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CHANLER RIGHT TO KNOW LAWSUITS NAB CHINESE CORPORATIONS

Let's say a product is made in China. But the product doesn't meet American health and safety standards. Can an American law reach across the Pacific and force the Chinese manufacturing company to comply with U.S. law?

Answer : yes.

In September, the Chanler Group, an environmental law firm, reached a settlement on behalf of its client, Peter Englander, with a Chinese manufacturer of products alleged to contain the reproductive toxin di(2-ethylhexyl)phthalate, commonly known as DEHP.

Englander alleged that the foreign company, Hangzhou GreatStar Tool Company, violated California's Proposition 65 by manufacturing and selling hand tools and stools containing DEHP through major retailers such as Lowe's and Orchard Supply Hardware, without providing California consumers with the requisite health hazard warning.

The settlement was approved on September 13, 2013.

"If a product is going to be sold in America, it has to meet American health and safety standards, both local and federal," said Clifford Chanler, the founder of The Chanler Group. "This is true regardless of where the product is manufactured."

As a result of the settlement, the overseas manufacturer has agreed that, no later than May 1, 2014, all of the products at issue, intended for sale to California consumers, shall be reformulated so as to virtually eliminate the presence of DEHP.

Should Hangzhou GreatStar Tool Company accelerate its reformulation schedule and certify that the products at issue are reformulated by March 15, 2014, Englander agreed to waive a portion of the $30,000 civil fine.

Seventy-five percent of the civil fine is paid to the State of California.

The case represented the first time California's Proposition 65 law, or any American consumer protection statute, has been used as a basis for international prosecution, Chanler told *Corporate Crime Reporter* in an interview last week.

Chanler said he expects this to be the beginning of a new trend, where overseas manufacturers are held accountable for the products they provide for American consumers.

The Chanler Group represents citizen enforcers and whistleblowers to promote awareness of toxic chemicals found in our everyday environment and to enhance the health of the general public by advocating for the removal of chemicals known to cause cancer or reproductive harm from consumer products.

Last month, a similar lawsuit settled by Chanler Group requires DAP Inc., a large Chinese manufacturer, to reformulate consumer products to comply with Prop 65

DAP Inc. manufactures millions of handle grips used on hand tools and tape measures that are sold throughout the United States by Target Stores.

Those products were found to include the reproductive toxicant di(2-ethylhexyl)phthalate (DEHP), which is regulated under Proposition 65. The manufacturer has now agreed to remove the hazardous chemical.

The agreements require the Chinese companies to reformulate every product at issue to eliminate DEHP and to pay civil penalties totaling as much as $65,000, 75 percent of which will go to the State of California to protect and enhance public health and the environment.

"A factory in China does not make products just for California," Chanler said. "They make products for the entire United States and globally. So, if you get a commitment to take lead paint out of a children's toy, then you are pretty sure that is going to impact in a positive way the children's toys being sold in the other 49 states. And I would venture to guess it would also impact the toys sold to many other countries, although I have no statistics or other evidence to support that."

"Recently, our clients have settled with three Chinese companies where they have agreed to reformulate the products to eliminate the known toxicants. That's a direct commitment with a Chinese company that is enforceable through a special tribunal in Hong Kong."

(See **CHANLER**, page three)

(**CHANLER**, from page one)

"I would venture to say now that we are settling with the very top of the pyramid that the impact of those cases will be more far reaching than some of our other cases that have been successfully concluded."

"I don't know for sure, but it might be one of the first, if not the first case, where an American citizen, or even an American government agency, has settled with a Chinese company where they are committing to change their practices -- in this case reformulating their products to eliminate toxic ingredients."

"I don't think those cases got any traction with the media. There are many people who believe that Chinese based companies should be held accountable in our courts for goods and services they sell to the American public."

Those were Prop 65 cases, right?

"Yes they were," Chanler says.

What is the jurisdictional hook?

