

California settles decades-long lawsuit over lead paint, but outcome is bittersweet

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10 MIN READ

OAKLAND, Calif. (Reuters) - When Californian counties and cities first sued paint makers in 2000, they wanted the companies to pay billions to remove dangerous old lead paint from hundreds of thousands of homes.

Ashley Avila, 11, plays with her nephew Alexander Avila, 3, outside of their home where Alexander was lead poisoned by lead-based paint in Oakland, California, U.S. June 18, 2019. REUTERS/Kate Munsch

After a 19-year legal struggle, they have finally succeeded in getting the companies to fund a remediation program, albeit on a much smaller scale. Sherwin-Williams, ConAgra Grocery Products Co. and NL Industries have agreed to a \$305 million settlement, according to a filing in Santa Clara County Superior Court in California on Wednesday.

The resolution marks a rare success for a public nuisance claim, under which counties and municipalities can sue corporations for past activities - including those conducted decades ago - they say have harmed communities.

High-profile public nuisance claims have proliferated in recent years in the United States as local governments try to use the courts to make corporations pay for societal ills like lead poisoning, the opioid addiction crisis and climate change.

Yet the glacial pace and complex twists in California's lead paint case highlight just how difficult it can be to use the public nuisance strategy against corporations, even in a state whose courts are particularly consumer friendly.

A trial judgment in 2014 ordered the paint companies to pay \$1.15 billion, but an appeals court decision led to the amount being slashed by more than half in 2017. Once the companies had exhausted the appeals process, they threatened to sue individual property owners who received help cleaning up their properties, by claiming they had failed to properly maintain their housing.

"This landmark settlement will allow thousands of homes to be remediated, and as a result current and future generations of California children will no longer face the threat of lead poisoning," said James Williams, County Counsel for Santa Clara County, where the lawsuit was first filed.

"We're pleased that we've been able to hold lead paint manufacturers accountable and responsible," he said.

The defendant paint companies did not admit any wrongdoing under the settlement, and Sherwin-Williams and ConAgra welcomed the end of the legal battle.

“Sherwin-Williams is pleased to have reached an agreement to resolve this litigation, and it will continue to vigorously and aggressively defend against any similar current or future litigation,” the company said in a written statement.

BITTERSWEET VICTORY

The number of U.S. children poisoned by lead has fallen sharply since the United States banned the toxic metal from residential paint and gasoline, during the 1970s and 80s.

But for California districts like Oakland and Los Angeles, where childhood lead poisoning still exacts a heavy toll, the outcome of the legal struggle is bittersweet.

In the decades it took the local governments to prevail, tens of thousands more children in California have been exposed to dangerous levels of lead, state public health data shows.

In Alameda County, for example, some zip codes have lead poisoning rates higher than those found in Flint, Michigan, at the peak of that city’s water contamination crisis ([reut.rs/2XUaLWq](https://www.reuters.com/article/health/lead-poisoning-in-california-idUSKCN192001)).

County inspectors found dangerous paint dust in the East Oakland home of 3-year-old Alexander Avila, who tested with lead levels more than five times the elevated standard of five micrograms per deciliter set by the Centers for Disease Control and Prevention (CDC).

When a reporter visited the nearly century-old home last month, Alexander was a ball of hyperactive energy. His mother Stephanie, 26, said he is able to speak few words and has trouble engaging with other kids at preschool. She fears his past lead exposure will affect him for life.

“People just don’t know what’s in their own houses, or the dangers their kids can face,” she said.

A county program helped fix lead paint hazards at the home, but public funds are scarce to repair housing before it can harm children.

In nearby Hayward, California, another predominantly working class city in the San Francisco Bay Area, five members of the Mariscal family, including two children, were poisoned by lead paint at their old home during 2017 and 2018, county health data and inspection reports show.

