

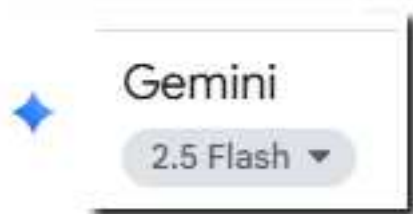


Grok-Liabi...10.13.2025

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*Gemini, I want you to answer substantially the same thing that Grok did in the Q&As just concluded. I am uploading to you the PDF*  
*<https://www.manufacturedhomepronews.com/wp-content/uploads/2025/10/Grok-LiabilityOfMHI-BoardOfDirectorsRiskPierceD-OLiability10.13.2025.pdf> and screen capture*  
*<https://www.manufacturedhomepronews.com/wp-content/uploads/2025/10/Grok-ConfirmsQ-AthreadOnMHI-BoardLiabilityMHProNews10.13.2025.png> that documents the accuracy of that thread. Feel free to critique, confirm, or correct Grok as warranted. Use plain text hyperlinks to support your response.*

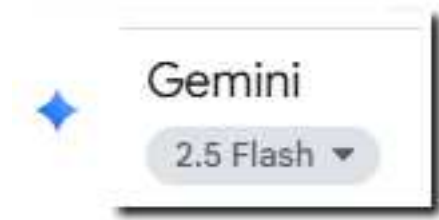


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Based on the uploaded document detailing the analysis by Grok regarding the potential liability for the **Manufactured Housing Institute (MHI)** Board of Directors and the firms they represent, the core findings focus on two primary areas of legal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

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### Disclaimer

Please note: This analysis is based solely on the third-party content provided in the uploaded document and is not legal advice. For a personalized legal analysis, you should consult an attorney.

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### Potential Legal Liabilities for MHI Board of Directors and Represented Firms

The analysis centers on the scenario where MHI's board supports a version of the ROAD to Housing Act that critics, like MHARR, argue fails to address key bottlenecks (such as discriminatory zoning and financing issues), potentially harming the industry, smaller members, and consumers.

#### 1. Breach of Fiduciary Duty

Trade association board directors owe **fiduciary duties** of **care, loyalty, and obedience** to the organization and its members. A breach could expose directors and their firms to lawsuits from members or regulators.

		Supporti ng Context & Resourc es (Plain Text Hyperlin ks)
Fiduciary Duty	Potential Breach Scenario (Related to ROAD Act)	

**Duty of Care** Directors must make informed decisions. If the board was aware of MHARR's explicit warnings that the unamended bill is a "hollow victory" and proceeded without amendments, this could be viewed as **negligence**.

**Duty of Loyalty** This prohibits **self-dealing** or favoring personal/firm interests. The argument is that the bill

**Overview of Fiduciary Duties in Non-profits:**  
<https://www.boardeffect.com/blog/fiduciary-responsibilities-nonprofit-board-directors/> **MHI's awareness:** MHI's website notes they monitor legislation : <https://www.manufacturedhousing.org/>

**Critique on Perpetuating Consolidation:**  
<https://www.manufacturedhomepronews.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/> **Liability for Interested Transactions:**

		Supporti
		ng
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benefits larger conglomerates (e.g., those tied to MHI leaders like Clayton Homes affiliates) by ignoring bottlenecks that disproportionately affect independent firms, constituting a breach if pushed to maintain market control.

<https://law.stanford.edu/wp-content/uploads/2023/01/Fiduciary-Duties-of-the-Board-of-Directors.pdf>

**Duty of Obedience** Directors must adhere to MHI's mission (to elevate factory-built

**MHI's Mission:**

<https://www.manufacturedhousing.org/> **Examples of Fiduciary Duties in Associations:**  
<https://www.asha.org/siteassets/uploadedfiles/legal-responsibilities.pdf>

Fiduciary Duty	Potential Breach Scenario (Related to ROAD Act)	Supporti ng Context & Resourc es (Plain Text Hyperlin ks)

housing).  
Supporting a  
bill that critics  
say conflates  
manufactured  
and modular  
housing,  
potentially  
eroding  
affordability  
mandates,  
could be a  
violation if  
members sue  
for failing to  
fulfill  
advocacy  
roles.

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#### Possible Consequences of Breach:

- Civil lawsuits for **damages** (e.g., compensation for lost opportunities).
- **Removal** from the board or reputational harm.
- In extreme cases of gross negligence, personal liability might **pierce D&O insurance** protections. Firms represented by directors could also face vicarious liability.

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## 2. Antitrust Liabilities

Trade associations like MHI are subject to **U.S. antitrust laws** (e.g., the Sherman Act), which prohibit facilitating anticompetitive conduct among members.

