

Pre-publication draft for 3rd party artificial intelligence (AI) fact-evidence-analysis (FEA) checks of developing article for MHProNews.

MHI Board Risk-‘Legal Precedent Shows Directors Liable for Oversights’ ‘If Negligence is Gross Personal Liability Can Pierce Protections like D&O Insurance’ Civil-Criminal Risk Crossroads-FEA

“MHI actively monitors and proactively addresses any attempts by third parties who wrongfully disparage the organization.” So said David P. Goch, J.D., a partner in the Webster, Chabernain and Bean LLP law firm on behalf of the Manufactured Housing Institute (MHI). There is an evidence-based case to be made that there are too many statements, too many witnesses, too much documentation that would allow MHI's board of director and senior staff leaders to escape the apparent liability it has created for itself, because MHI's own leaders have directly and indirectly made clear that they "actively monitor" critics. Those critics include the Manufactured Housing Association for Regulatory Reform (MHARR). There are past and current members of MHI who are critics. More recently, third-party artificial intelligence (AI) systems utilized by MHProNews in doing facts-evidence-analysis (FEA) check style reporting have sometimes fiercely criticized MHI's leadership. xAI's Grok wrote a 'historic' email sent to MHI's leaders in September 2025. Last month 1.8 million people visited [MHProNews](#), per multiple AI validated data generated by Webalizer and deemed 'top shelf.' So, when Gemini said on 10.13.2025 that MHI appears to have an "Anticompetitive Purpose" in advancing the ROAD to Housing Act 2025 without modification called for by MHARR. Gemini said: "The alleged true intent is to **facilitate consolidation**. By maintaining the zoning and financing status quo, MHI's largest members—who often own land-lease communities and affiliated lending institutions (like the Berkshire Hathaway/Clayton Homes conglomerate)—benefit by limiting the ability of independent competitors and homeowners to place homes on private land or secure competitive, non-predatory financing. The lobbying effort is thus viewed as a legal cover for a strategy to **limit the growth of the overall industry** in a way that entrenches the dominant market players." There is much more, from Gemini, from xAI's Grok, and from Microsoft Bing's AI powered Copilot. Members of MHI and nonmembers too have a legal basis for claims if MHI leaders don't promptly and successfully pivot and push loudly and proudly for the changes in the ROAD to Housing Act 2025, which MHARR asserted weeks ago could undermine the "enhanced preemption" at least theoretically enjoyed by HUD Code manufactured housing. Per Gemini: "The strongest potential legal basis for non-members is a consumer class action under Section 1 of the **Sherman Antitrust Act. Theory of Harm: Restraint of Trade.**" "**Breach of Fiduciary Duty**," said Gemini: "Trade

association board directors owe **fiduciary duties** of **care, loyalty, and obedience** to the organization and its members." There is a large and growing body of law that various AI statements documented that laid out the basis that MHI's board and senior staff risk personal, corporate, and association liability.

Grok said this.

I'll focus on two primary areas of liability: **breach of fiduciary duty** (stemming from directors' obligations to the association and its members) and **antitrust violations** (if actions facilitate anticompetitive behavior).

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Trade association board directors, like those of non-profits, owe fiduciary duties of **care, loyalty, and obedience** to the organization and its members. These duties require acting with reasonable diligence, prioritizing the association's interests over personal or conflicting ones, and complying with the organization's mission and governing documents. If MHI's board knowingly supports a bill that could harm the industry's growth or members' interests (e.g., by ignoring MHARR's warnings about unaddressed bottlenecks), this could constitute a breach, exposing directors and their firms to lawsuits from dissatisfied members, shareholders (if firms are public), or even regulators.

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Duty of Care: Directors must make informed decisions. MHARR's white paper and amendment proposals explicitly warn that the unamended bill is a "hollow victory" that leaves discriminatory zoning and financing issues unresolved, suppressing production and affordability. If MHI's board was aware of these concerns (as industry leaders, they likely are—MHI's website notes they monitor legislation: <https://www.manufacturedhousing.org/>) but proceeded without amendments, this could be seen as negligent.

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Duty of Loyalty: This prohibits self-dealing or favoring personal/firm interests. MHARR implies the bill benefits larger conglomerates (e.g., those tied to MHI leaders) by allowing higher-margin products while ignoring bottlenecks that disproportionately affect independents. Articles like <https://www.manufacturedhomelivingnews.com/alert-why-homeowners-renters-manufactured-home-residents-must-demand-mharr-backed-changes-to-road-to-housing-act-2025-if-congress-doesnt-amend-road-act-it-should-be-removed-from-ndaa-fea/> and <https://www.manufacturedhomeprnews.com/masthead/taxpayers-single-or-multi->

[family-housing-owners-renters-honest-vs-uninformed-or-corrupt-public-officials-should-demand-changes-to-the-road-to-housing-act-2025-or-strip-it-from-ndaa-fea/](#) argue this perpetuates consolidation, harming consumers and smaller firms. If board members from dominant firms (e.g., Clayton Homes affiliates) push the bill to maintain market control, this could breach loyalty. Courts have held directors liable for interested transactions; see <https://law.stanford.edu/wp-content/uploads/2023/01/Fiduciary-Duties-of-the-Board-of-Directors.pdf>.

