



**VIA E-MAIL**

November 9, 2015

Ms. Trish Gerken  
Senior Legal Analyst  
Office of the Attorney General  
Department of Justice  
2550 Mariposa Mall, Room 5090  
Fresno, CA 93721

RE: NAIMA's Comments on California Department of Justice's Notice of Proposed Rulemaking – Amendment to Title 11, Department 4 of the California Code of Regulations Concerning Proposition 65 Enforcement Actions Brought by Private Parties

Dear Ms. Gerken:

The North American Insulation Manufacturers Association (“NAIMA”) appreciates the opportunity to submit comments supporting California’s Office of Attorney General’s (“OAG”) proposed reformation of Proposition 65’s enforcement system. The California OAG’s Proposal is designed to curb frivolous lawsuits.

NAIMA is the trade association for North American manufacturers of fiber glass and mineral wool insulation products. NAIMA’s members have manufacturing plants in California, and insulation products manufactured by NAIMA’s members throughout the United States are sold in California and subject to Proposition 65 requirements.

NAIMA supports the Attorney General’s effort to curb frivolous lawsuits under Proposition 65. The financial incentives embedded into the statutory framework of Proposition 65 have resulted in many abuses by predatory lawyers and “bounty hunters.” These frivolous lawsuits do little to improve the public health in California, but lawyers and bounty hunters reap significant financial benefits from attorney fees and statutorily mandated “bounties.”

While the Attorney General’s proposal to cap “payments in lieu of penalties” is a significant improvement, NAIMA urges further reforms. For example, not awarding attorney fees through the Proposition 65 bounty program could effectively eliminate frivolous lawsuits. Eliminating the award of attorney fees would force lawyers and plaintiffs to more clearly and precisely define whether a significant public benefit has been realized from the lawsuits brought under Proposition 65. Attorney fees are often a driving force behind filing a lawsuit. In California, the general rule for attorney fees are each party to a lawsuit must ordinarily pay his or her own attorney fees, unless a specific statute provides otherwise. This premise has even been codified by California Legislature at *Code of Civil Procedure section 1021*.

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Therefore elimination of the provision for attorney fees would require lawyers to seek attorney fees through established statutory measures for seeking fees. This would of necessity involve greater judicial scrutiny of all settlements. This option would provide a strong disincentive for filing frivolous lawsuits.

NAIMA supports the Attorney General's much needed reforms and urges additional action in the future.

Sincerely,



Angus E. Crane  
Executive Vice President, General Counsel