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How 2 Industries Stymied Justice for Young Lead Paint Victims

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When Selena Wiley signed the lease for an older rental home in South Bend, Ind., she asked the property manager about lead paint and was assured the house was safe.

But in November 2018 — almost two years after moving in with her partner and three children — Ms. Wiley noticed that their 2-year-old's appetite had vanished and his constant chattering had stopped.

A doctor soon discovered that the boy, Jovonne, known as J.J., had lead poisoning. The level was so high that he immediately began a 19-day treatment to help rid his body of the toxin, which can cause irreversible damage to a child's brain and nervous system. A health inspector soon found lead paint and dust throughout the family's rental home.

As J.J. faces an uncertain future, no one has been held responsible so far — the firm that owns the home protected its assets in a tangle of limited liability companies, and the property insurer excluded lead from its coverage. These practices are now the norm across the United States, The New York Times has found, part of a decades-long campaign by the real estate and insurance industries to shield themselves from liability in lead-poisoning cases. The effort has helped allow what is often considered a problem of the past to remain a silent epidemic today.

Although lead poisoning has decreased substantially since the late 1970s as a result of regulatory actions and public health initiatives, about 500,000 children under 6 have elevated blood lead levels in the United States and are at risk of harm. The issue has only intensified in the era of Covid-19: Rental inspections lagged, exposure increased as people spent more time at home and testing of children fell by 50 percent at times in 2020.

"It's a slow-moving catastrophe that people have just gotten used to," said Sean M. Ryan, a state senator in western New York, where high rates of lead poisoning persist.

Children in the U.S. With Elevated Blood Lead Levels

No level of exposure to lead is considered safe. Even low levels have been shown to affect a child's intelligence, learning ability and behavior. The U.S. Centers for Disease Control and Prevention recently lowered the threshold used to identify children with the highest lead levels.

Not only is the illness a scourge in many of the country's poorer ZIP codes, but families like J.J.'s have less recourse than ever. Over the years, children often received settlements or court judgments to help pay for health care, therapy and tutoring as they struggled with the life-altering effects of lead poisoning. The payments also served as a warning to landlords to make sure their properties were safe.

But with little public attention and the approval of state officials, insurance companies across the country excluded lead from their policies, declining to pay out when children were poisoned on properties they covered, according to interviews with health and housing officials, regulators and lawyers who represented children and their families. The move also eased pressure on landlords to fix up their rentals.

Without insurance, there is little chance of recovering money for a child when a landlord has few resources. Property owners who do have substantial holdings have found ways to legally distance themselves from problem rentals, increasingly using L.L.C.s to hide assets and identities. In 2019, for example, a Virginia family that had been awarded a \$2 million judgment agreed to accept just \$140,000 after the landlord, a major developer, dodged collection efforts.

As a result, plaintiffs' lawyers — who often work on contingency, fronting costs and collecting payment only if there is a favorable judgment or settlement — are increasingly declining to file lawsuits.

If not for the obstacles, "I would still be getting up in front of juries," said Richard Serpe, a lawyer who represented the Virginia family and stopped taking lead cases last year after working on them for three decades. "We have shifted the burden to the people least able to handle it, which is these kids."

The issue of lead poisoning has taken on new urgency: In October, the Centers for Disease Control and Prevention lowered the threshold for identifying those at risk, meaning many more children will be found to have elevated lead levels. In New York State alone, that number would almost double, from about 6,000 new cases a year to about 11,500, according to health data reviewed by The Times.

No exposure to lead is considered safe, and even low levels have been shown to affect a child's intelligence, learning ability and behavior, according to the C.D.C. Repercussions can be lifelong, and taxpayers end up footing much of the cost of care — billions of dollars annually for medical treatment and special education.

The ultimate goal is to fix lead hazards so children are not exposed at all, which local, state and federal agencies address with limited success. David Jacobs, chief scientist at the National Center for Healthy Housing, points out that there are known remedies for hazardous properties, and argues that landlords and insurers, who can grant or deny them coverage, must play a role in solving the problem. "We can't afford to keep ignoring it — it costs too much and causes too much damage," he said.

Some states have limited or tried to ban insurance exclusions — a bill is pending in New York — but the insurance and real estate industries have opposed such measures. Executives in those businesses say that requiring lead coverage would collapse the insurance market and drive up the cost of housing, without addressing the presence of lead paint before a child is poisoned.

“Efforts to resolve this longstanding problem should be focused on eliminating the lead paint risk from rental properties,” said Ken Stoller, a senior director at the American Property Casualty Insurance Association, which represents insurers.

