRESENTED BY CPM)

Company's aggressive marketing of lead paint, which they knew was highly toxic to young children, has created a public nuisance that threatens the health of California's children to this day.

In 2013, Honorable Judge James P. Kleinberg of Santa Clara Superior Court issued a \$1.15 billion judgment in favor of the cities and counties, ruling that NL Industries, ConAgra and Sherwin-Williams were liable for the harm that they created.

In November 2017, the California Court of Appeal for the Sixth Appellate District upheld the verdict for pre-1951 homes tainted with lead paint, overturned it as to homes built between 1951-1980, and remanded the case to trial court for further proceedings to limit the \$1.15 billion abatement fund to an amount sufficient to address the problems lead paint poses in pre-1951 housing.

The California Supreme Court denied review of the case in February 2018, and defendants sought review of the decision by the U.S. Supreme Court.

Santa Clara County Superior Court Judge Thomas Kuhnle later ruled that the abatement fund should be set at \$409 million to cover pre-1951 housing. The cities and counties will use these funds to remove lead paint hazards from pre-1951 homes, prioritizing homes occupied by low- and moderate-income families.

According to the Centers for Disease Control (CDC) and California's Childhood Lead Poisoning Prevention Branch, lead paint and its degradation into lead-contaminated dust and soil is the primary cause of lead exposure for children who live in older homes. The California Legislature has declared that "childhood lead exposure represents the most significant childhood environmental problem in the state today." (Health & Safety Code § 124125)

In 2009 alone, 10,875 children in the cities and counties prosecuting the case had been poisoned by lead. In 2012, the CDC released a report, the CDC Response to Advisory Committee on Childhood Lead Poisoning Prevention Recommendations in "Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention," finding that "no safe blood lead level in children has been identified." Even at the lowest levels, lead causes permanent neurological damage to children, decreasing IQ and causing other serious health consequences.

The jurisdictions who are plaintiffs in this case are Santa Clara County, Alameda County, the City of Oakland, the City and County of San Francisco, the City of San Diego, Los Angeles County, Monterey County, San Mateo County, Solano County, and Ventura County. The County Counsel and City Attorney's Offices for the jurisdictions have litigated the case in partnership with the law firms of Cotchett Pitre & McCarthy LLP, Motley Rice LLP, Mary Alexander and Associates, the Law Offices of Peter Earle, and Altshuler Berzon LLP.

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The case is *County of Santa Clara v. Atlantic Richfield Co. et al.*, Santa Clara Superior Court, case no. 1-00-CV-788657, filed Mar. 23, 2000.