

NEWS RELEASE

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JANUARY 7, 2014

COURT MAKES FINAL RULING ON AWARD TO REMOVE LEAD PAINT FROM HOMES IN CALIFORNIA COUNTIES

\$1.15 BILLION

SAN JOSE – TODAY, Santa Clara Superior Court Judge James P. Kleinberg issued his **final verdict** ordering Sherwin Williams, National Lead and ConAgra to pay **\$1.15 billion** into a fund to remove lead paint from homes in various counties and cities in California. This decision is the largest public nuisance award in history of the State of California and comes after 13 years of vigorous litigation. The case has already gone up to the Court of Appeal twice and the California Supreme Court once. The Court increased the final verdict and Judgment from the tentative **1.1 Billion** to **1.15 Billion** by increasing the amount payable for the cost of remediation.

The removal of lead paint will have a dramatic effect on the health of young children who live in homes in these counties, most of them poor and minority. The removal will prevent this toxic metal from damaging the children's kidneys, brains and nervous systems.

Joseph Cotchett of Cotchett, Pitre & McCarthy, who began this fight nearly 14 years ago stated that: *"All Californians should be outraged by the Lead Paint Industry's sour grapes statement that California is out of step with the country. California has made it clear that irresponsible corporations like Sherman Williams are out of step with America . . . This is a landmark decision that will dramatically improve the lives of children throughout the state and holds the lead paint companies responsible for removing the toxic paint. The companies promoted lead paint while knowing that it was poisonous to children."*

Bela Matyas, a medical doctor and public health officer for one of the counties, stated: *"The number of children poisoned by lead remains unacceptably high, and if we are to make any further inroads in tackling this enormous problem we need to address the root of the problem: we need to abate the lead in older housing. This decision represents a huge victory for our children and our communities throughout California. It also represents a huge victory for public health and for common sense."*

The court has now rejected the paint companies' latest arguments contesting their liability after the judge's tentative ruling of December 16, 2013. Judge Kleinberg stated: *"Consistent with their arguments throughout the trial the Defendants rely on statistics and percentages. When translated into the lives of children that is not a persuasive position. The Court is convinced there are thousands of California children in the Jurisdictions whose lives can be improved, if not saved through a lead abatement plan."*

The Judge found that Sherwin Williams, National Lead and ConAgra or their predecessors were liable for promoting lead paint while knowing of its poisonous effects on children. The medical literature and the companies' own internal documents demonstrate that the companies knew by the early 1900s that lead paint was injurious to children. Although banned in 1978, lead paint remains on millions of homes in the Counties of Santa Clara, Alameda, Los Angeles, Monterey, San Mateo, Solano, and Ventura; the City and County of San Francisco; and the Cities of San Diego and Oakland, California.

The decision affects largely minority children of color as the houses affected are in poor neighborhoods throughout the state.

Nancy Fineman, a partner with the Cotchett firm who also tried the case, added that: *“For too long, government, home owners and parents had to pay the costs to stop lead poisoning. Now, those who created the nuisance are being responsible to help remedy the problem.”*

The case is *The People of the State of California v. Atlantic Richfield et al.*, Santa Clara Superior Court Case No. CV-788657.

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COTCHETT, PITRE & McCARTHY, LLP

1 Jurisdictions would be 3,555,630 units²² x 0.8 (reduction for multi-unit residences).²³
2 Applying that number to a reasonable cost of inspection yields the \$400,000,000 figure.

3 **M. Cost of Remediation**

4 Remediation limited to interior surfaces results in an estimated cost of remediation of
5 \$759,284,467, or approximately \$750,000,000.²⁴

6 Education expenses are included in these figures.

7 **Conclusion:**

8 **Therefore, the Court orders:**

9 The Defendants against whom judgment is entered, jointly and severally, shall pay to
10 the State of California, in a manner consistent with California law, \$1,150,000,000 (One
11 Billion One Hundred Fifty Million Dollars) into a specifically designated, dedicated, and
12 restricted abatement fund (the "Fund").

12 The payments into the Fund shall be within 60 days of entry of judgment.

13 The Fund is to be administered by the Director of the California CLPPB program for
14 the benefit of people within the 10 Jurisdictions and the costs incurred by the State of
15 California to administer the Fund shall be paid from the Fund.

