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Rhode Island wins lead paint suit State is 1st to see verdict vs. makers

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By Raja Mishra, Globe Staff | February 23, 2006

In a case that was watched closely by Massachusetts officials, the State of Rhode Island won a first-ever verdict yesterday against the makers of lead-based paint, with a jury deciding that three companies must clean more than 300,000 homes of lead contamination and may potentially be forced to pay out billions of dollars in damages.

The decision could resonate beyond Rhode Island, with numerous other states and municipalities contemplating legal action.

The lead-based paint industry's products, health specialists say, have contributed to decades of debilitating health problems in millions of American children, most of them living in poor neighborhoods.

"It's not limited to states. There are cities and towns that could file suits," said Rhode Island's attorney general, Patrick C. Lynch.

"The companies failed to step up and clean up the problem they created," Lynch added. "The legal process has held them accountable and said you can't duck and run."

The Massachusetts attorney general, Thomas F. Reilly, has said he was watching the Rhode Island case with interest. Reilly and Connecticut's attorney general, Richard Blumenthal, have made inquiries about the case with plaintiffs' attorneys, according to a lawyer involved in the Rhode Island litigation who asked not to be identified because the case had not yet concluded.

Rhode Island Superior Court Judge Michael A. Silverstein is scheduled to decide Tuesday whether the paint companies must pay punitive damages and how much that amount would be.

Reilly had no comment on the verdict, an aide said yesterday.

Rhode Island's case was argued in court by the South Carolina-based law firm Motley Rice, which was heavily involved in litigation against tobacco companies in the 1990s. Some public health advocates and legal specialists said Rhode Island's success yesterday, after decades of courtroom failures around the country, could encourage others to target the industry, resulting in a tide of litigation similar to the lawsuits that confronted the tobacco industry.

Lead-based paint was banned in the United States in 1978, after scientific studies established that flakes and dust from the paint can cause brain damage in children who eat or inhale it. Harmful effects include learning disabilities, speech problems, and behavioral disorders. Highly elevated levels of lead poisoning can cause death.

Many areas with old housing stock -- especially New England -- still have lead-based paint on the walls.

Almost a quarter of the nation's housing stock has contained lead paint, and the country has been grappling with the ramifications for nearly three decades. Millions of children have been treated for poisoning, and many billions of dollars have been spent. Massachusetts spent more than \$3 million last year on educating about, screening for, and cleaning up lead paint.

At least 1,300 Massachusetts children have been diagnosed with lead poisoning in the past five years, most in poor neighborhoods, according to state figures.

"As long as we have housing stock with lead paint, we will continue to have children at risk in certain communities," said Suzanne Condon, an associate Department of Public Health commissioner. "It's devastating for these kids."

The reaction to yesterday's verdict was immediate on Wall Street. Stocks of two of the companies involved took a beating in heavy trading, with Sherman-Williams's stock dropping 18 percent, a \$1.3 billion loss in market capitalization, while [NL Industries](#) fell 8 percent. The third firm, Millennium Holdings LLC, does not trade publicly.

The verdict yesterday mandated that the paint companies fund the decontamination of more than 300,000 Rhode Island homes. This could cost more than \$1 billion, lawyers said.

The paint companies disputed the verdict.

"We continue to believe that the facts and the law are on our side," Cleveland-based [Sherwin-Williams](#), said in a statement. "The court still has to rule on various remaining issues before the next steps in the legal process can be determined."

The four-man, two-woman jury ruled yesterday that the lead contamination of homes was a public nuisance unleashed by the paint companies that violated the public's right to clean health.

One defendant, Atlantic Richfield Co., was acquitted for reasons unstated by the jury. Another defendant, DuPont Co., settled with Rhode Island in June for \$10 million for lead paint remedies and education funding, part of which was paid to the Harvard-affiliated Dana Farber Cancer Institute, which treats certain conditions linked to lead poisoning.

Rhode Island lawyers argued that the corporate predecessors of the paint companies manufactured and marketed lead-based paint long after its dangers were known, causing harm to hundreds of thousands of children.

The companies replied in court that lead levels in children have plummeted recently, indicating that the problem remains in narrow segments of the population and that lead paint is not the sole source of the contamination.

They also disputed the accusation of knowingly selling a harmful product.

Rhode Island's first attempt to bring the suit ended in a 2002 mistrial when a jury deadlocked. In the latest case, the jury took nearly two weeks to reach its verdict.

Suits are pending in Wisconsin, New Jersey, California, New York, Texas, and Missouri, though in every case the plaintiffs are cities and counties rather than states.

"There were other states sitting and waiting for the Rhode Island decision to come out. This gives them a good sign," said Brian Gumm, a researcher for the Washington-based Alliance for Healthy Homes, a nonprofit policy and advocacy organization that is focused on preventing lead poisoning in children.

Material from the Dow Jones Newswire was used in this report. ■