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**CONSUMER GROUPS TO 4TH CIRCUIT: PUBLIC DESERVES TO KNOW
IDENTITY OF ‘COMPANY DOE,’ DETAILS OF CONSUMER PRODUCT
DATABASE CASE**

*Trial Court Conducted Secret Litigation, Sealed Facts From Public Because of Risk to
Company’s Reputation*

WASHINGTON, D.C. – A court ruling that allowed a company to litigate as “Company Doe” and prevents the public from knowing key details about the court’s decision concerning a consumer product safety database should be overturned, three consumer groups told the 4th U.S. Circuit Court of Appeals today.

The case is a first-of-its-kind in several respects. First, it appears to be the first time a court has ever sealed a court record because of concern about a company’s reputation. Second, it appears to be the first time a court has allowed a company to proceed under a fictitious name to protect its reputation. It also is the first legal challenge to the Consumer Product Safety Commission’s (CPSC) product safety database, which was set up in 2011 as required by the Consumer Product Safety Improvement Act of 2008.

“The public has a First Amendment right of access to court proceedings,” said Scott Michelman, the Public Citizen attorney handling the case for Public Citizen, Consumers Union and Consumer Federation of America. “The denial of public access is particularly problematic where the case involves a matter of public safety and a challenge to the implementation of a new statute. Adjudicating cases based on secret proceedings, with secret facts and a secret plaintiff, is incompatible with our tradition of open government.”

In July, a federal district court in Greenbelt, Md., sealed from public view key facts about the lawsuit, which was filed by an unnamed company against the CPSC in an effort to keep out

of the product safety database a report about one of the company's products. The decision prevents the public from seeing the company's name and relevant court findings, including parts of the court's decision barring the CPSC from posting to its database the report of consumer injury about which the company sued.

Although the case was decided in July, the court's opinion was not released publicly until October. In the public version, key portions of text are blacked out. The opinion shows that the case, originally filed in October 2011, was decided in the company's favor after nine months of proceedings conducted out of public view and without opportunity for public participation. The district court found that the incident report failed to link Company Doe's product to the harm reported. The court apparently relied on expert testimony, but information about that testimony – who the expert was, what the expert said and more – remains sealed.

The CPSC's searchable online database, available at www.saferproducts.gov, was launched in March 2011. More than 11,500 product complaints have been filed by consumers and others about everything from kitchen appliances and nursery equipment to clothes and electronics.

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 database is a vital consumer safety tool that helps ensure shoppers are properly informed about hazards lurking in the marketplace," said Ami Gadhia, senior policy counsel for Consumers Union, the policy and advocacy division of Consumer Reports. "We use the database regularly as a resource to help us keep our readers informed."

Added Rachel Weintraub, legislative director and senior counsel for Consumer Federation of America, "Congress required the CPSC to establish this database in order to reduce delay in informing the public about unsafe products. But if the sealing that occurred in this case is permitted, many companies will seek to challenge database entries in secret, and the entries could be hidden from the public for what could be years. The result will be exactly the type of delay Congress sought to prevent."

Shortly after the lawsuit was filed in the fall of 2011, the consumer groups objected to the company's motion to litigate the case anonymously and under seal. The court, however, allowed the case to proceed in secret. The consumer groups are now appealing that ruling.

The groups' brief on appeal is at <http://www.citizen.org/documents/Company-Doe-v-Public-Citizen-Opening-Brief-Appellants.pdf>. The court's redacted opinion is available at <http://www.citizen.org/documents/Company-Doe-v-Tenenbaum-Revised-Memorandum-Opinion-Redacted.pdf>.

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.

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