16 Monies from the Fund shall be disbursed to each jurisdiction to be supervised by that
17 County's Board of Supervisors (including the Board of Supervisors of the City and County of
18 San Francisco) and the city councils of the cities of Oakland and San Diego, consistent with

19 ²² P283_015.

20 ²³ Tr. 1548:12-21.

21 ²⁴ To determine the cost of interior-only remediation, the Court has considered reducing the Jurisdictions' estimated
22 total remediation costs based on the percentage of total remediation costs attributable to interior remediation, as set
23 forth in the Evaluation of the HUD Lead Hazard Control Grant Program (National Center for Healthy Housing and
24 University of Cincinnati, 2004) ("HUD Evaluation") – which was relied on at trial by both the People's abatement
25 expert, Dr. David Jacobs, and Defendants' abatement expert, Mr. Benjamin Heckman. (P70_119 ¶ 6.2.2 [HUD
26 Evaluation]; Tr. 1506:24-1508:18, 1510:12-22, 3195:1-3196:4; D1438.4.) According to the HUD Evaluation, the
27 median cost of interior remediation strategies is approximately \$5,960/unit, while the median cost of exterior
28 remediation strategies is approximately \$1,870/unit. Using these median values to determine the ratio of interior
remediation costs to total remediation (interior and exterior) costs suggests that approximately 76% of total
remediation costs are attributable to interior remediation ($\$5,960 / (\$5,960 + \$1,870)$). (P70_119 ¶ 6.2.2.)

At trial, Dr. Jacobs testified that remediation of homes in the Jurisdictions, performed in accordance with the
procedures set forth in the People's Abatement Plan, would average \$2,000 per housing unit. (1532:18-1533:18; see also P262 at
23-24.) Since approximately 76% of lead remediation costs are attributable to interior remediation, the average per-unit cost of
remediation can be reduced from \$2,000/unit to approximately \$1,500/unit (\$1,500 is approximately 76% of \$2,000). This
reduces the People's total estimated remediation cost from approximately \$1,000,000,000 to approximately \$750,000,000.

1 past practices regarding lead detection, removal, and prevention. Each jurisdiction shall be
2 entitled to receive up to the following maximum percentage and distribution from the fund:²⁵

3	Alameda*	9%	\$103,500,000
4	(*including the residents of the City of Oakland)		
5	Los Angeles	55%	\$632,500,000
6	Monterey	2%	\$23,000,000
7	San Mateo	5%	\$57,500,000
8	Santa Clara	9%	\$103,500,000
9	San Diego	7%	\$80,500,000
10	San Francisco	7%	\$80,500,000
11	Solano	2%	\$23,000,000
12	Ventura	4%	\$46,000,000

14 The jurisdictions shall apply for grants from the Fund with a three-step program as
15 described. Exterior abatement and remediation is excluded from this order.

16 Dr. David Jacobs, or his designee, shall serve as a consultant to the Plan. He shall be
17 compensated at a rate of \$300 per hour, with payments to be made out of the Fund. His
18 compensation for any 12 month period shall not exceed \$50,000. Any ordinary expenses
19 incurred by Dr. Jacobs, such as travel, meals, and incidentals shall be in addition to his hourly
charges and shall be consistent with the State of California reimbursement guidelines for
government employees.

20 The program shall last for four years from the date of total payment by defendants into
21 the Fund. If, at the end of four years, any funds remain, those monies shall be returned to the
22 paying defendants in the ratio by which the program was initially funded. The Superior Court
of California, County of Santa Clara, shall have continuing jurisdiction over the Plan and its
23 implementation.

24 SUMMARY OF DECISION

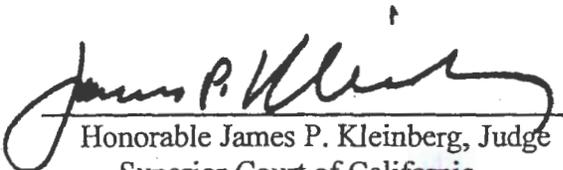
- 25 1. The Court rules against ARCO and ConAgra's defense of no successor liability.
- 26 2. The Court rules that constructive notice on the part of the Defendants is
27 sufficient.

28 ²⁵ Percentages derived from number of houses pursuant to chart at Section V.H *supra*.

