

Testimony before the Committee on Education and Labor
“Are Osha’s Penalties Adequate to Deter Health and Safety Violations”
By Becky Foster
April 28, 2009

Good morning Mr. Chairman and Ranking Members. Thank you for giving me the opportunity to testify today on behalf of families of fatally injured workers. My name is Becky Foster. My testimony today is in honor of my step-son, Jeremy Foster.

Jeremy was the best son a family could hope for. He was a respectable young man who loved his family and enjoyed spending much of his time outdoors. Our Jeremy would have celebrated his 24th birthday last Saturday. (Apr25th)

Our time with Jeremy was cut tragically short in the early hours of Friday October 1st, 2004. His mother called me at 2am – very upset and saying that a friend of Jeremy’s that was working with him at the Deltic Timber sawmill in Ola Arkansas had called his Aunt – this was the only phone number the friend could think of – and said that Jeremy had been badly hurt while working near the chipper. We naturally assumed that he would be taken immediately to the local hospital only 15 miles away. So we chose to meet there. I called his Dad at work and we all went to the hospital and waited for the ambulance to arrive – It never did.

After waiting approximately 45 excruciating minutes, a nurse walked into the room to repeat what she had been told from a phone call. At the same time Jeremy’s Aunt – who had also met us at the hospital along with his Uncle – received another call on her cell phone. She looked at us and said “Jeremy is gone”.

I will not describe what we went through in those moments. The pain cannot be described. We all left from the hospital, called family members and then met at his oldest sister’s house. Later that morning two men from Deltic Timber came to the door to express their condolences. They wouldn’t tell us what happened but assured us that they would find out and keep us updated. Those two men left and we have never heard from them again.

It was our friend who works as the coroner at the funeral home that told us that he had been strangled. She said that his shirt had caught on something and was wound continuously until the shirt became so tight around his neck that he could no longer breathe.

It was later that we learned that this equipment caught his shirt because it had been modified by maintenance workers at Deltic Timber. They had welded a piece of keystick to an auger shaft. By not placing a guard over this modified area, they created a 'catch point'. It is stated in the OSHA report that this modification was the direct result of our son's death.

When we received our copy of the OSHA report we were not surprised to see the notation of the company's actions being at fault for the fatality. But we were appalled to see the amount of the fine: \$4,500. Surely this was an error. Shortly afterwards we read in our state newspaper that the fine had been reduced to only \$2,250. Did they place a value of our only son's life at this amount? It was as if OSHA had patted Deltic Timber on the back and said "Good job guys. You only killed one person".

This company walked away from us and was only at a loss of \$2,250. They sent flowers to the funeral and they walked away.

Jeremy was employed with Deltic Timber thru a temp agency. The temp agency paid for the funeral under workers compensation regulations.

We were left with nothing but pain and loss. We did consult lawyers; several of them. But our state of Arkansas does an excellent job of protecting employers. Because of workers compensations statutes and a dual employment law we were denied our day in court with Deltic Timber.

At the very least Deltic Timber should have been penalized with a substantial fine. Yes, we understand that companies are in business to make a profit and a very large fine could result in loss of profit. But of course they would have a chance to make up for the loss in the next fiscal quarter. What about the worker that is killed? There is no second chance.

All of this could have been avoided simply by reviewing OSHA equipment regulations before modifying the equipment. Just one moment to consider the options would have saved Jeremy's life. Why even have regulations if they are not enforced? Why have penalties if they are not substantial enough to get the companies attention and prevent more accidents?

Obviously, this meager fine had no lasting impression on this company. Since Jeremy's accident there have been at least two other accidents. One was a fire at another location that resulted in one death and two serious burn injuries.

(Attachment#1 and #2)

Mr. Chairman and Ranking Members; I plead for your support in any efforts that are presented to ensure a safer workplace.

