



Report of the Workgroup on
Lead Liability Protection for Owners of
Pre-1978 Rental Property
MSAR No. 9267

November 2012

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I. EXECUTIVE SUMMARY

In 2011, the Court of Appeals of Maryland decided *Jackson v. The Dackman Company*, 422 Md. 357 (2011), a case that addressed the constitutionality of Maryland's Reduction of Lead Risk in Housing Act, passed in 1994, that protected landlords who met specific criteria in the Act from personal injury from lead-related lawsuits. The Court found that a key provision of the Act was unconstitutional.

Concerned that the Court's decision would cause problems for the housing market and landlords that had relied on provisions in the 1994 legislation that had been deemed unconstitutional, members of the Maryland General Assembly introduced legislation during the 2012 Session to establish a Lead Poisoning Compensation Fund. Fashioned loosely on the model used to create the Maryland Automobile Insurance Fund, the Lead Poisoning Compensation Fund would have provided "a means for owners of residential rental property to obtain coverage for liability for injuries arising out of lead poisoning." The Fund would have been established through a \$50 or \$100 per unit fee "paid by each owner of residential rental property location in the State that was built before 1978."

Because of concerns about the financial viability of such a fund, House Bill 472 was amended to mandate that the Maryland Insurance Commissioner establish the Lead Liability Protection Workgroup (Chapter 373, Acts of 2012). The purpose of the Workgroup was "to evaluate and make recommendations to the General Assembly relating to lead liability protection for owners of pre-1978 rental property." House Bill 472 contained four specific tasks for the Workgroup:

1. Feasibility of encouraging the existing insurance marketplace to provide lead liability coverage for owners of pre-1978 rental property.
2. Feasibility of establishing other mechanisms for providing lead liability insurance coverage for owners of pre-1978 rental properties.
3. Feasibility of establishing an Insurance Fund for lead liability insurance coverage including financial and underwriting requirements.
4. Current availability of private risk management tools such as insurance and bonds in the commercial market.

The Workgroup studied these issues and the members have reached the following conclusions.

- While there is some insurance coverage available in the private market, it is not affordable for landlords with a small number of properties or those who have properties that are not certified lead free, which render them difficult to underwrite.
- A State sponsored insurance fund is not financially feasible, especially if that fund is intended to cover claims arising in the past.
- There may be other options for coverage, such as a risk retention group. However, these options are likely to be unaffordable for the owner of only a few properties or those who have properties that are challenging to underwrite.

In accordance with the legislation, the Workgroup briefly discussed a number of alternative ideas that may assist in providing lead liability insurance coverage or encouraging the existing insurance marketplace to provide lead liability coverage for owners of pre-1978 rental property (e.g. measures that would incentivize landlords to eliminate the lead hazard in their properties or that would in various fashions limit or share the burden of claims). These suggestions and ideas are summarized in Section V.C. Many of the suggestions involved limiting or shifting liability. A detailed examination of these suggestions, however, was outside the scope of the Workgroup's statutory charge and the Workgroup offers no specific recommendations as to the viability or practicality of these suggestions and ideas, leaving that to further examination by the General Assembly and others involved with the issue.

II. LEAD LIABILITY PROTECTION WORKGROUP MEMBERSHIP AND MEETING SCHEDULE

The enabling statute required the Maryland Insurance Commissioner to convene a

Workgroup with the following members:

- ❖ Senate of Maryland (two members)
- ❖ House of Delegates (two members)
- ❖ Secretary of the Environment or designee
- ❖ Secretary of Housing and Community Development or designee
- ❖ Secretary of Health and Mental Hygiene or designee
- ❖ Representatives of:
 - the Judiciary¹
 - the insurance industry
 - owners of pre-1978 property
 - childhood lead poisoning advocacy groups;
- ❖ Representatives with expertise in legal claims arising out of lead poisoning, including attorneys representing plaintiffs and defendants;
- ❖ Representatives from academic institutions with expertise in insurance and actuarial science; and
- ❖ Any other representative the Commissioner determines to be included in the Workgroup.

A list of Workgroup members is found in Appendix 1.

