



Update from CAOC

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The shelf of corporate shame

SB 1149 (LEYVA) WILL FIX IT. PROTECTING CONSUMERS AGAINST DANGEROUS DRUGS AND OTHER PRODUCTS BY REMOVING THE CLOAK OF SECRET SETTLEMENTS

In 2001, with the leadership of then-CAOC President Bruce Broillet, Consumer Attorneys of California sponsored a bill to prohibit litigation and settlement secrecy. The effort was brought to a sharp halt due to two intervening factors: then-Assembly Speaker Bob Hertzberg refused to allow the bill to be voted upon on the Assembly floor, and the September 11, 2001 terrorist tragedy brought the legislative session to a stop.

In my CAOC office, I had a shelf I called “The Shelf of Shame,” which had actual products that killed or maimed mostly women and children. These products all had one thing in common: The course of litigation showed that they were dangerous, that there were corporate coverups of those dangers, that secrecy in the litigation process kept the public and the regulatory agencies from knowing about those dangers, and as a result, more deaths and injuries occurred.

I had a prescription bottle of DES. In 1938, DES (diethylstilbestrol) was the first synthetic estrogen to be created. It was prescribed to millions of pregnant women, primarily from 1938 to 1971, in the mistaken belief the drug prevented miscarriage and ensured a healthy baby. But it wasn’t adequately tested, didn’t work, and instead, DES caused a rare cancer, clear cell adenocarcinoma of the vagina and cervix. However, for years, the public was unaware of these dangers, as suits against the manufacturer were settled under a cloth of secrecy while women continued to take this drug.

I had a Dalkon Shield. In 1971, Dalkon Shield went into the market, spearheaded by a large marketing campaign as an alternative birth control device, and at its peak, about 2.8 million

women used the Dalkon Shield in the U.S. Years later, the Dalkon Shield became infamous for its serious design flaw: a porous, multifilament string upon which bacteria could travel into the uterus of users, leading to sepsis, injury, miscarriage, and death. However, for years, the public was unaware of these dangers, as suits against the manufacturer were settled under a cloak of secrecy while women continued to use this device.

I had a steel-tipped children’s game lawn dart. Called the most dangerous children’s toy of all time, between 1978 and 1987 hospital emergency rooms treated a reported 6,700 lawn dart injuries. Over three-fourths of these injuries happened to children. The steel tip would pierce a child’s skull when it landed. However, for years, the public was unaware of these dangers, as suits against the manufacturer were settled under a cloak of secrecy while children continued to use this device.

I had a two-point lap belt. Even though the three-point lap belt we all use now was invented in 1958, car manufacturers refused to use it. I worked with a family whose twin boys were in the back seat of a vehicle that was hit by another car. One twin died, one became a quadriplegic – an injury and death that likely would have been prevented by a three-point lap belt. However, for years, the public was unaware of these dangers, as suits against the manufacturer were settled under a cloak of secrecy while passengers and drivers continued to use this device.

Fast forward to 2022. Finally, 21 years after our first attempt and countless preventable deaths and injuries later, we are hopeful that this practice of secrecy

will be stopped. CAOC is prioritizing Senate Bill 1149 by Senator Connie Leyva to finally address secrecy in the courts. SB 1149 will allow the public to know the truth about dangerous products and environmental hazards that today are far too often hidden behind a veil of secrecy. For decades, agreements between the parties in litigation and, more recently, stipulations for court orders and standing protective orders, have sealed information that the public has a right to know.

Dangers, defects, and hazards do not deserve protection, but deserve disclosure in order to protect the public health and welfare. Each generation provides its own examples of the harms caused by secrecy. Harms that include hundreds of thousands of deaths and irreversible injuries: from deadly Firestone and Cooper tires to the grotesque dangers of the defective Essure birth control device, Remington rifles that discharge without pulling the trigger, GM faulty ignition switches, car seatbacks that break upon impact, Purdue Pharma’s lies about Oxycontin, and many more. In each of these instances, overly broad court protective orders shielded this information from the public view.

SB 1149 will fix this situation and will save lives. It will replace the protective order regime with a presumption of disclosure and openness. True trade secrets will still be protected by applying for an order of nondisclosure. But no longer will secrecy rule the day. The public has a right to be protected from harm, and we believe that our legislature has a responsibility to assure that protection. 🗳️