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January 2023
Price \$5.00

Why no criminal investigation of Caterpillar after worker's death?

The thermal annihilation of Steven Dierkes

By Russell Mokhiber

On June 2, 2022, 39-year-old Steven Dierkes, father of three young girls, checked in for work at the Caterpillar foundry in Mapleton, Illinois. It was his ninth day on the job.

Dierkes was taking a sample of the 2,600 degree molten iron when he tripped and fell into the vat.

There was no guardrail.

There was no protection to keep him from falling in.

Capitol Hill Citizen obtained a copy of the Peoria County's coroner's report.

Cause of death?

“Thermal annihilation.”

The deputy coroner, Matthew Schlieper, arrives at 10:50 am and reports that at the scene was Peoria County Sheriff's detective Lee Hoffman.

“Hoffman states there is a pit where there is molten metal,” Schlieper reports.

“The workers take a sample with a long pole that has a cup on the end. Hoffman states there is a video of the incident. He denies anyone pushing the deceased. He states it looks like the deceased tripped and fell into the pit of molten metal. He states there was a witness that tried to come over the deceased, but could not help him.”

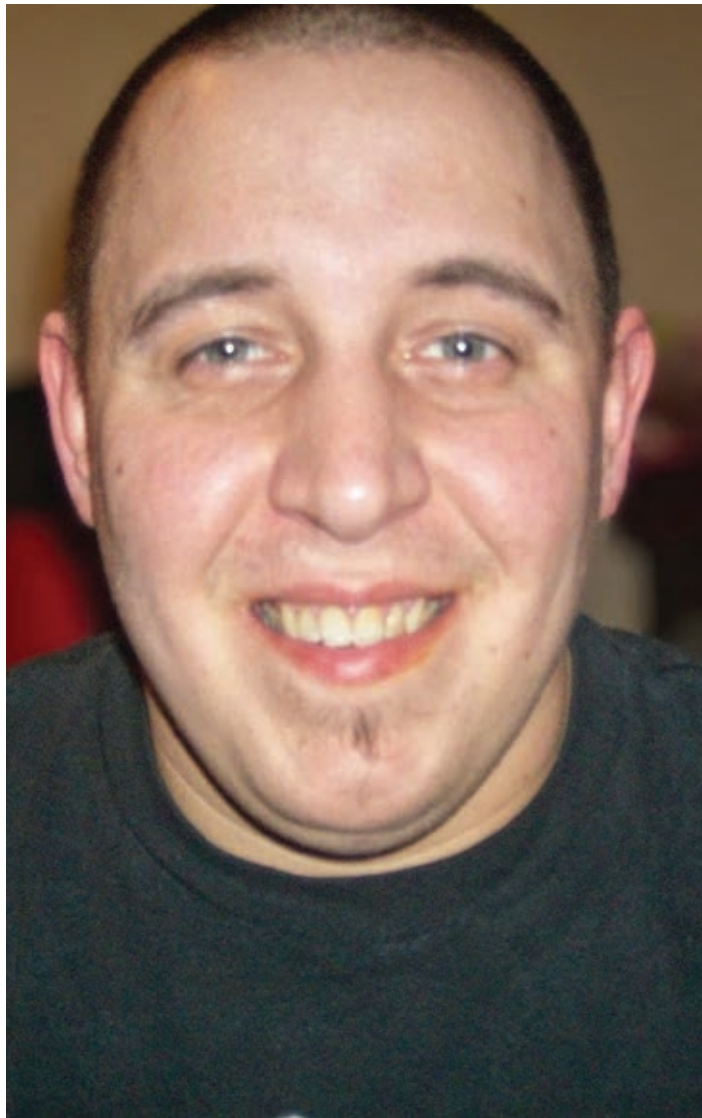
“Hoffman states shortly after the incident happened, a crane was used to try to pull out remains of the deceased. Unknown if any remains were removed. Per workers, the material will not be cool

enough to handle until (4 pm to 6 pm). Work supervisor was given a business card and told to call when material can be dumped to be sifted through for remains. Work supervisor also states the deceased has worked there for a little over a week.”

Schlieper reports that “there was an area marked off the caution tape that was put by Sheriff's Office.”