Workgroup members were assigned to serve on one of two subworkgroups, which were formed to provide a forum for more detailed discussion of particular issues. Subworkgroup One focused on the existing insurance marketplace and alternative mechanisms for providing lead liability. Subworkgroup Two focused on the feasibility of establishing an insurance fund for lead liability insurance coverage.

The Workgroup met on June 19, August 21, and September 4, 2012. Meeting minutes are available on the MIA's website at <http://www.mdinsurance.state.md.us/sa/news-center/legislative-information.html>. Subworkgroup meetings were held on June 19 and July 31, 2012.

¹ By letter dated May 22, 2012, the Honorable Robert M. Bell, Chief Judge of the Court of Appeals of Maryland, informed the Insurance Commissioner that Rule 3.4 of the Code of Judicial Conduct prohibits the appointment of a judge to a governmental committee, "unless it is one that concerns the law, the legal system, or the administration of justice." Accordingly, he declined to appoint a judicial representative to the Workgroup.

III. OVERVIEW

A. Background

Lead poisoning is a serious medical condition caused by increased levels of the heavy metal lead in the body. Particularly serious for young children, lead interferes with the development of the nervous system and can cause permanent cognitive and behavior disorders. U.S. Dep't of HHS, *The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress* 1, II I-7 and IV 1-25 (July 1988).

Lead was a common additive to paint and childhood lead poisoning began to be diagnosed in the United States in the late 19th century. Katarina Lah, *History of Lead Use* (May 8, 2011) available at <http://toxipedia.org/display/toxipedia/History+of+Lead+Use>. In 1922, the League of Nations recommended a ban on the use of white lead in interior paint and most countries in Europe had banned its use by 1931. Gerald Markowitz & David Rosner, *Cater to the Children: The Role of The Lead Industry in a Public Health Tragedy, 1900-1955*, 90.1 AM. J. OF PUBL. HEALTH, 37 (January 2000). The United States did not adopt the ban and the use of lead-based paint in the United States instead increased. Joanne Pollack, J.D., *The Lead-Based Paint Abatement Repair & Maintenance Study in Baltimore: Historic Framework and Study Design*, Journal of Health Care Law & Policy, Vol. 6:90 (2002).

The first significant lead-based paint legislation passed in the United States in 1971. The Lead-Based Paint Poisoning Prevention Act addressed the use of lead-based paint in federally-funded housing. U.S Department of Housing and Urban Development, *History of Lead-Based Paint Legislation*, available at <http://www.hud.gov/offices/cpd/affordablehousing/training/web/leadsafe/ruleoverview/legislationhistory.cfm>. In 1978, the Consumer Product Safety Commission banned the residential use of lead-based paint. *Id.*

B. Review of Statutes and Case Law

1. Maryland's Lead Law

In 1992, the General Assembly authorized the Lead Paint Poisoning Commission (Chapter 406, Acts of 1992). The Commission conducted a study and issued a preliminary report in December 1993 and a final report in May 1994. The General Assembly passed the Reduction of Lead Risk in Housing Act (Ch. 114, Acts of 1994) (“the Act”) based on the Commission’s recommendations. The 1994 legislation was designed to “reduce the incidence of childhood lead poisoning, while maintaining the stock of available affordable rental housing.” MD. ANN. CODE, ENV. ART., §§ 6-801 through 6-852.

As originally enacted, the law applied to properties constructed before 1950. A significant portion of the Act was dedicated to establishing and enforcing risk reduction standards. The owners of pre-1950 properties were required to register with the Maryland Department of the Environment by December 31, 1995 and file a renewal registration each year. Sections 6-811(a), 6-812(a). Compliance with the Act was optional for those properties built between 1950 and 1978. However, during the 2012 Session, the General Assembly passed House Bill 644, effective on January 1, 2015, that requires all rental properties built before 1978 to meet all applicable provision of the Act.

Sections 6-826 through 6-842 of the Act established the “qualified offer” available to those landlords who have registered their properties and complied with the Act’s applicable notice and risk reduction standards. Section 6-836. A “qualified offer” consisted of two categories of expenses, which total \$17,000.00: 1) relocation expenses to move the impacted tenants to a lead-safe property up to a maximum amount of \$9,500.00; and 2) medically necessary treatments of the person at risk (until that person reaches age 18), which are not

otherwise covered by health insurance, up to a maximum amount of \$7,500.00. Section 6-841. Acceptance or rejection of a qualified offer released the landlord (and the landlord's agents and insurer) from any liability to the person accepting or rejecting the offer arising from injury or loss caused by the ingestion of lead on the property. Section 6-835. A landlord who does not comply with the applicable notice and risk reduction standards is presumed to have failed to exercise reasonable care concerning lead hazards for the time period at issue. Section 6-817.