"There is no jurisdictional hook," Chanler said. "We did bring enough pressure to bear upon them that they voluntarily came into the courts, voluntarily agreed to reformulate their products, pay money to the state of California and our client, and agreed to an enforcement mechanism -- a special tribunal in Hong Kong. And we researched it for many months to make sure that they weren't just going to come in, say they were going to do the right thing, and then when it came time to enforce an alleged violation, they would say -- you can't touch us."

"My client sued Chinese companies," Chanler said.

Even though there is no jurisdiction?

"Zero jurisdiction," Chanler said. "But any company can voluntarily agree to jurisdiction."

What was the pressure that was put on the companies?

"We provided them information regarding the toxic content of their products," Chanler said. "We gave them the information that led to our issuing the notice to their companies. Our client served a 60 day notice letter, which is a prerequisite for filing a lawsuit. We served such a letter on their American sellers of the consumer products at issue."

"These were companies like Lowe's, Target, Costco -- the big box retailers. And historically those large retailers have come to the bargaining table and resolved these right to know actions. And they commit not to sell any more of the products at issue, whether they are children's products or adult products."

When you say pressure was brought to bear, you mean pressure from these big box retailers?

"It could be," Chanler said. "The pressure in part, and it could be in substantial part, came from large purchasers of the goods in the U.S., who are also large sellers of the goods to the American public. And they likely said -- although I was not on those calls -- get us out of this mess and talk directly to Chanler's clients and see if you can resolve the case without our involvement."

Chanler started his career as a corporate defense attorney. And then, in 1991, he opened his own firm to prosecute right to know and False Claims Act cases.

How did that happen?

"When I was at Brobeck, I tried to drum up some corporate business through a friend," Chanler said. "He said -- I will see what I can do. He said -- I am part of an environmental group and can you make a donation to that group? At that point, I was a young attorney at a large firm completely broke. I had no money. I said -- I could do pro bono work."

"That person set up a meeting with an in house attorney at the large environmental group. We sat down. It happened to be when Prop 65 was just passed. And I said -- that's an interesting statute. I brought it to Brobeck Phleger. I was in good standing at that point. We had just had a good jury victory in federal court. And originally they said yes -- you can take this case, which involved methylene chloride in paint stripper, which would have been one of the first cases brought under Prop 65. But then the executive committee said no, there was a conflict."

"When Wilson Sonsini offered me a job, I said I'm happy to take it, thank you very much. Can I bring this type of case over with me? Originally they too said yes. I signed the retainer agreement under the Wilson name. And after we started the case, I was called into the executive suite. I was told it was anti-corporate and there was a conflict, although Wilson Sonsini didn't have much of an environmental department at that point. So, I went to the environmental group and said -- I'm really sorry I can't take the case with this firm. It's a great firm. But I'm willing to open up my own shop out of my apartment in Pacific Heights in San Francisco. If you are okay with that, I'll take the leap. They said -- you are three quarters crazy. You

are a year and a half away from partnership at a significant firm. But if you do it, of course, we will give you the cases."

"I started there. The first settlement for $30,000 afforded me enough money to buy a computer and hire an assistant. That was 1991."

(See the complete Interview with Cliff Chanler, page 12.)

NADER, FRANKEL, BOGLE, MONKS TO SPEAK AT FIDUCIARY CONFERENCE AT NATIONAL PRESS CLUB

The Frankel Fiduciary Prize and Symposium will honor Robert A. G. Monks, the first Frankel honoree, at the National Press Club in Washington, D.C. on December 10.

"Bob Monks is the perfect choice to inaugurate what we hope will be a long tradition of recognizing those persons who over a career have worked to protect and safeguard the position of the investor," said John C. Coffee, who chaired the committee that selected Monks. "While also a prolific writer and theorist of corporate governance, he has lived a life in the arena, fighting battle after battle to make the market a fairer and safer place for the American shareholder. Whether or not it realizes it, the proactive hedge fund of today is following in his pioneering footsteps."

