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Consumer Groups Appeal Court Decision in Suit Against Consumer Product Safety Commission That Was Based on Secret Proceedings and Information

Court Releases Decision With Key Facts, Legal Conclusions Blacked Out

WASHINGTON, D.C. – Public Citizen, Consumer Federation of America and Consumers Union are appealing a federal court decision, released Monday, permanently sealing from public view key facts about a lawsuit filed by an anonymous company against the Consumer Product Safety Commission (CPSC). The decision prevents the public from seeing the company’s name and relevant court findings, and it bars the CPSC from posting to its online consumer complaint database the report of consumer injury about which the company sued.

The court’s opinion, released today with key portions blacked out, indicates that the case, originally filed in October 2011, was decided in the company’s favor more than two months ago after nine months of proceedings conducted out of public view and without opportunity for public participation.

“Adjudicating this first-ever challenge to the consumer product safety database in secret, based on secret evidence, and with a secret plaintiff, is at odds with the First Amendment and our tradition of open judicial proceedings,” said Scott Michelman, the Public Citizen attorney representing the three organizations. “The public has a strong interest in the outcome of this lawsuit and a correspondingly strong right to learn who is involved and the factual basis for the court’s decision to exempt a product report from the database.”

The CPSC’s searchable online database, available at www.saferproducts.gov, was launched in March 2011 pursuant to a congressional mandate to provide consumers with

information about potentially dangerous products after a spate of product recalls. Nearly 9,000 reports had been filed as of June 2012.

“The court blocked the CPSC from publishing a report of harm, but the facts underlying the decision are entirely blacked out,” said Rachel Weintraub, director of product safety and senior counsel for Consumer Federation of America. “The court’s seal prevents the public from assessing the court’s reasoning, and understanding its impact on the integrity of the CPSC database.”

The CPSC database is modeled after databases on the websites of the National Highway Traffic Safety Administration, created in 1996 to provide access to consumer complaints about automobiles, and the Food and Drug Administration, also available since 1996, which describes adverse event reports made by hospitals, manufacturers and others about drugs and medical devices.

The CPSC is required by law to post consumer complaints within 20 business days of receiving them. Before complaints are posted, the product manufacturers are notified and given a chance to respond. If the information submitted is shown to be untrue, the complaint is corrected or removed from the database.

“The CPSC database is a critical tool for informing consumers and consumer advocates about potential safety concerns related to a wide variety of products,” explained Ami Gadhia, senior policy counsel for Consumers Union.

The consumer groups objected to the company’s motion to litigate the case anonymously and under seal shortly after the lawsuit was filed in the fall of 2011. But the court allowed the case to proceed in secret and did not rule on the motion to seal until July 2012, when it also granted the company’s motion for summary judgment. The CPSC also has appealed.

“The court wrongly assumed that whatever interest the company had in avoiding publication in the database justified keeping the public from learning about this dispute,” said Michelman of Public Citizen. “But courts around the country have long recognized that the public has a First Amendment right to access court proceedings.”

The court’s opinion, available at <http://www.citizen.org/documents/Company-Doe-v-Tenenbaum-Revised-Memorandum-Opinion-Redacted.pdf>, suggests that other portions of the record might eventually become public, also with portions blacked out. Even the consumer groups’ original objection to the seal remains under seal at this time.

The opinion released Monday was authored by Judge Alexander Williams, Jr., of federal district court in Greenbelt, Md. The consumer groups’ appeal, entitled *Company Doe v. Public Citizen*, will be heard by the Fourth U.S. Circuit Court of Appeals. The notice of appeal was filed in late September and, pursuant to the district court’s order, is still under seal.

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Public Citizen is a nonprofit consumer advocacy organization based in Washington, D.C. The Consumer Federation of America is an association of nearly 300 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy and education. Consumers Union works for health reform, food and product safety, financial reform, and other consumer issues in Washington, D.C., the states, and in the marketplace.