

Debate

Sherwin-Williams Waits for the Paint to Dry

ISSUE: Should businesses be responsible for decades-old advertising?

Most would agree that companies advertising a dangerous product should be held accountable, but it's not always so clear cut after a significant amount of time has passed. This is the dilemma that paint makers faced from a 2000 California lawsuit seeking damages for the marketing of lead paint in homes more than a century prior. Sherwin-Williams created advertisements for paint that was lead-based in the early 1900s but stopped selling white lead paint for inside use in 1943. However, the California court argued that although lead paint wasn't illegal until 1978, Sherwin-Williams and other paint makers knew about some of the dangers of this product yet continued marketing it to homeowners anyway.

In a 2014 verdict, the California court ruled that Sherwin-Williams, NL Industries, and ConAgra were liable for the cleanup and were ordered to pay upwards of \$1 billion. The damages were later reduced, and NL Industries agreed to a \$60 million settlement, but Sherwin-Williams and ConAgra appealed to the U.S. Supreme Court, who in 2018 refused to hear the case. The two companies argued that the suit violated their free speech and due process and allowed businesses to be held accountable for decades-old advertising. At this time, the companies were expected to pay \$400 million based on a 2017 appeals court decision.

The companies continued to fight back. After nearly 20 years of litigation, the final settlement was reduced to \$305 million to be paid by Sherwin-Williams, NL Industries, and ConAgra over a period of six years, and the companies were not required to admit any wrongdoing. Sherwin-Williams remains dedicated to fighting similar lawsuits in other areas. The funds will be used to fix paint hazards and make older homes safer.

There are two sides to every issue:

- 1. There should be a time limit or statute of limitations to protect businesses from decades-old advertising.*
 - 2. There should not be a time limit to protect businesses from previous business practices because companies should be held responsible, even after decades have passed.*
-

**This debate issue was developed by O. C. Ferrell and Linda Ferrell © 2021. This case was prepared for classroom discussion rather than to illustrate either effective or ineffective handling of an administrative, ethical, or legal decision by management. All sources used for this case were obtained through publicly available material.*

Sources: Alexander Bruell, "Sherwin-Williams Lands in Trouble over 114-Year-Old Paint Ad," *The Wall Street Journal*, September 2, 2018, <https://www.wsj.com/articles/sherwin-williams-lands-in-trouble-over-114-year-old-paint-ad-1535886000?mod=searchresults&page=1&pos=1> (accessed March 8, 2019); Jon Bilyk, "Lead Paint Makers Lose Another Round in Long-Running, \$1.1 Billion California Lawsuit," *Forbes*, November 14, 2017, <https://www.forbes.com/sites/legalnewsline/2017/11/14/lead-paint-makers-lose-another-round-in-long-running-1-1-billion-california-lawsuit/#e4d5c343b398> (accessed March 8, 2019); "\$60 Million Settlement Reached in Lead Paint Lawsuit; Companies Fight to Overturn Court Ruling," *Silicon Valley Newsroom*, May 18, 2018, <https://www.sanjoseinside.com/2018/05/18/60-million-settlement-reached-in-lead-paint-lawsuit-companies-fight-to-overturn-ruling/> (accessed March 8, 2019); Sam Allard, "Sherwin-Williams, ConAgra Must Pay \$400 Million for Lead Paint Re-mediation in California, Supreme Court Says," *Cleveland Scene*, October 16, 2018, <https://www.clevescene.com/scene-and-heard/archives/2018/10/16/sherwin-williams-conagra-must-pay-400-million-for-lead-paint-remediation-in-california-supreme-court-says> (accessed March 8, 2019); Joshua Schneyer, "Paint Makers Reach \$305 Million Settlement in California, Ending Marathon Lead Poisoning Lawsuit," *Reuters*, July 17, 2019, <https://www.reuters.com/article/us-usa-lead-settlement/paint-makers-reach-305-million-settlement-in-california-ending-marathon-lead-poisoning-lawsuit-idUSKCN1UC26J> (accessed February 6, 2020).