

Plaintiff claimed home's lead-based paint poisoned her child

Amount: \$2,000,000

Type: Settlement

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *brain* - brain damage
- *other* - lead poisoning; aggravation of pre-existing condition
- *mental/psychological* - autism; cognition, impairment; attention deficit hyperactivity disorder

Case Type:

- *Toxic Torts* - Lead Poisoning
- *Premises Liability* - Apartment; Tenant's Injury; Dangerous Condition; Negligent Repair and/or Maintenance
- *Worker/Workplace Negligence* - Negligent Repair

Case Name: Y----- J-- an Infant Under the Age of Fourteen (14) Yrs. by Ashley Rivera, His Mother and Natural Guardian and Ashley Rivera v. West 189 LLC and Sassouni Realty Group LLC.

Date: September 12, 2018

Plaintiff(s):

- Ashley Rivera
- minor plaintiff (Male, 2 Years)

Plaintiff Attorney(s):

- Adam M. Orlow; The Orlow Firm; Flushing NY for minor plaintiff and Ashley Rivera

Plaintiff Expert (s):

- Vicki Sudhalter Ph.D.; Psychology/Counseling; Staten Island, NY called by: Adam M. Orlow
- Richard Schuster Ph.D.; Rehabilitation Counseling; New York, NY called by: Adam M. Orlow

Defendant(s):

- West 189 LLC
- Advanced Abatement Corp.
- JD Lead Consultants Inc.
- Joseph Environmental, LLC
- Sassouni Realty Group LLC

Defense Attorney(s):

- Angela Lurie Milch; Smith Mazure Director Wilkins Young & Yagerman, P.C.; New York, NY for West 189 LLC, Sassouni Realty Group LLC
- Laura M. Mattera; Nicoletti Gonson Spinner & Owen LLP; New York, NY for Joseph Environmental, LLC
- Joshua R. Hoffman; Hoffman Roth & Matlin, LLP; New York, NY for JD Lead Consultants Inc.
- Kateryna Stupnevich; Morrison Mahoney LLP; New York, NY for Advanced Abatement Corp.

Facts:

On Feb. 13, 2011, the plaintiff, a 2-year-old boy, was presented to a hospital. The boy's mother, Ashley Rivera, reported that the boy had ingested lead-based paint that had chipped off of a wall of her apartment, which was located at 621 W. 189th St., in the Fort George section of Manhattan. The boy's blood was tested, and the results revealed a toxic concentration of lead. The lead's concentration measured 11 micrograms per deciliter. The Centers for Disease Control and Prevention has recommended that a child's concentration should not exceed 5 mcg/dL. Rivera claimed that her son's condition was a result of prolonged exposure to lead-based paint that had chipped and/or peeled off of her apartment's walls. She contended that he was poisoned by the exposure.

Rivera claimed that the paint's deterioration predated her son's birth. She also claimed that the apartment's condition had been repeatedly reported to her landlord's managing agent, Sassouni Realty Group LLC.

In November 2010, Rivera's son underwent a test of his blood, and the results revealed a concerning concentration of lead. The lead's concentration measured 8 mcg/dL. The New York City Department of Housing Preservation and Development inspected the premises, and it determined that the residence's lead-based paint constituted a hazardous condition. Violations were issued to the premises' owner, West 189 LLC. A resultant remedial project was entrusted to a contractor, Advanced Abatement Corp. The work continued past Feb. 13, 2011, when Rivera's son ingested the chip of lead-based paint.

After Advanced Abatement had stopped working, the New York City Department of Housing Preservation and Development performed another inspection of the premises, and it determined that the premises' lead-based paint had not been completely removed. The agency hired another environmental-remediation contractor, Joseph Environmental, LLC. After Joseph Environmental's work had been completed, another contractor, JD Lead Consultants Inc., declared that the premises had been remediated. Rivera's son subsequently underwent another test of his blood. Its lead's concentration measured 26 mcg/dL. The New York City Department of Housing Preservation and Development performed another inspection of Rivera's apartment, and the agency determined that the premises' lead-based paint had not been completely removed.

On July 14, 2011, Rivera's son underwent another test of his blood. Its lead's concentration measured 55 mcg/dL. His abdomen was X-rayed, and the test revealed the

presence of objects that were deemed to be chips of paint.

Rivera, acting individually and in her son's behalf, sued West 189, Sassouni Realty Group, Advanced Abatement, Joseph Environmental and JD Lead Consultants. The lawsuit alleged that the defendants were negligent in their remediation of the premises, that West 189 and Sassouni Realty Group were also negligent in their maintenance of the premises, and that the defendants' negligence created a dangerous condition that poisoned Rivera's son.

Plaintiffs' counsel contended that West 189 and Sassouni Realty ignored repeated complaints regarding the condition of Rivera's apartment's paint. He claimed that the complaints began in 2008, but that remediation was not undertaken until 2010. He further claimed that Advanced Abatement prematurely abandoned its work, and he argued that West 189 and Sassouni Realty should have ensured that Advanced Abatement completed the work.

Plaintiffs' counsel also contended that Advanced Abatement and Joseph Environmental did not completely remediate the premises, and he claimed that Joseph Environmental did not minimize the minor plaintiff's risk of encountering lead-based dust or lead-based paint. He also claimed that JD Lead Consultants incorrectly declared that Joseph Environmental's remediation had been successful.

Advanced Abatement and Joseph Environmental claimed that their workers adequately addressed any hazardous areas that were identified by the New York City Department of Housing Preservation and Development. Their attorneys contended that the companies could not be liable for any hazardous areas that the agency may have overlooked.

JD Lead Consultants claimed that its inspection was restricted to areas that had been addressed by Advanced Abatement and Joseph Environmental.

West 189 and Sassouni Realty Group claimed that they promptly responded to the violations that they received, that remediation was entrusted to Advanced Abatement, that Advanced Abatement did not complete its assigned work, and that the company did not heed a request to complete the work.

Injury:

On Feb. 13, 2011, a test revealed that the minor plaintiff's blood contained a toxic concentration of lead. The lead's concentration measured 11 mcg/dL. During the ensuing six months, the lead's concentration increased to 55 mcg/dL. Rivera claimed that the boy's brain was poisoned by the lead. She claimed that his residual effects include extreme hyperactivity, impairment of his cognition and resultant exacerbation of a pre-existing condition: autism. The plaintiffs' expert neuropsychologist submitted a report in which she opined that the boy suffers residual diminution of his IQ, and she estimated that the diminution may total as many as 30 points.

The plaintiffs' vocational-rehabilitation expert submitted a report in which he opined that the boy's hyperactivity increases his supervisory needs.

Rivera sought recovery of damages for her son's past and future pain and suffering. She also presented a derivative claim.

Result:

The defendants moved for summary judgment of liability. During pendency of the motion, the parties negotiated a settlement. The insurer of West 189 and Sassouni Realty Group agreed to pay \$1.3 million, from primary and excess policies that provided combined coverage of \$11 million; Advanced Abatement's insurer agreed to pay \$275,000, from a policy that provided \$1 million of coverage; Joseph Environmental's insurer agreed to pay \$275,000, from a policy that provided \$1 million of coverage; and JD Lead Consulting's insurer agreed to pay \$150,000, from a policy that provided \$1 million of coverage. Thus, the settlement totaled \$2 million. Rivera was allocated \$150,000, and her son was allocated the remainder.

Trial Information:**Editor's
Comment:**

This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls. The minor plaintiff's name was removed from the report's reproduction of the lawsuit's caption.