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## States with Sunshine in Litigation Statutes

- |               |                    |                    |
|---------------|--------------------|--------------------|
| 1. Arkansas   | 7. Indiana         | 13. Oregon         |
| 2. California | 8. Louisiana       | 14. South Carolina |
| 3. Delaware   | 9. Michigan        | 15. Texas          |
| 4. Florida    | 10. New Jersey     | 16. Virginia       |
| 5. Georgia    | 11. New York       | 17. Washington     |
| 6. Idaho      | 12. North Carolina |                    |

## The Legacy of Secret Settlements

Product	Years Kept Secret	Death and Injury toll
<b>Zomax, McNeil Laboratories</b>	<b>12</b>	<b>14 deaths, 403 life threatening allergic reactions</b>
<b>General Motors Fuel Tanks</b>	<b>15</b>	<b>At least 750 deaths</b>
<b>Bjork-Shiley Heart Valves</b>	<b>6</b>	<b>At least 248 deaths</b>
<b>Bic Lighters</b>	<b>7</b>	<b>10 deaths, total burn injuries unknown</b>
<b>Asbestos</b>	<b>40 +</b>	<b>Total deaths and injuries incalculable</b>
<b>Dalkon Shield, A.H. Robins</b>	<b>15</b>	<b>11 deaths, 209 septic abortions, thousands of reported injuries</b>
<b>Firestone Tires</b>	<b>10</b>	<b>148 deaths, 500 injuries</b>



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Wednesday, March 12, 2003  
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## EDITORIAL: Sealed shut

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For the third time in a decade, the Legislature will debate legislation preventing state judges from sealing settlements in lawsuits involving public hazards.

In previous efforts -- 1991 and 2001 -- business interests successfully killed similar bills. They shouldn't be so shortsighted this time.

Proponents of Senate Bill 251 note that when the courts keep secret many settlements involving corporate liability, individual citizens are deprived of information they could use to protect themselves, and companies have less incentive to act responsibly.

That's true -- and, in fact, efforts to keep the public in the dark about any aspect of our judicial system should be vigorously opposed.

The business groups, however, argue that publicizing these deals would only encourage unscrupulous attorneys looking for deep pockets. That is a legitimate concern.

But the answer isn't throwing up the cloak of secrecy.

Rather, companies fearing frivolous lawsuits should welcome public scrutiny as motivation to fight the tactics of bottom-feeding attorneys simply looking to exploit the legal system to extort large monetary awards from businesses who have done nothing wrong but see it as cheaper to settle than fight.

A good argument can be made that sealing settlements in and of itself only encourages further lawsuits by telegraphing a company's willingness to pay up rather than defend itself.

The public has a right to know the resolution of judicial proceedings -- especially those involving products that

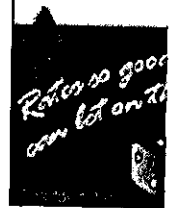
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could present a danger. Concerns about sleazy attorneys and the judges who abet them must not override that fundamental tenet, and should be addressed through more aggressive tort reform.

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# OPINION

## end secret settlements is long overdue

cases. A bicycle manufacturer who constructs faulty bikes doesn't want the world to know about his defective products. He also doesn't 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've 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's a long and ugly history of secret settlements in cases in which disclosure would have alerted the public to serious, ongoing dangers.

● 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.

"One can only guess what would have happened if the original 1933 settlement had been made public," the coalition noted in a report. "If 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 that 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 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 aggressively has 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's 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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