



Kenneth A. Paulson: Private justice: when secrecy undermines safety

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I must have missed a course in law school.

At the University of Illinois College of Law, I studied contracts, constitutional law and property transactions. But I must have overlooked 措secret Settlements 101. ?/p>

Some law schools must be teaching it. Lawyers nationwide have grown accustomed to settling lawsuits with the understanding that there 搠be no public disclosure of the outcome.

It 搠easy to understand the appeal of secret settlements to defendants and plaintiffs, particularly in personal injury cases. A bicycle manufacturer who constructs faulty bikes doesn 搠 want the world to know about his defective products. He also doesn 搠 want negative publicity that could affect sales of his other bikes. Plaintiffs can get a larger settlement by promising not to disclose the large sum they 搠e been paid. A judge — eager to clear the docket — blesses the agreement. In this scenario, the plaintiff is compensated, the defendant is spared embarrassment or scorn and the public is left in the dark.

There 搠 a long and ugly history of secret settlements in cases in which disclosure would have alerted the public to serious, ongoing dangers:

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- Eleven former employees of the Johns-Manville Co. filed suit in 1933 claiming that their work had caused asbestosis. The company agreed to pay off the claims, but the secret settlement would not be disclosed for more than 40 years, according to the Coalition for Consumer Rights. 搵 can only guess what would have happened if the original 1933 settlement had been made public,?the coalition noted in a report. 搵f the hazards of asbestos had been known during the Great Depression, a generation of workers could have been spared horrible respiratory diseases.?
- Also kept from the public for years were settlements in lawsuits which alleged that Ford pickup trucks were defective, slipping from park to reverse. The defect allegedly caused more than 200 deaths and 4,600 injuries.
- Over 10 years, about 100 lawsuits were filed alleging that Firestone manufactured unsafe tires for the Ford Explorer. The National Highway Traffic Safety Administration says 148 deaths and more than 500 injuries may have been caused by these tire tread separations. Secret settlements hid the potentially lethal problem from the public for years.
- Amid the recent wave of sexual abuse allegations against priests, it also has been revealed this year that the Catholic Church insisted on secret settlements in cases stretching back to 1985.

Secret settlements keep allegations of unsafe products and harmful conduct away from the press and out of the public eye.

These abuses have not gone unnoticed. Some have taken significant steps toward reform, most recently in South Carolina where all 10 federal judges voted for a total ban on sealed, court-approved settlements. Echoing the federal judges' concerns, South Carolina Supreme Court Chief Justice Jean Toal is now asking state judges to take a close look at secret settlements.

The Association of Trial Lawyers of America has aggressively promoted legislation that would limit secret settlements. Opponents of these bills argue for the need to protect trade secrets and patient privacy, but judges have the tools to address these issues without sealing the entire record. Arkansas, Florida, Louisiana, Washington and Virginia are among states that currently limit secret settlements when there are public safety considerations.

This kind of reform is long overdue. It抐 unconscionable to take a lawsuit — filed in public courts, processed by public employees and heard by judges on the public payroll — and seal it for the convenience of the litigants. Public safety is never a private matter.

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