I ask that each of you please visit the website <http://www.usmwf.org/> for additional stories from families of fatally injured workers. The **United Support & Memorial for Workplace Fatalities (USMWF)** was created by Tammy Miser. Tammy also has personal experience with these issues, as she lost her brother in unsafe working conditions.

Her story is included in the attached "FAMILY BILL OF RIGHTS".

(attachment#3)

I also ask for your support of the "**PROTECTING AMERICA'S WORKERS ACT**".

Thank you for your service to workers and their families.

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Deltic Timber Fined In Deadly Fire

• Updated 14 months ago

Deltic Timber Corp. has been fined \$13,500 for safety violations at its sawmill near Waldo after a fire caused the death of one worker and injured two others.

The Occupational Safety and Health Administration inspected the mill following the Aug. 9 fire. OSHA said an enclosure for the planer room, where the fire broke out, and the dust-collection system were not built to national standards, and exposed employees to intense flames, heat and sparks.

Diana Petterson, a spokeswoman for OSHA, said Deltic Timber has addressed the problems, although the company is contesting the citation and fine.

Craig Douglass, a spokesman for the El Dorado-based company, said Deltic completed the corrective actions recommended by OSHA before starting the mill back up October 30th.

In the fire, Darrell Richards of Junction City suffered burns on most of his body and died September First at a hospital in Memphis.

Andy Emerson of Taylor and Billy Pope of Springhill, Louisiana, were injured and hospitalized. The two men have not returned to work but are back at home and receiving physical therapy.

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<http://www.todaysthv.com/news/news.aspx?storyid=60444>

http://www.osha.gov/pls/imis/establishment.inspection_detail?id=311127906&id=309893931&id=307893347

Search Results

Inspection Detail

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Quick Link Reference

311127906	309893931	307893347
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Inspection: 311127906 - Deltic Timber Corporation

Inspection Information - Office: Little Rock		
Nr: 311127906	Report ID:0627100	Open Date: 08/10/2007
Deltic Timber Corporation 1720 Highway 82 West Waldo, AR 71770		Union Status: NonUnion
SIC: 2421/Sawmills and Planing Mills, General NAICS: 321912/ Cut Stock, Resawing Lumber, and Planing		
Inspection Type: Accident		
Scope: Partial	Advanced Notice: N	
Ownership: Private	Close Conference: 10/11/2007	
Safety/Health: Safety	Close Case: 07/21/2008	
Optional Information: Type	ID	Value
	N 10	IMMLANG-N
Related Activity: Type	ID	Safety Health
	Accident 100264399	

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	4					4
Current Violations	2					2
Initial Penalty	18000					18000
Current Penalty	11500					11500
FTA Amount						

Violation Items										
#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	Last
Deleted 1.	01001	Serious	5A0001	01/18/2008	02/07/2008	\$4500	\$4500	\$0	02/01/2008	F - Formal

Attachment#2OshaReport (2)

Deleted 2.	01002	Serious	5A0001	01/18/2008	02/07/2008	\$4500	\$4500	\$0	02/01/2008	F - Formal
3.	01003	Serious	19100022 A01	01/18/2008	01/31/2008	\$4500	\$4500	\$0	02/01/2008	F - Formal
4.	01004A	Serious	5A0001	01/18/2008	02/07/2008	\$7000	\$4500	\$0	02/01/2008	F - Formal
5.	01004B	Serious	5A0001	01/18/2008	02/07/2008	\$0	\$4500	\$0	02/01/2008	F - Formal

Inspection: 309893931 - Deltic Timber Corporation

Inspection Information - Office: Little Rock		
Nr: 309893931	Report ID:0627100	Open Date: 03/01/2006
Deltic Timber Corporation Highway 10 East Ola, AR 72853 SIC: 2421/Sawmills and Planing Mills, General NAICS: 321113/Sawmills Mailing: P.O Box 129, Ola, AR 72853		Union Status: NonUnion
Inspection Type: Planned Scope: Partial Ownership: Private Safety/Health: Safety Emphasis: N:Amputate,S:Amputations		Advanced Notice: N Close Conference: 03/01/2006 Close Case: 03/01/2006

