

**MARYLAND GENERAL ASSEMBLY
ENVIRONMENT AND TRANSPORTATION COMMITTEE
JUDICIARY COMMITTEE
TESTIMONY OF ANTONIO F. DIAS
THE SHERWIN-WILLIAMS COMPANY
OPPOSING HB 879
MARCH 10, 2020**

My name is Antonio F. Dias. I am a Partner in the Jones Day law firm. I am appearing today on behalf of The Sherwin-Williams Company (“Sherwin-Williams”) to oppose House Bill 879.

This legislation would bring about an unwarranted, unfair and unwise change to Maryland’s system of justice. In Maryland, a party may be held liable only for harm that the party causes. Market share liability would obliterate this fundamental principle of law by forcing liability on a manufacturer, even where there is no evidence whatsoever that the manufacturer’s product caused the alleged damage or injury.

No Maryland court has ever adopted market share liability. Indeed, every court to consider the question has agreed that the theory flies directly in the face of Maryland tort law. Maryland’s courts have rejected market share liability, as have the overwhelming majority of courts that have considered the theory’s use. Moreover, no legislature has ever adopted market share liability for use in lead-based paint related claims.

Sherwin-Williams and other former lead pigment manufacturers acted responsibly and in accordance with the law when they manufactured and sold lead pigments generations ago – at a time when federal, state, and local governments recommended and often required the use of lead pigments in paint because it was known to be the highest-quality paint pigment available.

Company Presence in Maryland

Sherwin-Williams is proud of the hard work and accomplishments of its nearly 1,000 employees in Maryland. Sherwin-Williams manufactures and sells materials and supplies in Maryland. These operations include facilities acquired from Duron by Sherwin-Williams in 2004, and later from Valspar.

In Maryland, Sherwin-Williams operates 90 company owned retail stores and three global supply chain plants.

The Sherwin-Williams' Company History

Since its beginning in 1866, The Sherwin-Williams Company has been a pioneer in the paint industry, continuously developing new technology to make its paints safer, more durable, and convenient for everyday people to use in painting their homes. Even when it was not common in the paint industry, Sherwin-Williams sought to, and did, develop a high quality ready-made paint, suitable for professional and do-it-yourself painters.

In 2004, Sherwin-Williams acquired Duron, Inc., a leading coatings company based in Maryland. Sherwin-Williams has continued to service Duron customers through Duron stores and manufacturing facilities. Duron has a history deeply tied to the state of Maryland. Duron was founded in 1949 by Henry Feinberg, a paint chemist, and opened its first store in 1950. It focused its business on the sale of quality paints to professional painters. In 1957, Duron opened a plant in Beltsville, Maryland. Harry Feinberg's son, Dr. Robert Feinberg, former chairman and CEO of Duron, joined the business in 1976.

The effects of Sherwin-Williams' technological developments in the paint industry remain evident to this day. The ready-made paints sold world-wide at consumer retailers were developed and marketed in large part by Sherwin-Williams a century ago. The resealable circle

paint cans that hold the ready-made paints we purchase paint in at retailers world-wide were developed and patented by Sherwin-Williams. Sherwin-Williams led the paint industry in developing lead-free paints suitable for both professional and do-it-yourself painters. Sherwin-Williams is, and always has been, a revolutionary manufacturer of paint, constantly striving to advance technology in the paint industry and to make paint more accessible to consumers across the globe.

The Sherwin-Williams Company's history began in 1866, shortly after the end of the Civil War, when Henry Sherwin became a partner in Truman, Dunham & Co., sellers of paint ingredients. As Henry Sherwin remarked, Sherwin-Williams began at a time when "there was no railroad to the Pacific Coast, no Suez Canal, no Panama Canal, no telephones, no dynamos, no electric lights, no storage batteries, no electric railways, no wireless telegraph, no steam turbines, no typewriters, no airships, and no automobiles." At this time, paint manufacturers and dealers did not sell the ready-made paints that we are accustomed to today. Rather, they sold the ingredients for paint, which professional painters then mixed themselves to make their own paints. In fact, it was not until the late 1800s that paint manufacturers and dealers began to sell ready-made paints.

In the early 1900s, it was very common for paints to contain lead pigments, and Sherwin-Williams' paints were no exception. Indeed, lead pigments were perceived as the best quality ingredients in paints by scientists, painters, and consumers, as well as manufacturers, and paints without lead pigments were considered inferior and "adulterated." In fact, some states passed laws requiring the labeling of paint ingredients in order to protect consumers from the sale of inferior paints not containing lead pigments. Accordingly, Sherwin-Williams described the ingredients in its paints on its labels beginning in the early 1900s.

During the 1930s and 1940s, Sherwin-Williams made great strides in producing state-of-the-art paints that did not contain lead pigments. Thus, due to technological advances, Sherwin-Williams almost completely stopped making or selling any lead-based paint for interior residential use by 1937. Duron never marketed lead-based paint for residential use.

The decreased production of lead-based interior paints was due in large part to the development of Kem-Tone, a revolutionary water-based interior paint that Sherwin-Williams debuted in 1941. Kem-Tone was so innovative, that, in 1996, the American Chemical Society awarded Kem-Tone as a National Historic Chemical Landmark. Kem-Tone was revolutionary because it spread very easily, covered well enough to hide wall paper in one coat, had no odor and dried within a couple of hours.

