

## Never Assume That Maryland Law Will Govern Your Contract Dispute

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As a general rule when interpreting contracts, unless the contract contains a choice of law provision, courts in Maryland will apply the law of the State where the contract was formed. The Latin term for this rule is *lex loci contractus*. However, Maryland courts will not apply the law of another State if that law violates the strong public policy of Maryland. In a recent decision, the Court of Appeals of Maryland dealt with this rule in a case involving lead-based paint. See *Brownlee v. Liberty Mutual Fire Ins. Co.*, 456 Md. 579 (2017).

In *Brownlee*, plaintiffs filed an action in Maryland seeking damages caused by exposure to lead paint during the time they lived in a Baltimore City home owned by the Salvation Army. The Salvation Army asserted that it was immune from liability on charitable immunity grounds. Therefore, the only way for plaintiffs to recover in this case was for the Salvation Army's insurance company to cover the claim and pay any damages awarded against it.

Although the plaintiffs lived in Maryland, it was not clear that Maryland law would apply to their case. The reason is because the Salvation Army's insurance policy (the "Policy") that covered the property was purchased in Georgia from Liberty Mutual. The Policy included pollution exclusions that the Supreme Court of Georgia has interpreted as preventing coverage for lead-based poisoning claims. As a result, Liberty Mutual moved to dismiss the complaint because under Georgia law the Policy does not cover plaintiffs' claims.

In opposing the motion to dismiss, plaintiffs argued that the court should not apply Georgia law because it violates Maryland's

strong public policy concerning the protection of victims of childhood lead-based paint poisoning. Plaintiffs noted that under Maryland law only a specific exclusion can prevent a lead-based paint poisoning claim. Because there was no such exclusion in this case, plaintiffs asserted that under Maryland law Liberty Mutual was obligated to indemnify and defend the lawsuit. The Court of Appeals was asked to decide the merits of Liberty Mutual's motion to dismiss. The question for the Court of Appeals was whether Maryland courts would apply Georgia or Maryland law in interpreting the Policy's pollution exclusions.

The Court of Appeals analyzed statutes and cases and determined that Georgia's law did not violate Maryland's strong public policy regarding lead-based poisoning claims. The Court of Appeals based its decision on the fact that the Maryland legislature permits the specific exclusion of lead-based paint claims from insurance policies. As a result, the Court of Appeals held that Georgia's interpretation of the pollution exclusion clause governed, and the case was dismissed because the Policy did not cover plaintiffs' lead-based paint claims.

Obviously, the Court of Appeals' decision was devastating to plaintiffs' attempt to recover damages related to their alleged injuries. This case highlights that fact that there is no guaranty that Maryland law will govern your contract dispute. Therefore, it is critical to determine prior to filing a claim what law will actually be applied to resolve any contractual issues.

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