Inspection: 307893347 - Deltic Timber Corporation

Inspection Information - Office: Little Rock		
Nr: 307893347	Report ID:0627100	Open Date: 10/01/2004
Deltic Timber Corporation Highway 10 East Ola, AR 72853 SIC: 2421/Sawmills and Planing Mills, General NAICS: 321113/Sawmills Mailing: P.O Box 129, Ola, AR 72853		Union Status: NonUnion
Inspection Type: Accident Scope: Partial Ownership: Private Safety/Health: Safety		Advanced Notice: N Close Conference: 11/30/2004 Close Case: 02/16/2005
Optional Information: Type ID Value N 10 IMMLANG-N		
Related Activity: Type ID Safety Health Accident 100262922		

Workplace Tragedy Family Bill of Rights

By
USMWF.ORG, Members of LaborSafe,
COSH and Caring Families

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*To find detailed information pertaining to the Workplace Tragedy
Family Bill of Rights, visit www.usmwf.org*

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The Sobering Facts: Workplace Injury, Illness & Death

Each day millions of fathers, mothers, husbands, wives, sons, and daughters leave their homes for another day of work. They work in retail stores, restaurants, mines, hospitals, and countless other industries. They work to provide for their families, save for the future, and better Society. Tragically, many of these workers and their loved ones have no idea that simply going to work may jeopardize their limbs and life.

According to the US Department of Labor, in 2005, 4.2 million non-fatal injuries and illnesses were reported in private industry workplaces. In 2006, 5,703 US workers were fatally injured on the job. Behind each one of these injured, sickened or killed workers is a family in mourning – a family in need of answers, resources, and support.

Occupational Tragedies and their Impact on Families

Workplace fatalities and serious injuries have a tremendous impact on the community. While coworkers and friends must also cope with the unexpected tragedy, no one is more affected than the families. These families have a special need to understand the death of their spouse, parent, son, daughter, or fiancé. For many family members, grief persists and is unresolved unless all available information about the circumstances of the work-related fatality or injury is shared in a timely manner.

Unfortunately, when a loved one is injured or dies on the job families do not know where to turn for answers. Current legislation ignores the rights of family members to be involved in the investigative process, and investigative government agencies, such as the Occupational Health and Safety Administration (OSHA) and the Mine Safety and Health Administration (MSHA), are complex and highly bureaucratic. Workers' compensation systems are equally complicated. Not surprisingly, families too often find little support from government officials when they inquire into how the workplace incident occurred.

In spite of their loss and overwhelming frustration with the investigative system, family members are banding together to advocate for safer and healthier work environments. These family members are committed to calling attention to occupational dangers not only to honor their loved ones, but also to prevent other families from experiencing the pain and confusion associated with workplace injury, illness, and death.

United Support & Memorial for Workplace Fatalities (USMWF): Our Mission

In 2004, USMWF was formed to support individuals, companies and other organizations dealing with the repercussions of a worker's death and/or injury. USMWF also aims to prevent future workplace tragedies. Additional goals include:

- Provide individuals who have lost a loved one with information pertaining to workplace laws, rights, mental health resources, memorials, tributes, and local relevant events.
- Connect new workplace tragedy family member victims to others who have experienced a similar loss.
- Equip students and/or adults with prevention strategies that will protect them from injuries or illnesses in a variety of workplace settings.
- Provide companies with information to help their employees deal with the loss of a coworker.
- Assemble dedicated organizations and individuals for advocacy initiatives and events.

- Create awareness in the field of workplace deaths and injuries and the needs of families, coworkers and employers.

Families of workplace tragedies need and deserve hope, answers, direction, support, and acknowledgment. Together USMWF, advocacy organizations such as LaborStart, and national Coalitions for Occupational Health and Safety, caring families, and government agencies can change the way family member victims are treated, and ensure their needs are met by giving them the right to a fair and transparent investigative process.

