Hazcom Pre-Emption - A Potential Weapon For The Defense In Warnings-Related Toxic Tort Cases

October 25, 2012

By Roy Alan Cohen, Jeffrey M. Pypcznski and Julius M. Redd

On its face, the concept of federal preemption under the Hazardous Communications Standard ("HazCom"), 29 C.F.R. 1910.1200, appears to offer a powerful defense to state common law failure-to-warn claims after 1985, particularly for labeling requirements in the chemical manufacturing industry. The argument is simple: if Congress enacts a statute or authorizes a federal agency to implement mandatory national labeling requirements, then a chemical manufacturer which complies with the applicable federal labeling laws should not also be required to comply with various state law standards that differ from the federal law, including common law tort claims alleging failure to comply with labeling requirements often created by a plaintiff's expert witness.