

# ON THE PLAINTIFF'S SIDE

John D. Kassel, Esq. Theile B. McVey, Esq.

December 2016

Volume 6, No. 1

## The View from Here

### Happy Holidays!

By John Kassel

Everyone here at Kassel McVey wishes you and yours a wonderful and safe holiday season. We hope that the new year brings you opportunity and joy, and a chance to do good things with family and friends. Given our divided country, we need more than ever to step and bring forth acts of kindness. Simple acts of random kindness.

This year Kassel McVey is celebrating its 15<sup>th</sup> year of service as trial lawyers. In 2001, Theile McVey and I put together this law firm with the idea of representing injured people and their families. We have sought to bring excellence and commitment to our work.

While our adversaries may try to outspend us, no one will outwork us. The relationships we have with our clients push us to be our best. I am proud of the team Theile and I have put together.

Everyone strives to give the best client service we can. So this year as we celebrate the holidays, we also will raise a toast to 15 years of legal service to our clients and the promise to continue our work in the future. Happy Holidays and Happy New Year!!

## Also in this issue

- Kassel McVey wins \$14 million verdict in asbestos cancer case, p. 2
- Theile McVey elected vice president of the South Carolina Association for Justice, p. 2



A production machine in which a client of Kassel McVey was severely injured. The machine lacked an available safeguard.

## Manufacturer failed to install safeguard on production machine

It seemed just like any other day on the job. Only this one would prove to be life changing.

The August heat permeated the plant in the small South Carolina town in the Pee Dee. Employees relied on respirator masks and ear plugs to guard against the airborne dust and noise levels.

Jimmy, on the job for five months, was operating a sophisticated machine that made erosion control blankets. Out of the end of the machine came eight-foot-wide rolls of straw held together by a nylon backing. The blankets would be used on highway projects to secure embankments from soil erosion.

During the morning shift, the straw material began bunching up as it headed to the winder rollers. Jimmy grabbed the edge of the moving blanket with his right hand to attempt to straighten out the blanket. Before he knew it, his right hand and arm had been dragged into the winder rollers, stopping only at his shoulder.

The emergency stop button and stop cord were out of reach. Jimmie suf-

See SAFEGUARD, p. 3

# Kassel McVey wins \$14 million verdict in asbestos cancer case

A Spartanburg County jury has awarded \$14 million in damages to the family of Dennis Seay, a maintenance worker who developed cancer as a result of being exposed to asbestos while working at the Celanese plant in Spartanburg in the 1970's.

Dennis Seay passed away in 2014, a little more than a year after being diagnosed with mesothelioma, a rare and particularly aggressive form of cancer than is linked almost exclusively to exposure to asbestos. From 1971 to 1980, Seay had been employed by Daniel Construction Co. to perform maintenance work at a polyester fiber manufacturing plant owned by Celanese, a specialty materials company headquartered in Texas.

The Seay family was represented by Theile McVey of the Kassel McVey firm and Chris Panatier and Kevin Paul of Simon Greenstone Panatier & Bartlett.

Dennis Seay worked hard every day maintaining pipes, pumps and valves at the Celanese plant. During the 1970's, the pipes were insulated with asbestos. The pumps and valves contained asbestos gaskets and packing and were also insulated with asbestos. In order to perform the maintenance work, the asbestos insulation, gaskets and packing had to be removed, all of which exposed Mr. Seay to an enormous amount of asbestos.

At the time Dennis Seay was working at the plant, Celanese had unusually extensive knowledge about the effects of asbestos, but failed to provide warnings about those known dangers to workers or contractors. The company's medical director had attended a landmark conference hosted by the New York Academy of Sciences in 1964 about the product's dangers. Numerous documents showed an intention by Celanese to conceal from workers and contractors how much asbestos they were being exposed to and what that exposure meant to the health of the workers.

After a nine-day trial, the jury deliberated for about two and a half hours before finding Celanese liable and returning a verdict of \$12 million in actual damages. After another brief deliberation, the jury assessed Celanese an additional \$2 million in punitive damages. The jury also returned a defense verdict in favor of another defendant, John Crane Inc., which manufactured asbestos-containing gaskets used at the plant.

As a result of his mesothelioma, Dennis Seay suffered extensively. His lungs collapsed 10 times and he underwent several surgeries and endured chemotherapy before passing away from a combination of blood constriction, wasting and suffocation. Seay was survived by his wife of nearly 50 years, three children and many grandchildren.

After the jury came back with the \$12 million actual damage verdict, prior to the punitive damage phase, Celanese, through their lawyers, apologized. Despite that apology, Celanese has appealed the verdict.

**We're here for you**  
We are attorneys committed to providing excellent legal service with compassion and respect. We do not represent insurance companies. We work for injured people to obtain fair compensation. Call us and let us make a difference for you.

## News & Events

**NEW VICE PRESIDENT** — Theile B. McVey of Kassel McVey has been elected this year as vice president of the South Carolina Association for Justice, the premier organization of plaintiff trial lawyers in the state. The position is a great honor bestowed by her peers,



fellow trial lawyers. The position is time intensive, requiring work on legislative priorities, membership, and fundraising.