Workplace Tragedy Family Bill of Rights

The following Bill of Rights for family member victims of workplace fatalities and serious injuries would provide fundamental privileges to the loved ones left behind by workplace incidents.

1. A federal liaison office must be established to provide family members with information about the accident investigation(s) process, role of other state or federal agencies, workers' compensation and other matters related to their loved one's death.
2. Family members must have full "party status" in legal proceedings involving OSHA, MSHA, or whatever state or federal agency is conducting the workplace-fatality investigation.
3. Family members must have the right to designate a representative to act on their behalf in all matters related to the investigation and any follow-up legal actions related to the investigation.
4. Family members must be notified of all meetings, phone calls, hearings or other communications involving the accident investigation team and the employer, and be given the opportunity to participate in these events.
5. Family members must have the opportunity to recommend names of individuals to be interviewed by the accident investigation team and to submit questions to the investigators for response by the interviewees. Family members should be given access to all transcripts of interviews, affidavits, or written statements made by witnesses and others interviewed for the investigation.
6. Family members must have the right to be kept routinely [no less than once every 14 days] informed by federal and state officials (e.g., OSHA, OSHA State-Plans, MSHA) on the progress of the incident investigation, including an estimate of when the investigation will be completed.
7. Family members must have the right to conduct an independent investigation of the work-related fatality or serious injury, including the right to visit the scene of the accident before it is released by the investigation team back to the employer's control.
8. OSHA and MSHA must assure that all physical evidence related to the accident investigation is preserved and secured in a tamper-resistant environment. Family members should have the right to view all physical evidence.
9. Family members should have access to all documents gathered and produced as part of the accident investigation, including records prepared by first responders, and state and federal officials. Information mentioning the deceased family-member's name and condition should not be redacted from documents provided to family members. All fees related to the production of documents should be waived for family members.
10. Family members must be compensated for the time and expenses incurred because of a work-related fatality or serious injury. In cases where the deceased or seriously injured worker has no spouse or dependent children, a parent of the worker should be compensated for funeral cost, travel and medical expenses, and lost wages.

True Stories of Workplace Tragedies and the Families Left Behind

Shawn Boone

Shawn Boone, 33, was killed from injuries resulting from an explosion at the Hayes Lemmerz Plant in Huntington, Indiana. The lack of information surrounding his death, and assistance from government agencies inspired his sister to start an organization dedicated to reaching out to family members of workplace fatality victims.



On October 29, 2003, Shawn and his coworkers performed a routine procedure to relight a furnace at Hayes Lemmerz, an international producer of automotive and commercial highway steel and aluminum wheels. (It was common practice for workers to be asked to put fires to avoid calling the fire department.) After the furnace was lit, Shawn remained in the vicinity to ensure the flames remained extinguished. After few minutes, Shawn and his coworkers began to collect their tools. He was standing directly behind the furnace with his back toward it, when suddenly an explosion occurred. Coworkers who witnessed the explosion stated that despite being knocked down Shawn got up and started walking toward the doors. It was then that a second and more intense blast occurred. The heat from the blast was not enough to melt copper piping. Unfortunately, Shawn did not die instantly; instead, he remained on the building floor smoldering while the aluminum dust continued to burn through his flesh and muscle tissue. The breaths he took burned his internal organs, while the blasts took his eyesight.

By the time the ambulance arrived, Shawn had no nerve endings and was burnt from head to toe. Yet, he was conscious and asking for help. Later that morning, Shawn's family let him go. It was the hardest thing they've ever done, and to this day they live with a feeling of guilt.

In the middle of the family's tragedy there was another taking place. Hayes Lemmerz was allowed to start the clean-up process simply because Shawn was not dead yet. The immediate clean-up not only contaminated the investigation site, but also deprived Shawn's family and coworkers the opportunity to begin their healing by visiting the site of the incident.

