



Center for Justice & Democracy's
Public Policy Clinic at
New York Law School
185 West Broadway
New York, NY 10013

April 28, 2014

The Honorable Jerrold Nadler
Member of Congress
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Nadler:

Re: H.R. 4361, the Sunshine in Litigation Act of 2014

We are members of Civil Justice Through the Courts, a clinic at New York Law School that focuses on raising awareness to attacks on the civil justice system. We are writing to express support for H.R. 4361, the Sunshine in Litigation Act of 2014, and commend you for your leadership on this important issue.

This bill would require courts to determine if the public health and safety could be endangered as a result of confidential settlements, discovery documents or courts records. If information is “relevant to the protection of public health or safety,” it could be protected from public disclosure only when there is a “specific and substantial interest” in confidentiality that outweighs the public’s health or safety. But the court order could be “no broader than necessary.” Thus, H.R. 4361 would ensure that corporations and other powerful litigants will not be able to shield information vital to the public’s well-being and will help place such information where it belongs, in the public eye.

Often, evidence of perilous corporate decision-making is uncovered during the discovery process. For example, a document uncovered during litigation around the dangerous Ford Pinto showed how Ford decided to pay compensation to burn victims and their families rather than to fix unsafe fuel tanks. Companies also may seek to settle cases to avoid public trials and to keep the public from learning about company’s dangerous products (e.g., machinery, nursing home beds, or cars). This practice runs counter to one of the important functions of the public civil justice system: transparency. The discovery process uncovers information that otherwise would stay hidden. Trials themselves help publicize information. Large companies should not be permitted to cover up information through secret settlements and protective orders that could harm the public safety. Nothing proves this point more clearly than the GM ignition switch disaster.

As early as 2005, GM forced victims' families to sign secret settlements, which enabled GM to conceal information about the defect and ensured that consumers were unaware of possible problems. If these settlements were not confidential, consumers could have been made aware of the problem, and GM would have been forced to address and fix the problem. For example, Amber Marie Rose was a bright, young 16-year-old student with ambitious goals of attending college. In the early hours of July 29, 2005, Amber was driving home in her 2005 Chevrolet Cobalt from a party when she lost control of the vehicle, causing her to crash into a tree. She was promptly taken to Civista Medical Center, but died shortly after arriving. The airbags failed – a key result of the ignition switch defect. Had they worked, she would probably still be alive today. Her family sued and GM settled in 2005, but the company forced them to sign a confidentiality agreement.¹ While Amber's death could have helped raise public awareness of the defect, the confidentiality agreement prevented anyone else from learning about it.

Companies argue that this bill would lead to disclosure of protected trade secrets. This argument is simply untrue. A trade secret is “a formula, process, device, or compilation of information used in one's business which confers a competitive advantage over those in similar businesses who do not know it or use it.” 104 N.Y. Jur. 2d Trade Regulation § 246. Under this bill, where a court deems a trade secret legitimate and the value of said information to a company or corporation outweighs the public's need for full disclosure, the court has full discretion to maintain the information's confidentiality.

Others argue that this bill may overburden the courts. However, the bill applies only to a small segment of cases where pleadings state facts concerning the public health and safety, and a party requests a protective order or confidential settlement. These issues will not be raised in the substantial majority of cases and so this bill will not increase burdens on courts.

In sum, increasing transparency will ultimately foster a better and more reliable business and legal system, which in the end will better the lives of countless individuals. If you have any questions on this matter, please contact Adjunct Professor Joanne Doroshow, joanned@centerjd.org. Thank you.

Very sincerely,

Clinic Students:
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¹ Jonathan Abel, *In One Week, Six Traffic Deaths on Tri-County Roads*, WASHINGTON POST (July 31, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/30/AR2005073000044.html>.