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Environmental Victory in Lead Paint Case

San Diego will benefit from \$409 million fund to protect children

San Diego City Attorney Mara W. Elliott issued the following statement on the U.S. Supreme Court's decision announced today to deny an appeal by three companies that were found liable for knowingly selling hazardous paint products to Californians.

The decision lets stand a California Court of Appeal ruling that the three companies – The Sherwin-Williams Company, ConAgra Grocery Products Company, and NL Industries, Inc. – must pay into a \$409 million fund to remove toxic lead paint from pre-1951 homes, prioritizing homes that are occupied by low- and moderate-income families.

Elliott said:

“After nearly twenty years of litigation, the lead paint industry will finally be held accountable for exposing tens of thousands of children to a toxic chemical that damages their central nervous systems and ability to learn. This battle has only strengthened our resolve to seek justice for our community and hold accountable anyone who flagrantly disregards the health and safety of our children.”

The lawsuit, *The People of the State of California v. Atlantic Richfield Co, et al.*, was filed by Santa Clara County in March 2000, and joined by seven counties, including Los Angeles and San Francisco, and two cities. The City of San Diego was the only participant from San Diego County.

The case did not go to trial until July 2013. The judgment, which ran more than 100 pages, dismissed two defendants, Atlantic Richfield and DuPont, but found the remaining three defendants liable for creating a public nuisance. Those three defendants were ordered to pay \$1.1 billion to a fund to be managed by the state and distributed to the 10 plaintiffs through grants.

However, last year an appellate court reduced the judgment to cover only homes constructed prior to 1951 and ordered the trial court to recalculate the costs.

The manufacturing of lead paint was banned by the U.S. Consumer Products Safety Commission in 1978, but it remains in many older homes, often coated over by layers on newer paint. It becomes a health hazard when it deteriorates and turns to dust. A tiny amount swallowed by a child can damage reproductive organs and result in a lifetime of learning difficulties, behavioral problems, and even death.

Deputy City Attorney Paul F. Prather was part of the multijurisdictional team that argued the case over six weeks in a Santa Clara County courthouse in 2013, leading to a landmark judgment.

More recently, Deputy City Attorney Mark Ankorn took over the case and represented the City of San Diego in settlement talks. He also testified before the California Legislature in hearings that led to the abandonment of a deceptive ballot initiative, funded by the lead paint manufacturers, that would have declared lead paint was not a public nuisance and shifted the manufacturers' responsibility for lead-paint clean-up to the public.

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