“There was a pit with molten material inside. No railings around the pit noted. . . . Material noted around the circumference of the pit, unknown

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Stephen Dierkes

Family Photo

Presidential waivers flout separation of powers

By Bruce Fein

It has become commonplace for Congress to endow the president with limitless discretion to waive application of a statutory mandate.

Waiver authority is most prominent in statutes bearing on national security or international commerce, but they also make more than cameo appearances in the domestic field.

Such unbounded executive authority is both injudicious and arguably unconstitutional.

It is symptomatic of wholesale congressional abdications to the executive branch to evade accountability.

Power inexorably flows to the executive

It is said that waivers are necessary because Congress cannot foresee all the circumstances in which application of a statute might subvert the public interest. True enough.

But that observation applies to every congressional enactment.

Life has always been in constant flux. In the digital age, change comes at warp speed. No person or collection of persons can foresee the future and tailor statutes accordingly.

The Constitution anticipates

a lack of clairvoyance by endowing Congress with power to repeal, amend, or supersede statutes based on experience. In cases of genuine emergencies, Congress is fully capable of legislating without tarry. It has done so even in non-emergency situations.

Congress acted with lightning speed in 1973 (Public Law 93-107) to prohibit television black outs of sporting events if tickets for attendance had been sold out 72 hours before game time.

And today, Congress enjoys a three-day work week (Tuesday, Wednesday, Thursday) which can easily be extended if circumstances show a need

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Dear new member: Welcome to Congress

26 tips to help you survive and thrive

By Congressman
Dennis Kucinich (1997-2013)

Congratulations! For many of you, as it was for me, election to Congress is the fulfillment of a dream. Now that you have arrived, I humbly offer for your consideration some practical guidelines as you begin your journey of service to our Nation.

1. Your Family. Don't trade your family or loved ones for a congressional seat. That will always be a bad deal. Take care to protect yourself, and those you love, by conserving personal time. Washington is exciting and full of distractions. In Washington, new acquaintances are not substitutes for friends and loved ones.

2. Your Time. Your scheduler must be sensitive to your need to protect time for yourself for food, for breaks, and to reflect.

3. Your Health. Congress can be demanding and stressful on your health. Don't hesitate to check-in with the Office of the House Physician.

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Steven Dierkes fell into a pit of molten metal with a temperature of 2600 degrees Fahrenheit

Photo: 123rf.com

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it was there prior to the deceased falling in.”

Schlieper reports that Brian Groeper of the Sheriff's office had a video of the incident given by Caterpillar.

“He gave me a flash drive and I copied the files. In the video, the deceased is carrying the pole to test samples of the material. Deceased was noted to have an abnormal gait. Deceased was walking towards the pit and stumbled. Deceased looks as if he went onto his knees first and then fell in the pit. The video is time stamped. The time the deceased fell in was at 09:23 per the timestamp on the video. Deceased was seen collecting a sample without issue prior to this incident.”

At about 4 pm, the coroner's office received a phone call from Christopher Lund, the manager at the Caterpillar foundry.

“He states they are ready to dump the material for use to sift through for remains. I responded back to Caterpillar in Mapleton. I sifted through the remains and found some bone fragments. They were placed into a paper sack and transported back to the Peoria County Morgue.”

What kind of a man was Steven Dierkes?

“Steven loved the outdoors and all animals,” his obituary read. “He was a loving person who enjoyed laughter from any source he could find. He was a hard-working teddy bear of a man with calloused hands and a tender heart. He would have done anything for anyone with no expectation of anything in return. He would have given a stranger the shirt from his back even though that may have been his last shirt. Most of all,

The thermal annihilation of Steven Dierkes

he was a wonderful loving father to his daughters that he absolutely adored.”

What has been law enforcement's response to the thermal annihilation of Steven Dierkes? Let's start with the Occupational Safety and Health Administration (OSHA).

In Chicago, OSHA's regional administrator Bill Donovan said that Steven Dierkes' death “could have been spared if Caterpillar had made sure required safety protections were in place, a fact that only adds to this tragedy.”

“Producing more than 150,000 tons each year, Caterpillar's foundry is one of the nation's largest and they should be acutely aware of industry regulations to protect workers using smelters and other dangerous equipment,” Donovan said.

OSHA cited Caterpillar Inc. for one willful violation and proposed fines of \$145,027, the civil maximum allowed under federal law.