The symposium host committee is co-chaired by Adrian Cadbury, formerly CEO of Cadbury Schweppes and principal author of the Cadbury Code, the globally recognized "bible" of corporate governance, and Nell Minow, co-founder and board member of GMI Ratings, a firm specializing in evaluating governance risk.

The morning panel will feature remarks from Vanguard founder John C. "Jack" Bogle, Sir Adrian Cadbury, consumer activist, Ralph Nader and Boston University law professor, Tamar Frankel.

A panel of experts will discuss the status of investor trust and fiduciary duties 50 years the Supreme Court decision in Capital Gains Research Bureau.

The morning program will be followed by a luncheon and awards ceremony.

"From the chairman's boardroom to the adviser or broker's office, fiduciary duties are at a crossroads, in great demand and under enormous pressures. The Frankel Fiduciary Symposium will be a vivid reminder why this centuries-old legal doctrine may be more relevant today than at any time in history," said Knut A. Rostad, president, the Institute for the Fiduciary Standard.

EU FINES BANKS $2.3 BILLION IN LIBOR SETTLEMENT

The European Commission has fined eight international financial institutions a total of $2.3 billion for participating in illegal cartels in markets for financial derivatives covering the European Economic Area (EEA).

Four of these institutions participated in a cartel relating to interest rate derivatives denominated in the euro currency.

Six of them participated in one or more bilateral cartels relating to interest rate derivatives denominated in Japanese yen.

Such collusion between competitors is prohibited by Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement.

Both decisions were adopted under the Commission's cartel settlement procedure; the companies' fines were reduced by 10% for agreeing to settle.

"What is shocking about the LIBOR and EURIBOR scandals is not only the manipulation of benchmarks, which is being tackled by financial regulators worldwide, but also the collusion between banks who are supposed to be competing with each other," said Joaquín Almunia, Commission Vice-President in charge of competition policy.

"Our decision sends a clear message that the Commission is determined to fight and sanction these cartels in the financial sector. Healthy competition and transparency are crucial for financial markets to work properly, at the service of the real economy rather than the interests of a few."

Interest rate derivatives -- forward rate agreements, swaps, futures, options -- are financial products which are used by banks or companies for managing the risk of interest rate fluctuations.

These products are traded worldwide and play a key role in the global economy.

They derive their value from the level of a benchmark interest rate, such as the London interbank offered rate (LIBOR) – which is used for

phone every six months. It has, moreover, built 4G capabilities in a very short span of time. At the beginning of 2013, it did not offer 4G service anywhere in the country. As of August, T-Mobile's 4G network covers 200 million Americans. By way of comparison, AT&T's and Verizon's 4G networks each cover or will soon cover over 300 million.

Perhaps less significantly but still to the relief of many, T-Mobile has eliminated the 15-second introductory message to voicemail. All of this puts pressure on the industry leaders to improve their own offerings, which is exactly what we want from competition.

T-Mobile's effect on the wireless marketplace is already apparent. After eight consecutive quarters of decline, T-Mobile's base of contract subscribers increased by more than 600,000 in both the second and third quarters of 2013.

In both periods, T-Mobile's net subscriber growth exceeded that of AT&T. Soon after T-Mobile announced its semiannual phone upgrade plan, AT&T and Verizon gave their subscribers the option of upgrading every year. Perhaps most tellingly, Verizon, which has long been the largest and most profitable wireless carrier, is forecast to record lower profits in coming years, due in part to increased competition from T-Mobile. Verizon's loss is consumers' gain.

Thus far, it is hard to dispute the government's decision to preserve four independent players in the national wireless market.

A combined AT&T/T-Mobile would have likely had more pricing power and increased carrier profits at the expense of the consumer. In an over $160 billion annual industry, even a small price increase can have large effects. Subscribers would collectively spend billions more each year – in effect, a tax collected by corporate executives and shareholders.

The DOJ and FCC appear to have not just preserved but unleashed competition. Recognizing it will be independent for the foreseeable future, T-Mobile has shaken up a cozy oligopoly and delivered tangible benefits to consumers. And, in the process, it has demonstrated the public value of strong antitrust enforcement.