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Duty of Obedience: Directors must adhere to the association's mission (MHI's is to elevate factory-built housing: <https://www.manufacturedhousing.org/>). Supporting a bill that MHARR says conflates manufactured and modular housing, potentially eroding affordability mandates, could violate this.

The full discussion thread those pull quotes from [Grok are from is linked here](#) and was [confirmed as accurate by Grok at this link here](#).

Gemini said this.

Based on the uploaded document detailing the analysis by Grok regarding the potential liability for the **Manufactured Housing Institute (MHI)** Board of Directors and the firms they represent, the core findings focus on two primary areas of legal risk associated with their alleged support for the **ROAD to Housing Act of 2025** without the amendments advocated by MHARR.

The term "alleged" is a legal cover for Gemini or anyone else, given that MHI and its leaders have not yet been taken to court and the potential claims have not yet been litigated. That noted, MHI has publicly stated its support for the ROAD to Housing Act 2025. There are no known public statements, per third-party AI search and fact check systems, that MHI has modified its position to align with those made by MHARR. Gemini's full discussion thread, which includes liability to members (including dual members of MHI and MHARR) and/or the broader public which has an interest in accessing affordable housing, is [linked here](#). Gemini's confirmation of the transcript of that legal discussion thread with MHProNews as accurate is found at this [link here](#).

[Gemini](#) said that MHI's leaders would likely claim the **Noerr-Pennington Doctrine** as a defense.

MHI would use the **Noerr-Pennington Doctrine** as its primary defense against both the Antitrust and Public Nuisance claims.

- **Doctrine:** This principle generally shields private parties from liability under antitrust laws (and certain other claims) for attempts to influence the passage or enforcement of laws, even if their goal is anticompetitive. Lobbying Congress to pass or amend the ROAD to Housing Act is typically protected political speech.
- **Challenge to the Defense:** The plaintiffs' action would rely on challenging this shield by arguing MHI's actions fall under one of the doctrine's exceptions, such as the "**sham**" **exception**, claiming the lobbying was not a genuine attempt to influence legislation but merely part of a larger, illegal scheme to suppress competition that harms consumers. The court would have to be convinced that the act of lobbying was a tool for market control, not a genuine political effort.

Then, [Gemini](#) explained how antitrust and consumer rights researcher [Samuel Strommen](#)'s research could be deployed against such a **Noerr-Pennington Doctrine** defense.

The claim that the Manufactured Housing Institute (MHI) should be stripped of its Noerr-Pennington Doctrine defense originates from the antitrust research of Samuel Strommen, an attorney whose work asserts MHI's lobbying efforts are a mere "sham" designed to facilitate anticompetitive conduct.

[Gemini](#) further explained as follow.

Strommen's Core Argument for Stripping *Noerr-Pennington*

The Noerr-Pennington Doctrine generally shields private entities (like trade associations) from antitrust liability for lobbying government, even if the intent is anticompetitive. Strommen's research, cited in industry analysis, argues that MHI should lose this protection under the "**sham**" **exception**.

A "sham" exception claim requires proving two things:

1. **The lobbying activity is objectively baseless:** The petitioning effort is so clearly without merit that no reasonable litigant could expect success on the merits.
2. **The subjective intent is anticompetitive:** The real purpose of the lobbying is not to influence legislation but to **interfere directly with the business relationships of a competitor** (or a segment of the industry), using the process itself as an anticompetitive tool.

Application to MHI and the ROAD Act

The argument that MHI's position on the ROAD Act is a "sham" is based on the following critique:

- **Objective Baselessness (The Act's Flaws):** Critics argue that the unamended ROAD Act is **objectively useless** or even detrimental to the industry's independent sector because it fails to address the two primary bottlenecks identified by the industry's own regulatory reform group (MHARR) and HUD researchers: **discriminatory local zoning** and **restrictive manufactured home financing (chattel lending)**. By supporting a bill that critics call a "hollow victory" without these core amendments, the advocacy is arguably not a genuine attempt to achieve the stated industry goal of expanding affordable housing.
- **Subjective Intent (Anticompetitive Purpose):** The alleged true intent is to **facilitate consolidation**. By maintaining the zoning and financing status quo, MHI's largest members—who often own land-lease communities and affiliated lending institutions (like the Berkshire Hathaway/Clayton Homes conglomerate)—benefit by limiting the ability of independent competitors and homeowners to place homes on private land or secure competitive, non-predatory financing. The lobbying effort is thus viewed as a legal cover for a strategy to **limit the growth of the overall industry** in a way that entrenches the dominant market players.