The Maryland Department of the Environment and the Coalition to End Childhood Lead Poisoning reported that from February 24, 1996 through October 24, 2011 (date of the *Jackson v. The Dackman Company* decision), landlords have made 144 qualified offers. Of that number, 83 offers were rejected and 61 offers were accepted. This number is quite low when compared to the number of lead poisoning cases (656) that were filed in Maryland in 2011 alone. A review of the Circuit Court for Baltimore City docket revealed that in January 31, 2012 there were 1,164 open and active lead paint cases on the docket. As of July 12, 2012, there were 1,287.

2. *Jackson v. The Dackman Company*

On October 24, 2011, the Court of Appeals of Maryland issued an opinion in *Jackson v. The Dackman Company*, 422 Md. 357 (2011) that addressed the constitutionality of those provisions of Maryland's Reduction of Lead Risk in Housing Act that grant landlords immunity from personal injury from lead-related suits based on the qualified offer. The Court of Appeals found the limited liability section of the Act unconstitutional under Article 19 of the Maryland Declaration of Rights. 422 Md. at 376. The Court stated that the qualified offer as set forth in the statute is not an adequate remedy for those injured.

For a child who is found to be permanently brain damaged from ingesting lead paint, proximately caused by the landlord's negligence, the maximum amount of compensation under a qualified offer is minuscule. It is almost no compensation. Thus, the remedy which the Act substitutes for a traditional personal injury action results in

either no compensation (where no qualified offer is made or where a qualified offer is rejected) or drastically inadequate compensation (where such qualified offer is made and accepted).

Id. at 382. The Court found that, “although the immunity provisions of the Act are invalid, they are severable from those remaining portions of the Act which can be given effect.” *Id.* at 383.

3. *House Bill 472*

In response to the *Dackman* decision, Senate Bill 873 and House Bill 472 were introduced during the 2012 legislative session. Their intent was to establish a Lead Poisoning Compensation Fund to provide liability coverage to residential rental property owners that had been compliant with the 1994 legislation for injuries arising from lead poisoning that occurred in their properties. It was contemplated that the proposed fund would be established from fees on pre-1978 residential rental property owners. These fees would be deposited into the proposed fund and would not become part of the State Treasury. The legislation would have created a State entity governed by a board of trustees, whose members would have been compensated by the State. The bill authorized the appointment of an executive director with significant independent administrative power to manage the funds.

After public hearings and comments and in response to concerns raised about the financial viability of the proposed fund, the General Assembly passed and the Governor signed an amended version of House Bill 472 (Chapter 373, Acts of 2012) creating a Workgroup on Lead Liability Protection for Rental Property. The legislation required the Maryland Insurance Commissioner to convene a workgroup to evaluate and make recommendations relating to lead liability protection for owners of pre-1978 rental property. The Workgroup was charged with evaluating:

(1) the feasibility of encouraging the existing insurance marketplace to provide lead liability coverage for owners of pre-1978 rental property; (2) the feasibility of establishing other mechanisms for providing lead liability insurance coverage for owners of pre-1978 rental property; (3) the feasibility of establishing an insurance fund for lead liability insurance coverage; and (4) the extent to which private risk management tools such as insurance and bonds are available on the commercial market.

The Commissioner was required to report the findings of the workgroup to the Governor and the General Assembly on or before December 1, 2012.

IV. STATE OF THE CURRENT INSURANCE MARKETPLACE

According to landlords who were members of the Workgroup or who attended the Workgroup meetings, the only insurance coverage available to them for lead liability was the statutorily mandated coverage for \$17,000 to cover the amount of the qualified offer. This coverage is now clearly inadequate in light of the ruling in *Dackman*.

