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Jury Awards \$6 Million in Paint Case

BY JOHN CAHER

ALBANY — A jury in traditionally conservative Albany County has returned what is apparently the largest lead paint verdict ever in upstate New York: a total of \$6.2 million for two poisoned children.

After 12 days of testimony and two days of deliberations, the jury on Friday night returned a verdict of more than \$4 million to an 8-year-old boy and \$2.2 million to his 7-year-old sister. Damages were assessed against the landlord and a painter. Later this year, a claim against Albany County stemming from the same case is slated for trial.

Graves v. Chen, 6658-98, arises out of the lead poisoning of two children, Jaquan Daise and Janet Lundy. In 1994, the children were living with their mother, Wynola Graves, in a 60-year-old home in Albany. After 14-month-old Jaquan Daise was tested with a blood level of 27 micrograms per deciliter (mg/dl), nearly triple what New York State regulations consider the danger point, Albany County inspected and found numerous hazards.

Albany County ordered the landlords, Norman C. Chen and Fuh Me Chen and co-owner Jiangua Wung, to perform a lead abatement. The owners hired a painter, Kenneth W. Noland of Noland Painting & Construction Co. The plaintiffs alleged that Mr. Noland had never performed a lead abatement before and did not disclose his lack of experience to the landlords, the county or the family. They also alleged that Mr. Noland neglected to take standard precautions for lead abatement and failed to use proper cleanup techniques. Regardless, after the abatement was concluded, Albany County certified the work, according to counsel for the plaintiffs.

Within two weeks, Jaquan's blood level had risen to 38 mg/dl, resulting in his hospitalization. That prompted another inspection by Albany County, and another abatement.

By the summer of 1996, Janet Lundy's blood level was at a dangerous level of 27 mg/dl. Again, the county inspector returned. Again hazards were found, some of them in the same areas cited in the 1994 inspection. Again, the hazards were abated. The family moved out several months later.

At trial, it was shown that at least four children in other properties owned by the Chens had been lead poisoned prior to the 1994 poisoning of Jaquan Daise. The Chens admitted that they would normally refrain from undertaking an abatement until a problem was reported and the county ordered a remedy. Mr. Chen holds a Ph.D. in chemistry.

The jury heard from plaintiffs experts who said both children suffer from permanent brain damage, cognitive disorders and attention-deficit hyperactivity disorder. Defense experts claimed that the boy's problems were unrelated to lead poisoning, and that the girl had no neurological problems or brain damage.

On Friday night, the jury seated before Supreme Court Justice James B. Canfield held the landlords 98 percent liable and the painter 2 percent responsible. It awarded: \$138,000 for the boy and \$105,000 for the girl for past pain and suffering; \$1.55 million for the boy and \$883,000 for the girl for future economic loss; and \$2.32 million for the boy and \$1.21 million for the girl for future pain and suffering.

The plaintiffs were represented by Peter Danziger and Mo Athari of O'Connell and Aronowitz in

"Landlords clearly have a legal responsibility, and also a moral responsibility, to routinely inspect and maintain their properties to prevent lead poisoning of children," plaintiff's attorney Peter Danziger said.

Albany, and David McMorris of Thornton & Naumes in Boston. Michael I. Lonergan of Allen, Johnson & Lonergan LLP in Albany represented the landlords. The painter was represented by Edward B. Funk, of Flink, Smith & Associates LLC of Latham.

Mr. Funk said yesterday that Mr. Noland “did exactly what he was told by the county,” and noted that the county approved the work.

It is my belief that that was one of the reasons why the jury took over 10 hours to decide the question of his fault,” Mr. Rink said. “Ken Noland was not negligent as negligence is defined by the law.”

Mr. Rink referred to his client as the “dolphin who got caught up in the tuna net,” and said he will move to set aside the verdict as it pertains to his client. He also said the verdict amount was too high.

Mr. Funk said his client has a counterclaim pending against Albany County.

Counsel for the landlords, Mr. Lonergan, was not immediately available for comment.

Yesterday, Mr. Danziger said that the landlords had \$800,000 of insurance through two carriers. He said that while he would have settled for the policy limit, he rejected an offer for \$500,000, and is now contemplating a bad faith claim against the insurer. Mr. Danziger said the painter has a \$1 million policy.

Second Record

Friday’s verdict is the second record-setter in four months for the lead litigation team at O’Connell and Aronowitz. Last fall, Mr. Danziger and Mr. Athari represented the plaintiffs in the largest reported lead paint settlement upstate and the first-ever upstate settlement involving a county, for a total award of \$925,000. In that case, *Van Epps v. County of Albany*, 6206-97, the settlement included \$600,000 for an 11-year-old girl and \$325,000 for her 12-year-old brother. It also required Albany County to pay \$50,000 to the boy and \$200,000 to the girl.

“Landlords clearly have a legal responsibility, and also a moral responsibility, to routinely inspect and maintain their properties to prevent lead poisoning of children,” Mr. Danziger said. He said the award in *Graves v. Chen* “hopefully will serve as a warning to landlords and painters that lead inspections and abatements must be performed properly.”