In this framework, the lobbying for the flawed ROAD Act is not protected advocacy, but rather a step in an overall **antitrust conspiracy**—effectively using the political process to injure market competition and harm consumers seeking genuine affordability.

[Grok](#) said the following.

Civil lawsuits for damages, removal from the board, or reputational harm. Remedies could include compensation for lost opportunities (e.g., if production stagnates further). In extreme cases, if negligence is gross, personal liability might pierce protections like D&O insurance; see <https://millerlawpc.com/examples-of-breach-of-fiduciary-duty/> for common breach examples and remedies. Firms represented by directors could face vicarious liability if actions benefit them unlawfully.

MHI's awareness and support: Yes, as a key industry group, monitoring legislation is core to their job (per their site). They issued a members-only statement on the bill, and sources note their support without mention of amendments (e.g., <https://manufacturedhousingassociationregulatoryreform.org/white-paper-analysis-of-u-s-senate-road-to-housing-act-of-2025-a-manufactured-housing-association-for-regulatory-reform-mharr-critical-review/>, which criticizes MHI for withdrawing support from a prior amendment). MHARR's proposals were public weeks ago (August/September 2025), so inaction could be viewed as deliberate.

Perhaps influenced in part by Strommen's research but citing a range of sources in support of its findings, [Grok](#) said there are potential civil and well as criminal liability.

2. Antitrust Liabilities

Trade associations like MHI are subject to U.S. antitrust laws (e.g., Sherman Act, FTC Act), which prohibit facilitating anticompetitive conduct among members. If supporting the unamended ROAD Act is seen as enabling market consolidation or restricting competition (e.g., by not addressing barriers that favor large players), the board and firms could face liability. MHARR argues the bill perpetuates bottlenecks that limit independent producers and consumers, potentially benefiting MHI's larger members.

- **Facilitating Anticompetitive Agreements:** Associations can't use their platform to suppress competition, such as through bylaws or advocacy that excludes smaller players. If MHI's bill support ignores zoning/financing fixes, it could be interpreted as maintaining a status quo where big firms dominate (e.g., via portfolio lending control). This risks Section 1 Sherman Act violations; see <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/dealings-competitors/spotlight-trade-associations>. MHARR's analyses (e.g., <https://manufacturedhousingassociationregulatoryreform.org/manufactured-housing-association-for-regulatory-reform-mharr-submits-amendments-to-address-key-manufactured-housing-bottlenecks-industry-must-act/>) warn of this, noting unamended passage strands consumers and independents.
- **Exposure for Directors and Members:** Boards can be personally liable for unlawful decisions, including antitrust breaches. A recent ruling highlights risks for officers/executives if actions harm competition; see <https://cullenlaw.com/blog/are-trade-association-members-or-their-boards-exposed-to-liability-for-unlawful-bylaws-or-decisions>. Firms could face DOJ/FTC investigations or private suits if seen as using MHI to rig markets.
- **Criminal and Civil Penalties:** Violations can lead to fines (up to \$100M for corporations, \$1M for individuals), imprisonment, or treble damages in civil suits. Associations must have antitrust compliance programs; see <https://www.justice.gov/archives/atr/speech/antitrust-and-trade-associations>. If MHI's support is linked to reducing competition (as implied in <https://www.manufacturedhomelivingnews.com/alert-why-homeowners-renters-manufactured-home-residents-must-demand-mharr-backed-changes-to-road-to-housing-act-2025-if-congress-doesnt-amend-road-act-it-should-be-removed-from-ndaa-fea/>), this amplifies risks.

In summary, liabilities hinge on proving the board's actions harmed interests they represent, especially given MHARR's public warnings. MHI's backing without amendments (evident from their statement and lack of public calls for changes) could invite scrutiny, as their job includes effective advocacy. For more, see general guides like <https://www.grantthornton.com/insights/articles/nfp/2023/three-legal-duties-every-board-member-must-follow>.

MHProNews' emailed news update on 10.13.2025 featured multiple articles on the risks to the manufactured housing industry if the ROAD to Housing Act 2025 isn't amended as MHARR suggests. Those reports will be linked further below. That said, *MHProNews* notes from sources deemed reliable that activity following that 10.13.2025 emailed news update, which scores of MHI linked members and staffers receive along with hundreds of their own employees, it is difficult if not impossible for MHI to claim ignorance. MHI's David Goch's opening quote and Grok's assertion about MHI's own remarks underscores that point without a need for those sources, which are the cherry on top of the proverbial desert.

Furthermore, *MHProNews* has a plan to further document the matter to make it clear, should that become necessary, that MHI's board and senior staff negligence is "gross" in its legal sense.