The members of Subworkgroup One researched the availability of lead liability insurance for landlords in a number of Northeast markets among excess and surplus lines brokers and reinsurers. The research indicated that there are currently no state-funded insurance programs designed for lead liability. The Subworkgroup and the Workgroup heard from representatives of landlords owning pre-1978 properties, especially those based in the Baltimore area, that many insurers that had once provided coverage for lead-liability claims under general liability policies no longer do so and that many property and casualty policies now carry a lead-claim exclusion.

On the other hand, the Subworkgroup was also told that there are carriers that continue to write coverage with no lead exclusion. While these carriers impose underwriting requirements (including a review of claims history and inspection for lead remediation), they tend to price on the assessment of overall risk with no specific surcharge for lead liability. For example, there is a long standing program in the five boroughs of New York City that offers primary and umbrella

coverage for older buildings. There are no lead exclusions and no surcharges. However, the program has specific guidelines and will not write policies for public or subsidized housing.

In short, for older housing stock that has been properly maintained and has had lead remediation, it appears that there may be some private insurance available. Pricing is based upon general life safety and liability issues with no additional price component for lead. During the public meetings of the Workgroup, however, representatives of many of the landlords who own smaller numbers of properties indicated that even if they met the underwriting standards for these policies, particularly for lead remediation, the price of the available policies is more than these landlords are able or willing to pay.

V. DISCUSSION

A. A State fund for lead liability insurance coverage is not financially viable.

The primary focus of the Workgroup's discussion was on the viability of a statutorily created insurance fund. The Workgroup considered the viability of both a retroactive fund ("tail fund") that would address the claims for lead-related injuries that have occurred in the past and an insurance fund for future claims (the "prospective fund").

The first question that had to be addressed was how much money an insurance fund would need at inception to meet its obligations. Because landlords are most concerned about retrospective versus prospective claims, a fund that would address "tail" claims was addressed first.

1. *The establishment of a "tail fund" would likely require an initial investment of approximately \$2.1 billion.*

The Workgroup's actuarial experts suggested the development of two formulae for giving the Workgroup a "ball park" estimate of the cost of an initial liability reserve to cover possible past claims. The two formulae used were:

- Formula No. 1: Policy Limit x No. of Claims x Length of Tail = Liability Amount / No. of Pre-1978 Units = Fee Per Unit
- Formula No. 2: Policy Limits x Total No. of Children with Lead >/+ 10 x Percentage of Estimated Claims = Total Liability / Number of Pre-1978 Units

As a preliminary step, the value of the various data points had to be determined. The Workgroup began by assuming that the cost of establishing a fund covering claims arising in the past (the “tail”) would be spread among all pre-1978 rental units, as the 2012 legislation proposed. This is the largest universe of properties for which lead exposure is generally considered a possible problem.² According to U.S. Census figures, there are approximately 400,000 pre-1978 rental units that could be subject to a fee to fund the initial liability reserve for any insurance fund.³

The “tail” period for cases involving injuries to children is generally assumed to be as long as 21 years because a claim for a child who may have been exposed to lead paint can be filed until three years after the child reaches the age of 18. It was agreed by the Workgroup, however, that the effective tail for any potential insurance fund covering only landlords who were compliant with the Maryland Reduction of Lead Risk in Housing Act (which because of court suits did not go into effect until 1996) would more likely be closer to 16 years.

Other data points were more difficult to determine. For example, a conservative policy limit for any coverage of \$200,000 was used because that was the number cited in the proposed 2012 legislation, even though Workgroup members reported that the average settlement in a lead

² It was conceded, however, that many of the rental units included in the number have never had a problem with lead paint poisoning, with at least a portion of them being certified as lead free or with limited lead being present.

³ The actual census figure is 446,000 non-owner occupied units in Maryland. However, it was agreed that not all of these properties are rental units. Some of these properties are vacation homes or used for other non-rental uses. Therefore, it was agreed to use 400,000 as the estimate of units that would be subject to the initial fee. The Maryland Department of Assessment and Taxation does not have data on the number of rental units in the State.

injury case may be two to three times that figure. As to the number of possible cases, research of a Workgroup member determined that in 2011, at least 656 lead cases were filed in Maryland's circuit courts.

