

Supplement to the Los Angeles and San Francisco

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Top Verdicts of 2014

The largest and most significant verdicts and appellate reversals handed down in California in 2014.

\$1.15 billion**People of the State of California et al. v. Atlantic Richfield Co. et al.****case
INFO**

Public nuisance

Santa Clara County

Superior Court Judge James P. Kleinberg

Plaintiffs' attorneys: Cotchett, Pitre & McCarthy LLP, Joseph W. Cotchett Jr., Nancy L. Fineman, Brian M. Schnarr; Mary Alexander & Associates PC, Mary Alexander, Sophia M. Aslami; Motley Rice LLC, Fidelma L. Fitzpatrick; Law Offices of Peter Earle, Peter Earle; Santa Clara County Counsel's office, Danny Chou, Greta S. Hansen, Jenny S. Lam; San Francisco city attorney's office, Owen J. Clements, Erin Bernstein; San Diego city attorney's office, Paul Prather; Alameda County Counsel's office, Andrew J. Massey; Oakland city attorney's office, William E. Simmons; Solano County Counsel Dennis Bunting; San Mateo County Counsel's office, Rebecca M. Archer; Los Angeles County Counsel's office, Robert E. Ragland, Andrea Ross; Monterey County Counsel's office, William M. Litt; Ventura County Counsel's office, Eric Waltz

Defense attorneys: Bartlit Beck Herman Palenchar & Scott LLP, Donald E. Scott, Jameson Jones, Andre Pauka; McManis Faulkner, James McManis, William W. Faulkner; Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates, Allen J. Ruby; Jones Day, Paul M. Pohl, Robert A. Mittelstaedt, John Wesley Edwards II



FROM LEFT, NANCY L. FINEMAN, DANNY CHOU, GRETA S. HANSEN AND JOSEPH W. COTCHETT JR.

Sam Altal / Special to the Daily Journal

In the world of big bet litigation, plaintiffs' lawyers are familiar with taking on a case for the long haul. But when Cotchett, Pitre & McCarthy LLP sued lead paint makers in 2000, attorneys had no idea it would take more than a decade to get a verdict.

"There were times in those 13 years when, as the head of the firm, I said, 'Wait a minute, this is getting out of hand,'" said Joseph W. Cotchett Jr., a name partner of the Burlingame firm and one of the lead attorneys on the case.

"But the question is, once you start down a road in a case, where do you stop? Where do you draw the line?"

For his firm, alongside nearly a dozen California cities and counties, there was no stopping until a \$1.15 billion bench verdict came down in their favor and was finalized in January 2014. *People of the State of California et al. v. Atlantic Richfield Co. et al.*, 788657 (Santa Clara Co. Super. Ct., filed March 23, 2010).

The odds against that outcome were huge. The original plaintiff, Santa Clara County,

sued several of the country's lead paint makers and the companies that acquired them, accusing the defendants of harming children who ate flakes of the material as it peeled and chipped off the walls and surfaces of aging homes.

Plaintiffs have made similar claims in other states for decades, but failed. In 2006, a Rhode Island jury issued a notable exception: it found Sherwin-Williams Co., NL Industries Inc. and Millennium Holdings LLC liable for creating a public nuisance, the same accusation brought in the Santa Clara County lawsuit.

But in 2008, the Rhode Island Supreme Court unanimously overturned the verdict, finding "public nuisance law simply does not provide a remedy for this harm."

The claim failed against lead paint makers in Rhode Island and other states because those companies didn't own the homes their products polluted, said Nancy L. Fineman, another partner with Cotchett Pitre who worked on the case.

California is "unique" with respect to pub-

lic nuisance, she said, because companies can be held liable even if they do not own the property where the problem originated.

But, Fineman noted, "It's not a groundbreaking case. It's an application of existing law on public nuisance."

It remains the single standing verdict in the U.S. that finds lead paint makers liable for such a claim, she said.

In January 2014, Santa Clara County Superior Court Judge James P. Kleinberg found three companies liable for creating a public nuisance: ConAgra Grocery Products Co. LLC, Sherwin-Williams and NL Industries. Two others — Atlantic Richfield Co. and E. I. du Pont de Nemours and Co. — were dismissed.

Lawyers for the three defendants found liable are with Arnold & Porter LLP, Bartlit Beck Herman Palenchar & Scott LLP, Jones Day, and Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates, among others.

They did not respond to requests for comment.

In ConAgra's appeal to the 8th District

Court of Appeal, the company said Kleinberg "applied the wrong legal standard" in several ways, including "using hindsight," failing to require proof that the companies caused the damage, and failing to require proof that the potential hazard could be cleaned up at a reasonable cost.

"The judgment rests on incorrect legal standards, insufficient evidence and evidentiary errors, and violates federal and state constitutional due process and separation of powers limits," wrote Raymond A. Cardozo, a San Francisco partner with Reed Smith LLP in the appeal.

The counties that won are Los Angeles, Alameda, Santa Clara, San Mateo, Ventura, Monterey and Solano, and the cities that won are San Diego, Oakland and San Francisco.

Danny Chou, assistant county counsel for Santa Clara County and one of the lead attorneys in the case, said the verdict was "a vindication of the time and commitment" that all the lawyers put into the case.

— Saul Sugarman