

# The Legal Intelligencer

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## VERDICTS & SETTLEMENTS

### Family, Insurer Settle Over Home Damaged by Furnace Nebiol v. Erie Insurance Exchange \$945,000 Settlement

BY BEN SEAL,

**Date of Settlement:**

July 29.

**Court and Case No.:**

C.P. Bucks No. 2014-00766.

**Judge:**

Robert J. Mellon.

**Type of Action:**

Breach of contract, negligence.

**Injuries:**

Financial, health risks, emotional distress.

**Plaintiffs Counsel:**

Bruce J. Chasan and Alexander Chasan, Law Offices of Bruce J. Chasan, Philadelphia.

**Defense Counsel:**

Robert T. Horst, Timoney Knox, Fort Washington.

**Plaintiffs Experts:**

Dr. Robert Snyder, pharmacology; Dr. Iris G. Udasin, Piscataway Township, New Jersey; James M. Wagner, public adjuster, Doylestown.

**Comment:**

A family whose house was rendered uninhabitable by an oil-furnace explosion has reached a \$945,000 settlement with their insurer that includes the insurer purchasing the house and an additional cash payment.

The settlement, reached July 29 in *Nebiol v. Erie Insurance Exchange*, also includes an agreement that the Nebiols reserve the right to file suit in the future if they contract illnesses related to benzene, a carcinogenic compound found in the home after the explosion.

The plaintiffs, Gary and Florrie

Nebiol, were insured by Erie Insurance Exchange at the time of a Feb. 7, 2013, "puff back" incident in their home, which is "an explosion of unburned home heating oil," according to the plaintiffs' first amended complaint.

The Nebiols returned home to find petroleum odors permeating their house and contaminating mattresses, clothing, furniture, food, electronics and more, making the home uninhabitable, the complaint said.

The Nebiols immediately began staying in a hotel, and Erie determined the loss was covered and authorized remediation efforts, according to the complaint. Testing also revealed high levels of benzene in the home. An Erie claims adjuster recommended the Nebiols retain Eastern Diversified Services Inc. to do the remediation at Erie's expense, the complaint said.

The Nebiols proceeded to take part in efforts to fix the home, alongside EDS, including repainting rooms, replacing mattresses, restoring artwork and refinishing flooring, unaware of the possible benzene hazard, the complaint said.

In February 2014, a test performed by a forensic consultant selected by Erie showed that benzene levels still exceeded limits, despite remediation efforts, the plaintiffs said, keeping them from listing the house for sale.

The plaintiffs alleged breach of contract and negligence, and added in the amended complaint allegations of battery, for exposure to benzene; intentional infliction of emotional distress, for the stress caused by their exposure; and bad faith, for Erie's

failure to settle the claim.

In its answer to the plaintiffs' complaint, Erie denied that remediation efforts were inadequate or unsuccessful, and said the Nebiols "have voluntarily decided not to hire any other remediation contractor, or to return to their residence." Erie further argued that the benzene levels did not prevent the Nebiols from selling their house.

As part of the settlement, Erie will purchase the property from the Nebiols for \$525,000 by a completion date of Oct. 30. Erie will also pay the transfer taxes and \$420,000, and will continue to cover the cost of the Nebiols' hotel until the real estate transaction is completed. Bruce J. Chasan, attorney for the plaintiffs, said the hotel costs have been nearly \$4,000 per month.

"The carve-out on the release for benzene-related illnesses was very important," Chasan said. "The Nebiols won't have to worry about remediating this house and selling it themselves. They'll be able to move on with their lives. They've had a lot of disruption for two-and-a-half years."

Robert T. Horst of Timoney Knox, attorney for Erie, said he couldn't comment without Erie's permission.

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