

People of the State of California v. ConAgra Grocery Products Company

In 2000, the Office of the County Counsel for the County of Santa Clara filed this landmark case on behalf of the People of the State of California to hold former lead paint manufacturers responsible for promoting lead paint for use in homes despite their knowledge that the product was highly toxic. Young children are especially vulnerable to lead poisoning, and lead paint is the predominant source of lead poisoning. There is no known level of exposure to lead that is considered safe, and the effects of lead poisoning are irreversible. Low level exposure can result in reduced IQ and attention problems, and high level exposure can result in coma, convulsions, and death.

Nine other California cities and counties joined the lawsuit. The other cities and counties involved are the City and County of San Francisco, the Cities of Oakland and San Diego, and the Counties of Alameda, Los Angeles, Monterey, San Mateo, Solano, and Ventura.

In 2014, the Santa Clara County Superior Court issued a lengthy decision holding The Sherwin-Williams Company, ConAgra Grocery Products Company, and NL Industries, Inc. (collectively, “Manufacturers”) accountable for creating a public nuisance in the ten cities and counties involved in the lawsuit. The public nuisance created by these Manufacturers consists of the collective presence of lead paint in the interiors of homes in the ten cities and counties.¹ Manufacturers were ordered to pay \$1.15 billion

to fund (1) inspection for, and abatement of, lead paint and lead-contaminated dust from the interiors of homes and lead-contaminated soil around homes built in 1980 or earlier in the ten cities and counties, (2) remediation of any structural deficiencies in the homes that would cause the lead control measures to fail, and (3) public education and outreach necessary for the program. The ten cities and counties were designated to oversee the lead inspection and abatement program in their respective jurisdictions. Property owners’ participation would be entirely voluntary, and any funds unspent after four years would revert back to Manufacturers.

In 2017, the Court of Appeal upheld the Superior Court’s determination that Manufacturers were liable for creating a public nuisance in the ten cities and counties. (*People v. ConAgra Grocery Products Co.* (2017) 17 Cal.App.5th 51.) However, the Court of Appeal limited the judgment to homes built before 1951.

In February 2018, the California Supreme Court rejected Manufacturers’ petition for review of the Court of Appeal’s decision. Manufacturers plan to further appeal the decision to the U.S. Supreme Court. In the meantime, however, the case is returning to the Superior Court to (1) calculate the amount that Manufacturers must pay for pre-1951 homes only and (2) decide on a receiver to administer the fund and distribute the monies to the ten cities and counties.

¹ Notably, the court did *not* find that lead paint on any individual property is a public nuisance, and thus no individual homes were declared a public nuisance.