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Testimony of American Property Casualty Insurance Association (APCIA)

House Environment and transportation Committee

House Bill 879- Baltimore City Civil Actions - Toxic Substance

March 10, 2020

Letter of Opposition

The American Property Casualty Insurance Association (APCIA) appreciates the opportunity to provide written comments in opposition of House Bill 879. APCIA is the primary national trade association for home, auto, and business insurers. Representing nearly 60 percent of the U.S. property casualty insurance market, APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years.

House Bill 879 would use several suspect and disfavored legal doctrines to shift a long list of costs associated with renovating and repairing aging housing stock, including many attenuated costs, from the Baltimore City Housing Authority and the owners of residential buildings in Baltimore City onto companies that manufactured paint or other coatings allegedly containing toxic substances several decades ago. Completely ignoring basic concepts of fairness that require allocating any damages based on a party's proven fault, the bill would impose joint and several liability on lead paint manufacturers and specifically relieve plaintiffs from the fundamental requirement of having to prove that a specific manufacturer produced the paint that allegedly caused their property-related losses. In a particularly cynical move, the bill would provide that a manufacturer's sole means of reducing its potential liability would be to prove it had a particular market share at the time the paint was applied. This so-called "market share" liability has generally been rejected in Maryland and elsewhere, since (as with joint and several liability and not requiring plaintiffs to specifically assign fault) it is a manifestly unfair approach, clearly outside the mainstream of jurisprudence, that would inject significant new costs into the legal system and the flow of commerce.

For these reasons, the APCIA urges the Committee to provide an unfavorable report on House Bill 879.