

2014-Supreme Court Decision on Chemicals Spill  
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### **The Supreme Court Decides on a Chemicals Spill**

In 2004 a truck overturned on a busy highway and spilled its cargo – which consisted of agrochemicals – right in front of a foodstore. The chemicals disseminated on the road, contaminated the store's products and reached a nearby stream killing fish, plus dozens of people became sick as a result of inhaling the chemical powder.

The store filed a claim for damages against the transport company, the driver and the cooperative that owned the cargo. Subsequently, the foodstore withdrew the claim against the driver and the Court of the First Instance found for the plaintiff against the transport company awarding damages of \$44,000 but omitting to include the coop which had failed to answer the complaint in due time. On appeal the Court of Appeal upheld the decision, included the coop and increased damages to \$84,000 making both parties – the transport company and the coop – liable for payment.

The coop appealed and on June 9, 2014 the Supreme Court upheld the Court of Appeal decision (Comercial Calcerón S.R.L. c. Ruiz Díaz, Claudio y otros s/Indemnización de daños y perjuicios. Ac. y Sent. N° 474. 09/06/2014) on the following grounds:

1. The coop is liable for damages resulting from the spill of agrochemicals when the damage arose from the potential factor created by the inherent hazard of the product that was triggered by the accident. The spill caused damage without parties' intervention or the fault of the victim as set out in Art. 1847 of the Civil Code [which pertains to strict liability].
2. The coop is liable since the transport company is a third party for whom it must answer, given that the customs broker acts on behalf of the importer [the coop] when it hires transport.
3. The risk, hazard and toxicity of the substance were proven. The court file contained a report of the town's mayor about the dead fish and persons that became sick plus the transport guide of the transport authority that described the product as a hazardous substance.

The Supreme Court found that the matter at hand fully met the requirements of the Civil Code for strict liability to operate. The coop cannot escape liability by invoking absence of fault given that the Code's provision does not include the element of fault but the concept is founded on the premise that the damage is caused by the inherent risk of the thing. Neither can the coop argue that the damage was caused by a third party for whom it is not liable since as it was clearly demonstrated that the transport company was hired by the coop's customs broker. The Customs Code determines that the broker acts on behalf of the importer or exporter.

The decision does not rule on liability for environmental damages and it is rather a straightforward application of strict liability in tort for the damage caused by

hazardous substances. Although an environmental prosecutor was quick to appear at the site of the accident no prosecutions or claims for environmental damage were pursued.