– The Great Wireless Merger: Two Years Later, by Albert Foer and Sandeep Vaheesan, American Antitrust Institute, December 5, 2013.

INTERVIEW WITH CLIFF CHANLER, NEW CANAAN, CONNECTICUT

Let's say a product is made in China. But the product doesn't meet American health and safety standards. Can an American law reach across the Pacific and force the Chinese manufacturing company to comply with U.S. law?

Apparently yes.

In September, the Chanler Group, an environmental law firm, reached a settlement on behalf of its client, Peter Englander, with a Chinese manufacturer of products alleged to contain the reproductive toxin di(2-ethylhexyl)phthalate, commonly known as DEHP.

Englander alleged that the foreign company, Hangzhou GreatStar Tool Company, violated California's Proposition 65 by manufacturing and selling hand tools and stools containing DEHP through major retailers such as Lowe's and Orchard Supply Hardware, without providing California consumers with the requisite health hazard warning.

The settlement was approved on Sept. 13, 2013.

The case represented the first time California's Proposition 65 law, or any American consumer protection statute, has been used as a basis for international prosecution.

That's according to Cliff Chanler, the lawyer who brought the lawsuit, and founder of The Chanler Group.

Chanler said he expects this to be the beginning of a new trend, where overseas manufacturers are held accountable for the products they provide for American consumers.

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We interviewed Chanler on December 3, 2013.

CCR: You graduated from the University of Denver College of Law in 1985. What have you been doing since?

CHANLER: After law school, I came back to New York and Connecticut. During the day, I traded government bonds for a financial firm. In the evening I did pro bono work for the Center for Constitutional Rights in New York. I did that for

about two to three years.

I then moved to the San Francisco bay area. I joined a class action plaintiffs' firm -- David B. Gold and Associates. That firm primarily focused on securities fraud issue. I was then hired by a much larger firm -- Brobeck Phleger and Harrison. At that time it was one of California's largest firms. At that firm, I split my time between trying plaintiff contingency cases for the firm -- which were few and far between -- and defending class action securities litigation, on behalf of primarily accounting firms.

From Brobeck, I was hired by Wilson Sonsini Goodrich & Rosati, which is based in Palo Alto, California. I practiced at that firm for about two years. I handled primarily intellectual property litigation.

From the Wilson Sonsini firm, I ended up starting my current firm in September 1991.

CCR: How did you go from a big corporate defense firm to a plaintiffs' side right to know firm?

CHANLER: When I was at Brobeck, I tried to drum up some corporate business through a friend. He said -- I will see what I can do. He said -- I am part of an environmental group and can you make a donation to that group? At that point, I was a young attorney at a large firm completely broke. I had no money. I said -- I could do pro bono work.

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It happened to be when Prop 65 was just passed. And I said -- that's an interesting statute. I brought it to Brobeck Phleger. I was in good standing at that point. We had just had a good jury victory in federal court. And originally they said yes -- you can take this case, which involved methylene chloride in paint stripper, which would have been one of the first cases brought under Prop 65. But then the executive committee said no, there was a conflict.

When Wilson Sonsini offered me a job, I said I'm happy to take it, thank you very much. Can I bring this type of case over with me? Originally they too said yes. I signed the retainer agreement under the Wilson name. And after we started the case, I was called into the executive suite. I was told it was anti-corporate and there was a conflict, although Wilson Sonsini didn't have much of an environmental department at that point. So, I went to the environmental group and said -- I'm really sorry I can't take the case with this firm. It's a great firm. But I'm willing to open up my own shop out of my apartment in Pacific Heights in San Francisco. If you are okay with that, I'll take the leap. They said -- you are three quarters crazy. You are a year and a half away from partnership at a significant firm. But if you do it, of course, we will give you the cases.

I started there. The first settlement for $30,000 afforded me enough money to buy a computer and hire an assistant. That was 1991.

