CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

The U.S. Chamber of Commerce strongly supports H.R. 725, the "Innocent Party Protection Act." This legislation would provide a uniform standard, firmly rooted in existing law, for federal courts to evaluate whether plaintiffs have improperly named a business or individual as a defendant in a lawsuit to avoid federal jurisdiction. This doctrine is known as "fraudulent joinder."

Plaintiffs' lawyers who sue out-of-state businesses often include a local business or individual solely to oust a federal court of jurisdiction and keep their cases in trial lawyer friendly state courts. Unfortunately, there are many examples of local jurisdictions where the trial bar has a significant home field advantage against out-of-state businesses. By naming a business that resides in the forum state or that is from the same state as the plaintiff, plaintiffs' lawyers eliminate "complete diversity" of citizenship among the parties, which is an essential requirement for federal jurisdiction.

This practice not only deprives out-of-state defendants of their right to a neutral federal forum, but also hurts the businesses and people needlessly drawn into the lawsuits. Many of these local defendants are small businesses, such as retailers and distributors. They must expend resources to defend themselves, even if the plaintiff's attorney has no real intention of pursing a judgment against them.

The fraudulent joinder doctrine allows a federal court to rectify this unfair result and disregard, for jurisdictional purposes, the citizenship of a non-diverse defendant. Federal courts universally recognize this doctrine, but are divided in how they apply it. Some courts have set the bar for finding fraudulent joinder so high that they remand cases to state court so long as the plaintiff has a "glimmer of hope" of recovering against the local business or individual added to the lawsuit. Other courts find joinder is fraudulent when the plaintiff has not stated a "plausible claim" against the non-diverse defendant. *See, e.g.*, *Int'l Energy Ventures Mgmt., L.L.C. v. United Energy Group, Ltd*., 818 F.3d 193 (5th Cir. 2016).

H.R. 725 would address these problems. First, the legislation would set a unified standard for all federal courts to follow. Federal courts would evaluate whether the plaintiff has stated a plausible claim for relief against the non-diverse defendant, which is a standard routinely applied by federal courts when deciding motions to dismiss. Second, the bill would make clear that federal judges are allowed to consider whether the plaintiff has a good faith intention of seeking a judgment against a non-diverse defendant. Third, the legislation would clarify that federal courts can consider information beyond the four-corners of the complaint when evaluating whether the plaintiff has fraudulently joined a defendant.

H.R. 725 is a modest and targeted fix that would help end the gamesmanship in litigation and safeguard access to neutral federal courts in cases involving litigants from different states. The bill takes an approach that is firmly grounded in existing law. It would help ensure that litigation is handled in a fair, impartial, and consistent way without unduly burdening the federal court system.

The Chamber strongly supports H.R. 725, opposes any hostile weakening amendments, and urges the Committee to report the bill out favorably.

Sincerely,

Neil L. Bradley

cc: Members of the Committee on the Judiciary