Inserting these data points into Formula No. 1, it was anticipated that there would need to be an initial liability reserve to cover prior claims of approximately \$2.1 billion. Allocating this to all pre-1978 would result in a per unit fee of \$5,248.00.⁴

A different approach was taken for Formula No. 2, which focused on the universe of likely claimants—specifically, the number of children with blood lead levels at or above ten micrograms per deciliter (>/+ 10).⁵

Formula No. 2 also used a policy limit of \$200,000, multiplied by the number of children with blood levels at >/+ 10 and multiplied again by the anticipated percentage of the children effected by blood levels at >/+ 10 who would actually file claims against a landlord for lead poisoning. The resulting number would then be divided by number of pre-1978 units to arrive at the initial per unit fee to set up a fund.

The total number of children with blood levels at >/+ 10 was assumed to be 44,435. This number was based on the Maryland Department of Environment's Annual Report on Childhood Blood Lead Surveillance in Maryland for the years 1996 through 2011. It encompasses 16 years of data, which was consistent with the agreed-upon 16 year tail period for the proposed coverage.

The most difficult variable in Formula No. 2 was determining an appropriate percentage of those children who tested at >/+ 10 who would actually file a claim against a landlord for lead

⁴ $\$200,000 \times 656 \times 16 = \$2,099,200,000 / 446,000 = \$5,248$. Originally, the Workgroup estimated the number of lead claims filed in court at approximately 1,000 per year and suggested the full tail period of 21 years. This would have resulted in a far higher initial reserve and initial fee [$\$200,000$ (policy limits) \times 1,000 (claims) \times 21 (length of the tail) = $\$4,200,000,000$ (initial reserve) / 400,000 (number of pre-1978 rental units) = $\$10,500$ (initial fee)].

⁵ The Center for Disease Control has recommended that this standard should change to blood lead levels at or above five micrograms per deciliter. If this lower standard is adopted in Maryland it is estimated by Maryland's Lead Poisoning Prevention Commission that the number of lead poisoning cases in the State may increase three fold.

poisoning. For this initial, rough “ball park” calculation, the 656 cases filed in 2011 was used as a general guide. It was assumed that approximately 23.5% of the children suffering the effects of blood levels at ≥ 10 from 1996 through 2011 would likely file claims against a landlord for lead poisoning.⁶

Using these assumptions, the total projected tail liability figure in Formula No. 2 was also \$2.1 billion dollars.⁷ Again, assuming 400,000 pre-1978 units, this would result in a per unit startup fee for the insurance fund of \$5,230. Even when the Workgroup substituted a far lower (and probably unduly optimistic) estimate of the number of claims that could be filed (5% of children injured or 139 claims), an insurance fund would need to plan for a tail liability of \$444,350,000. This would result in a per unit startup assessment of \$1,110.88.

There was widespread (if reluctant in some cases) agreement among Workgroup participants that all of these numbers—each of which assumed that the assessment would be allocated to all pre-1978 rental units, regardless of any history of past or present lead poisoning or whether they would benefit from any coverage—were so high as to make establishment of such a fund economically and politically impractical.

2. *The establishment of an insurance fund for future claims would require an initial investment in excess of \$131 million.*

The Workgroup also considered the financial viability of an insurance fund that would address only future claims on an occurrence basis. Using some of the same assumptions and data used in developing the estimates for the “tail fund,” it was determined that to provide policy limits of \$200,000, a prospective insurance fund would require \$131,200,000 to fund the

⁶ 44,435 children tested from 1996 through 2011 multiplied by 23.5% equals 10,664.40. This number divided by 16 years equals 652.64 claims per year.

⁷ Assuming a policy limit of \$200,000 multiplied by the total number of children with lead levels ≥ 10 multiplied by 23.5% equals \$2,091,999,800.

potential liability for one year's worth of claims.⁸ The owners of the 400,000 pre-1978 rental units would need to pay \$328 per unit to fund just the first year for such a fund.

3. *Other costs and considerations for the establishment of an insurance fund.*

The Workgroup's primary discussion focused on the initial liability reserve amount that would be required to establish an insurance fund because it was determined that would reveal the magnitude of the underlying numbers involved in providing coverage. However, it was noted also that there would also be the need for significant investment in the operational, and administrative costs required to begin an insurance fund. A Workgroup member familiar with these issues indicated that he knew of a recent estimate that found that the initial operational and administrative capital necessary to establish a small property and casualty insurance company was \$7 to \$10 million. While this amount could be significantly lower if the insurance fund was established within one of the existing state funds (e.g. MAIF or IWIF), there would still be significant costs required in addition to an initial liability reserve.

