



Ohio Supreme Court Rules Paint Company's Payments into Lead Paint Abatement Fund Do Not Qualify as Covered "Damages"

Feb 12, 2025

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Sherwin-Williams Co. v. Certain Underwriters at Lloyd's London,
2024 WL 5049193 (Ohio Dec. 10, 2024)

In a recent ruling, the Ohio Supreme Court determined that the insurers of Sherwin-Williams Co. are not required to indemnify the company for its court-ordered payment of over \$101 million into a lead paint abatement fund. This ruling, stemming from the case *Sherwin-Williams Co. v. Certain Underwriters at Lloyd's London*, clarifies the interpretation of "damages" under insurance policies, emphasizing that payments aimed at preventing future harm do not qualify as compensatory damages.

Lead Paint Litigation and Resulting Coverage Dispute

The case originated from a lawsuit filed by Santa Clara County, California, against Sherwin-Williams and other paint manufacturers. The lawsuit, which initially included several causes of action related to lead paint, ultimately proceeded on just a public nuisance claim. The trial court ruled against the paint companies in 2013, ordering them to pay \$1.15 billion (later reduced to \$409 million) into an abatement fund. This fund was designated for lead paint testing in homes, remediation of lead paint hazards, and educational programs on lead paint poisoning. In 2019, each of the three paint companies ultimately agreed to pay \$101 million into the abatement fund.

Sherwin-Williams, seeking indemnification for this payment into the abatement fund, filed suit in Ohio to determine the coverage obligations of its insurers related to the California judgment. The insurers argued that the policies covered only damages or expenses that were (1) neither expected nor intended and (2) "for," "because

of,” or “on account of” property damage or bodily injury, and that no such damages had been awarded against Sherwin-Williams.

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Procedural History and Ohio Supreme Court Decision

An Ohio trial court ruled in favor of the insurers, stating that the abatement fund payment was an equitable remedy aimed at preventing future harm, whereas damages are directed at compensating for past accrued harm. This decision was reversed by the Eighth District Court of Appeals, which held that the payments did constitute damages, as the abatement fund was not strictly intended to prevent harm but also to compensate for money depleted by ongoing remediation efforts. However, the Ohio Supreme Court ultimately reinstated the trial court’s judgment, emphasizing that the abatement fund’s purpose was to prevent future harm, not to compensate for past harm, and thus these payments did not qualify as “damages” under the insurance policy.

Notably, the Ohio Supreme Court expressly distinguished a decision involving “response costs” under 42 U.S.C. 9601 et seq, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for environmental hazards, explaining that response costs in that case, even though equitable in nature, were

aimed at remediating past harm done to property.

Insurance Policy and Coverage Considerations

Legally, this case underscores the importance of precise language in insurance contracts and the interpretation of policy terms. The Ohio Supreme Court emphasized that “damages” refer to compensation for past harm or injury, not payments made to prevent future harm. The distinction between equitable remedies and compensatory damages can significantly impact the obligations of insurers and the scope of coverage. In a broader sense, this decision also demonstrates the interest insurance companies have in making sure any abatement fund clearly and unambiguously sets forth the damages the fund is intended to address.

If you have concerns or need further clarification on policy drafting and coverage considerations, our team is ready to assist. Please contact the authors or any attorney with Frost Brown Todd’s [Insurance Coverage and Bad Faith](#) practice.

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