

Garner ConAgra Explosion: Workers Compensation Claims and Lawsuits Provide Separate Paths to Compensation

A Question and Answer Session with Mark McGrath

On the morning of June 9, 2009, a massive explosion ripped through the ConAgra processing facility in Garner, North Carolina. The blast tore gaping holes in the roof of the facility and collapsed other portions of the roof and an exterior wall. The explosion killed three workers, caused severe burns to at least four, exposed many workers to released ammonia, and sent dozens of ConAgra employees to local hospitals. Federal, state and local federal officials have descended on the Garner facility and have begun the laborious task of identifying the cause and origin of the explosion.

Federal investigators are now focusing on the installation of an industrial water heater as the most likely cause of the blast. Investigators from the United States Chemical Safety Board suspect that the explosion occurred while contractors were purging a gas line. It is believed that purging of the line resulted in the release of an explosive natural gas cloud directly into the plant. It is further believed that some source of ignition inside the plant ignited the gas cloud, resulting in a catastrophic explosion.

As with any large-scale industrial accident, the ConAgra explosion is certain to spawn workers' compensation claims and related litigation. Mark McGrath is experienced in the representation of workers who have been injured in similar explosions. Mark made himself available this morning to answer and provide updates to some of the most common questions that are being asked by injured workers and their family members.

I was injured in the explosion at the Garner ConAgra plant. What are my rights?

At this point in time, we have to speak in terms of possible rights. If you were an employee of ConAgra, and were injured while you were "on the clock" and working in the plant, you certainly have a workers' compensation claim. Whether you have any further rights or claims will depend on the results of the investigation currently being conducted by state and federal officials. In some cases you may be able to sue other parties for their negligence in court. If you have been injured, be sure to report the injury to your employer and make sure you fill out the paperwork for a workers' compensation claim. Of course, it goes without saying, but seek medical attention immediately for any injuries or symptoms you might be experiencing, and listen to your doctor.

Based on what you know so far, do you think we will have claims against any other parties?

The tentative results of the investigation suggest that injured workers WILL have viable claims against outside contractors that can be filed as negligence suits in state court. If outside contractors are responsible for the gas leak, injured ConAgra workers will have claims against those contractors.

What will the standards be for those claims?

There are very basic industrial standards governing the installation, maintenance and repair of gas lines and equipment that utilizes natural gas as its fuel source. For example, in a number of similar explosions state OSHA investigators have cited responsible parties for: (1) failing to implement methods and procedures for testing concentrations of natural gas, procedures for purging gas line or methods to

control operation of gas; (2) failing to instruct or train employees regarding methods for testing natural gas concentrations, procedures for purging gas or methods to control access to valves and pipes; (3) Purging lines of air without within an enclosed space without providing venting; (4) failure to close vents after air is purged; (5) negligently allowing natural gas to accumulate in an enclosed space; (6) negligently allowing explosive gas to accumulate in dangerous levels; and (7) failure to test the concentration of fugitive natural gas within enclosed spaces.

In addition, a number of very technical industrial standards will come into play. Most importantly, any claim arising out of the explosion will likely hinge upon the application and interpretation of standards promulgated by the National Fire Protection Association. NFPA standards provide very specific requirements regarding the locations, installation and maintenance of equipment such as natural gas-powered water heaters in environments where electrical equipment, open flames and other potential sources of ignition are present. I would suspect that investigators will be asking why the contractors (or ConAgra) decided to locate the water heater and gas lines in locations where any gases emitted from them, whether intentionally or not, could be exposed to potential sources of ignition.

What will workers' compensation give me?

The compensation available under the workers' compensation program is very limited. Basically, your employer is required to pay for your medical expenses and to pay you a percentage of your weekly wage while you are out of work. You cannot recover intangible damages, such as pain and suffering, under the workers' compensation program, nor are you able to recover damages for loss of future earning capacity. If you have lost a limb or use of a body part you can recover scheduled compensation for those kinds of injuries. Even though the benefits available under workers' compensation will not make you whole, you can still make the most of what is available to you under the program. Remember, it is quite possible that this, together with any health insurance you might have, will be the only compensation you will receive. The North Carolina Industrial Commission has some very useful information on its web site, and I would recommend it to anyone who has been impacted by this tragedy. See <http://www.ic.nc.gov>

Do I need a lawyer to file my workers' compensation claim?

