

Murder Incorporated

by Charlie Morgan

Agents, brokers and risk managers routinely counsel their colleagues on the necessity of maintaining a safe workplace, both for humanitarian reasons and the economic consequences. There may be a more compelling reason for firms to stress workplace safety, though; if one of your employees is killed or seriously injured, it could mean jail time for upper management figures.

Exposing Executive Complicity

The first case in the modern era that put an executive in jail for a workplace fatality occurred at the Film Recovery Systems plant near Chicago in 1983. A Polish immigrant, Stefan Golab, died as a result of breathing cyanide gas generated by a photographic film recovery operation. The subsequent investigation by the Cook County medical examiner revealed that not only were workers not provided with the appropriate personal protective gear, but that

management actively sought to conceal the chemical risks from the non-English speaking workforce. According to an article in the April 2000 American Journal of Public Health, supervisors were ordered to scrape the skull-and-crossbones

warning labels from the canisters containing cyanide gas. Further testimony revealed that workers were observed vomiting violently outside the plant as a result of exposure to the toxic fumes.

The district attorney of Cook County secured indictments for murder against five Film Recovery officials. Following the criminal trial and a series of appeals spanning eight years, three of the firm's managers were sentenced to three-year jail terms for manslaughter. This signaled the start of a trend—as the intervening years witnessed increased use of the criminal law as a vehicle for enforcing workplace safety.

In the first case in New York that imposed criminal sanctions for egregious violations of workplace safety, two brothers who ran the Phymm Thermometer Corporation were sentenced to twenty-six weeks in jail, a \$10,000 fine and five years probation. They were found guilty of assault with a deadly weapon for knowingly exposing their employees to toxic mercury fumes.

Massachusetts's courts handed down two indictments in 1994 and 1995 against the president of

Twexsbury Industries for allowing the operation of a front-end loader with defective brakes, resulting in the death of two employees. Similar criminal sanctions have also been sought in California, Texas, Wisconsin, Michigan and Colorado.

To date, however, no incident has been dealt with as harshly as the 1991 fire in a poultry processing plant in Hamlet, North Carolina. An intense fire from a burst hydraulic line at Imperial Food Products spewed flammable material onto a chicken fryer. The ensuing smoke and flames killed twenty-six people and seriously injured fifty-six others.

During the course of the investigation led by the county prosecutor's office, details emerged that motivated the district attorney to pursue criminal sanctions. Specifically, the management of Imperial had reportedly been concerned with employees pilfering the processed chickens, and had locked the emergency exits in order to put a stop to it. This was the most significant factor in the sentencing of Imperial's president to a twenty-year jail term.

Unveiling Responsibility

What accounts for the recent spate of criminal sanctions being imposed in an industrial setting? In order to understand the historical reluctance to seek such penalties, two points must first be understood. First, the state-based workers' compensation mechanism that was adopted in the early decades of the twentieth century explicitly employed a no-fault standard. Employees gave up any legal rights beyond their compensation benefits, and an employer's potential liability was limited to the means for funding this system. Second, the underlying concept of the corporation as a separate legal entity served to preclude criminal sanctions against it because it lacked the requisite "personhood" required for such penalties.

Following a number of high profile corporate crimes with defendants that included Union Carbide and Exxon Corporation, it became increasingly clear that shocking offenses were more likely to be criminalized. That is, the "personhood" required for specific intent crimes, such as manslaughter or reckless endangerment, was becoming easier to discern.

It is clear that the employer will no longer be allowed the fig leaf of protection afforded by the exclusive remedy of state workers' comp laws. Malice and improper motive support far more onerous consequences than OSHA's regulatory sanctions.

Criminal law is being used as a vehicle to enforce workplace safety.