The Workgroup also touched briefly on the issue of the cost of premiums and the underwriting standards that would need to be applied when issuing policies. Even assuming an affordable initial total liability reserve, it seems clear that the amount of annual premium would be extraordinarily high.

Net premium is the amount that must be collected in advance or annually to cover all losses that will occur during the insured period. This amount is spread among all members of the insured group and the larger the pool of insureds the lower the cost. While it was assumed that any legislation setting up a State sponsored fund, as a matter of financial necessity, would have to spread the cost of the liability reserve among all 400,000 pre-1978 owners of rental properties,

⁸ Assuming a policy limit of \$200,000 multiplied by 656 claims per year equals \$131,200,000. This number divided by 400,000 results in a per unit startup fee for the first year of \$328.00.

annual premiums would be paid by only those few landlords who actually needed or wanted the insurance. This would likely be a far smaller number. Additionally, an individual policy would have to be underwritten based upon the condition of that property.

In the private market that currently exists, it is the cost of the premium and the underwriting requirements that keep many landlords out of the market. According to the Coalition to End Childhood Lead Poisoning, 60% of the lead claims in Maryland are brought against landlords who own four or fewer units. In a State fund for lead liability insurance coverage, a high percentage of the risk exposure would be borne by a relatively small number of landlords. A high risk of exposure spread among a small number of potential insureds would result in prohibitively high premiums. This, too, argues against the idea of setting up a State sponsored fund.

B. Private risk management pools provide some insurance coverage for owners of pre-1978 rental property.

When evaluating the extent to which private risk management tools such as insurance and bonds are available on the commercial market, the Workgroup found that there is some availability for owners of pre-1978 rental property to join together and form risk retention groups (RRG). A type of insurance formed under The Federal Liability Risk Retention Act of 1986, a RRG permits members who engage in related business activities to write liability insurance for all or a portion of third party liability exposures of group members. The federal law allows a group to be chartered in one state, but able to operate in all states.

A member of Subworkgroup One contacted three brokerage firms that specialize in the environmental insurance market about establishing a RRG. One firm had written a master policy for a landlord association with a minimum premium of \$6,500 to \$7,500 plus taxes and fees along with a retention amount (deductible) of \$25,000. These landlords had between 70 and 120

units and the premium averaged approximately \$35 to \$45 per door. To qualify for this master policy, the property must be certified lead free.

One firm indicated that once it determined whether there were enough participants to make a RRG program feasible, it might be able to offer a master claims made policy for a group of landlords, with a per occurrence limit that would be negotiable, and an aggregate limit for the group. Underwriting would require a review of Maryland regulations, a review of the frequency of past regulatory violations, and a determination that each property has been well maintained with a minimum standard of care. It was also likely that lead remediation would be required as an underwriting standard.

A policy of this type would be for third party bodily injury and normally requires a retention amount of \$25,000, although that amount may be negotiable. However, it is likely that the problem of underwriting and affordability for landlords with fewer properties would be as much a road block in the RRG arena as it is in the commercial insurance market.

C. Other mechanisms for providing lead liability insurance coverage and for encouraging the existing insurance marketplace to provide lead liability coverage for owners of pre-1978 rental property.

During the Workgroup's meetings, there were a number of suggestions and ideas raised for other means of making it easier for landlords to secure insurance coverage in the existing marketplace. Many of these suggestions involve shifting or limiting liability. While the Workgroup was generally instructed to consider such ideas, it was determined that any detailed examination and certainly any recommendation was beyond the statutory charge of the Workgroup to consider the feasibility of insurance coverage. It was also clear from the Workgroup's discussions that there was significant divergence of opinion among Workgroup

members as to the value of the various suggestions. The Workgroup offers no recommendation as to these suggestions, which are offered for informational purposes only.

