

# PRESIDENT'S PAGE

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Some years ago, I represented a young boy who suffered chest burns when caps for a toy gun spontaneously ignited in his shirt pocket. Research revealed similar reported incidents, all involving caps manufactured in Asian countries. The case was straightforward—the toy caps were dangerously defective, giving rise to a textbook products liability claim. But the trail leading to the elusive foreign manufacturer was tortuous.

Just two years ago, as the holiday season was getting under way, it was discovered that millions of toys manufactured in China contained dangerous levels of lead paint. More recently, thousands of homeowners have experienced devastating damage to their homes caused by Chinese-manufactured drywall. The drywall, used in new or newly renovated homes, has begun to emit sulfur-based gases, which are corrosive and may cause deterioration of wiring and even respiratory problems in some residents who have been exposed.

The cost of removing and replacing defective drywall is extraordinary, and the indirect costs and associated damages are exponentially greater, making the home impossible to sell and essentially worthless. Even more disturbing, the full devastation of this defective product is still emerging, with the economic, environmental, and health effects likely to be felt for years.

Every day, American consumers are vulnerable to injury or death from dangerous foreign products. In our global economy, products are as likely as not to have been imported—and consumers often have no choice in their selection. When foreign products injure American consumers, they are faced with formidable challenges:

- identifying the manufacturer
- negotiating the maze of international treaties and foreign law necessary to obtain jurisdiction in U.S. courts, both state and federal
- overcoming motions to dismiss for lack of personal jurisdiction

Even in countries that are signatories to the Hague Convention (and not all are), procedures for service of process are complex and expensive. After plaintiffs have successfully negotiated this maze, they find that enforcing an American judgment in a foreign country often proves to be even more difficult than obtaining it.

In May, Sen. Sheldon Whitehouse (D-R.I.), chair of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, held a hearing exploring the problems American consumers face when suing foreign manufacturers. Among the witnesses, Chuck Stefan, vice president of homebuilder Mitchell Co., testified about the difficulties he faced when trying to hold foreign manufacturers accountable for the defective dry-wall in the homes his company built. After determining the identity of the manufacturer, his attorney was required to have all court papers translated into both Mandarin Chinese and German, wait six to eight months, and then rely on the Chinese government to serve the manufacturer.

To address problems like these, Whitehouse, along with Sen. Jeff Sessions (R-Ala.) and Senate Majority Whip Dick Durbin (D-Ill.), introduced the Foreign Manufacturers Legal Accountability Act—S. 1606. Sen. Mary Landrieu (D-La.) and Sen. Bill Nelson (D-Fla.) cosponsored the bill.

The act would make it easier for an injured consumer to hold a foreign manufacturer accountable in the American judicial system. The legislation requires a foreign corporation that does business in the United States to have a registered representative here that would accept service of process for civil and regulatory claims. By registering the agent, the foreign company also consents to state and federal jurisdiction for these claims.

The legislation covers imported products regulated by the Consumer Product Safety Commission, the Food and Drug Administration, and the Environmental Protection Agency. These include imported drugs, devices, cosmetics, biological products, chemical substances, and pesticides.

### **Quid pro quo**

This important bill deserves our support. Foreign manufacturers should have to play by the same rules as American manufacturers and not escape responsibility because the provenance of their products is elusive and, when discovered, they are beyond the reach of our judicial system. Requiring that foreign manufacturers register in the United States and submit to jurisdiction as a quid pro quo for the privilege of importing products into the lucrative American market is fair and reasonable.

This legislation should be supported by American manufacturing and business interests, as it puts foreign manufacturers on parity with American businesses. Whether they can deviate from the usual chorus of opposition to any legislation that enhances access

to justice and support a bill that will make it easier for American consumers to prosecute products liability actions—even against U.S. companies' foreign competitors—remains to be seen.