United States Senate

WASHINGTON, DC 20510

June 14, 1995

DEAR DEMOCRATIC COLLEAGUE:

We write to urge you to join us in ending abusive and speculative securities class action litigation by supporting S. 240, the Private Securities Litigation Reform Act of 1995. The present legal system governing securities litigation operates at the expense of the investors it was intended to protect.

We recognize that much of what is characterized as "reform" these days usually fails to take into account the interests of everyday, working Americans. We worked hard to guarantee that the bill reported out of the Senate Banking committee on May 25, 1995, balanced the interests of all Americans.

The negative impact of the present system is felt particularly by those working Americans who invest to ensure their future economic livelihoods. As companies are forced to settle meritless lawsuits to avoid the ever increasing expense of going to court, the value of investments diminish as resources are wasted on legal fees and settlements. Consumers are actually receiving less information about investment opportunities as companies are clamping down on voluntary disclosures of information in order to avoid lawsuits.

In turn, speculative suits increase the price of raising capital to support new business opportunities ultimately inhibiting the creation of jobs and economic growth in our communities. Resources that ordinarily would be used to fund capital investment, research and development, production costs, and new jobs must be used "to make the lawyers go away." Defending against such suits can be as costly as starting a new product line. Forcing companies to invest in abusive lawsuits, however, will never provide workers, consumers, and investors with the dividends of a new product line.

The ultimate irony is that in meritorious cases, plaintiffs receive an average of 14 cents for every dollar of an award or settlement. The rest goes to legal fees and administrative expenses. No one -- not consumers, markets or corporations -- is well-served by the present system.

Arthur Levitt, Chairman of the Securities and Exchange Commission, framed the issue concerning abusive securities litigation in his testimony before the Senate Banking Committee:

> The right question is, "Can the system serve our nation better?" The answer to that is a resounding "Yes." . . . [T]here is no denying that there are problems in the current system -- and that investors, markets and corporations are being hurt by these systemic flaws. We must do something to reduce the excessive costs of a litigation system that threatens the vitality and competitiveness of the U.S. economy.

In an effort to reduce the excessive costs to investors and the economy, we introduced S. 240 with substantial bipartisan support. S. 240 continues the bipartisan approach taken in the 103rd Congress when we introduced a similar bill with Democratic and Republican support.

We also note that securities litigation reform was supported by a majority of Democrats in the House on final passage of H.R. 1058 which passed overwhelmingly, 325-99. In addition, a majority of Democrats voted to report favorably securities litigation reform legislation in both the House Commerce Committee and the Senate Banking Committee.

Significantly, S. 240 improves upon the House-passed H.R. 1058 by incorporating provisions to ensure that consumers and investors are able to bring meritorious lawsuits, while at the same time preventing abusive class action securities litigation:

-- S. 240 does not contain a fee-shifting provision. The House bill allows the prevailing party to petition the court for attorneys' fees from the losing party using a low standard.

-- S. 240 codifies current caselaw by requiring plaintiffs to plead "specific facts supporting a strong inference that the defendant" acted with the requisite intent. The House bill, on the other hand, demands a substantially higher burden that many experts found unfair to injured plaintiffs.

-- S. 240 requires each plaintiff class representative to certify that the plaintiff did not buy the security at the direction of plaintiff's counsel. Requiring certification will cut down on the abusive practice of using "professional plaintiffs." H.R. 1058 does not take similar safeguards.

-- S. 240 guarantees that defrauded small investors will be fully compensated. The House bill contains no such protection.

-- S. 240 narrows significantly the scope of the House "safe harbor" from liability for forward-looking statements that project, estimate, or describe the expected performance of a security. The Senate safe harbor applies to statements made in connection with activities already heavily regulated by the SEC.

-- S. 240 expressly empowers the Securities and Exchange Commission to bring "aiding and abetting" actions against any person who provides substantial assistance to the commission of a fraud. The House bill provides no such protection to consumers.

-- S. 240 does not contain the controversial "fraud on the market" provision codified in H.R. 1058.

The current system needs to be changed to meet the needs of investors, the markets and corporations. The costs of speculative litigation in jobs and economic growth should be troubling to all our colleagues. In order to bring rationality to our securities litigation process, we ask you to join the Democratic cosponsors of the bill in support of S. 240.

Sincerely,

BARBARA A. MIKULSKI
United States Senator

CHRISTOPHER J. DODD
United States Senator

PATTY MURRAY
United States Senator

CAROL MOSELEY BRAUN
United States Senator