

\$42M VERDICT

Geneva couple wins \$42 million verdict against city over Foundry

By DAVID L. SHAW dshaw@fltimes.com (May 19, 2022)



*This 2018 file photo provides a look at the former Geneva Foundry site on Jackson Street.
Steve Buchiere / Finger Lakes Times*

GENEVA — Todd and Lindsey Powers of 56 Wadsworth St. have been awarded more than \$42 million in damages from the city related to contamination of their property by the former Geneva Foundry.

The award was made Tuesday by an Ontario County state Supreme Court jury following a trial that began May 10 and ended Tuesday before Judge Craig Doran.

The jury answered “yes” to these questions:

- Was the city of Geneva’s statement that the property located at 56 Wadsworth St. was fit for redevelopment incorrect?
- Did the city of Geneva fail to use reasonable care ensuring that its statement was correct?
- Did Todd and Lindsey Powers hear or read the city of Geneva’s statement?
- Did the city of Geneva know or would a reasonable person in the city of Geneva’s position have known that Todd and Lindsey Powers would rely on the statements in purchasing the property at 56 Wadsworth Street?
- Did Todd and Lindsey Powers rely on the city of Geneva’s statement?
- Was Todd and Lindsey Powers reliance on the city of Geneva’s statement reasonable?
- Did Todd and Lindsey Powers suffer damage as a result of their reliance on the city of Geneva’s statement?

The jury then was asked how much money should be awarded for those damages.

Todd Powers was awarded \$5 million for pain and suffering and \$1 million for expenses incurred from the date of the city’s statement to the date of the verdict, as well as getting another \$26 million for pain and suffering and \$5 million for expenses incurred for damages from the date of the verdict to be incurred in the future, a period said to be 26 years.

The jury award Lindsey Powers \$175,000 in damages for loss of consortium from the date of the city’s statement to the date of the verdict. She also was awarded \$5 million for loss of consortium from the date of the verdict to be incurred in the future, a time said to be 26 years.

The grand total: \$42,175,000.

“We obviously are disappointed with the outcome of the trial and will take appropriate steps to protect the city’s interest, including consideration of an appeal,” James Youngs, an attorney with the Hancock Estabrook law firm who represented the city, wrote in an email to *the Times*.

Todd Powers declined to comment Wednesday, but said he likely would make a statement in the next few days.

“The evidence established that the city of Geneva knew or should have known that the property sold to my clients was contaminated with lead,” said Steve Williams of the Smith Sovik law firm in Syracuse, who represented the Powers in the litigation. “The lead, along with other harmful metals, settled on the property after drifting from the smoke stacks of the old Geneva Foundry, which had operated in the neighborhood for decades.

“Before my clients purchased the vacant lot, which neighbored their home, the city stated that it was safe for redevelopment. The jurors concluded that the city was negligent to have made such an inaccurate and untrue statement about the property. Todd and Lindsey relied on the misrepresentation when purchasing the property and building on it.”

Williams said Todd Powers excavated the property by hand to build a driveway pad, a garage and other home improvement projects.

“His work in contaminated soil caused him to suffer from lead poisoning, which resulted in significant and permanent health problems,” Williams said. “For the rest of his life, Todd will experience cognitive difficulties, memory loss, frequent vomiting, stomach and intestinal pain, diarrhea and a host of other conditions. He will never again be the hard-working, self-reliant man he once was, and the jury’s award reflects that fact.”

The Powers sued the city and former City Manager Matt Horn in 2019. In February 2020, Rochester-based state Supreme Court Justice Charles Schiano Jr. removed Horn as a defendant and dismissed seven of the eight causes of action. That left the cause of negligence against the city.

The Foundry operated at 23 Jackson St. from 1868 to 1988. In the 1940s, part of the site was a coal yard. To melt iron and cast-iron objects, the Foundry burned coal and later coke, mixed in layers with unrefined and scrap metal iron and flux in a cupola-type furnace. The process operated without air-emission controls until 1970, and state Department of Environmental Conservation officials said the controls put into place were inadequate.

Ash particles from the foundry stack settled on the site and in surrounding neighborhoods. Contamination was found on 244 individual properties, mostly residential, along with some churches, businesses, and a park. The off-site contamination area consisted of south of Lewis Street to north State Street, and from properties west of Genesee Street to east of Wadsworth Street.

Contaminants at the Foundry site were identified as polycyclic aromatic hydrocarbons, chromium, lead, mercury and arsenic. Lead and arsenic were the primary contaminants at the offsite properties.

The city acquired the Foundry property through foreclosure in 1998 and submitted it to the state Environmental Restoration Program. The city removed drums, other waste containers, hazardous substances, and the buildings from the site in 2005, leaving only concrete slabs and foundation walls. They have since been removed and fresh soil installed.

After detailed soil sampling, a DEC-sponsored remediation consisting of the removal of 1-2 feet of topsoil for offsite disposal and replacement with clean soil has been underway since 2017. These cleanup activities have resumed and will continue on the remaining properties until December, weather permitting. Up to 38 properties will be cleaned up in 2022, with all properties set for completion by the end of 2023.

Link to original article: https://www.fltimes.com/news/geneva-couple-wins-42-million-verdict-against-city-over-foundry/article_43096a4c-9715-55cb-b2b2-af5ed7ab9e88.html