Three year-old Isaac, who tested at levels more than twice the CDC’s elevated threshold, suffered anemia - a common symptom of lead exposure - and, like Alexander, has also had speech problems.

The CDC says there is no safe level of lead in children’s blood. At least 4 million U.S. children remain at risk of exposure from chipping paint or lead dust in their housing, the agency says. Lead paint doesn’t pose an immediate danger unless it is deteriorating.

Many of the 10 counties and cities that brought the lawsuit have tens of thousands, or hundreds of thousands, of older housing units. Neutralizing lead paint hazards in a single home can cost thousands of dollars, so the settlement money may only cover the clean-up of a fraction of homes that need work.

“The litigation money can only go so far, but it’s a start,” Larry Brooks, director of Alameda County’s lead poisoning prevention program, said in an interview last month.

More than 6,300 children have been exposed to elevated lead levels in his county since 2000, when the litigation began, according to county health data.

Although the United States banned lead paint sales in 1978, most old housing still contains it, and thousands of U.S. neighborhoods still have alarming poisoning rates, Reuters found in a series of articles in 2017. ([reut.rs/2MfniGn](https://www.reuters.com/article/2MfniGn))

NEW LEGAL PRECEDENT?

California jurisdictions are the first to have a public nuisance verdict upheld against former lead paint manufacturers. Several lawsuits in other states have failed since 2000, from Illinois to Missouri and Rhode Island.

The California case may set a new legal precedent for seeking remediation. Legal scholars say it could encourage new lawsuits against paint companies, and Californian local governments report receiving inquiries from counterparts in other areas of the country interested in bringing their own nuisance claims.

In product liability lawsuits, attorneys must prove harm to individual plaintiffs. In public nuisance cases, the plaintiffs don't have to prove harm to specific people. Instead, they can claim that the defendants' activities impeded broad community rights, such as the public right to enjoy property.

In California, the plaintiffs argued the companies were responsible for creating a public health threat and knew of the toxic dangers of lead paint when they marketed it, without properly warning consumers, for decades before the U.S. government banned its use in homes.

Slideshow (14 Images)

The paint companies argued that they stopped marketing lead paint products once risks became known. They contended that home owners were responsible for preventing any poisoning hazards in their living spaces.

Santa Clara County recently filed another public nuisance case against opioid pill manufacturers, and similar cases are popping up with increasing frequency nationwide.

Many of these suits share a common goal: making big business pay to fix high-cost societal burdens that their profit-making activities may have left behind.

Corporate defense attorneys worry that more wins for local governments under the public nuisance doctrine could saddle businesses with huge and unpredictable liabilities, in some cases for decades-old actions they thought were safe at the time.

WHY SETTLE NOW?

The California local governments and the companies settled after a marathon legal battle that saw both sides suffer setbacks.

Beyond seeing the earlier \$1.15 billion judgment sharply cut back by an appeals decision, the plaintiffs were concerned with court-imposed restrictions on how the money could be used.

For instance, the terms had limited the remediation program to housing built before 1951, and only indoor paint hazards could be fixed. The local governments also faced a tight, four-year window to complete the program, after which any unspent funds would be returned to the paint companies.

As recently as January, court filings from the case show, lawyers for the paint companies vowed to sue California property owners who sought to use the remediation funds. Counties were concerned the mere specter of these suits would have a chilling effect on the remediation program, which will rely on housing owners' voluntary participation.

It was an unusually bold move, legal scholars say.

"Talking about suing property owners is an aggressive tactic," said Bob Rabin, a tort law specialist at Stanford University.

"I can't think of another public nuisance judgment where defendants turned around and said recipients of the damages should be disqualified because they are to blame," he said.

With the settlement in place, these threats and court-imposed limitations on how the money can be spent will now be lifted.

Paint companies have agreed not to target property owners with lawsuits, cities and counties can take as much time as they need fixing homes, and housing built through the 1970s – when lead paint was still being sold – are also eligible for help, including on exterior walls.