

Maryland Court of Appeals OKs Circumstantial Causation Evidence in Lead Paint Cases

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In a case that may make it easier to prove causation in *Maryland* lead paint cases, the Maryland Court of Appeals held that neither direct evidence of the source of lead nor expert testimony was necessary when a trier of fact had sufficient circumstantial evidence to conclude that the subject property was the “*reasonable probable*” source of lead exposure. See [Rowhouses, Inc. v. Smith](#), 133 A.3d 1054 (Md. 2016)

Plaintiff brought suit against the owners of two rental properties she had lived in as a small child in the early 1990s, alleging that lead paint exposure at those properties caused permanent neurological deficits. The trial court granted a defense motion for summary judgment, citing a lack of direct evidence of lead paint at the subject property, which had since been demolished, and inability of Plaintiff’s expert to rule out other potential sources of lead exposure. This, the trial court ruled, left Plaintiff unable to prove causation.

On appeal, Maryland’s intermediate court reversed the trial court, and the Maryland Court of Appeals affirmed. After a detailed survey of its recent lead paint cases, the Maryland high court noted that its precedents established that causation may be established with circumstantial evidence “so long as the circumstantial evidence demonstrates that the subject property is a reasonable probable source of lead exposure.” *Id.* at 1080. In the summary judgment context, “a reasonable probability requires a showing that is less than ‘more likely than not,’ but more than a mere ‘possibility.’” *Id.* at 1080-81. Here, that meant a jury could reasonably conclude that the subject property was a source of Plaintiff’s lead exposure. However, the court continued, “the case law has not discussed what exactly is required to rule *out* other reasonably probable sources.” *Id.* at 1083 (emphasis added). The court held that, just as circumstantial evidence can be used to establish that a property was a “reasonable probable” source of lead exposure, circumstantial evidence could be used to establish that there were no other “reasonable probable” sources of Plaintiff’s lead exposure.

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