



## Four successive policies subject to lead-paint claim, top court holds

June 2, 2006

By ANN W. PARKS,

Daily Record Assistant Legal Editor

A family who suffered lead paint exposure at their Baltimore residence from 1990 to 1993 may be able to recover \$1.2 million from the landlord's insurer — double the \$600,000 indemnification limit found by the Baltimore City Circuit Court.

The Court of Appeals yesterday found the circuit court improperly granted summary judgment to the insurer, United Services Automobile Association, with respect to its liability on two out of four successive homeowner's insurance policies issued to landlord Kenny A. Hooper.

The circuit court had held that mother Rita T. Riley and her three children had failed to generate any dispute of material fact as to whether the children had suffered injuries during the first two policy periods, beginning on July 28, 1990 and July 28, 1991.

"There is clearly enough evidence considering Dr. [Howard] Klein's testimony, in addition to the testimony that the Carpenter children were ingesting lead paint from the time that they moved into the property, to demonstrate injury as defined in the USAA policy," Judge Clayton Greene Jr. wrote for the court. "This clearly constituted a dispute of material fact."

The top court also found that the \$300,000 policy coverage limit could be stacked over the four successive policies, resulting in a potential \$1.2 million of coverage.

"While USAA insists that its intent to prevent the stacking of multiple policies is clearly manifested in the language of the policy, it is clear that a reasonably prudent person could also read the policies to mean that each separate policy is implicated by a continuing occurrence," Greene wrote. "These contradictory interpretations of the same language clearly demonstrate an ambiguity in the

### WHAT THE COURT HELD

**Case: United Services Automobile Association v. Rita Riley, CA No. 40. Opinion by Greene, J. Filed June 1, 2006.**

#### Issue:

1) Was a grant of summary judgment in favor of an insurer proper with respect to its homeowner's insurance coverage liability during two out of four policy periods? 2) Was the insurer's coverage limited to a single per occurrence limit of \$300,000 if the injury spans four policy periods?

#### Holding:

Judgment of the Court of Special Appeals affirmed. There was a dispute of material fact as to whether the children residing in the house had suffered injuries during the first two policy periods. Also, while the policies are ambiguous, a reasonably prudent person could read them to mean that each separate policy is implicated by a continuing occurrence.

#### Counsel:

Andrew Janquitto for petitioner; Brian S. Brown for respondent.

[RecordFax: 6-0601-20 \(28 pages\)](tel:6-0601-20)

policy.”

In the policies, an “occurrence” is defined as “bodily injury...which occurs during the policy period.”

Brian S. Brown, who is representing the family, said both of these issues come up frequently in lead paint cases.

“In the lead-paint context, it is not necessary to prove the existence of a blood-lead level in order to prove that an injury has occurred as a result of exposure to lead-based paint,” he said. “In this case, [the doctor] did have a sufficient factual basis to opine that the children were exposed to lead-based paint at the subject address and sustained an injury because of it.”

Continuous trigger

Yesterday’s opinion affirms that of the Court of Special Appeals, which last year found a “continuous trigger” theory applied to the plaintiffs’ claim of poisoning throughout the course of their multiyear tenancy.

Riley and her children sued Hooper, claiming that the family was negligently exposed to lead paint at 1803 West Mosher Street from June 1990 to the fall of 1993.

USAA then filed a declaratory judgment action in October 2001 against Riley, the children and Hooper, claiming that Hooper’s policy limited insurance coverage to \$300,000.

The circuit court determined that the plaintiffs could not establish that the children suffered bodily injury during the first two of the four policies.

In the underlying tort action, Klein seemed to indicate, in a May 2001 deposition, that the children’s exposure to lead began a few weeks or months prior to their testing in 1993. Since the four successive policies took effect in July 1990, July 1991, March 1992 and March 1993, the insurer argued in the declaratory judgment action that there was no proof of exposure during the first two policy periods.

In a subsequent affidavit, however, Klein indicated his belief that each child was exposed to lead during each of the four policy periods, suffering the requisite bodily injury to trigger the policy coverage — even though the children’s blood-lead levels would have been initially below acceptable levels of concern.

The top court rejected the insurer’s argument that the doctor’s testimony was contradictory and therefore unreliable. It appeared that the doctor, in his first deposition, was responding to a specific question regarding the beginning of the children’s elevated lead levels; and later expanded his testimony regarding overall exposure.

The court also rejected the argument that there was insufficient factual basis for Klein’s testimony that exposure to lead, even at low levels, was harmful.