While federal lawmakers have recently taken steps to combat lead poisoning, they have not done enough. Congress allocated money in the infrastructure bill to replace lead pipes that can taint water, but removed funding for the far larger problem of lead paint in older dwellings, which accounts for up to 70 percent of elevated lead in children, according to the C.D.C. Though President Biden’s Build Back Better bill contained \$5 billion to remediate residential lead paint hazards, it stalled in Congress in December.

And none of that legislation would help children like J.J. who have already been poisoned. His family filed a lawsuit in 2020 against the real estate company that owned their house, and are awaiting the outcome of a court dispute over whether the insurer’s lead exclusion was valid.

The Enduring Threat of Lead Exposure

PUBLIC HEALTH OFFICIALS HAVE MADE PROGRESS IN PROTECTING CHILDREN FROM LEAD POISONING AND ITS EFFECTS ON THEIR DEVELOPMENT. BUT RISKS REMAIN.

- **Deep Roots:** Lead poisoning is an issue tracing back to Roman times that has stretched into modern day. One in three children worldwide have been found to have high lead levels in their blood.
- **Covid Ties:** Lockdowns during the pandemic may have increased exposure to lead, just as screenings of children for it plummeted.
- **Success Story:** When lead pipes in Newark were found to have tainted the city’s drinking water, it led to a crisis. Here is how it was solved.
- **Powerful Lobbies:** The U.S. insurance and real estate industries have campaigned to avoid liability in lead cases. Millions of children have paid the price.

Once a mellow child who was meeting all his milestones, J.J., now 5, exhibits typical effects of lead poisoning: aggression, attention problems and developmental delays. Even with therapy at preschool, he is considerably behind his 3-year-old sister in communicating: She talks in full sentences, but his words are halting, the meaning often only understood by his family.

“I want to do whatever I can to get my baby extra help to help him have a better future,” Ms. Wiley said. “He is forever altered.”

Unsafe and Uninsured

A few years ago, Mr. Ryan, now a Democratic state senator, learned that his constituents in Buffalo were sending bottled water to Flint, Mich., where widespread lead contamination in the water supply had drawn national attention.

While respecting the gesture to help, he recalled from a Reuters investigation that there were 17 ZIP codes in Buffalo where the rate of children with high lead levels was at least double that of Flint. In surrounding Erie County, more than 500 children 3 and under were newly confirmed to have elevated lead in 2020. The health department is now monitoring about 1,300 children overall, but there as elsewhere across the country, experts believe the true number of children affected is higher, as not all are screened for the toxic metal.

In 2017, Mr. Ryan, then an assemblyman, introduced a bill to tackle what he saw as a major factor in the lead crisis: insurance exclusions. Not only did they prevent children from being compensated, they reduced landlords' accountability. "Insurance is often part of the solution to keeping homes safe," Mr. Ryan said.

"Taxpayers are paying a great amount of money every year to treat victims of lead poisoning," he added, "and that cost should be borne by the property owner and insurance company."

One New York family recently affected by an exclusion was that of Gabrielle Chaplin, whose 2-year-old daughter was found to have five times the threshold for elevated lead after a checkup in September 2020. (The Times is providing limited identifying information about the children in this article to protect their privacy.)

Ms. Chaplin, 31, who works in debt collections, knew to be wary of lead. As a girl in Buffalo, she had been poisoned herself and performed poorly in classes. “I used to skip school because I didn’t understand stuff,” she recalled.

Ms. Chaplin wanted her daughter’s life to be different, so when looking at an apartment in an Erie County suburb, she said, she asked about lead paint and was assured there was none. But after her child was poisoned, an inspector found lead in the basement, front porch and exterior of the house, including along windows that Ms. Chaplin often opened and shut – which can chip paint and create lead dust – while at home during the pandemic.

In December, Ms. Chaplin learned that her landlord’s insurance policy had a lead exclusion. Her lawyer, Jonathan Staehr, said he would wait to see how the lead affected her daughter’s development before advising whether to sue the landlord.

The girl, now 3, angers easily and has trouble calming herself down, her mother said. Once a week, she sees a tutor from a community-funded program for lead-poisoned children.

“It’s heartbreaking because it was my baby’s health that was played with,” Ms. Chaplin said.

Mr. Ryan’s attempts to address such cases have been stymied: His bill passed the Assembly twice but faced strong opposition from insurers and has stalled in the Senate’s insurance committee. Senator Neil Breslin, a Democrat and the panel’s chairman, said in an interview that he wanted insurers to provide proof that the bill would destabilize the market, as they claim it would. But he has not held a hearing.

