

SB 1135 (Hertzberg): Court Secrecy Kills

SUMMARY: The public has the right to know about dangers that can kill or injure. But even when civil lawsuits are brought against hazardous products and other public dangers, those at fault are able to dodge wider exposure because of court secrecy.

Court records should be public documents open to inspection, especially in cases involving a community peril. But all too often, businesses secure protective orders that keep information secret and insist on settlement agreements that prohibit the parties from disclosing anything about the dangers or the case. **Secrecy in litigation is not appropriate if it keeps evidence of danger from public scrutiny.**

PROBLEM: When a defective product, drug or environmental hazard creates a public risk, we assume that corrective action will be taken to ensure others are warned and not exposed to harm. But corporations and other responsible parties taken to civil court will frequently skirt any broad public accountability by agreeing to settle only if absolute secrecy is maintained by all parties. Through secret agreements and court-issued protective orders blocking discovery, current law permits those at-fault to shield evidence of their injurious conduct from the public – perpetuating the public risk.

Secrecy in civil cases permits defendants to bury "smoking guns" and limit public debate of real hazards associated with their products. Secrecy orders prevent consumers from making informed decisions. The public remains vulnerable, at risk of injury, illness, or even death.

BACKGROUND: Secrecy in litigation has affected vast numbers of consumers, contributing to the injuries and deaths. The victims include:

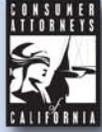
- Infants using incline sleepers.
- Motorists killed by malfunctioning airbags.
- Patients who trusted that their drug prescriptions and medical devices would heal, not harm.

When corporations secretly settle individual claims involving dangerous products, practices or conditions, it perpetuates a cycle of danger, leaving unsuspecting consumers in harm's way because they've been left in the dark about the risk.

The California Legislature has already acted in this area to prohibit secrecy in the courts related to elder abuse, sexual harassment and employment claims. Now is the time to do the same for dangerous public hazards.

Corporations often maintain that confidentiality is crucial to protecting trade secrets. A measure of secrecy is appropriate to protect actual trade secrets and sensitive personal information, but not if it shields evidence of a danger to the public. SB 1135 makes this important distinction.

SOLUTION: To better protect consumers from the ongoing public health risks posed by defective products, **SB 1135 will adopt a presumption against secrecy that protects the openness of information discovered in a court proceeding, boosting public safety in the process.**



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EXAMPLES: The following are just a few of the scores of examples that illustrate why secrecy in civil court cases pose an unacceptable public risk.

Evenflo Booster Seats: Marketed as passing rigorous safety tests, the dangerous car seats can be lethal for kids under 40 pounds in side-impact crashes. They continued to sell after secretive civil actions.

Playskool Travel Lite Cribs: Just a few months old, Danny Keysar strangled to death when his crib collapsed. Danny's parents later learned that prior lawsuits involving the same product had been secretly settled. In all, six children died.

Rock N Play Bassinet: The poor design of this Fisher-Price infant sleeper led to 73 deaths, but protective orders kept details of the cases secret.

Takata Air Bags: The company settled cases under protective orders hiding details of exploding airbags that killed at least 15.

Tire belt separation: Defective steel belts on Cooper Tires caused 362 deaths, but court secrecy kept details from the public.

Ignition shut off: GM settled early court cases to keep them secret. The defect caused at least 174 deaths when vehicles stalled.

Road guard rails: Newer design guardrails that cut through cars like spears caused more than 100 deaths, but protective orders left the public in the dark. In California, 3,000 of the guard rails are still on roads.

Remington 770 Rifles: These rifles could fire without warning, resulting in deaths and serious injuries. After years of court secrecy, documents finally released in 2015 showed the company knew about the defect since 1947. The defective rifles caused as many as 40 deaths and 1,000 serious injuries.

Opioid Epidemic: Purdue Pharmaceuticals and other manufacturers pushed wider use of drugs traditionally reserved for patients with grave illnesses. Court secrecy kept under wraps that manufacturers knew the risks of abuse were much higher than their marketing materials indicated.

Essure: This permanent birth control device caused 30 deaths and 10,000 injuries, according to the FDA. But court secrecy kept most documents under wraps.

Pelvic Mesh: Despite more than 100,000 serious injuries and 200 deaths, Johnson & Johnson and other manufacturers continued to market this dangerous product. Court protective orders kept details of more than 140,000 cases secret.

Asbestos: For decades, manufacturers buried data about the dangers of asbestos. In 1933, one of the largest companies entered into a settlement for former employees made ill in exchange for a written promise to not bring new actions against the corporation. The settlement was not made public for another 45 years.

Roundup: Over 40,000 people exposed to the weed killer allege the product caused cancer. A federal judge overseeing 900 lawsuits issued a broad protective order shrouding details from the public.

Lockeed toxic exposure: The company secretly settled with workers at its Burbank plant, where chemicals contaminated the soil and groundwater.

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