If you have suffered a significant injury, you should definitely hire a lawyer to assist you in pressing your workers' compensation claim. You have to keep in mind, the people who you talk to on the phone, who pay your medical expenses and related costs, are not working for you. They work for the insurance company that provides workers' compensation coverage to ConAgra. When you talk to an adjuster, you need to keep one undeniable truth in mind: this guy is not your friend. He is not trying to get you the best healthcare possible. He is not lying awake at night worrying about your condition. His job is to pay only the benefits that the carrier is absolutely legally required to pay. If there is a choice to be made between "Cadillac" treatment and "Kia" treatment, he is always going to push for the "Kia" treatment. This is why you need a lawyer. These people are trained in keeping claims payments to a minimum, and they will nibble away at you until you are eaten alive. You need to worry about getting back on your feet. You do not have time to keep after insurance adjusters and case managers. Hire a lawyer, let him or her worry about the workers' compensation claim and you worry about getting better. This is what we do for a living.

Is workers' compensation all that is available to me?

Not necessarily. Again, whether additional claims are available to you will depend on what comes to light during the accident investigation. Under North Carolina law, except in very rare circumstances, you cannot sue your employer or fellow employees for work-related injuries. You can, however, file suit against any other person or entity if they caused or contributed to your injuries. Let me give you an example. Suppose that the investigation determines conclusively that the explosion was caused by the natural gas leak, and that the leak was caused by the negligence of one or more outside contractors. In that case, injured workers likely possess claims against those contractors for negligence. Think of it like this, if the investigation points the finger of guilt or responsibility at anyone other than ConAgra, that person can be sued in court. This is called a "third party" action, because the person you are suing is a person other than your employer. Our firm handles these cases all the time.

Why would I sue in court if workers' compensation pays my medical expenses and a percentage of my weekly wage?

Well, for one thing, there are statutory limits to the benefits that need to be paid under workers' compensation. When you hit those limits, you are basically on your own. Even while you are being compensated, however, workers' compensation barely touches upon the many losses and damages that you have incurred. For example, think of the physical and emotional pain and suffering that you have experienced. You can recover damages for these losses in a lawsuit against negligent third parties. What if your loved one was killed in the explosion? Workers' compensation pays a meager death benefit and little else. What about the emotional damage you have suffered because your loved one was needlessly taken from you? The loss of her love, support and companionship? Damages for these kinds of losses cannot be recovered in a workers' compensation claim, but they can be recovered in a lawsuit against culpable third parties. Also, the spouses of injured workers can recover damages for harm that the injury has inflicted upon their marital relationship, a claim known as loss of consortium. This kind of claim cannot be brought under the workers' compensation program, but it can be recovered in a civil suit for damages that are brought in superior court.

Lots of people at work are saying that they know things that are relevant to the investigation. They are willing to talk to other workers, but not to investigators, lawyers or other people outside the company. What should I do?

It is very common after incidents of this sort for there to be lots of rumors and scuttlebutt among the employees. Keep your ears open. Many times, there is a kernel of truth lying beneath the rumors. If you hear that Jimmy Smith talked to Rob Jones, and that Rob says that the boiler was supposed to be replaced but the contractor changed his mind, write this down. Keep a list of the rumors you hear and from whom you hear them. Store any and all emails that you receive from your employer and co-workers. These people may be very reluctant to speak with anyone, especially an attorney, at this point in time. If a lawsuit arises down the line, however, they can be forced to appear for a deposition upon the issuance of a subpoena.

Have you worked on any cases like this one?

Like I said, the bulk of my practice is representing people who been injured in accidents just like this one. Our firm represents people who have suffered burns, electrical injuries and other catastrophic injuries. We have represented people who have been injured or killed in fires and industrial explosions. My partners and I have studied the NFPA standards in detail. We have them on our bookshelves, and

spend more time with our noses in them than our spouses would like. We have a network of expert witnesses who know the relevant codes and standards inside out. We have them on speed dial, and can have them working on a case within minutes of signing up a client. This kind of case is our bread and butter. Call me weird, but this kind of accident really gets my juices flowing. I know that someone out there is to blame. I know that innocent people have had their lives ripped apart because someone, somewhere, did not do his or her job right. I know that unless a proper, impartial and thorough investigation is undertaken on behalf of the injured workers that little of value will ever come to light. I despise injustice, and the merest hint of corporate negligence costing someone her life or her health causes my blood to boil. Again, this kind of accident rarely if ever occurs in the absence of negligence of some kind. The job is identifying that negligence, and holding the responsible party to task. That is the kind of challenge that keeps me singing in the shower every morning. I get to help people for a living. In this day and age, how many people can honestly say that?