New York and other areas around the country with older housing have long had issues with lead poisoning. For decades, the metal was added to make paint more durable and resistant to moisture. The health risks have been known for centuries, but the United States did not ban lead paint for homes until 1978.

Soon after, lawyers began suing landlords on behalf of poisoned children. “How much would someone have to pay you to take away 10 IQ points and fundamentally alter who you are?” asked Vincent Greene, a lawyer who has handled lead cases. By the early 1990s, insurers told state insurance commissions that they were facing crushing costs from lead paint verdicts and settlements that could reach into the millions, and sought to exclude lead coverage from their policies.

Regulators appear to have offered little pushback. In 1993, a Department of Housing and Urban Development advisory group noted in a report that Aetna, an industry giant, had gotten approval in 40 states for the exclusions. The American Association of Insurance Services, which developed policy language for hundreds of insurers, had won approval in 32 states to exclude coverage for lead in paint, water and soil, the report said.

By 1999, New York State approved exclusions for 90 companies, records show. They are now common with insurers big and small, and the state no longer keeps track.

The federal housing department estimates that significant lead paint hazards remain in about 29 million housing units, and that young children live in approximately 3.3 million of them. The problem spans the country, with persistent risk in cities including Baltimore, Detroit, Jackson, Miss., Milwaukee, Philadelphia and Sacramento. Minority children are especially affected, given that they are more likely to live in older rental homes that are poorly maintained by landlords.

“We’ve allowed bad housing conditions to become normalized,” said Ruth Ann Norton, chief executive of the Green & Healthy Homes Initiative. “Kids can overcome a lot of things, but brain damage isn’t one of them.”

The Long Scourge of Lead Poisoning

Insurers argue that banning exclusions now would drive up premiums and would not promote the best way to protect children — correcting lead hazards before residents are exposed, a task they say is better left to landlords and local housing or health regulators.

“It’s like insuring a burning building that is already on fire,” said Ellen Melchionni, president of the New York Insurance Association, a trade group. “We don’t think forcing insurance companies to pay for a known hazard will be the solution.”

Advocates for Mr. Ryan’s bill contend that insurers can incentivize landlords to take steps before a child is harmed, by requiring them to fix lead hazards before providing coverage.

Ridding homes of lead paint can be costly — though grants and loans are available in many cities. Nonetheless, landlords can take less expensive measures to make houses “lead safe”: removing peeling paint and sealing surfaces with a new coat to prevent children from ingesting toxic flakes and dust, for example. Dr. Jacobs, who oversaw efforts to reduce lead hazards at the Department of Housing and Urban Development, said that given the millions of times remediation procedures had been used across the country, lead was no longer the liability it was three decades ago.

“It’s something you can get your arms around,” Dr. Jacobs said.

But often, dangers are identified only after a child has shown symptoms of lead poisoning or been screened in a checkup.

Preventive requirements vary considerably across the country, and some are more effective than others. In Maryland, for example, all properties built before 1978 must have a lead inspection certificate at each change of occupancy. In Rochester, N.Y., rentals must be inspected every three or six years, depending on the building’s size. Lead poisoning has dropped considerably in both areas. But such laws are relatively uncommon in the United States and unevenly enforced.

A few states have restricted lead exclusions. New Hampshire has prohibited them since 2019. That has encouraged owners to fix up their properties, said D.J. Bettencourt, the state’s deputy insurance commissioner, because otherwise they may find themselves uninsured.

In Rhode Island, insurers are required to cover owners who have proved their properties are safe through abatement or inspections. If hazards persist and the insurers decline to offer coverage, they must direct the owners to a state-sponsored program for high-risk candidates, though there is no requirement to actually purchase lead coverage through the state.

There was no lead coverage for a duplex in Coventry, R.I., where Amie Jordan-Wade lived when her daughter was severely poisoned in 2015. (Neither the landlord nor the insurer would say why.) The baby was a little over a year old when her mother noticed that she would not respond when her name was called.

“She was distant and dazed,” Mrs. Jordan-Wade said.

Doctors discovered that the little girl’s lead level was extremely high and hospitalized her to begin chelation therapy, a process that removes heavy metals from the blood. An inspector found lead hazards throughout the three-bedroom rental – around windows, doors and baseboards, according to state records.

The girl’s mother sued the landlord, Butkus Properties. Her lawyer, Mr. Greene, eventually discovered that the insurer, Merrimack Mutual Fire Insurance Company, had a lead exclusion at the time.

Mrs. Jordan-Wade, who works as a produce manager at a local grocery store, said her daughter, now 8, is happy but struggles with behavioral issues. Lead can also lead to tooth decay, and the girl has needed two dental surgeries. The family is on Medicaid, so the care is covered by the state.

