



The despicable confidential settlement agreement

ATTORNEYS FACE A DILEMMA BETWEEN DUTY TO CLIENT AND OBLIGATION TO THE CAUSE OF CIVIL JUSTICE

Confidential settlement agreements have been around for a very long time. Enough is enough. They should be banned. The public is now becoming aware of the sinister nature of those agreements in the growing outrage over sexual assault cases, especially involving well-known public figures. It is popular to refer to them as NDAs (Non Disclosure Agreements). As bad as it may be for some celebrity or congressman to get to legally hide the fact that he is a sexual predator, it is far worse for the public to be ignorant of some deadly defect in an automobile.

NDAs in products liability

Lawyers who have a heavy concentration of products-liability cases, especially against automobile manufacturers, have been aware for decades from the exchange of information literature that the same defects are swept under the rug in dozens, sometimes hundreds, of cases while the manufacturers continue to advertise safety ratings by the toothless tiger known as the National Highway Safety Administration. We have known for years that certain vehicles tend to roll over because they have a narrow wheelbase and a high center of gravity. Equally pervasive is the fact that most roofs are ridiculously subject to collapse, air bags

are more dangerous than useful, and the list goes on and on.

Current California law

Under Current California Law, confidential settlements are prohibited only in a limited number of cases:

1. Ironically, Civil Code section 1793.26 makes confidential settlements illegal in an action under the Lemon Law. So, if you buy a car which is a lemon and the case is settled, it must be public. But if you buy a car where the wheels fall off because of a defect causing major injuries, confidential settlements are just fine.
2. In addition, pursuant to C.C.P. section 1002(a), confidential settlements are illegal when the civil action pertains to a felony sex offense, a criminal child abuse case or criminal exploitation of a minor.
3. Confidential settlements are not prohibited in elder abuse cases, but disfavored. (C.C.P. § 2017.310.)

The attorney dilemma

Obviously, attorneys owe their first allegiance to their clients. Many attorneys dutifully sign settlement agreements with boilerplate nondisclosure clauses, ignoring the impact that this subterfuge has on the public generally. Let's face it, none of us wants to pass up a good set-

tlement and risk trial over some stand against these clauses. Nonetheless, principled attorneys in growing numbers do refuse NDAs and usually the settlement goes ahead anyway.

Legislative solutions

As the sexual assault scandals continue to heat up and the outcry to ban NDAs expands, now is the perfect time to put pressure on politicians to include in any such legislation all settlements, not just ones involving unwanted sexual advances. Only by banning these clauses by legislation, can we relieve the pressure on attorneys and even clients to pass up a good settlement by insisting on removal of an NDA. It is clear that automobile manufacturers and other defendants enter into settlements for a host of reasons, not the least of which is to try to avoid a much bigger verdict. They will not take every case to trial just because NDAs are illegal.

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