

Update re Confidentiality of Settlement Agreements and Protective Orders

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As we previously reported, the California legislature was working to pass [Public Right to Know Act of 2022](#) (Senate Bill 1149). If this bill became a law, it would have had a significant impact on settlement agreements and protective orders in product liability and toxic tort cases because it will essentially prohibit the use of confidentiality to restrict the disclosure of case-related information.

The Public Right to Know Act of 2022 (the “Proposed Act”) would apply to all civil actions involving “a defective product or environmental hazard that poses a danger to public health or safety.” More specifically, it applies to all defective products and environmental hazards that have “caused, or [are] likely to cause, significant or substantial bodily injury or illness, or death.” As such, the Proposed Act would encompass—at a minimum—all California product liability and toxic tort cases. But the Proposed Act was amended to carve out Song-Beverly Consumer Warranty Act cases, unless the case included a claim of physical personal injury.

In addition, the Proposed Act bars any attempt to restrict the disclosure of discoverable information related to a covered action. A defendant therefore cannot use a confidential settlement agreement or protective order to prevent the disclosure of (1) admissible evidence and (2) information that appears reasonably calculated to lead to the discovery of admissible evidence. But there are a few exceptions. For example, settlement amounts can remain confidential. So can information related to trade secrets.

Given the frequent use of confidentiality provisions in settlement agreements and protective orders to govern and limit disclosure of confidential information and documents, the Proposed Act would have had a profound impact on product liability cases. As such, it faced staunch opposition from the corporate sector. This opposition proved successful as the Proposed Act fell short of the votes needed to pass the Assembly.

It will be interesting to see if this issue is raised again in the future. If so, a new member of the legislature will have to champion the bill, as Senator Connie M. Leyva (the author of the Proposed Act) is no longer a member of the California legislature.