“I don’t know what her needs are going to be as she gets older,” Mrs. Jordan-Wade said. “It can take a long time to know the effects.”

The ‘Shell Game’

Ronald Stallings was vacationing in Turks and Caicos in 2018 when he found out about a \$2 million judgment against one of his companies.

“Bummer,” he recalled thinking. “How am I going to get out of this?”

Nearly a decade earlier, a baby was lead-poisoned at one of the roughly 150 apartments owned by Mr. Stallings, a prominent real estate developer once named “Visionary of the Year” in Richmond, Va. The building was held by an L.L.C., Walker Row Partnership, and Mr. Stallings began divesting most of its assets. After Walker Row was sued in the lead case in 2017, it would pay only a pittance of what was owed.

Janae Thompson, who brought the lawsuit, had moved with her daughter into Apartment 15 at the building in 2008. The Richmond property was a three-story brick building with stately columns; at about \$650 a month, the rental seemed like a good find. Mrs. Thompson, then a 21-year-old single mother who went by her maiden name of Eddings at the time, was getting her associate degree while juggling a job at a bank; her child, Ziona, was about to turn 1.

Several months after moving in, Ziona started to regress. She cried a lot, often for no apparent reason. Her growing vocabulary stalled over the next year. She began to have trouble picking up her toys and no longer needed to be scolded for opening the refrigerator, as she seemed to have lost the strength to do so.

In June 2009, after the girl had turned 2, she cried for nearly a day and a half straight, so Mrs. Thompson took her to the doctor. The next day, she was told to rush Ziona to a hospital. Her lead level was nearly six times what the C.D.C. now considers elevated. Afterward, an inspector found peeling paint in the living room and bedrooms and lead hazards on the doors and windows.

Mrs. Thompson never brought Ziona back to Apartment 15. Over the next few years, the girl became aggressive and easily agitated, hitting herself and banging her head against the wall, her mother said. She was hyperactive with a short attention span and often in tears. Once in school, Ziona needed special help. For years, Mrs. Thompson paid for tutoring and behavioral therapy.

Although much of Ziona's medical care was covered by Medicaid, Mrs. Thompson said, "my life revolved around trying to find extra money" to try to "make sure she was OK."

A lawyer, Mr. Serpe, took Mrs. Thompson on as a client and worked for nearly a decade to try to hold Mr. Stallings and his company accountable. The case, like many others Mr. Serpe had handled, presented almost insurmountable challenges.

In 2010, he sent a letter notifying Mr. Stallings of potential legal action, but said there was no response. Mr. Serpe filed a lawsuit in 2017 and eventually learned that Travelers Insurance, which covered the property, had a lead exclusion.

In 2018, after Mr. Stallings failed to show up in state court, a judge awarded Ziona \$2 million in damages.

Mr. Stallings said in an interview that he had not been personally served the case, a claim Mr. Serpe disputed, noting that another company officer was given the complaint. The developer said he had been preoccupied running a local entertainment venue and had not realized there was a lead exclusion in his policy. "I didn't pay any attention to it after I thought the insurance company would handle it," he said. "Long story short, it slipped through the cracks." He also said he had rented the property through the local housing authority, which was supposed to do an inspection.

After the judgment, Mr. Stallings resisted paying the \$2 million owed by his company. At an October 2018 hearing, he testified that for six years he had been shutting down Walker Row because it was not profitable. When asked in the hearing why his website listed several projects under development, Mr. Stallings said the site was old. Asked why it had been updated just months earlier, Mr. Stallings said he did not know.

At the hearing, he mentioned four more L.L.C.s associated with his business. But Walker Row, he said, had no pending projects, no employees and no tenants paying rent.

In the interview, Mr. Stallings expressed frustration about insurance exclusions and said he understood that Mrs. Thompson was trying to “come through the L.L.C.” and have him held liable for her daughter’s condition. “L.L.C.s are there to protect people from being personally sued,” he added. “Somebody a lot smarter than me started this.”

Tax returns from 2016 show Walker Row had \$2 million in assets and liabilities. That year, the building where Mrs. Thompson and Ziona had lived sold for nearly \$900,000. By 2019, few assets remained in the L.L.C. Mr. Serpe said he believed that Mr. Stallings had executed a “tremendous corporate shell game” to avoid the full judgment — a claim Mr. Stallings denies, saying the divestments were unrelated to the lawsuit.

Mrs. Thompson, worn down by the litigation, agreed to a settlement of \$140,000. After court and legal fees, about \$70,000 was put into a trust for Ziona.