For Mardi Gras, Theile has been invited to speak in New Orleans to the Southern Trial Lawyers Association.

**AND!...**Theile has been named a Super Lawyer for South Carolina in the area of personal injury law for 2016.

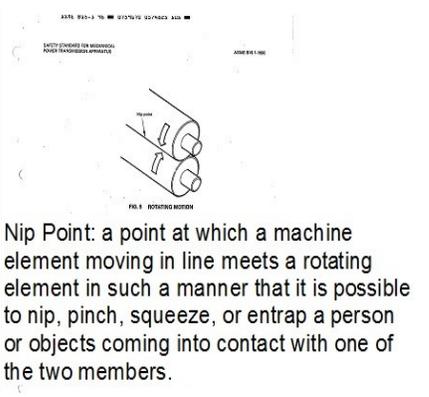


**MEETING THE VEEP** — John Kassel of Kassel McVey and Patricia Kassel got a chance in October to meet Vice President Joe Biden. Biden was in Columbia at a fundraiser for Fran Person, who was running for Congress from South Carolina's Fifth District.

**SEMINAR PRESENTATION** — Elizabeth Moultrie, senior paralegal at Kassel McVey, was invited by the Paralegal Education Institute to make a presentation on October 21. The seminar, held at the Hilton Garden Inn Columbia Northeast, was attended by 23 paralegals and one attorney from across South Carolina. Elizabeth discussed successful management of complex cases. The lessons included initial case management, information collection, drafting pleadings, and powerful discovery techniques. This is the second seminar Elizabeth has been asked to present.



Drawing (at right) of a nip point in the ANSI Safety Standard for Mechanical Power Transmission Apparatus, ASME B15.1-1996. Photograph at left is of the winder rollers of Jimmy's machine.



Nip Point: a point at which a machine element moving in line meets a rotating element in such a manner that it is possible to nip, pinch, squeeze, or entrap a person or objects coming into contact with one of the two members.

# Production machine lacked needed safeguard

SAFEGUARD from Page 1

ferred massive fractures of all the bones in his forearm and upper arm. He had muscle and tissue loss. He would never recover his strength and range of motion. Jimmy's orthopaedic surgeon described the right dominant hand as at best a "helper hand." Jimmy was 35 at the time.

The lawyers at Kassel McVey looked at Jimmy's case. We visited the plant and inspected the machine with an expert in mechanical engineering.

It turned out the machine had two rollers rotating very close together in opposite directions. This condition has long been described in the engineering literature as a "nip point," a recognized hazard capable of causing severe injury or death. Jimmy was injured by an unguarded nip point. Were safeguards available that would have prevented this injury? We wanted to find out.

Through the use of subpoena power and depositions, we learned of several similar tragic accidents occurring on similar machines long before Jimmy got hurt. A similar injury had occurred to a plant manager in Pennsylvania. We found a similar injury to a worker in southeastern Georgia.

And yes, there was a safety device available that was cost-effective, reliable, would not unduly interfere with production, and, most importantly, would have prevented injury. The safety device is called a light curtain. It shoots a beam of light in front of the winder rollers. Operating much like the electric eye of a garage door opener, the light curtain is designed to stop the winder rollers instantly if a hand or object breaks the beam.

There was one problem with the case. The machine manufacturer hired expert engineers who gave opinions that light curtains don't work, are not reliable, and can easily be undermined. The engineers claimed that the injury to Jimmy wasn't due to a lack of safeguarding, but rather it occurred because Jimmy had placed his hand too close to the moving winder rollers.

That seemed like a formidable argument. That is, until we took a trip to Europe for depositions of the machine manufacturer. After hiring a court reporter, videographer, and translator, we learned one key fact: the manufacturer itself does not allow its operators to run its own machine in its own plant without a light curtain guarding the winder rollers.

The lesson was clear. It made no sense to blame the worker for a catastrophic injury when simple safeguarding was available that would have eliminated the risk of injury. From time to time, workers make mistakes. It should not cost them an arm and a leg.

## Happenings

South Carolina Appleseed board member John Kassel introducing Stuart Andrews, this year's winner of Appleseed's Clementa Pinckney Advocate of the Year Award. Appleseed is a nonprofit advocacy group for low-income persons and families.



THAT'S THE SPIRIT — Elizabeth Moultrie, senior paralegal at Kassel McVey, in costume on Halloween. Elizabeth is a six-year employee at Kassel McVey.



KASSEL  McVEY  
ATTORNEYS AT LAW

1330 Laurel Street  
P.O. Box 1476  
Columbia, South Carolina 29202  
**Phone:** 803.256.4242  
**Toll Free:** 855.256.4242  
**Fax:** 803.256.1952

PLACE  
STAMP  
HERE

Ready to make a difference for you



Areas of practice: *Medical Malpractice, Nursing Home Litigation, Products Liability, State and Federal Tort Claims Cases, Insurance Bad Faith, Wrongful Death and Personal Injury, Premises Liability.*

If you do not wish to receive this publication in the future, please email [akaminer@kassellaw.com](mailto:akaminer@kassellaw.com). We will promptly remove your name from our list.

Newsletter editor: David Kassel, Accountable Strategies Consulting



*From all of us at  
Kassel McVey*

