(Continued)

an attempt to rescue both Gamble and Garrett, passed out and fell into the Tank. At some point, Hackbarth radioed to Charles to turn off the pumps and call 911. Charles rushed back to the Tank and entered it in an effort to rescue Gamble, Garrett and Lanser. She, too, passed out, but eventually regained consciousness.

Dr. Daniel Teitelbaum, a physician specializing in occupational medicine and toxicology, and an OSHA expert and consultant, concluded that Gamble and Lanser died from acute hydrogen sulfide poisoning which occurred in a confined space. . . . Although Garrett survived, he suffered life-threatening respiratory distress syndrome and aspiration pneumonia and sustained injuries to his lungs and eyes.

The State presented substantial evidence that Weidman and Noll were high managerial agents of Far West acting within the scope of their authority. Weidman was President and Chief Operating Officer of Far West and a member of the board of directors. Noll was the supervisor for the sewage division of Far West, answered to Weidman and had considerable authority over Far West's employees. He was in charge of Far West's safety program. He and Weidman together formulated and developed policies and practices of Far West regarding entry into underground sewage tanks. . . . A jury could reasonably conclude that Weidman and Noll were high managerial agents of Far West and were acting within the scope of their authority.

The State presented substantial evidence that Weidman and Noll were aware of the extreme risks to employees working at Far West. Both were industry professionals with extensive training and experience in sewage treatment plants. They knew the dangers associated with confined spaces and sewer environments. They knew about potentially lethal dangers posed by toxic gases found in underground tanks. Weidman posited that the death and injuries occurred due to the toxic gases. Noll admitted that working in underground tanks was unsafe. The State presented substantial evidence that Weidman and Noll knew and understood the OSHA permit-required confined space regulations. . . .

A jury could reasonably conclude that Noll and Weidman consciously disregarded a substantial and unjustifiable risk of death or physical injury by knowingly violating OSHA regulations and permitting Far West employees to enter dangerous, life-threatening underground tanks without training, equipment, safety measures or rescue capability. A reasonable jury could find from this evidence that Weidman and Noll did more than "fail to perceive a substantial and unjustifiable" risk of death or serious physical injury for purposes of criminal negligence; they acted recklessly by being "aware of" and "consciously disregard[ing] a substantial and unjustifiable risk" of death or serious physical injury for purposes of aggravated assault and endangerment; and knowingly violated A.R.S. § 23-403 and OSHA regulations for purposes of A.R.S. § 23-418(E).

The State presented substantial evidence that the conduct of Weidman and Noll constituted a gross deviation from the required standard of care and/or conduct. Moreover, there was substantial evidence to show that Weidman and Noll engaged in conduct necessary to satisfy not only the elements of the criminal statutes defining the offenses but also the elements necessary to impose enterprise liability on Far West. See A.R.S. § 13-305(A) ("failure to discharge a specific duty imposed by law" and/or conduct undertaken which constitutes offense and "is engaged in, authorized, solicited, commanded or recklessly tolerated" by directors or high managerial agents).