CCR: What is your practice now?

CHANLER: Our practice is all based on whistleblower type litigation. It's divided between prosecuting right to know toxic laws on behalf of the public brought in the name of either a large environmental group or a citizen enforcer. And the other part are those False Claims Act cases brought in state or federal courts.

CCR: How many attorneys in the firm?

CHANLER: Fifteen to twenty.

CCR: How does it split between right to know versus False Claims Act -- number of cases?

CHANLER: The caseload is about eighty percent right to know enforcement cases and twenty percent False Claims Act cases.

CCR: How many right to know plaintiff side firms are there in California?

CHANLER: Let's limit it to the right to know toxic area that I practice in. There might be other right to know actions, such as whether or not something says it's organic and it's not really organic.

In the right to know toxic field, I would guess there are about ten and twenty such firms. But I do not keep track. I do know there are a substantial number of former colleagues that have spun off and started firms much like my own. Whether all of them or most of them are still doing right to know toxic work or not, I'm just not sure. I know some are.

CCR: Is your right to know practice exclusively California based?

CHANLER: No. We have been looking carefully at the Consumer Products Safety Improvement Act. We have been expanding our workload beyond California. And we have now put a lot of resources in building a national arm.

CCR: What's the right to know practice about?

CHANLER: If there is a state law that requires a consumer product manufacturer, for example, to identify a particular chemical and the health hazards

associated with that chemical on the product packaging, and they do not, then the government and in some instances citizens can bring an action against that consumer product manufacturer for failing to advise the public that the product contains that particular chemical and that that chemical has the potential or is known to cause substantial harm -- whether it is a birth defect agent or a carcinogen, to name two.

CCR: Under the California law, there is a whistleblower provision?

CHANLER: Yes, the law we have been enforcing for the past 22 years has a whistleblower component. Citizens are incentivized to do the work that the government has historically done. In a case where the government for one reason or another does not want to bring an action, it allows citizen enforcers to effectively step in the shoes of the government and sue the alleged wrongdoer as if they were the government.

Some attorneys refer to this role as a private attorney general or a citizen enforcer, or a supplemental enforcer.

CCR: How big are the recoveries under the right to know law?

CHANLER: The California the law -- The Safe Drinking Water and Toxic Enforcement Act of 1986 -- also known as Prop 65, allows the citizen to recoup 25 percent of the civil fines that are collected in any given case. Typically, the penalties would range from an average of $50,000 up to $1 million or $2 million in civil fines.

Under Prop 65, you will often find in settlements a waiver of a second or supplemental penalty due at a later time in exchange for a certification from the settling company that they have reformulated their product to eliminate the previously hidden toxicant.

For example, if corporation X settles a case for $1 million in civil fines, it could be paid in two installments. The first installment of $100,000 would be due upon court approval of the settlement. The second payment of $900,000 could be due one year later.

But the corporation could get a complete waiver of the second payment of $900,000 if it provides under oath a certification that the product at issue no longer contains the chemical at issue and therefore there has been a barter of the second penalty payment for a public health consideration.

In that example, the state of California would have received $75,000 of the first $100,000 penalty payment. The citizen enforcer would have received $25,000. If in a year, the corporation couldn't fulfill or chose not to fulfill its reformulation commitment, then 75 percent of the $900,000 would go to the state and 25 percent would go to the citizen enforcer.

CCR: Give us some of your top hits from your litigation over the years.

CHANLER: I'll tell you some of the cases that have had the most impact from a public interest or public health standpoint perspective.

A major ingredient in nail polish used to be a solvent called toluene. It is a known birth defect agent. Those cases were brought in 1993 and 1994. And companies such as Revlon and Maybelline and dozens more have agreed to remove that chemical completely from any of the nail polish products going forward.

At about the same time, one of the largest ingredients in crayons was asbestiform fibers. After those cases, you no longer find asbestos in crayons.

Lead paint was used to decorate virtually all glassware -- whether children's glasses or normal glasses you find in your cupboard.