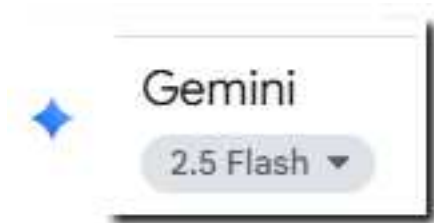
- **Facilitating Anticompetitive Agreements:** If the support for the unamended ROAD Act is viewed as an action that **enables market consolidation** or restricts competition by ignoring zoning/financing fixes, it could be interpreted as maintaining a status quo where dominant firms control the market.
- Such actions risk **Section 1 Sherman Act violations**.
- The board and their represented firms could face liability if the actions are seen as an attempt to suppress competition that favors large players.

### Supporting Antitrust Resource:

- **FTC Guidance on Trade Associations:** <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/dealings-competitors/spotlight-trade-associations>



*What could be the possible legal grounds for a legal action that could allow for citizens who are not members of MHI, because they seek affordable housing and its benefits if MHI fails to make a robust and public effort to 'pull out the stops' and do what is necessary to modify the proposed ROAD to Housing Act or kill the bill, either of what MHARR suggests?*



🔍 Analysis

Query successful

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The most likely legal grounds for **citizens or consumers (non-MHI members)** seeking affordable housing to take legal action against the Manufactured Housing Institute (MHI) for its legislative advocacy (or lack thereof) concerning the **ROAD to Housing Act of 2025** fall into the areas of **Antitrust Law** and the emerging use of **Public Nuisance** torts.

Unlike MHI members, who can sue for breach of internal fiduciary duty, non-members must generally demonstrate a **public harm** or an **anticompetitive effect** that directly impacts their ability to access affordable housing.

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## 1. Antitrust Claims (Sherman Act)

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

The argument would be that MHI's decision to support the unamended ROAD to Housing Act, while ignoring key amendments that address **discriminatory zoning** and **restrictive financing** (as advocated by MHARR), serves the anticompetitive interests of its largest, consolidating members (e.g., manufacturers and land-lease community operators).

- **Anticompetitive Conduct:** The claim is that MHI's action constitutes a "**walking conspiracy**" or collective action by competitors designed to maintain or increase market concentration by suppressing competition. By allowing the bill to advance without fixing the underlying regulatory bottlenecks, MHI allegedly perpetuates a market where large firms control a limited number of manufactured housing placement options (communities) and financing sources.
- **Consumer Injury (Antitrust Standing):** Citizens and prospective homeowners could claim they are **direct customers or market participants** suffering an **antitrust injury**. This injury is the direct result of the artificially constricted supply of affordable housing and inflated costs (e.g., rising lot rents), which flows from the alleged anticompetitive conduct.
- **Goal of the Suit:** To obtain an **injunction** to stop the anticompetitive behavior, or **treble damages** (three times the actual damages).

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## 2. Public Nuisance Tort

This legal theory is highly ambitious and less traditional in this context, but it is being increasingly used to address widespread social problems that have been "sidestepped" by legislatures.

### Theory of Harm: Unreasonable Interference with a Public Right

The core of a Public Nuisance claim is an **unreasonable interference with a right common to the general public**, such as public health, safety, peace, or comfort.

- **The Right Violated:** The plaintiffs (citizens) could argue that MHI's actions/inactions have unreasonably interfered with the **public's right to access affordable housing**.
- **The "Nuisance" (Abatement Theory):** The nuisance is not MHI itself, but the **perpetuation of the affordable housing crisis** (a condition that affects the community at large) caused by the manufactured housing industry's failure to deliver its full potential, allegedly due to the market controls favored by MHI's largest members and its legislative strategy.
- **Legislative Failure Context:** The argument would posit that MHI's lobbying activity is actively blocking the political resolution of the affordable housing crisis through the effective deployment of manufactured homes (which HUD researchers have identified as a key solution). This strategy, critics would argue, constitutes the type of corporate action that can be targeted when "politics fails" to protect the public.

### Major Hurdle: Special Injury Rule

For private citizens to sue for a public nuisance, they generally must demonstrate a **"special injury"** that is different in kind from the injury suffered by the public at large. This is a high bar, as the lack of affordable housing is a widespread public injury. Plaintiffs would need to show a uniquely specific and different economic or personal harm.

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## 3. The *Noerr-Pennington* Doctrine 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

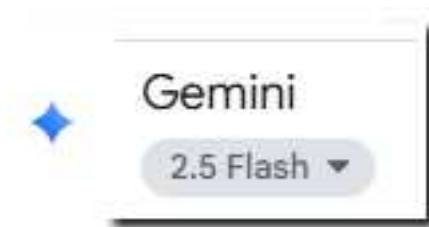


enforcement of laws, even if their goal is anticompetitive. Lobbying Congress to pass or amend the ROAD to Housing Act is typically protected political speech.

- **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.



*You mentioned the Noerr-Pennington Doctrine as a possible defense by the Manufactured Housing Institute, but didn't Samuel Strommen in his antitrust research specifically say that MHI should be stripped of that defense? Explore that and use plain text hyperlinks to support your response.*



Query successful

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.

This legal argument focuses on challenging the premise that MHI's advocacy regarding the **ROAD to Housing Act of 2025** is protected political speech.

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## **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.

