

# Practice Alert - New Decision on Sunshine in Litigation Act

October 21, 2009

On October 21, 2009, the Third District Court of Appeal released: *Ford Motor Co. v. Hall-Edwards*, No. 3D08-3220 (Fla. 3d DCA Oct. 21, 2009) (*Not final until disposition of timely filed motion for rehearing*), granting a petition for writ of certiorari, quashing an order declaring various model years of the Ford Explorer a public hazard under section 69.081, Florida Statutes, the Sunshine in Litigation Act. The appellate court stated, "[t]he statute does not invite notices or motions simply to determine that a particular 'device, instrument, person, procedure, product, or condition [of a device, etc.]' is a public hazard. . . . the statute governs attempts by a litigant to avoid disclosure of specific information or documents to the public." (citing § 69.081, Fla. Stat.). Because there was no request by Ford Motor Company to limit disclosure of case-related documents and the trial court did not hold an evidentiary hearing prior to entering its order, the appellate court determined the trial court departed from the essential requirements of law in entering the order. The appellate court also found irreparable injury that should not await review until a plenary appeal, stating: "The label 'public hazard' is not to be affixed to an allegedly-dangerous product 'like you would buckle a collar on a bird dog or paste a tag on an express package that is being forwarded to a friend.' Attention to a proper evidentiary hearing and due process are plainly required. Such a label has significant and far reaching consequences in a day when court orders can make it around the world before the sun sets on the day they are filed. The respondent's counsel, who include lawyers and firms involved in many other lawsuits against Ford, wasted no time in disseminating the order. The statute was intended to preclude the concealment of specific information about a 'public hazard,' not simply to provide a tactical pejorative for counsel to use in other cases." (Citations omitted).

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