I've heard that some big shot law firms from New York and other places are trying to sign up clients here in North Carolina. Should I talk to them?

For heaven's sake, stay clear of these guys. I remember the horrible fire they had in Hamlet years ago, and it was revolting the way the out-of-state firms pulled into town like snake oil salesmen. There is no out of state lawyer out there who knows half as much of the North Carolina law that will be applied to any case that is brought arising out of this explosion. They come down here making big promises, and their only goal is to get your name on a piece of paper. In all likelihood, they will simply get you to sign on the dotted line, and then farm the case out to someone like myself. They are basically brokering the case. I would urge anyone considering hiring a lawyer to hire a North Carolina lawyer. I encourage anyone who comes into our office and talks to me about a claim to speak with other firms if they have any doubt about hiring us. I am that confident in our abilities and our track record. I would never, ever recommend that prospective clients give one minute of their time to some out-of-state hired gun attorney or firm.

My wife was injured in the explosion. Do I need a lawyer now, or can it wait?

WHOEVER YOU CHOOSE, YOU ARE DOING YOURSELF A DISSERVICE UNLESS YOU BEGIN THE PROCESS OF HIRING AN ATTORNEY IMMEDIATELY. Why? There are many reasons. For one, evidence in these kinds of cases has a funny way of disappearing in the weeks and months following a tragedy like this. If you get a lawyer involved immediately, he or she can take steps to ensure that all relevant evidence is preserved. Hiring a lawyer early in the game also allows the attorney to monitor the investigations being conducted by the Chemical Safety Board, NCDOL, law enforcement and other agencies. In some circumstances, clients may even be permitted to intervene and participate in any proceedings that result from the imposition of fines or the issuance of citations in connection with these investigations. Hiring a lawyer in the shadow of the tragedy also lets you shift some of the burden to his shoulders. You and your family are likely dealing with emotional turmoil, financial difficulties and other domestic disruptions. Worrying about keeping an eye on the legal side of things is simply too daunting a task for the average guy. Get a lawyer involved, give him his marching orders, and focus on the things that really matter: getting healed and tending to your family's immediate needs.

Any final words of advice for us?

My heart goes out to the people who have been affected by this tragedy. Sadly, it is an all too common story. After years of representing folks who have been injured or killed in these kinds of accidents, I have become somewhat jaded. I have lost confidence in those who are entrusted with the enforcement of labor standards. Time and time again I see the agencies like NCDOL failing to conduct thorough investigations, and failing to pursue parties who bear responsibility for accidents that kill and maim innocent workers. In a world where the agencies charged with policing industries and enforcing labor standards are friendlier and more sympathetic to the industries than they are to injured people, who else is there with the experience, expertise and financial resources to mount such investigations. That's right, lawyers like me. Without us, we are left with agencies like the FDA and the FAA, and we have seen dramatic evidence lately of the fine job that they are doing for consumers.

That being said, it looks to me like the Chemical Safety Board is doing a very fine job of investigating this explosion. When they have investigated explosions in the past, their final reports have been comprehensive, virtual road maps to a successful lawsuit. That being said, their job is to identify a cause and to prevent similar incidents from occurring in the future. It is not their job to identify the parties legally responsible for the explosion. That is what I do for a living. It is not an easy job, but I love it.

I used to represent insurance companies and large corporations and defend them in lawsuits brought by injured people. After about a dozen years of doing that, I became disgusted with myself. I was in the business of defending wrongdoers and separating injured people from the compensation they deserved. I've learned, slowly perhaps, that prevailing in a lawsuit isn't all about the money, despite what the cynics might say. For many injured people and their loved ones, obtaining a fair settlement or prevailing at trial brings a tremendous sense of closure, and also provides them with an affirmation that justice will inevitably prevail when the cause is true and when the pursuit of it is well-engineered and relentless.

It's easy to grow emotional calluses when you are, like myself, in the catastrophe business. But events like this dissolve them. I share the pain of the people whose lives have been ripped apart by this tragedy. Since yesterday, I have been unable to get their grieving faces out of my mind, especially when I lay in bed at night. To those who have been affected by this unspeakable tragedy, you are all in our thoughts and prayers.