

## THE AM LAW LITIGATION DAILY: Rhode Island Supreme Court Throws Out Lead Paint Verdict

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### APPELLATE

Until yesterday, the paint industry had only one big blemish to mar its near-perfect record in cases alleging widespread public health problems from lead paint. And now that lone defeat has been turned into a victory. On Tuesday the Rhode Island Supreme Court overturned a 2006 jury verdict that held three paint companies liable: Sherman-Williams Co., NL Industries, and Millennium Holdings. (A fourth defendant, Atlantic Richfield Co., was found not liable at trial.) The state appellate ruling means that the paint companies are off the hook for \$2.4 billion in inspection and clean-up costs for Rhode Island homes containing lead paint. It also puts a damper on similar pending actions in Ohio and California. In its 4-0 decision, Rhode Island's supreme court wrote that the trial court should have dismissed the case when it was first filed in 1999 because the state Attorney General had no facts to back up the public nuisance claim

that manufacturers recklessly sold the lead paint that poisoned children in Rhode Island.

There are lots of losers in this decision, chief among them the Motley Rice lawyers hired by the state AG. Led by partner John McConnell, the Motley Rice team tried the longest civil jury trial in Rhode Island history--on contingency, so the supreme court ruling hits them in the wallet. The winners include Donald Scott of Bartlit Beck, who was lead trial counsel for NL. Scott worked with John MacFadyen of MacFadyen, Gescheidt & O'Brien on the appeal for NL. Sherman was represented by Jones Day attorneys Mickey Pohl and Laura Ellsworth. Millennium had Thomas Bender of Hanson Curran and William Kayatta of Price Atwood. ARCO was represented by John Tarantino of Adler, Pollock & Sheehan.