That was primarily as a result of glassware being made overseas, where all of a sudden lead paint was the type of paint used to decorate glassware. We were successful in getting hundreds of companies to commit not to import any more glassware or dinnerware with lead paint as a decoration.

At one point we found lead paint on the outside of major soda bottles. And we also found it inside glass based soda bottles. That also resulted in reformulation commitments by companies to remove the lead paint from the outside and inside of their products.

There are dozens and dozens of children's toys that had phthalates, which are now banned around the country. Whether they were sippy cups, or baby duckies, or baby bibs, they had these phthalates. And we got the companies to completely eliminated DEHP, which was one of the more toxic phthalates, from all of these children's products.

We also have brought countless of lead paint in children's toys cases before the federal and state governments started regulating and banning the use of lead paints in those products a few years ago.

CCR: You are bringing these cases primarily under the California law. But it has a national impact

because if they don't market in California, they aren't going to market in the rest of the country.
CHANLER: A factory in China does not make products just for California. They make products for the entire United States and globally. So, if you get a commitment to take lead paint out of a children's toy, then you are pretty sure that is going to impact in a positive way the children's toys being sold in the other 49 states. And I would venture to guess it would also impact the toys sold to many other countries, although I have no statistics or other evidence to support that.

Recently, our clients have settled with three Chinese companies where they have agreed to reformulate the products to eliminate the known toxicants. That's a direct commitment with a Chinese company that is enforceable through a special tribunal in Hong Kong.
I would venture to say now that we are settling with the very top of the pyramid that the impact of those cases will be more far reaching than some of our other cases that have been successfully concluded.
CCR: Have those cases been made public?
CHANLER: Yes. We have made public two of them. The court just approved a second one last week. I don't know for sure, but it might be one of the first, if not the first case, where an American citizen, or even an American government agency, has settled with a Chinese company where they are committing to change their practices -- in this case reformulating their products to eliminate toxic ingredients.

I don't think those cases got any traction with the media. There are many people who believe that Chinese based companies should be held accountable in our courts for goods and services they sell to the American public.
CCR: Those were Prop 65 cases, right?
CHANLER: Yes they were.
CCR: What is the jurisdictional hook?
CHANLER: There is no jurisdictional hook. We did bring enough pressure to bear upon them that they voluntarily came into the courts, voluntarily agreed to reformulate their products, pay money to the state of California and our client, and agreed to an enforcement mechanism -- a special tribunal in Hong Kong.

And we researched it for many months to make sure that they weren't just going to come in, say they were going to do the right thing, and then when it came time to enforce an alleged violation, they would say -- you can't touch us.
CCR: Are you saying you sued Chinese companies under Prop 65?
CHANLER: My client sued Chinese companies.
CCR: Even though there is no jurisdiction?
CHANLER: Zero jurisdiction. But any company can voluntarily agree to jurisdiction.
CCR: What was the pressure that was put on the companies?
CHANLER: We provided them information regarding the toxic content of their products. We gave them the information that led to our issuing the notice to their companies. Our client served a 60 day notice letter, which is a prerequisite for filing a lawsuit. We served such a letter on their American sellers of the consumer products at issue.

These were companies like Lowe's, Target, Costco -- the big box retailers. And historically those large retailers have come to the bargaining table and resolved these right to know actions. And they commit not to sell any more of the products at issue, whether they are children's products or adult products.
CCR: When you say pressure was brought to bear, you mean pressure from these big box retailers?
CHANLER: It could be. The pressure in part, and it could be in substantial part, came from large purchasers of the goods in the U.S., who are also large sellers of the goods to the American public. And they likely said -- although I was not on those calls -- get us out of this mess and talk directly to Chanler's clients and see if you can resolve the case without our involvement.
CCR: Is this a first of a kind settlement with major Chinese manufacturers?
CHANLER: Yes. And I do think it is the beginning of a multi-decade trend.
CCR: Who are the clients who bring these cases?
CHANLER: Our clients have ranged from large environmental groups to investigators to environmental toxicologists with PhDs who ferret out these cases. Once we determine through certified labs that a particular product has a particular chemical in it that is regulated, we have a team of outside toxicologists who evaluate the magnitude of exposure.