- Encourage Lead Remediation - State money should be spent only on efforts to eliminate the lead hazard by encouraging greater remediation efforts such as tax credits for replacement of friction surfaces such as windows, doors, and cabinets. This would incentivize landlords to improve the condition of their properties. Lead remediated properties are more likely to qualify for insurance in the private market.
- Revise the Qualified Offer – Some suggested that the *Dackman* decision allows for amendment to the qualified offer language that currently exists in the Reduction of Lead Risk in Housing Act in a form that could survive judicial scrutiny.
- Impose Some Liability on the Manufacturers and Distributors of Lead Paint – In order to ensure adequate compensation for children with lead poisoning, as well as a way to mitigate the potential liability of landlords, it was argued that lead pigment manufacturers should be made a party to lead cases. This would require a statutory change.
- Limitations on Liability/Tort Reform – Among the suggested options were a reform of the current standard of proof in lead liability cases, changes in the evidentiary requirements, including precertification of claims, and placing a cap on attorneys fees and/or judgments. It was also suggested that lead cases be treated similar to workers compensation, which are subject to binding arbitration.
- Explore a Tobacco-Style Settlement – It was suggested that a lead liability insurance fund could be established with the proceeds from a settlement with lead pigment manufacturers, which would have to be brought by Maryland’s Attorney General.

VI. SUMMARY

The research of the Workgroup found that there is some limited insurance coverage available for landlords of pre-1978 rental properties and some limited opportunities for groups of landlords to take advantage of less traditional insurance vehicles, such as risk retention groups. For many landlords, however, the high cost of premiums and the cost of complete lead remediation and other possible underwriting criteria are obstacles to taking advantage of options in the private market.

The Workgroup has concluded that a State fund for lead liability insurance coverage operating with either a retroactive “tail” claims or solely on prospective claims basis is not

financially viable due to: 1) the high cost to pre-1978 landlords for funding a required initial liability reserve; 2) the continuing and significant liability exposure as a result of both past claims and potential claims in the future⁹; and 3) the small risk pool of potential insureds.

Consequently, the Lead Liability Protection Workgroup recommends that the General Assembly should not pursue a State sponsored insurance fund designed to provide lead liability coverage for owners of pre-1978 rental property.

⁹ Without being able to quantify the impact on risk and exposure, the Workgroup did note that the CDC has recently lowered what it considered the threshold of danger to exposure to lead. This could open the door to increased claims in the future, further exposing any State sponsored fund to risk.

Appendix 1

WORKGROUP MEMBERSHIP ROSTER¹⁰

John F. Banghart
Maryland Automobile Insurance Fund, Deputy Executive Director

Delegate Pamela G. Beidle
Maryland House of Delegates, Anne Arundel County

Gary L. Chandler
GNI Properties Inc., Director, Salisbury Area Property Owners Association

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Administration

Clifford S. Mitchell, M.D.
Maryland Department of Health and Mental Hygiene, Assistant Director Office of Environment
Health & Food Protection

Delegate Doyle L. Niemann
Maryland House of Delegates, Prince George's County

Senator Catherine Pugh

¹⁰ Senator Robert J. Garagiola, from Montgomery County was appointed by Senate President Thomas V. Mike Miller, Jr. to serve on the Workgroup. However, Sen. Garagiola was unable to participate and a replacement member was not appointed.

Maryland Senate, Baltimore City

Steven W. Sachs
Willis Group Holdings, Executive Vice-President and Director of Real Estate and Hotel Practice

John J. Scott, Jr.
Westminster American Ins. Co., Vice President/General Counsel

Alfred L. Singer
President, Singer Realty Inc.

Adam D. Skolnik
Maryland Multi-Housing Association, Executive Director

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5. We are looking for markets for these two scenarios. If you could volunteer and try to obtain pricing from your underwriting contacts, it would be appreciated. Please fill in your results including name of carrier, pricing and/or any issues you encountered.

- A. Brick dwelling located in Maryland with 3 apartments built in 1950, updated, doors and windows replaced, with a Full Risk Reduction inspection, no claims, with a CSL of \$1,000,000 including lead liability coverage.

- B. Brick dwelling located in Maryland with 3 apartments built in 1950, updated, doors and windows replaced, Certified Lead Free, no claims, with a CSL of \$1,000,000 including lead liability coverage.

Please complete and return this survey by

August 20, 2012 by e-mail to:

Nancy Egan, Assistant Director of Government Relations

Email: negan@mdinsurance.state.us.gov

Maryland Insurance Administration

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202