Failing to Give Asbestos Training to 11 Workers is One Violation, Not 11?



A Texas owner planned to develop the site of a defunct hospital into residential housing. He knew the buildings contained asbestos. But rather than trained licensed personnel, he used 11 illegal immigrants from Mexico to do the work. He also kept up the work in secret after the city ordered him to stop. When OSHA discovered what was happening, it cited the owner for 29 willful violations, including 11 separate citations for not training the workers and 11 more for not supplying them respirators. The owner said that he should have been cited for two willful violations, at most. Applying a violation on a per-worker basis was wrong, he argued. OSHRC agreed and counted failing to train and provide respirators as one offense each. OSHA appealed. But the U.S. federal court for the Fifth Circuit threw out the appeal. Not giving workers a respirator is a single offense; theoretically, not providing asbestos training can be a per-employee offense, the court continued, if each worker has different individual needs. But in this case, all 11 workers were basically in the same boat and needed the same kind of training, the court found. So failure to train was a single offense.

[*Chao v. OSHRC*,U.S. App. LEXIS 2979 (5th Cir.)].

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