Today, Shawn's sister, Tammy Miser, is the founder of the United Support and Memorial for Workplace Fatalities. She works tirelessly to ensure that family members of workplace tragedies have the support needed to cope with their loss. In addition, she advocates for the rights of these family members, including the right to visit incident sites. Shawn's loss has forever impacted the life of his family. His family's efforts to provide resources and support to those affected by workplace tragedies has forever impacted the lives of countless others.

Christopher Doughty

In February 2007, Christopher Doughty, 18, went to work with his uncle. The two were taking soil samples for a new house. Later in the afternoon, Christopher was killed when a jacket he was wearing was pulled into an auger – an auger without an automatic emergency shutoff. He was killed instantly. Christopher's entire family, including his parents, brothers, sister, and aunts and uncles, is devastated. In addition to the emotional and psychological effects of their son's death, Christopher's parents have also incurred a large financial burden related to funeral costs. Current workers' compensation laws deny parents financial assistance for the loss of a child.



Christopher's dad, Kenneth, vividly remembers receiving the call at work that Christopher had been killed on the job. He nearly fainted. Some eight months have passed since Christopher's death, but the pain is still as sharp as ever. "I lost my son, my fishing buddy," Kenneth explains. "I miss him everyday." Kenneth and his son, Kyle, have begun grief counseling, but still find themselves wondering how and why this incident happened.

Lorraine, Christopher's mom, is also having a very difficult time coping with her son's death. "The toll it has taken on me is awful," she explained. "I am doing all the right things: counseling, church, compassionate friends and reading, but I will never get over it."

In addition to coping with their grief, Christopher's parents have also had to deal with new financial realities. Funeral costs, which Kenneth paid, amounted to more than \$20,000. He received only \$6,000 from workers' compensation. Kenneth was able to pay the expenses from his savings, but worries that some parents may be forced into dire financial straits without proper compensation for their loss.

Lorraine, too, has experienced a financial burden since Christopher's death. Hospitalizations and medications prescribed to cope with the loss of her son have left Lorraine with medical bills in the thousands.

Christopher's death shattered both Kenneth and Lorraine's worlds. They are now haunted by unanswered questions regarding the incident. For example, why didn't Christopher receive safety trainings on the job? Why didn't the auger automatically shut-off? The OSHA report, which Kenneth can not read without breaking into tears, offers little support and few answers.

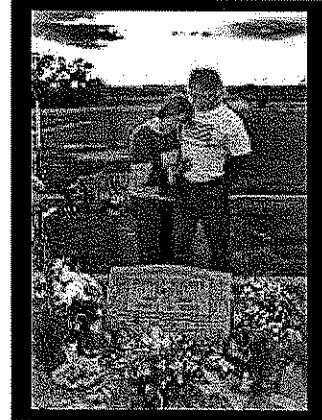
"It is sickening; we were robbed of our son and our futures... He did not have time to be a dad or husband," Lorraine explained. Kenneth echoes similar sentiments. His thoughts also turn to those families who may not have the financial means to pay for their son or daughter's funeral. "While no amount of money can ever bring back a child, families deserve to be compensated for their loss in order to properly say goodbye to their loved one. Indeed, it should be a right!"

Donald W. Smith

A college senior, Donald Smith, 22 of Texas, was tragically killed on the job while working as a mechanic's helper at a local chicken processing plant. Ordered by his supervisor to disconnect and remove a large electric motor without assistance, Donald was electrocuted while performing the task. Faced with the overwhelming loss of his son, Donald's father, Donald Coit, has become an outspoken advocate for the rights of families of workplace fatality victims.

