

## Fourth Circuit Declines to Apply Tort Doctrine to Insurance Contract



### Jack Griffeth, Attorney

Direct Line: 864.282.9104  
jgriffeth@collinsandlacy.com

### Practice Areas:

- Insurance Coverage
- Higher Education Law
- Employment Law

Visit Jack's personal blog, Jack Griffeth: A Man with a Stamp on Life & Law.

Last Friday, February 3, 2012, the United States Court of Appeals for the Fourth Circuit [1] filed its opinion in *Pennsylvania National Mutual Casualty Insurance Company v. Roberts*, in which the Court declined to apply the tort doctrine of "joint and several liability" to the payment of insurance proceeds.

The underlying facts of this case are tragic. From birth, Lakia Roberts was exposed to lead paint dust in the building where she lived. She was first diagnosed with lead poisoning at only "20 months" of age. The exposure to lead over the years resulted in debilitating problems. A jury returned a verdict of \$2,000,000 against Attsgood and Gordon Gondrezick who owned, leased and managed the property for the period of 55 months of lead exposure that Roberts suffered. Under the Maryland economic damages cap, the \$2,000,000 judgment was reduced to \$850,000. It was undisputed that Attsgood and Gondrezick were jointly and severally liable for the \$850,000.

Pennsylvania National filed a declaratory judgment action against Attsgood and Roberts on the basis of diversity jurisdiction. Penn National argued that it was obliged to indemnify its insured Attsgood for no more than 40% of the total judgment or \$340,000. It was undisputed that Attsgood had owned a policy of insurance for the property with Penn National for 24 months (January 1992 – January 1994), but Attsgood had sold the property to Defendant Gondrezick in November of 1993. Penn National contended that it only had 22 months of coverage.

There were cross motions for summary judgment filed in the District Court. Plaintiff Roberts argued that Penn National owed the entire verdict based on "joint and several" liability. Penn National argued that it owed for only 22 months of coverage given that during the last two months of coverage, its insured did not own the property. The lower Court held Penn National to an exposure of 24 months, the entire period of coverage, but refused to impose a "joint and several" recovery. Both parties appealed. The Fourth Circuit affirmed in part and reversed in part as follows:

1) The Court recognized the tragic circumstances that Roberts had suffered but adhered to the plain language of the insurance contract which obligated Penn National, on behalf of Attsgood, to pay sums legally obligated to pay as damages because of "bodily injury...to which this insurance applies..."

2) The Court reasoned that since Attsgood did not own the property for the last two months of the Penn National coverage period that Penn National's pro rata share amounted to 22 of the 55 months exposure (40%) of the amount of the underlying verdict.

3) In rejecting the “joint and several” tort analysis, the Fourth Circuit in its well reasoned opinion noted that Attsgood and Gondrezick were jointly and severally liable and that each was responsible for the entire judgment under long standing principals or tort law. However, the court held that insurance coverage disputes are “governed by contract law...” and the court could therefore find no rationale to support the imposition of “joint and several” liability upon the insurer. Moreover, the court held that though there was a distinct and full basis of Maryland cases to support this position, it further opined that not only was it “neither equitable or fair to require an insurance company to pay for coverage during the period for which effective coverage was not in force,” but would be disruptive for insurance markets as well. Ultimately, the Court reasoned that such a “joint and several” application would, in fact, ultimately, discourage tort feasons from buying insurance, and would create uncertainty which would result in significant costs on both insurance companies and policy holders.

## **Conclusion**

In recognizing that Roberts, unfortunately, might not be able to collect the full amount of the \$850,000 judgment, the Fourth Circuit, nevertheless, upheld the principle that it could not ignore the Maryland law by holding an insurance company to a contractual provision, in which it never agreed to, or to scramble together whole areas of the law that are conceptually distinct.

[1] Including the Honorable Richard M. Gergel, United States District Judge for the District of South Carolina, sitting by designation.

## **About Jack Griffeth**

Jack Griffeth is a shareholder at Collins & Lacy, P.C. His 35-year practice of law has focused on defense trial work, representing employers in employment related litigation and mediation. Jack serves as General Counsel to Wofford College, Furman University and Spartanburg Methodist college. Jack is a summa cum laude graduate of Wofford College where he earned his degree in Liberal Arts. He received his Juris Doctor from Duke University. In 1976, Duke University created the Charles Murphy Award for Jack, in recognition of his unique collegial contributions to the Duke Law School community. He’s also the 2008 recipient of the Greenville Bar’s most prestigious honor, the Tommy Thomason Award.

Jack is the Past President of the Greenville Bar Association, President-Elect for the S.C. Bar Foundation Board of Directors and a member of the House of Delegates for the 13th Judicial Circuit. He is a past member of the South Carolina Bar’s nominations committee and past-president of the Bar’s Alternative Dispute Resolution Council. Jack is a certified mediator by the South Carolina Bar and speaks frequently on the subject.

He is considered one of South Carolina’s pre-eminent attorneys by Martindale-Hubbell and has been named by his peers a Best Lawyer in America, the oldest and most respected peer-review publication in the legal profession.

## **About Collins & Lacy, P.C.**

In 2012, Collins & Lacy, P.C. celebrates 28 years of providing legal services to South Carolina. With offices in Charleston, Columbia, Greenville and Myrtle Beach, South Carolina, the firm’s primary focus is defense litigation, representing local, regional and national clients in the areas of:

- construction
- employment law
- hospitality/retail & entertainment law
- insurance/bad faith
- products liability
- professional liability
- public policy
- commercial transportation
- workers’ compensation

Collins & Lacy is committed to upholding the highest standards for integrity, civility and community service. For more information, visit [www.collinsandlacy.com](http://www.collinsandlacy.com).