

ISSUE BRIEF: Support the Innocent Sellers Fairness Act

Objective: Enact the **Innocent Sellers Fairness Act** (H.R. 989 in the 110th Congress), to provide targeted liability protection for product sellers.

Background: Unfounded and unfair lawsuits are increasingly having a negative effect on the ability of building material dealers and distributors to run their business and contribute to their communities. A Winter 2008 survey of building material dealers found that more than 1 in 4 has been the subject of product liability lawsuits within the past 5 years; 65 percent of those have been involved in more than one. The high costs of defending such lawsuits (\$50,000 - \$100,000 according to the SBA) typically force building material dealers to settle, regardless of the merits of the case.

Current law imposes liability without wrongdoing on sellers, and exposes them to all of the damages allegedly suffered by a plaintiff, even though other defendants may have played the critical role in causing the damages. The “mistake” may have been in the manufacture or design of the product, or in a customer’s improper use of the product, however the seller is often faced with some or all of the liability. No amount of care can free a seller from disproportionate product liability, and plaintiffs’ lawyers know this—they routinely sue anyone in the chain of distribution of a product, often forcing settlements out of otherwise innocent merchants.

These abusive product liability cases are part of a growing litigation burden on our nation’s small businesses and our economy. According to a 2007 study by the U.S. Chamber Institute for Legal Reform (ILR), small businesses bear 69 percent of business tort liability costs. For a typical building material supplier with \$1 million a year in revenue, the average tort liability cost is \$20,000 per year. These costs drive up the price of building materials, ultimately increasing the cost of a new home. The general public overwhelmingly supports lawsuit reform such as ISFA. According to the Institute for Legal Reform Election Night Survey (2006), 85 percent of voters feel frivolous lawsuits are a serious problem, and 74 percent believe lawyers benefit more than victims in the current judicial system. Enactment of ISFA would significantly reduce the burden of frivolous lawsuits on our courts, our businesses and our consumers.

Since 1986 a handful of states have passed product liability laws that include limits to liability for product sellers, including Iowa, Georgia, Indiana, New Jersey, Delaware, North Dakota, Texas, Mississippi and Michigan. While these state reforms are positive steps, a federal solution is important to ensure uniformity for suppliers who often operate in multiple states.

Case Examples: These are just a few of the abusive lawsuits building material suppliers have faced.

- A dealer in Ohio sold slate-style shingles to a customer. The shingles were shipped directly from the wholesaler to the jobsite; the dealer never saw nor touched the product. The coating later wore off some of the shingles, resulting in a spotty appearance, and the dealer was forced to pay \$16,000 in a settlement.
- A dealer sold bricks, manufactured independently of the dealer, to a customer. The dealer was named a codefendant in a lawsuit claiming manufacturing defects.
- A dealer sold a hammer to his attorney. The attorney’s son went out and hammered rocks, and injured his eye. The customer/ attorney sued the dealer.
- In Texas, a lumber dealer sold a 2x10x24 board to a contractor who improperly used it for scaffolding. While two people were standing on it, the board broke. One of the individuals was able to catch himself, but the other fell and was hurt. They are suing the lumber company for selling them a “defective” board, even though it was never suitable for scaffolding purposes. The case is still pending and has already cost the lumber dealer thousands of dollars to defend.

Solution: The “Innocent Sellers Fairness Act” would, in short, provide the following:

- that sellers/retailers do not take on liability for a product merely by selling that product; and
- that if sellers are negligent with respect to certain, specific non-sale activities, they will be responsible for the harm that their negligence causes.

Briefly stated, the legislation holds sellers responsible in proportion to their wrongdoing, and frees sellers from liability who have done nothing wrong. If you make a mistake you should pay; if you don’t, you won’t. What could be fairer than that?

Action: Please contact Rep. Dan Boren (D-OK) to sign on as an original sponsor of the Innocent Sellers Fairness Act .

Innocent Sellers, cont.

Innocent Sellers Fairness Act (H.R. 989) Cosponsors in the 110th Congress

Rep Young, Don	AK	Rep Shuler, Heath	NC-11
Rep Boozman, John	AR-3	Rep Foxx, Virginia	NC-5
Rep Franks, Trent	AZ-2	Rep Myrick, Sue Wilkins	NC-9
Rep Herger, Wally	CA-2	Rep Tiberi, Patrick J.	OH-12
Rep Miller, Gary G.	CA-42	Rep LaTourette, Steven C.	OH-14
Rep Issa, Darrell E.	CA-49	Rep Schmidt, Jean	OH-2
Rep Miller, Jeff	FL-1	Rep Jordan, Jim	OH-4
Rep Westmoreland, Lynn A.	GA-3	Rep Latta, Robert E.	OH-5
Rep Latham, Tom	IA-4	Rep Cole, Tom	OK-4
Rep Simpson, Michael K.	ID-2	Rep Fallin, Mary	OK-5
Rep Biggert, Judy	IL-13	Rep Pitts, Joseph R.	PA-16
Rep Shimkus, John	IL-19	Rep Platts, Todd Russell	PA-19
Rep Roskam, Peter J.	IL-6	Rep Duncan, John J., Jr.	TN-2
Rep Souder, Mark E.	IN-3	Rep Wamp, Zach	TN-3
Rep Buyer, Steve	IN-4	Rep Davis, Lincoln	TN-4
Rep Burton, Dan	IN-5	Rep Blackburn, Marsha	TN-7
Rep Pence, Mike	IN-6	Rep Gohmert, Louie	TX-1
Rep Tiahrt, Todd	KS-4	Rep McCaul, Michael T.	TX-10
Rep Lewis, Ron	KY-2	Rep Marchant, Kenny	TX-24
Rep Davis, Geoff	KY-4	Rep Sessions, Pete	TX-32
Rep Rogers, Harold	KY-5	Rep Hensarling, Jeb	TX-5
Rep Ehlers, Vernon J.	MI-3	Rep Bishop, Rob	UT-1
Rep Kline, John	MN-2	Rep Goodlatte, Bob	VA-6
Rep Bachmann, Michele	MN-6	Rep McMorris Rodgers, Cathy	WA-5
Rep Akin, W. Todd	MO-2		
<i>Past sponsors not returning in the 111th Congress</i>			
Rep Musgrave, Marilyn N.	CO-4		
Rep Shays, Christopher	CT-4		
Rep LaHood, Ray	IL-18		
Rep Hastert, J. Dennis	IL-14		
Rep Jindal, Bobby	LA-1		
Rep Baker, Richard H.	LA-6		
Rep Ramstad, Jim	MN-3		
Rep Wilson, Heather	NM-1		
Rep Kuhl, John R. "Randy", Jr.	NY-29		
Rep Chabot, Steve	OH-1		
Rep Gillmor, Paul E.	OH-5		
Rep Cannon, Chris	UT-3		
Rep Goode, Virgil H., Jr.	VA-5		
Rep Cubin, Barbara	WY		