As a result of technology developed during World War II, Sherwin-Williams offered exterior paints without lead pigments by the late 1950s. At this time, oil-based exterior house paints continued to contain low amounts of leaded zinc oxide to ensure that the paints were highly durable, mildew-resistant and resistant to fading from ultra violet rays.

Sherwin-Williams was also a leader in compliance with regulations that were passed in the 1950s. For example, in 1955 Sherwin-Williams was part of the American Standards Association Z66.1 subcommittee, which prepared the Z66.1-1955 standard specification to minimize hazards to children from residential surface coating materials. By the time Baltimore prohibited the use of interior paints containing lead pigments in 1951, Sherwin-Williams already had removed lead from virtually all of its interior residential paints fourteen years earlier. Similarly, in 1958, Baltimore adopted a warning requirement for lead-based paints. However, Sherwin-Williams had already implemented a lead warning label by 1954-55. In fact, Sherwin-Williams was a member of the National Paint, Varnish and Lacquer Association (NPVLA)

subcommittee on labeling, which developed model labels eventually approved by the NPVLA Executive Committee and recommended for use in the industry.

By the mid to late 1960s, due to incremental improvements in technology, virtually all exterior house paints made by Sherwin-Williams were lead free. Sherwin-Williams ceased production of lead chromates, molybdate orange and leaded zinc oxide by 1971, and by 1973, lead was removed from virtually all residential paints. This was well before the federal ban was enacted in 1978.

Sherwin-Williams' Programs

Sherwin-Williams and Duron have formed many partnerships within Maryland to promote lead safety, lead risk reduction, and that help to educate families regarding the potential dangers of deteriorating lead-based paint.

(1) HomeWork and EPA Renovation, Repair and Painting Rule Training

The Sherwin-Williams Company continues to provide workforce development and housing improvement programs in cities and public housing authorities across the country and here in Maryland. This program originated out of work with the National Organization of African Americans in Housing (NOAAH). NOAAH's work included a Healthy Homes Initiative Task Force to bring together public health officials, government entities, housing residents and professionals to address, among other things, lead risks. The program, called "HomeWork," has two main components: (1) professional painter training; and (2) lead-safe property maintenance assistance.

The HomeWork painter training program offers minorities and low-income housing residents the chance to learn the basic skills necessary for a career in professional painting. Sherwin-Williams provides the trainer, materials and equipment for the two-week training session. Sherwin-Williams also works along with local contractors and unions to assist trainees

in finding meaningful employment as a professional painter. As part of the course, the trainees are provided with the EPA's Renovation, Repair and Painting (RRP) Certification instruction.

In addition to the painter training, Sherwin-Williams' program encourages expansion of lead-safe property maintenance efforts. Sherwin-Williams provides participating entities with deeply discounted pricing on materials and supplies used in lead hazard control programs. These discounts are offered with the understanding that the cost savings will be used to make more housing lead-safe.

Sherwin-Williams has also sponsored HomeWork and EPA RRP training courses throughout Maryland. Sherwin-Williams has conducted more EPA RRP classes in Baltimore, than any other city in the United States. In Maryland, through Sherwin-Williams' programs, over 2,200 people have been trained in lead safe techniques.

(2) Partnerships with The National Council of Negro Women

Sherwin-Williams partnered with The National Council of Negro Women to train disadvantaged Maryland and Washington, D.C. residents to become professional painters and to identify additional ways to provide children with healthier environments. Sherwin-Williams' partnership with the National Council of Negro Women built upon work Sherwin-Williams has done with the National Organization of African Americans in Housing and the United States Conference of Mayors. Together, Sherwin-Williams and the National Council of Negro Women supported the "Not in Our House" initiative, which educated families about health risks in the home arising from poor maintenance and neglect, including educating families on how to identify potential sources of lead exposure in their homes. The "Not in Our House" initiative encouraged property owners and landlords to provide safer living conditions for tenants. As

stated by the National Council of Negro Women, landlords who expose families to unsafe conditions need to be held accountable and not rewarded.

(3) *CLEARCorps USA Program*

Sherwin-Williams supports the CLEARCorps USA program. Founded in 1995, CLEARCorps is a national non-profit that provides educational tools and training to promote lead-safe communities. CLEARCorps USA recruits and trains volunteers to control lead hazards in housing built prior to 1950. Among other things, volunteers work with communities and property owners to educate and train them on how to reduce potential lead hazards in their homes and to ensure the safety of children from lead hazards. CLEARCorps USA also trains and educates families on how to identify and eliminate other environmental health issues in their homes.

Conclusion

It would be unfair to use market share liability to target Sherwin-Williams and other former lead pigment manufacturers. Sherwin-Williams has a strong history of corporate responsibility, not only nationally, but here in Maryland as well. Sherwin-Williams continues to expand and deepen its investment in Maryland by broadening its operations and creating good jobs.

Imposing market share liability for claims related to old lead-based paint would constitute an unnecessary abrogation of core principles of justice and unnecessarily punish a good corporate citizen of Maryland.