



The Voice

And The Defense Wins

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DRI members [Art Davison](#) and [Sonja Tate](#) of **Fulcher Hagler LLP** in Augusta, Georgia, and [Mark Barrow](#) and [Ryan Holt](#) of **Sweeny, Wingate & Barrow, P. A.** in Columbia, South Carolina, obtained a defense verdict for one client and dismissal for the other after a two-week trial in U. S. District Court in Columbia, South Carolina, in February 2015.

Davison and Tate represented an international chemical manufacturer who produced a wastewater deodorizer containing sodium permanganate. Barrow and Holt represented the toller who mixed the product and had it shipped to the customer. The plaintiff was an employee of the Town of Lexington Utilities Department who inhaled a mist of the deodorizer in an industrial accident in April 2010. He alleged the manufacturer provided insufficient warnings of hazards associated with sodium permanganate and further alleged both defendants were responsible for the accident, which occurred while the product was being offloaded from a tanker truck.

Plaintiff, age 40, claimed he developed irritant-induced asthma from the exposure and that this respiratory injury permanently and totally disabled him from working. Three physicians testified in favor of this diagnosis. His economist blackboarded around \$1 million in future lost wages and \$1.3 million in future medicals according to a life care plan. The defense contended the product labels and Material Safety Data sheets for the deodorizer adequately warned of potential hazards and recommended appropriate personal protective equipment, which the plaintiff chose not to wear and his employer chose not to require.

Judge Joseph F. Anderson, Jr. presided over the complex trial, which involved 34 witnesses, 14 of whom were experts in safety, toxicology, pulmonology, industrial hygiene, engineering, economics, and vocational rehabilitation. On the eleventh day of trial, while the jury was deliberating, plaintiff's counsel dismissed the defendant toller with prejudice. Shortly thereafter, the jury returned a defense verdict for the manufacturer.

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