Establishing A Hazard Communication Program Fatality File

The decedent was a dye company worker from North Dakota who had decades of experience. He suffered second- and third-degree burns to more than 65 percent of his body when he accidentally mixed two chemicals that, when combined, were combustible. The worker died from his injuries. The defendant had delivered a large tote of one of the chemicals. It was identical to a tote containing another chemical that was delivered that day. Both totes had the same color placard, even though they had always had different colored placards to make identification of the contents easier.

In a wrongful death action, the worker's family alleges the chemical supplier committed negligence and strict product liability when it delivered chemical containers that were mislabeled or inadequately labeled.

The defendant failed effectively to control the hazards presented by the chemical totes in this case due to inadequate and improper packaging, labeling, and warnings, and these failures led directly to and were substantial factors in causing the incident that led to the worker's death. The tote that the worker needed to fill had a faded, barely discernible number identifying the chemical. Moreover the warnings were torn, poorly affixed, and in very small print. This container did not have the typical statements and warnings as described in the American National Standards Institute (ANSI) standard. The container used for the filling had a number identifying a chemical, but it did not clearly identify the chemical by name. Nor did it have the statements and warnings as described in the ANSI standard.

The defendant regularly delivered one of the chemicals with color-coded, diamond-shaped placards that were blue or red in color and delivered the other with color-coded diamond placards that were black. However, on this occasion, the tote containing the caustic

chemical had been marked with a black diamond-shaped placard, and nowhere on that container was the chemical identified by name. Given the worker’s extensive experience in the industry, he would have understood the danger involved in mixing the two chemicals and would have expected containers of a certain type and location to remain consistent. By shipping the caustic chemical in an inadequately and mislabeled tote that, on prior occasions contained a different chemical, the defendant increased the chance of foreseeable error and injury.

The mislabeled chemical tote directly led to and was a substantial factor in causing the incident that caused the death.