

AIRROC Education Panel Summaries (March 12, 2014) – Summarized by
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Lead Paint (Part 2): The Anatomy of Lead paint Claims – Insurer and Reinsurer Perspectives

Amy Kallal, a Partner at Mound Cotton Wollan & Greengrass moderated this panel consisting of Craig Brown, Vice President and Deputy General Counsel of RiverStone, Gregory Caruso, Vice President of Munich Re, and Mitchell Gibson, Claims Expert and Vice President, Swiss Re, in which experienced insurance and reinsurance claim handlers shared their experiences and lessons learned in the handling of lead paint claims. The panel initially laid out the general claims issues related to “typical” lead paint claims – *i.e.*, a lawsuit brought on a child’s behalf against its landlord or housing authority related to alleged exposure to lead through peeling or chipping paint. These claims were then analyzed and the panelists detailed their experiences handling these claims from the perspective of primary insurers, umbrella/ excess insurers, and reinsurers. More specifically, the panelists indicated that the clearest trend in lead paint claims is that they frequently arise in upstate New York and Baltimore, Maryland, and that the policy’s limit often dictates whether the case will settle or proceed to trial (higher policy limits equate to higher likelihood of trial). The chances of prevailing on summary judgment were also assessed, and the best chance to prevail in such an action was indicated to be through a causation defense (*i.e.*, that exposure was from another environmental source not the responsibility of the landlord). The panel additionally discussed the importance of venue and indicated that while most courts will not trigger multiple policy years, it remains a possibility due to the extended exposure periods that may occur in these cases. From a reinsurer’s perspective, the panelists explained the importance of contract language, the number of occurrences/ aggregation, as well as issues related to allocation.

The panel then proceeded to provide an example of a possible litigation scenario, what needs to be considered before proceeding to settlement or trial, and the possible scenarios that could subsequently arise between the direct and/or reinsurance carriers. Finally, the panel described atypical lead paint claims -- *i.e.*, those not brought against a landlord or housing authority but instead against lead paint manufacturers for causes of action sounding in “public nuisance.” See *People v. Atlantic Richfield Co.*, No. 1-00-CV-788657 (Cal. Super. Ct. Jan. 7, 2014). The panel then explained how these types of “producer” lead paint claims differ from typical claims from a claims handling perspective.