

New York Injury Cases Blog

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\$Millions for Brain Damage from Lead Paint

Toy manufacturer [Mattel, Inc.](#) will pay **\$12 million** to 39 states (including New York, Texas and Florida) to settle an investigation over lead-painted toys made in China and sold in the USA, according to the [Associated Press](#), [Environment News Service](#) and John Bisnar of [California Injury Blog](#). More than 21 million toys were recalled after disclosure that lead paint in them could cause brain damage to young kids.



Sound far fetched? Over- reaction? Not at all. Lead paint brain injury cases have been big money for plaintiffs' lawyers in New York for many years.

- **\$2,000,000** in March 2008 for a young girl in a Bronx apartment ([Guttierrez v. 824 South East Boulevard Realty, Inc.](#); Index # 15630/94)
- **\$4,650,000** in October 2007 for a four year old boy in Brooklyn ([Perez v. 2246 Holding Corp.](#); Index # 1683/04)

- **\$3,500,000** in March 2007 for a young girl in a Brooklyn apartment (Bernardez v. Velazquez, Document hosted at JDSUPRA™
Index # 18928/02) <http://www.jdsupra.com/post/documentViewer.aspx?fid=19408fcc-6207-49c2-b6bd-1d53e4bff157>

Not all lead paint cases result in multi-million dollar pain and suffering verdicts or settlements, of course. The **key factors in the big money cases are:**

- prolonged exposure (many years) to the lead paint
- a demonstrably high level of lead in the blood
- credible medical expert testimony as to permanency
- no family history of mental illness and a likelihood of academic and social success absent the lead paint poisoning

Paint manufacturers have been fighting lead pain litigation for decades even though they stopped making lead paint for interior use in 1955 after it was found to cause neurological problems in children who ingested its dust or flakes. The [federal government banned its use in 1978](#)

The bases for liability being imposed in New York courts upon a property owner (usually, a residential landlord) in lead paint poisoning cases are:

1. Article 14 of the Administrative Code of the City of New York, entitled "Lead Poisoning Prevention and Control" (applicable to multiple dwellings - apartments - in the city); and
2. Case law which has long held that a landlord will be liable for lead-based paint pain and suffering injuries when it's shown that the landlord had a duty to make repairs, knew the premises was built before lead-based paint was banned and knew that there were young kids living there exposed to hazards of the paint. [Johnson v. CAC Business Ventures, Inc.](#)



In light of the history of plaintiffs' success in New York brain damage case from lead based paint it appears that Mattel's \$12,000,000 payment to 39 states was a prudent business investment that has been intended in an attempt to stave off some liability from future lawsuits. Whether that result will attain, and even whether it should, are open issues according to some so-called civil justice advocates and "tort reform" opponents such as the folks over at the [Drum Major Institute for Public Policy](#).

We will follow this evolving story.

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