- 1 3. The Court rules against SW's argument that differentiates "pigment" versus
2 "paint."
- 3 4. The Court bases the decision solely on the issue of lead paint produced,
4 promoted, sold, and used for interior home use.
- 5 5. The Court rules that Defendants ConAgra, NL, and SW were substantial factors
6 in causing the injury alleged.
- 7 6. The Court rules that LIA and NPVLA were not agents of Defendants, but were
8 conduits of information and vehicles by and for the hazards and promotion of
9 lead paint.
- 10 7. The Court rules that as to Defendants ConAgra, NL, and SW the People have
11 sustained the burden of proof on all issues delineated by the Appeals Decision.
- 12 8. The Court rules that ARCO and DuPont are found not liable.
- 13 9. The Court finds in favor of the Public Entities and against SW on SW's cross-
14 claim for declaratory relief.
- 15 10. Defendants' Affirmative Defenses do not bar this action.
- 16 11. The Court orders the institution of the abatement plan and establishment of the
17 Fund as described above.
- 18 12. The People shall prepare a Judgment consistent with this Decision within 5
19 days.

20 **SO ORDERED.**

21 Dated: January 7, 2014

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Honorable James P. Kleinberg, Judge
Superior Court of California

THERE IS NO SAFE LEVEL OF LEAD FOR CHILDREN

By Bela T. Matyas, MD, MPH, Health Officer and Public Health Director, Solano County

Santa Clara County Superior Court Judge James Kleinberg handed down a decision on December 16, 2013 finding that three manufacturers of lead-based paint pigment had contributed significantly to the creation of a public nuisance placing children at risk of lead poisoning. This decision comes after thirteen years of litigation of a suit brought by ten California Counties and Cities against lead-based paint manufacturers to correct the enormous and widespread hazard they helped create that has resulted in tens of thousands of California children being harmed by lead each year.

Judge Kleinberg carefully considered volumes of complex, often contradictory information, documents and testimony to render his decision. His thoughtful analysis is captured in the details of his written decision, and his wisdom in its conclusion. Judge Kleinberg has correctly ruled that children are significantly harmed by lead contained in paint in older housing in California, that the paint in question was actively sold by manufacturers even well after they were (or clearly should have been) aware of the harms of lead to children, and that the only reasonable remedy is to abate the leaded paint. This trial has also demonstrated the usefulness of California's nuisance law as a vehicle to protect the public from harm.

At its core, Judge Kleinberg's decision reinforces common sense: lead-based paint was widely sold for use in homes even though it was known to be harmful to children, and the industry responsible should help to reduce the risk it created. The evidence that lead causes significant, permanent harm to young children is overwhelming. There is no safe level of lead in a child's body. The evidence that lead in the form of paint is widespread in our communities, represents the primary source of exposure for children, and will eventually deteriorate and result in a hazard for children unless it is abated is similarly overwhelming. Simply put, lead poisoning represents one of the most important environmental health problems we face in our communities. And, tragically, lead poisoning is completely preventable. It is also an equity issue, disproportionately affecting poorer families and racial and ethnic minority communities.

As Judge Kleinberg's decision notes, public programs (using taxpayer dollars to address a hazard created by a for-profit industry) have done what they reasonably can to address the childhood lead poisoning problem. However, we continue to see tens of thousands of children in California harmed by lead each year; the number of children annually identified with toxic levels of lead significantly exceeds the number of children reported with such common diseases as pertussis or with other important health issues. The number of children poisoned by lead remains unacceptably high, and if we are to make any further inroads in tackling this enormous problem we need to address the root of the problem: we need to abate the lead in older housing. The size of the proposed remedy, \$1.1 billion for the ten Counties and Cities involved in the suit, is an indication of the scale of the problem. A very large amount of lead remains in older housing in California.

The decision by Judge Kleinberg represents a huge victory for our children and our communities. It also represents a huge victory for public health and for common sense. We greatly applaud Judge Kleinberg for his wisdom.