Caterpillar doesn't think

OSHA: Steven Dierkes' death could have been spared if Caterpillar had made sure required safety protections were in place

OSHA should have designated it a willful violation and is challenging the citation. (In November 2022, the *Capitol Hill Citizen* filed a Freedom of Information Act request with OSHA for the video but OSHA has yet to respond.)

If determined willful, OSHA could refer the case to the Justice Department for criminal prosecution.

But even in cases of willful violations, federal criminal prosecutions of workplace deaths are rare. Since the passage of the Occupational Safety and Health Act in 1970, only 115 cases have been referred for prosecution under the act. During this time, there were approximately 425,000 workplace fatalities.

Because OSHA's criminal violations can only be misdemeanors, not felonies, federal prosecutors often regard these cases as a poor use of scarce time and resources.

Thermal annihilation corporate crime cases deserve felony provisions.

For years, Democrats in Congress have introduced legislation (the Protecting America's Workers Act) that would increase civil fines for OSHA violations and make willful violations subject to felony criminal prosecutions. But the last time Congress held hearings on the bill was 2010.

One of the lead co-sponsors of the legislation, Congressman Joe Courtney (D-Connecticut), said one of the key provisions of the legislation was to “au-

thorize felony penalties against employers who knowingly commit OSHA violations that result in death or serious bodily injury and extend such penalties to corporate officers and directors.”

“Under current law, maximum criminal penalties – no matter how egregious the conduct – are mere misdemeanors.”

But introducing the bill has been a Democratic public relations stunt since 2010. The legislation is reintroduced periodically. A press release is issued. But there is no action. No hearings. No votes. It's all performative. (Courtney did not respond to calls seeking comment.)

The AFL-CIO is complicit in this dereliction of duty to protect workers. It funds only two full time occupational safety and health staff. Every April, to commemorate Workers Memorial Day, the AFL puts out a comprehensive report documenting worker death tolls.

Last year, the report – *Death on the Job: The Toll of Neglect 2022* – found that “workplace hazards kill and disable approximately 125,000 workers each year – 4,764 from traumatic injuries, and an estimated 120,000 from occupational diseases. Job injury and illness numbers continue to be severe undercounts of the real problem.”

(In late December, OSHA announced that fatal work injuries in 2022 were up 9 percent from the previous year – to

5,190 fatal work injuries – one worker death every 101 minutes.)

But the AFL too is performative.

There has been no flexing of organized labor muscle in Congress to push through the legislation that would give prosecutors the tools and resources to criminally prosecute these companies.

The AFL-CIO did not even put out a statement about Dierkes thermal annihilation. Nor did the United Auto Workers, which represents workers at the Caterpillar foundry in Mapleton.

What about the state of Illinois? They could investigate the case for a possible reckless homicide charge against Caterpillar.

When Ira Reiner was the District Attorney for Los Angeles, he opened a criminal investigation into every workplace death. And some of those investigations led to criminal prosecutions. We wanted to ask Peoria County State's Attorney Linda Hoos – why no criminal investigation? Hoos did not return calls seeking comment.

Apparently, there is no criminal investigation at the state or federal level of Caterpillar, even though the Steven Dierkes family wants one.

The family had a hard time finding a lawyer because few lawyers in the Peoria area wanted to go up against Caterpillar. Illinois has the largest concentration of Caterpillar workers anywhere in the world, with 12,000 working in the Peoria area alone.

The family finally settled on a local lawyer named Damon Young. Young has filed a worker's compensation claim on behalf of the family and is hoping that OSHA rebuffs Caterpillar's challenge. A finding of gross negligence will allow him to proceed with a wrongful death claim against the company. Young has subpoenaed Caterpillar to get documents relevant to the case and to get a copy of the video of Dierkes death.

Congressman Darin LaHood (R-Illinois), who represents the Peoria area, Senator Dick Durbin (D-Illinois) and Senator Tammy Duckworth (D-Illinois) have yet to weigh in on the death of Dierkes. They did not return calls seeking comment for this article.

The Dierkes family wants justice for the thermal annihilation of their son, their partner and their father.

But the Justice Department, the state of Illinois, the AFL-CIO, the UAW and Congress are non responsive. **CHC**