

CENTERPIECE

Jury verdict of \$10,580,000 for farmer who lost his leg in unguarded cornheader.

McMillian v. Massey-Ferguson, Inc., Ala., Mobile County Circuit Court, No. CV-82-000686-K, Apr. 12, 1985.

On September 15, 1981, at 5 a.m., the light was on in the kitchen of J.J. McMillian's house in Perdue Hill, Ala. He was fixing breakfast. John Jacob McMillian grew up on the farm and, by age 39, had spent most of his adult life farming. He was divorced and had custody of his two children, ages 9 and 11. He got the kids off to school and set to work gathering corn, operating a Massey-Ferguson 510 combine and Model 44 cornhead. On most days, he would meet the school bus in the afternoon and the children would help him feed the cattle before supper. Today, while his children waited anxiously at the bus stop, he would be fighting for his life, alone in that cornfield. McMillian was having problems with "pig weed" that grew up alongside the cornstalks. The pig weed would fall back over the trough of the auger, which carried the corn from the cornhead to the throat of the combine, blocking the passage. It was about 9:30 a.m. when McMillian stopped the forward motion of the combine, leaving the thresher and auger operating, and climbed onto the throat of the combine to shove the blockage of pig weed into the auger. Suddenly, the auger grabbed the stalks of pig weed that he was standing on and jerked his legs out from under him. McMillian fell onto the rotating auger, which chewed up his left leg until the mechanism jammed and the slipping drive belts burned off. For nearly eight hours, he battled against the auger's grip. Several times he smashed his head against the machine in an effort to find relief from the agony in unconsciousness. The children had called neighbors who found McMillian at 5 p.m. and used a cutting torch to extract him. Doctors were forced to perform several amputations of the leg that ultimately left McMillian with only about 5 inches of stump.

A Step Backward in Safety

Farming is perhaps the most hazardous occupation in the U.S. 6,400 people die and 570,000 are disabled annually on America's farms. The death rate for farm residents is 3 times that in industrial workplaces. One reason, says Harry Philo, is that "most farm machines fail to incorporate elementary principles of safe design, which were accepted long ago in other types of industrial machinery." Lawyers Desk Reference §10.2 (1979). ATLA Members James A. Yance and Richard Bounds of Mobile, Ala. brought an action in McMillian's behalf

against Massey-Ferguson, alleging negligent design, strict liability under Alabama's Extended Manufacturer's Liability Doctrine and willful and wanton misconduct. Counsel initially contended that the machine should have been equipped with a barrier guard over the open auger, a deadman switch under the operator's seat to shut off the auger when the operator left his position, a switch to cut off the auger when raised to form a platform for the operator and a reverse mechanism to enable the operator to remove clogs without coming close to the running auger. Counsel quickly decided that the simplest device, the guard, was the key to the case. They learned in discovery that Massey-Ferguson's first cornheader, manufactured in 1958, featured a closed auger with a cover that provided some measure of protection for the operator. A similar closed design was used by most of the other manufacturers of similar machines. In 1960, Massey-Ferguson introduced the open auger design. Over the course of the next 15 years, every major manufacturer of cornheaders followed suit. Yance talked about the case to other lawyers around the country and received the discouraging observation that this industry-wide conformity to the open auger design would be a major stumbling block to imposing liability on Massey-Ferguson. But in Jim Yance's view, the burden was on the other side: What justified an industry already lagging in safety to take a major step backward in operator protection?

The "Fire" in the Case

Massey-Ferguson, in prior cases and in the depositions of its experts, put forth several reasons for its design decision. None was particularly convincing. Although an auger guard would add up to 200 pounds to the weight of the machine, Massey-Ferguson had added tons by increasing the capacity of the combine over the years. A closed auger would not slow the machine since it was the combine that generally lagged behind the cornhead in high yield fields. The most outrageous contention was that a closed auger would add to the danger by inviting the operator into the area of the running cornheader. This from the folks who had provided a handhold and non-skid surface at the very spot where McMillian was standing when he fell into the machine. There was only one motive that made sense. Profit. A guard would cost about \$200. Since Massey-Ferguson manufactured 100,000 cornheaders over the years, it saved at least \$20 million. The other major manufacturers eventually adopted the same unsafe design for no other reason than to remain competitive in price.

Jim Yance has a philosophy that the most effective case is one in which the credible facts present a theme,