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Settlements Reached Over Explosion That Killed Two Toddlers

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The parents of two toddlers killed by an explosion caused by spilled gasoline and a nearby water heater have settled claims against a series of defendants.

Most of the settlements are confidential, according to the parents' attorney. Those disclosed run into millions of dollars.

Jeremiah Fenn Jr., age 3, and Ja'el Fenn, 1, died from burns they suffered in their Albany home July 24, 2009. Although their bodies were almost completely burned, they were conscious, "thrashing around and crying" when their mother pulled them from the fire and carried them out of the house, said Jonah Flynn of the Flynn Law Firm, who represents the parents, Jessica and Jeremiah Fenn. The children were taken by ambulance to the Augusta Burn Center. Jeremiah died a week later, Ja'el a month and a half after that, according to their obituaries.

On the night of the fire, the children had been put to bed as usual. But they climbed out and went looking for their mother in the laundry room, Flynn said. In addition to the washer



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and dryer, the room housed a gas-powered water heater. Also, because the rented house had no garage, the parents stored lawn equipment there, including a gasoline can. One of the children tipped over the gas can. When the vapors reached the gas water heater's pilot light, the room exploded in a flash fire.

"This is an innocent spill that was a death sentence for two children—and it could happen to you or me or anybody," said Flynn.

The parents sued the landlord and makers and sellers of the water heater and the gas can in Dougherty County Superior Court two years after the tragedy, alleging their children died because the gas can and the water heater were defective and that the heater had been installed improperly.

They claimed a total of \$12.3 million in damages, including \$8.5 million for the children's lost earning capacity and \$3.8 million in medical bills. Ja'el alone had \$3.2 million in medical bills

covering 20 surgeries in an attempt to save her life, according to Flynn.

The lawsuit contended the water heater was flush to the floor when it should have been elevated, as required by building code rules. Flynn said the landlord settled for a \$1 million liability insurance policy limit. The landlord, Jason Lawson, and his company, Lawson Investments, were represented by Michael Kendall of Kendall Law Group in Douglasville. Kendall couldn't be reached.

Flynn also negotiated a confidential settlement with another company owned by Jason Lawson and his brother, Michael, Lawson Industries. Lawson Industries' attorney, Matthew Moffett of Gray, Rust, St. Amand, Moffett & Brieske, said Flynn was "tenacious and thorough in developing his evidence and advancing his contention"—that the second company was an "alter ego" for the first, which owned the rental home. Although Moffett argued against that contention, he said he was impressed with "how reasonably and professionally Jonah Flynn negotiated with us to resolve the case."

The lawsuit further contended that the water heater was defective because of an "open pilot, open burner" design that had been used since the 1930s but was abandoned by manufacturers after 2002 because of safety issues. "After 2002, the water heater industry changed its design to include a flame arrester covering its pilot and burner

to prevent the explosion of flammable vapors," Flynn said.

The Fenns settled for a confidential amount with the manufacturer, American Water Heater Co., and A.O. Smith Corp., which bought American after the manufacturing date. They were represented by Adam Peck of Lightfoot Franklin White in Birmingham, Flynn said. Peck said he couldn't comment.

The other alleged defect was in the gasoline can, which came with a cap that was lost soon after purchase, Flynn said. "It was a red can with a black spout and a yellow cap," Flynn said. "The cap falls off immediately."

The Fenns sued Blitz U.S.A. Inc, the manufacturer of the gas can. The settlement amount was confidential, but Flynn said it was part of a \$161 million fund that covered 88 claims. Based on those figures, the average payment would be \$1.8 million. Flynn said Wal-Mart Stores Inc. provided part of the settlement fund, as a retailer that sold the cans.

Michael Goldman of Hawkins Parnell represented Blitz. But Goldman said his involvement ended before the settlement, when Blitz filed for bankruptcy protection, and that the settlement was paid through the bankruptcy court.

The Fenn case differed from others against Blitz over the gas can, which alleged the can exploded, Goldman noted. The Fenn lawsuit, Goldman said, "was obviously a sad case" but

"the container did not cause this." He said the children's death was the result of "gasoline spillage around an open flame."

Goldman said the can came with warnings against storing indoors or around children. "If common sense were used, these accidents wouldn't happen," he said.

Flynn said he is also handling a series of cases around the country against Blitz over the gas can. The design of that product has also changed since the Fenn family's tragedy. "The gas cans are made differently now," said Flynn. "It takes two hands to twist the cap off the spout." Goldman said those changes were in response to environmental regulations, not lawsuits.

With their litigation and settlements concluded, Flynn said his clients continue to grieve. The mother, a private probation officer, was also burned carrying the children out of the fire. She suffered post-traumatic stress disorder, Flynn said. The father, a contract policeman on a military base, wears a picture of his children on a chain around his neck.

Their marriage did not survive the loss, Flynn said.

The case is *Fenn v. American Water Heater Co.*, No. 11CV1532-1.

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