"In viewing what is "right" and what is "wrong" with how families are treated in job related deaths, I believe one must look at our current laws," Donald Coit explained. "To the naked eye, it is obvious that current

laws favor corporate America." The family has been denied access to documents concerning negotiations between OSHA and his son's company, despite formal and properly filed requests. When government agencies and companies refuse to provide information that could reveal criminal actions, the entire legal system works against the families of workplace fatality victims. The current system undoubtedly needs serious revisions. "In my opinion, one of those revisions must allow families of workers killed on the job access to ALL information, including negotiations, meetings and correspondence," Donald Coit said. "An equally important revision must allow for the successful prosecution of negligent employers. With workers continually being injured and killed on the job, gross negligence is simply not enough; employers must be held accountable for the working environments they create."



Donald Coit also wishes that OSHA's final investigative reports contained more information – information that would answer the questions of grieving families and, perhaps, save the life of another worker. For example, although OSHA publishes their final citations on the Web, they do not include any of the information gleaned from interviews that could directly pinpoint an individual or company policy responsible for the workplace fatality.

"Unless laws are changed to allow prosecution and legal actions to be filed by parents outside of workers compensation protection, we will continue to see job deaths on a regular basis," Donald Coit explained. "Equally important is giving families the knowledge they need to fully grieve for their loved one – knowledge about the fatality incident, and knowledge about the investigative process."

William H. Nichols

William H. Nichols, 41 of South Carolina, was killed after he was crushed under an automotive lift on May 28, 2004. Because William's only child was under age at the time of his death, she has been afforded few rights as a surviving family member. His daughter's mother, Sharon, has continually tried, often without success, to obtain information surrounding the incident so that her daughter may someday know the truth about her father's death.



Sharon's frustration with the lack of information surrounding William's death is great. Despite the Freedom of Information Act (FOIA), which mandates government agencies disclose records when requested in writing by any person (exemptions apply), information surrounding William's death has been difficult to obtain. "My family is frustrated and angry," she explains. "We think of his death daily with confusion and misunderstanding and ask questions about how such a tragedy could have happened. Maybe this tragedy could have been prevented. Maybe we could save the lives of other sons, fathers, or brothers by sharing information about William's death."

Unable to find the information on her own, Sharon turned to the media to draw attention to William's story. Unfortunately, the media showed little interest. Next, Sharon wrote to several state representatives with the following results:

1) She received statements such as "sorry about your loss but there is nothing we can do to help you."

2) Sharon's letter was "passed on" to someone else in the government who in the end could do little to help her.

3) She received a printed document from an internet search explaining the laws of the state.

4) She received a letter from a United States Senator that read:

"I understand that you have requested incident investigative records from the SC Department of Labor, Licensing and Regulation under the state Freedom of Information Act. If you feel this agency has violated state laws, please contact the State Attorney General's office. However, please note that the state FOIA, nor the federal FOIA, allows the release of all records. Some information is still considered confidential under the FOIA laws and cannot be released. I have enclosed information pertaining to the state FOIA statute and what information OSHA must protect under law. I have also enclosed a citizen's guide detailing the federal Freedom of Information Act for your review. It lists nine exemptions which guards the release of information."

While Sharon recognizes that some types of information must remain protected, she wonders why a family should be denied information pertaining to a loved one's death. For, it is the family in need of protection from fear, confusion, and endless questions, not the information itself, and most definitely not the employer of the victim.

William's young daughter doesn't understand her dad's death. But, she does understand that he is gone, and she misses him daily. "The loss of her father is more than she should have to deal with, much less all the laws and regulations that keep her from knowing the truth," Sharon said. "As the mother of our child – William's only child - I will continue to fight for justice, for the truth, and for the release of information under the Freedom of Information Act. After all, what good comes from such a statue, if it continues allowing for the concealment of information?"

References:

US Department of Labor, Bureau of Labor Statistics (2007). *Latest numbers*. Retrieved October 1, 2007 from <http://www.bls.gov/iif/home.htm>.

We are also in the process of putting together a resource guide for families who have lost someone. It contains information for legal assistance, support, fact sorting, follow-up, grief resources becoming an advocate and more. This will be a great asset to after the initial shock of suddenly losing a family member or friend.