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# Product Liability & Mass Tort Litigation

## Virginia Alert



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## Virginia Supreme Court Yet to Rule on Lead-Paint Premises Liability for Landlords

BY JOHN ERBACH

In 2007, the Supreme Court of Virginia (“the Court”) ruled that the Virginia Residential Landlord and Tenant Act does not create a claim for damages in tort. See *Isbel v. Commercial Investment Assoc., Inc.*, 273 Va. 605 (2007). Rather, the common law rule that a landlord owes no duty to maintain premises that are within the tenant's exclusive control remains the law of Virginia.

However, the Court has not addressed whether this rule protects landlords from lead-paint liability. A Richmond Circuit Court dismissed a lead-paint claim against a landlord, holding that the common law duty governs lead-paint cases against landlords. See *Benjamin v. Hunt*, No. CL07-5910 (Richmond Circuit Court April 22, 2008). The plaintiff in that case appealed to the Court and it granted the petition for appeal. Before the Court could rule on the merits, the parties settled and dismissed the appeal. Therefore, the Court has signaled its intention to address this issue, but has yet to see a case come before it.

Whether *Isbel* and the common law rule govern lead-paint liability of landlords remains uncertain. The Court reverses nearly half of the cases it agrees to hear. See [http://www.courts.state.va.us/courtadmin/aoc/judpln/csi/stats/scv\\_caseload\\_rpt\\_2007.pdf](http://www.courts.state.va.us/courtadmin/aoc/judpln/csi/stats/scv_caseload_rpt_2007.pdf).

Because the Supreme Court granted the petition for appeal in *Benjamin*, landlords should consider a future appeal highly likely, especially if a trial court dismisses a case against a landlord by applying *Isbel*.

Landlords and practitioners defending lead-paint litigation should consider a motion to dismiss based on the reasoning in *Isbel*. Whether or not the motion prevails, the losing party will have good grounds for an appeal.

*For more information pertaining to this matter, please contact John Erbach at 804.783.6914 or [jerbach@williamsmullen.com](mailto:jerbach@williamsmullen.com).*

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