

1994 TOP DEFENSE VERDICTS - WAGNER V. ANZON



The National Law Journal



CASE TYPE: *Class Action, Lead Emissions*

CASE: *Wagner v. Anzon Inc., June Term 1987, 4420 (Ct. Common Pleas, Philadelphia Co.)*

PLAINTIFFS' ATTORNEYS: *Martin M. Krimsky, of Philadelphia's Mesirov Gelman Jaffe Cramer & Jamieson; Richard S. Lewis, of Washington D.C.'s Cohen, Milstein, Hausfeld & Toll.*

DEFENSE ATTORNEYS: *Philip S. Beck and Jeffrey A. Hall of Chicago's Bartlit Beck Herman Palenchar & Scott LLP.*

DATE OF VERDICT: *Dec. 1, 1994* SINCE 1960, according to the plaintiffs' complaint, a lead processing plant, first owned by NL Industries Inc., has been contaminating a blue-collar neighborhood north of Philadelphia's downtown. A class of some 7,500 present and former residents who grew up in the area sued Anzon and NL Industries, charging personal injury caused by exposure to lead.

The core complaint, says defense attorney Jeffrey A. Hall, was that these residents "had diminished IQs as a result of lead absorption. They also claimed depression, learning disabilities and reading disabilities," he says. Several thousand present and former homeowners – there were more than 3,500 homes in the area – also charged that the lead contamination had caused property damage.

The first trial contained 12 representative plaintiffs. The plaintiffs were asking for varying compensatory damages for the individual plaintiffs; the highest was for \$600,000, by a woman who claimed personal injuries caused by growing up in the neighborhood near the plant. The lowest was a small property damage claim by a homeowner. The plaintiffs were also asking for \$1 million for cleanup costs and \$80 million in punitives.

Just before the trial ended, Mr. Hall says, the judge recommended that the defendants settle the case, suggesting a payout by NL Industries of \$16 million and by Anzon of \$6 million. Anzon settled, on the day of closing arguments, for \$6 million. NL Industries declined, deciding to take its chances with the jury. "We thought it was too high," Mr. Hall says about the recommended settlement amount. "And I don't think the plaintiffs would have accepted it," he adds, because all previous settlement demands had been for more than \$50 million.

On Dec. 1, 1994, the Philadelphia jury returned a defense verdict for NL Industries, finding that the company was not liable for injuries to the representative plaintiffs and the entire class. The plaintiffs have filed post-trial motions for a new trial, claiming that the verdict was contrary to the evidence. Oral argument was in late March. If the verdict is upheld, the plaintiffs will appeal.