MARCH 22, 1902

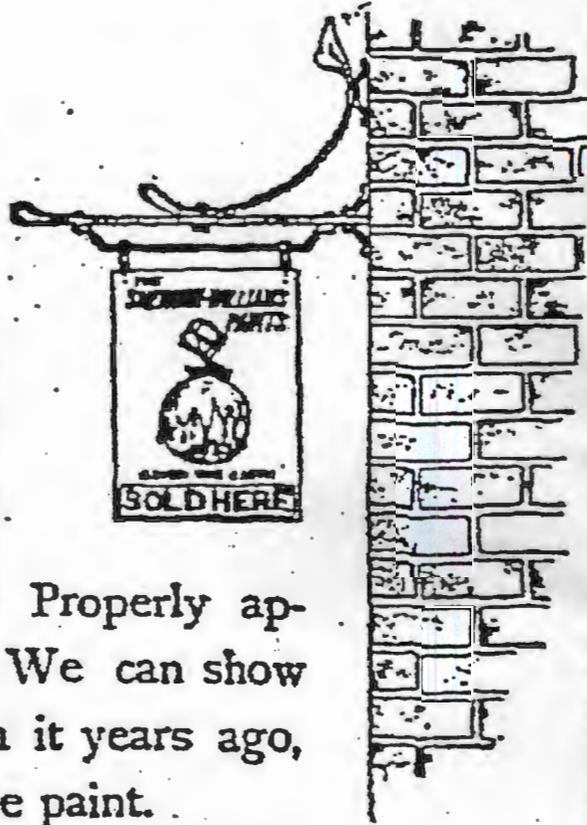
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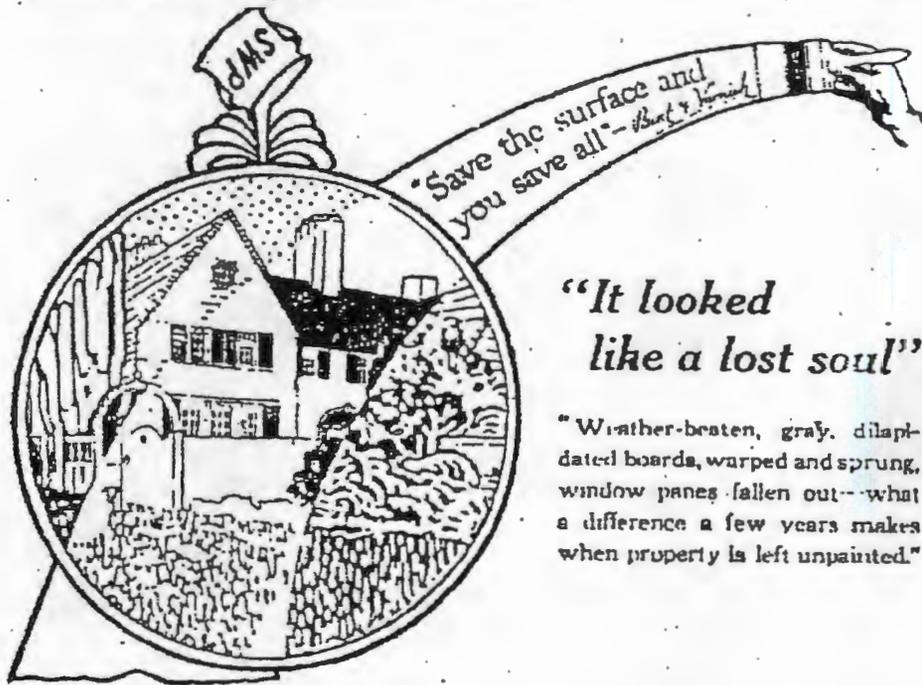
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Paint! This Week

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When you do yours, your neighbor will want to do his. Your neighborhood will look like a "brand new" community. There is nothing that can outwardly improve the looks of houses as much as paint. Inwardly, too, because housewives will want the inside to look as well as the outside.

And remember—it's not only going to make things look better, but Paint-up Week will make things last longer. Paint protects all surfaces. Constant exposure to weather eventually makes your paint crack and become faded and dull. So "Paint-up Week" may be just the thing your house needs, anyway. Take advantage of this special "Paint-up" time to make your home an object of pride.

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We make good paints to save you money.

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Don't allow surfaces to rot—it costs less to paint them.

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Good paint spreads easier and covers more square yards than cheap paint does. Figure in extra gallons of cheap paint that you must buy, and the extra cost of application—because cheap paint is harder to apply.

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Rohan Smith, The Chronicle

Places like this one on Lyon Street in San Francisco have faced lead paint enforcement action.



Rohan Smith, The Chronicle

709 Lyon St, one of the addresses subject to a lead paint enforcement action by the city of San Francisco, on Sunday, July 14, 2013 in San Francisco, Calif.