Now 14, Ziona attends a small Christian school and is doing well academically, which her mother attributes to years of extra help and the individualized attention she still receives. The teenager is on the cheerleading and dance teams, too, but has attention deficit hyperactivity disorder, can be impulsive and has significant trouble managing her emotions — conditions associated with lead-poisoned children. She is timid and often afraid to be out in public, especially on her own. Looking ahead, her mother said, “I’m scared to let her go into the world alone, given how she is.”

‘A Lifelong Thing’

The city of South Bend, where J.J. fell ill, has a program for inspecting rentals, but it is based on complaints or housing code violations. It wasn’t until J.J. was diagnosed in November 2018 with lead poisoning that a health inspector scoured the house where he lived. The health department sent a letter ordering the property owner, HomeWorks Funding Group II L.L.C., to address the lead dangers in January 2019.

An inspector had found lead paint and dust in two bedrooms and the stairway of the home. Months earlier, a maintenance worker had fixed several windows, scraping away paint that scattered across J.J.’s bedroom and other areas upstairs. In a lawsuit filed against HomeWorks, Ms. Wiley and her fiancé said the worker did not clean up the debris, so Ms. Wiley tried to do so herself. HomeWorks declined to comment.

The current condition of the home is a threat to public health because lead poisoning can cause permanent health problems in children, including brain damage, learning disabilities, behavioral problems and liver and kidney damage. In extreme cases, seizures and death can occur. This condition is a threat to the health of the children living at or visiting the residence.

Many lead hazards may be easily corrected. Often, all that is needed is a good cleaning and a fresh coat of paint.

By November, the family learned that J.J. was poisoned. Before they could move out, Ms. Wiley went into labor in December, delivering her daughter almost two months early. Soon after, HomeWorks showed them another rental home nearby; when Ms. Wiley insisted the county test it for lead, she learned that it had lead too. Her family moved out of state, where her fiancé works at a gas station as she cares for the children.

J.J. was lead-poisoned after a worker scraped away paint at his family's rental home in South Bend, Ind. Credit: Andrea Bruce for The New York Times

Martin Gould, a lawyer for the family, eventually learned that HomeWorks' insurance policy had a lead exclusion. But last month, J.J.'s family seemed to catch a break: A state judge ruled that the exclusion was unenforceable because the language was too broad — meaning the insurer, Indiana Farmers Mutual, might have to pay its policy limit of \$1 million if the family wins or settles its lawsuit against HomeWorks.

The judge's decision, which is limited to J.J.'s case, was surprising: Lead exclusions are rarely thrown out. About two weeks ago, Farmers Mutual filed a motion asking the judge to reconsider the ruling, saying that he'd disregarded cases where similar lead exclusions had been found enforceable.

Regardless of the insurance dispute, the family's suit against the landlord has presented familiar challenges. Mr. Gould discovered at least eight L.L.C.s tied to HomeWorks, which advertised that it managed nearly 1,000 properties in Indiana and Michigan. But a lawyer for the company told him that only two of the L.L.C.s were associated with J.J.'s former home. One was the property management firm. The other was the company that had owned the house, which Mr. Gould found was sold to another L.L.C. after J.J. was poisoned; Mr. Gould suspects both have few assets.

HomeWorks previously billed itself as a one-stop shop to rent, buy, sell and invest in real estate, he said, but changed its website after the lawsuit, making its entities seem unrelated.

“You can’t have it both ways — be a big company when it benefits you to generate revenue and business, and then hide behind an L.L.C. when you are sued in an attempt to escape accountability,” Mr. Gould said.

Ms. Wiley, in moments of sadness about her son, said she found herself wondering, “What would it have been like if they hadn’t been so negligent?” She added, “They took who I had away.”

It is hard to watch the 5-year-old struggle with things that came easily to her other children, she said. He cannot put on pants by himself and doesn’t know the names of his favorite snacks, identifying them instead by the color of their packaging: “orange” for Nacho Cheese-flavored Doritos, and “blue” for Cool Ranch.

He is easily distracted, overwhelmed and hard to console; Ms. Wiley sometimes has to explain his behavior to strangers in public. His teeth ache from lead-related decay, and the iron supplements he takes to slow the absorption of the toxin still in his body cause bouts of stomach pain.

Most of all, Ms. Wiley and her fiancé worry about their little boy’s future.

“We know it damaged his brain, she said. “We know it is irreversible. And we know it is a lifelong thing. No doctor can tell you, ‘This is what is going to be.’”

Research was contributed by Susan Beachy, Kitty Bennett, Sheelagh McNeill and Julie Tate.