Wis. High Court Gives Victory To Lead Paint Makers

MADISON, Wis. (AP) — Children poisoned by lead paint cannot allege that manufacturers defectively designed the product since the dangerous lead was a key ingredient, the Wisconsin Supreme Court ruled Tuesday.

The 6-0 decision limits the potential liability of companies that made components of lead paint for decades and are now facing dozens of lawsuits by Milwaukee children who ingested paint chips.

The lawsuits, including about 30 that are pending, will still move forward claiming the companies failed to warn consumers of the risks and created a market for a dangerous product, said Milwaukee attorney Peter Earle, who represents the children. But the plaintiffs now cannot add claims of defective product design, which could have been easier to prove.

The case at issue involved a boy who sustained lead poisoning after ingesting paint chips while living in a Milwaukee apartment in 1998, when he was 1. The boy, now 12, suffered learning disabilities as a result, Earle said.

Writing for the majority, Justice Ann Walsh Bradley said the boy and other plaintiffs cannot claim manufacturers of white lead carbonate products used as a pigment in residential paints were responsible for a design defect.

"Removing lead from white lead carbonate pigment would transform it into a different product," she wrote. "Under these circumstances, we conclude that the design of white lead carbonate pigment is not defective."

The defendants in the case included E.I. du Pont de Nemours & Co., Armstrong Containers, the Sherwin-Williams Co. and American Cyanamid. The federal government banned lead paint in 1978 because it can cause severe injuries such as learning disabilities and neurological damage.

The former makers of lead paint face similar lawsuits around the country. Just last month, a Mississippi jury ruled Sherwin-Williams was responsible for the illnesses of a boy who ate lead-contaminated paint chips and awarded $7 million in damages.

An attorney for Cleveland-based Sherwin-Williams praised the Wisconsin decision, saying the court had followed "established law."

"Lead is an inherent part of any lead pigment," attorney Charles H. Moellenberg Jr.

said.

The decision comes after the court in 2005 allowed a boy who ingested paint chips to sue several companies, essentially the entire industry, even though he could not prove which one made the product that injured him.

The court found companies were aware of the dangers of lead pigment as far back as 1904 but continued marketing their products through the 1970s. In other words, the entire industry contributed to the risk.

That ruling was the first of its kind and set off a backlash against the court by business interests who claimed that companies could now be sued when their products weren't at fault for a person's injuries.

Business groups poured millions into helping elect two new justices that they saw as friendly, and defeated Justice Louis Butler, who wrote the 2005 decision.

Tuesday's ruling leaves that decision intact, which allows the pending cases to move forward.

The plaintiffs will have to prove the industry was aware of the potential risks and failed to warn consumers about them. Under a design defect claim, they would have only had to prove the product was unreasonably dangerous when it left the manufacturer.

"Now we know what the lay of the land is and what the elements of the claims we have to prove are," Earle said. "We're prepared to do that."

Also Tuesday, the court ruled 4-2 that a father who accidentally severed the feet of his 2-year-old son with a riding lawnmower cannot hold Deere & Co. responsible. That means the family will not get a new trial in a lawsuit that claimed Moline, Ill.-based Deere should not have allowed the lawn tractor to mow in reverse.

The court ruled that bystanders, such as the boy, do not have any greater protections than consumers from dangerous products.

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