



And The Defense Wins

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DRI members [Stan Perry](#), a partner at **Haynes and Boone LLP** in Houston, Texas, and [Stephen M. Bressler](#), a partner at **Lewis and Roca LLP** in Phoenix, Arizona, were among the attorneys who successfully represented Shell in a product liability case involving inadequate warnings and negligence. The plaintiffs claimed Mr. Zendejas contracted atypical chronic myeloid leukemia (aCML) and later acute myeloid leukemia (AML) while working for McNeece Brothers Oil Company in Yuma, Arizona, from 2000-2006. According to the plaintiffs, Mr. Zendejas's atypical CML/AML was caused by his exposure to gasoline that Shell sold to McNeece Brothers. Mr. Zendejas was 29 when he was diagnosed with atypical CML in 2006.

Shell defendants argued that their material safety data sheets (MSDS) for gasoline were provided to McNeece and that these warnings were state of the art. They contended that McNeece (as the employer) had the duty to train and protect Mr. Zendejas, and further argued that gasoline does not cause leukemia.

Arizona is a *Frye* jurisdiction but, prior to trial, the trial court ruled that *Frye* did not apply. Thus, experts were evaluated under Arizona Rule of Evidence 702.

On November 19, 2009, by a 9-1 ruling, the jury found no defective product due to inadequate warning and no negligence.

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