The Attorney General will get a report from the outside toxicologist supporting the merits of the allegations.
CCR: If it weren't for firms like yours, would the state of California have pursued these cases

anyway?

CHANLER: No. They have taken up to ten cases that we have investigated over 20 years. They took the case where the allegation was there was lead paint on the outside of the Coke and Pepsi bottles and in certain instances the toxin made its way into the liquid itself. The Attorney General and the City Attorney of Los Angeles co-enforced that case. Our clients were also plaintiffs, but they were intervenors.

CCR: Is Prop 65 similar to the False Claims Act where you are suing on behalf of the government?

CHANLER: There are a lot of similarities between Prop 65 and the False Claims Act, with a couple of significant differences. But yes, you step into the shoes of the government. And under Prop 65, you are stepping into the shoes of the California Attorney General.

CCR: The False Claims Act has proven to be far more lucrative.

CHANLER: Yes, for both the government and the plaintiffs lawyers. You can take a whole year of Prop 65 work that my firm might do, and they might be less lucrative than one successful federal False Claims Act case.

CCR: On the Chinese cases, was there monetary recovery?

CHANLER: Yes, but the total dollars exchange was no greater than $100,000 and that was divided between penalties and cost reimbursement. You rarely see a False Claims Act case with those kinds of numbers. A low False Claims Act case is in the low millions. And the higher ones reach into the hundreds of millions of dollars.

The value of the right to know cases is in the public health impact. We estimate that approximately 500 million products every year are reformulated by just the cases brought by our clients. And that doesn't include what the Attorney General or any of the other private litigants are doing. That's just our cases.

There is one very important distinction between the False Claims Act and Prop 65. The qui tam attorneys lobby the U.S. Attorney very hard to pick up the case.

And the whistleblowers are stride for stride with their counsel trying to get the government to take the case. That's because the whistleblower gets a percentage of the federal government's recovery, which can be quite significant.

In Prop 65, on the other hand, the citizen does not recoup a percentage of the recovery if the government intervenes. The citizen can sometimes get zero.

The Attorney General would argue that if the government takes the case, the citizen is entitled to nothing. It's a very different dynamic between Prop 65 and the False Claims Act.

CCR: Are you saying the citizen recovers only if the government doesn't intervene?

CHANLER: Yes. The government may allocate some cost reimbursement. But it will not give any of the civil fines to the citizen.

CCR: Is there an argument for reforming Prop 65 so that there is more of a financial incentive for citizens to bring them?

CHANLER: There are people who want Prop 65 to be reformed. Some want it to be strengthened in terms of the monetary recoveries. There are critics from the other side who think Prop 65 needs to be reigned in.

CCR: How many cases are brought a year?

CHANLER: I would say probably 1,000.

CCR: You say there is a federal consumer products law that has a supplemental enforcement arm.

CHANLER: Yes, through a recent amendment to the Consumer Product Safety Act, my guess is you will find more letters written to the CPSC alerting them to hidden toxicants that violate one or more of the CPSC regulations. If the federal agency doesn't act, then the whistleblower can take action.

CCR: Have there been any actions so far?

CHANLER: There have been a few. But going forward, that should change in the coming year or two.

CCR: Just in terms of financial reward, if a young lawyer wants to get into either Prop 65 or False Claims Act, they should chose False Claims Act, right?

CHANLER: Well, False Claims Act cases are tough cases. Historically, you want the government to take the case from the whistleblower. That takes a long time to get the government to take it. They take several years.

And there is no remuneration to a young attorney. It is a heavy lift for a small firm. Then again, when you are young and don't have a lot of obligations and you are willing to take risks and start a new practice, it could be a very lucrative area -- rewarding both monetarily and otherwise.

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