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### Breaking News

## Will New Product Safety Law Be A Boon To Insurers?

BY DANIEL HAYS

NU Online News Service, Nov. 13, 3:25 p.m. EST

The new Consumer Product Safety Act may prompt some litigation by whistleblowers, but in the long run it should reduce claims against insurers, according to an attorney who represents whistleblower interests.

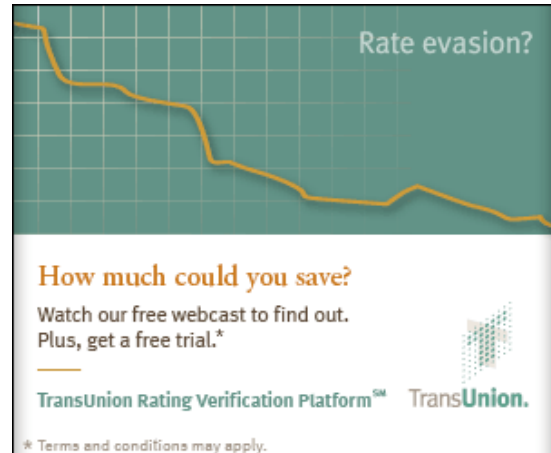
That assessment of the law--which was disputed by a product liability lawyer--comes from Stephen Kohn, president of the non-profit National Whistleblower Center.

Mr. Kohn's viewpoint was rejected by Frank Citera of Greenberg Traurig in Chicago, who heads firm's product liability practice group. He said he doubted whistleblower involvement will help insurers.

Mr. Kohn's group next week is sponsoring a seminar to brief attorneys on new protections in the law for employees who are fired for going public with product problems.

The Act--passed on Aug. 8 in an effort to improve the safety of children's toys, and keep toxic playthings from the marketplace--gives whistleblowers the right to bring an action for a jury trial to obtain reinstatement and compensatory damages for emotional distress and loss of reputation, as well as attorneys fees.

Mr. Kohn said the Act--which covers 15,000 products, from bicycle helmets to blasting caps--may result in individual whistleblower suits.



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whistleblower suits.

But he argues that if the worker's disclosure keeps a defective product off the market before consumers are harmed, it could avert hundreds of millions of dollars in injury claims, and class actions.

"This is in the long-term best interests of the insurance companies," he said, adding that insurers should be supportive of whistleblowers because, "it's a money saver."

It would be counterproductive for insurers, according to Mr. Kohn, "if they don't support and educate employees as to their rights." Insurers, he suggested, "should require companies to have a mechanism to obtain internal [employee] complaints as a requirement to be insured."

For publicly-traded companies, he noted, there is already a requirement that they have an employee concerns program, "but that only covers fraud against shareholders."

Insurance companies, according to Mr. Kohn, are in the best position to make sure companies have mechanisms to learn about defects before there is a big lawsuit.

The attorney said he is currently handling the case of an employee who was fired in 2001 for raising an alarm about defective bullet-proof vests, which had material that was degrading. Two years after his firing, a policeman was shot through the vest and another suffered permanent injury from a bullet that penetrated. Two years later, the Department of Justice withdrew the vest from the market.

Mr. Kohn said insurers most likely covered the two failures, but his client's actions "probably prevented hundreds of injuries."

Mr. Citera said Mr. Kohn's notion was "a perverse viewpoint."

The whistleblower component of the law, he said, has been one of great concern to companies. "I think the Act will be a bit of a boon for the plaintiffs' bar that ultimately would impact the insurance industry," he predicted.

In a perfect world, he said, a worker on the assembly line who sees a defect would prevent the product from hitting the market sooner, "but historically employees reluctant to blow the whistle."


Mr. Citera added that it would be

unlikely the average employee would be aware of protections afforded by the Act. And, in the course of his experience doing product recall cases, Mr. Citera said he could not recall many employee warnings.

Ultimately, he said he thought whistleblower involvement will have little impact on cutting down products that don't comply with the Act.

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