

Deseret News

By Lee Davidson

Deseret News

Published: Thursday, June 4, 2009 10:06 p.m. MDT

Do courts sanction suit secrets?

Courts allow companies to keep too many civil lawsuit documents secret that could save lives by disclosing dangerous defects in products, an attorney who represents the families of Utah State University students killed in a grim 2005 van accident told Congress on Thursday.

Bruce R. Kaster showed a House Judiciary subcommittee an example of one such document: a 2000 memo by Cooper Tires (which made the tires on the ill-fated USU van) that he said discusses how the company's tires lack key safety components that others offer.

Families of those killed in the USU van accident have sued Cooper Tires, contending defects allowed the tread to separate from the tires and caused the deadly rollover that killed eight students and a teacher.

Kaster did not talk about the USU accident specifically in his testimony, and court orders limit what attorneys in that ongoing lawsuit may say.

But when the Deseret News asked if the document were applicable to the USU case, he said, "It is applicable to all Cooper tread-separation cases in America."

He said he obtained that document in a Mississippi case he was litigating only because it came into evidence in open court. He said Cooper tried to have it sealed afterward, but the judge refused.

He testified to the subcommittee that the memo shows Cooper "knew about a safety component for their tires and elected not to put it in because of cost considerations."

He added, "The safety component they're talking about, the belt edge gum strip, is the same safety component that Firestone reduced in their tires on (Ford) Explorers. This was one of the significant design defects that led to the biggest recall of tires in American history.

"Firestone reduced the size of the wedge. This manufacturer doesn't even have a wedge, and they know that it reduces tread-belt separations, but this document discloses they have elected not to put this safety component in for cost considerations," Kaster said.

The Judiciary Committee is considering the Sunshine in Litigation Act, which would make it more difficult for companies to keep secret documents used in civil cases.

The bill would restrict federal judges from sealing documents or settlements without making specific factual findings that the secrecy order would not harm the public's interest in disclosure of information relevant to health or safety.

Kaster testified, "Tens of thousands of Americans, if not hundreds of thousands, have been killed or seriously injured by defective products that manufacturers are aware of, but the public is not," because they manage to seal sensitive documents in court.

"When you sue a manufacturer and request records, they insist on a protective order before they produce any internal documents that they assert are trade secret," Kaster testified.

"Unfortunately, in the real world, manufacturers use this protection to cover all documents."

Leslie A. Bailey, staff attorney for Public Justice, a group that fights to open court documents, also testified, "Much of the civil litigation in this country is taking place in secret."

He added, "Through protective orders, secret settlements and sealed court records, the public courts are being used by private parties to hide smoking-gun evidence of wrong-doing."