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Supreme Court Backs Release Of OSHA Files

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A U.S. Supreme Court ruling in a Texas lawsuit has opened the door for lawyers of workers injured in industrial accidents to gain access to once-confidential federal-investigation documents.

By refusing to hear the case last week, the high court effectively upheld a Harris County district judge's decision ordering **Wyman-Gordon Co.** to release transcripts of employee interviews with federal investigators about a fatal 1996 accident at the company's Cypress metal-forging plant.

Wyman-Gordon, based in North Grafton, Mass., had tried to keep the contents of the transcripts secret, arguing that it wouldn't have cooperated so fully with investigators from the federal Occupational Safety and Health Administration if it had known that the results of that inquiry would wind up in the hands of plaintiffs' lawyers in a lawsuit against it.

Uncensored Records

As business and legal observers weigh the impact of the high court's decision, some consider that the release of OSHA transcripts from a company's own files could turn out to be especially damaging. That's because when OSHA itself has released such transcripts in the past—for example, under the Freedom of Information Act—it usually has blacked out the names of employee witnesses and other information that it judges to be sensitive, such as company trade secrets.

"There's no question that this case sends a message to corporations that if they have such documents and it's not illegal to do so because a suit's already filed, they should trash them," says Frederick C. Moss, an evidence-law professor at Southern Methodist University School of Law.

Business groups agree. If confidentiality isn't maintained, "it will have a dampening effect on cooperation," says Bill Hammond, president of the Austin-based Texas Association of Business and Chamber of Commerce. It isn't that businesses might try to block OSHA's accident investigations, he says; they just might be much more guarded in their answers. "There is a difference between answering a question and going out of the way to answer to the best of your abilities," he says.

OSHA officials agree that it's important to be able to offer confidentiality to the wit-

nesses it interviews, but they dismiss claims that the decision will make employers less willing to cooperate in future investigations. The officials declined to comment further.

The Supreme Court's decision stemmed from a lawsuit brought by the families of three men killed in an explosion of a pressurized nitrogen tank at a metal-forging plant owned by the company's Wyman-Gordon Forgings Inc. unit in Cypress, about 25 miles northwest of Houston. The blast occurred three days before Christ-

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mas 1996, while employees were working on seals on the 90-foot-high tank. Eight workers were killed, and several more were injured.

In the weeks after the accident, OSHA investigators looking at possible violations of federal work-safety rules interviewed 32 employees and plant managers about the blast. All were assured their testimony would remain confidential.

In June 1997, Wyman-Gordon and OSHA agreed to a settlement that would prevent further disciplinary action by the agency. The company agreed to pay \$1.8 million in fines for 35 safety violations, including failing to have proper employee training and failing to install proper safety equipment. In addition, the settlement called for the agency to monitor safety measures at the plant for two years.

Several families of those killed have settled claims against the company. But a handful have filed lawsuits. The first to go to trial was the one brought by the three families.

Procedures Questioned

In their suit filed in Harris County state district court in October 1997, the families of Steven Nagy, who was 29; Donald Terry Sr., 60; and Amos Lightfoot, 56, accuse Wyman-Gordon of gross negligence. The suit says the company failed to maintain a safe workplace and alleges, among other things, that Wyman-Gordon neglected to follow established procedures designed to prevent explosions of pressurized tanks. The suit seeks more than \$140 million in damages, including \$75 million in punitive

damages. Lawyers for the three Houston-area families sought access to the OSHA interview transcripts early in the case. The lawyers said the interviews could corroborate suspicions about the incident they couldn't otherwise prove, and might provide new information that may have come from witnesses while their memories were still fresh. The lawyers said the transcripts also might reveal inconsistencies in the statements of unfriendly witnesses, which the attorneys could point out during trial.

District Judge Lamar McCorkle ordered the release of the transcripts, but he kept the documents under seal while Wyman-Gordon appealed his decision. The Texas 14th Court of Appeals refused to hear the case in May, and the Texas Supreme Court did the same in October. When the U.S. Supreme Court on Jan. 11 refused to overturn Judge McCorkle's order, the judge unsealed the documents and gave them to lawyers for the families.

Important Precedent

Richard Mithoff, attorney for the Nagy family, says the lawyers haven't fully determined how the OSHA statements will help their case. Regardless, he says, the release of the statements is important because it should allow for the release of similar such documents in the future.

"Those pursuing an honest business policy should have no problem with this ruling," Mr. Mithoff says. "But those who are trying to shield the testimony of their employees won't like it."

Wyman-Gordon's lawyers argued that the company only cooperated with OSHA because it had been promised the employee and management statements would be kept confidential and not be available to be used against it in lawsuits. A "very important public-policy issue is at stake" in the release and use of these documents, says Paula W. Hinton, a Houston attorney for Wyman-Gordon. "Every employer wants to be encouraged to cooperate with investigations [like this], and we did."

In its attempt to block the release, the company also argued that OSHA's investigation should be considered still in progress until the end of the two-year safety-monitoring period that began with the 1997 settlement. Releasing the interview transcripts before the investigation has been completed is improper, Ms. Hinton says.

Ms. Hinton also argues that the transcripts shouldn't be allowed in court because the statements were taken without the opportunity for Wyman-Gordon lawyers to ask questions or cross-examine the witnesses, as they would in pretrial depositions. Nevertheless, Ms. Hinton says that the release of the documents won't hurt the company's defense in the underlying lawsuit. "My suspicion," she says, "is that they are looking for a smoking gun, but it's not there."