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MARIN COUNTY

Families in bike suit seek new trial, say judge was biased

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The families of eight boys from California and several other states who were injured when the front wheels of their bicycles flew off have requested a new trial, accusing a Marin County judge of bias.

In a motion filed Tuesday in Marin County Superior Court, a lawyer for the families accused Judge Michael Dufficy of favoring defendants Wal-Mart and a San Rafael bicycle importer during their recent, nine-week trial.

The 57-page motion includes numerous alleged acts of favoritism by the judge, such as excluding evidence of the importer's federal safety violations, refusing to allow the testimony of a star witness and scolding the plaintiffs' lawyer in front of the jury.

The 12-person civil jury rejected claims last month that the nation's largest retailer and Dynacraft BSC Inc. knowingly sold bicycles with a defective quick-release lever that caused the front wheel to fall off. Co-defendant Carl Warren & Co., a claims processor, was also cleared.

The jurors awarded no damages to the boys' families. But one plaintiff reached a settlement with the defendants during the jury's deliberations. The families had asked for several million dollars in damages for the children's injuries between 2002 and 2003. Three of the boys have brain injuries.

Wal-Mart spokesman Kevin Thorton said that the company had not been served with the motion as of Tuesday and that it would not be appropriate for him to comment on the matter.

The filing includes a sworn affidavit by jury forewoman Janice Perez Ross of Novato, who accuses the judge of making "inconsistent rulings ... (and) showing favoritism toward the defense attorneys by allowing questioning by them and disallowing similar questions by the plaintiffs' attorneys on the same subjects."

Plaintiffs' lawyer Mark Webb cited instances of "uncontrolled anger and critical remarks" by the judge toward the plaintiffs.

Webb also noted that Dufficy did not allow evidence at trial that Dynacraft had paid \$1.4 million in civil fines in 2004 for not reporting defects in

some of its bicycles to the Consumer Product Safety Commission, but allowed Dynacraft to provide the jury with a letter by its lawyers that purported to show that the importer was in full compliance with the agency.

Webb also challenged Dufficy's ruling that the jury should disregard the fact that a quick-release lever had broken on a new bicycle in the jury room when the jurors examined it. And he objected to the judge's refusal to allow testimony by landscaper John Buchholz, who had worked for Dynacraft's former chief executive officer, Jerry Berman.

According to the motion, Buchholz was prepared to testify that Berman "had admitted that his bicycles were not only 'pieces of s -- ,' but that he knew they were sold to poor children, and that there was a fund set aside to settle cases involving such injuries."

Lawyers for Wal-Mart and Dynacraft could not be reached for comment. They argued at trial that the alleged problems with the bicycles were likely the result of improper assembly, parental neglect, failure to adjust the levers or children's abuse of the bikes.

The bikes were sold under the Next brand name and were mostly mountain bikes. The quick-release levers are designed to hold the front-wheel axle to the frame and to allow users to remove the wheel easily for transport or repairs.

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