



St. Louis Chapter Newsletter July 2019



Next Meeting

Monday, July 8th

Lunch Meeting

Developing Safety Leaders, with speaker Ray Boehm, Sr. Vice President, Risk Management, Keeley Companies

Location:

Syberg's Restaurant
2430 Old Dorsett Rd
Maryland Heights, MO 63043

Time:

11:30am Registration & Networking
12:00pm Lunch, Chapter Business & Presentation

[Register Here](#)

Coming Up

Friday August 5th through 7th – CHST Prep Course (see below)

Monday, August 12th - Joint Meeting with AIHA

Speaker Kerry Goyette presents a new perspective on safety and the behaviors that it affects. She will provide data driven solutions to help your team to be safer and more engaged.

Monday, September 9th – Business Tour

Join us for a tour of Watlow Electric Manufacturing Co., a family-owned company that designs and manufactures industrial electric heaters, sensors, and controllers. Time to be announced.

Monday, October 14th – Lunch Meeting

Speaker Chris Archer of Archer & Lassa LLC. will provide us with the latest information in the legal circles that affect worker's compensation.

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CHST Prep Course – August 5, 6, and 7

The chapter has arranged for a local prep course for the Board of Certified Safety Professional's [Construction Health and Safety Technician](#) (CHST) certification exam. This course will review construction-related safety concepts and practice exam questions.

The prep course is \$800 per person and will be hosted at French Gerleman (2023 Westport Center Drive, St. Louis, MO). Members self-paying for this course are eligible for our [Professional Development Scholarship](#) ([application](#)).

Ventilation: Theoretical Meets Reality

by William Kincaid, P.E., CSP, CET

Lockton Companies of St. Louis

Numerous common plant operations require forced air exhaust ventilation to keep airborne contaminants to safe levels, or to prevent fires and explosions. Recent events at some client locations have made it clear the knowledge of how to ensure ventilation is working effectively may not be so common. This month we'll take a very quick, simple look at a complicated subject to answer a few questions about ventilation.

Question 1: When we built this exhaust system, we figured out how much air we had to remove to get the required number of air changes. Then we went with a blower that would give us 25% more capacity than we calculated we would need. That's how you do it, right?

Answer: There's more to it than just buying a big blower fan. Because the system functions in an indoor environment, you need to supply enough air coming in to replace what's going out – there's various standards for this but typically you'll see the makeup air supply needs to be 90% to 125% of the exhaust capacity. I've been told by experts it's better to go with more than 100% makeup air so the building has a little bit of positive pressure. If there's negative pressure in the building, any exhausts that are convection only such as gas unit heaters, furnaces and water heaters can actually run backwards, pulling carbon monoxide etc. back into the building! You also must consider pressure losses in the piping including the losses in each intersection, reducer and bend, the hood efficiency which varies depending on the hood arrangement, etc. – there's a lot more to it than just the blower rating. In my experience lack of makeup air is the main reason exhaust systems with outside stacks don't work.

Question 2: We have this system on a PM schedule, and there are some gauges on the pipes, although we don't actually have anything set as to when they are to be read. Is that enough maintenance to meet the standards?

Answer: There are a lot of standards, but in a general way we can say any exhaust system which exists to protect people has to be tested before putting it into use, and periodically thereafter, depending on the applicable standards. The usual way we know the system's working up to par is to measure the velocity of the air going through it, using a pitot tube, and multiplying that times the cross section area of the pipe where the measurement was taken to give us volumetric flow rate. Once we're sure of that, we can sometimes monitor the system's performance with pressure gauges, but there should be periodic measurement of flow rates to be sure.

Question 3: Since our system was initially tested and found to meet the design specs, shouldn't our indoor air always be clean? Our carbon dioxide monitors are reading several parts per million all of a sudden, even after we got rid of our last propane forklift.

Answer: There are various factors that can reduce the efficiency of an exhaust system. A shortage of makeup air is a top efficiency killer. We often see it become a problem in the fall when outside temperatures drop and as a result we start keeping all our dock doors closed. Cross drafts also rank up there – all those fans the typical factory worker likes to run year-round can keep contaminated air from making it to the hood. Maybe there's something blocking air flow – have you inspected your piping inside and out for new dents, open branches which aren't connected to anything, blockages caused by debris getting into the stacks, disconnected pipe joints, and anything else under the sun that can happen? We've even seen blower motors

wired wrong and running backward, which really cuts blower efficiency. Again, a good test of the system and an inspection will help find the trouble.

Question 4: We have dust collectors all over the plant for our woodworking operations – our CNC routers, our sanding machines, our saws, etc. Just the same, the sawdust is everywhere. There's so much on the overhead bar joists, conduits and piping that the insurance company wants us to clean it – 200,000 square feet worth! What's going wrong here?

Answer: Chances are, it's more than one problem. How well do those dust collectors work? Are they capturing all the sawdust being generated by those machines? Maybe the pickup tube isn't close enough to where the dust is being generated, or maybe there's a pedestal fan blowing on the machine that blows the dust out of the way before it reaches the pickup. Plus, how much is escaping the dust collectors after being captured? Indoor dust collectors don't need makeup air from outside, but if they have small leaks in positive pressure piping, pinhole leaks in bags, and so on, fine dust will make its way out. Over the years it will settle everywhere, but when it settles out of reach, it accumulates.

What about the actions that generate dust, but aren't connected to a dust collector? Blowing down work areas with air nozzles, sweeping up dust on the floor with push brooms, hand sanding and sanding with jitterbugs, intermittently-used machines like chop saws and radial arm saws nobody thought to put onto a dust system, and who knows what else. All that dust will go somewhere, and it does – just not anywhere we want it to go. Overhead accumulations of combustible dust are a major hazard. There's no room left here to talk about explosion suppression, deflagration isolation, venting, and all the other precautions which combustible dust handling equipment requires – that's a topic for another day.

Conclusion

From all the preceding questions and answers, we see all our plans and investment to ventilate our workplaces become ineffective when running into the reality of all the factors that can reduce system efficiency. The logical conclusion is to think through the ventilation system based on all the various sources of contamination, know what standards apply to the system, and follow their lead as to establishing the design. For outside exhausts, provide enough makeup air year-round, test as needed, and have a disciplined approach to regularly making sure there isn't anything reducing the efficiency of the system. For dust collection, look beyond the main sources to the lesser sources which contribute to fugitive dust. Chances are, the costs to keep plant air clean are going to be much lower than the consequences of a dirty indoor atmosphere.



MO Comp News

- Dominic Archer

June, 2019

Co-Employee Liability

In *Danny Brock v Peter Dunne*, the claimant sued his supervisor in negligence for ordering him to clean a laminating machine that was still running and whose safety guards had been removed. The claimant sustained injuries when his hand got caught in the rollers. The suit proceeded to a verdict and the supervisor appealed.

The court found that the elements of a co-employee suit were proven in the allegation of negligence. First, the supervisor committed an affirmative negligent act or acts in removing the guard and ordering the machine to be cleaned while still running. Second, the court identified that the duty breached in this case was not foreseeable to the employer and therefore was beyond the employer's non-delegable duty to provide a safe work environment. As there were warning signs on the machine and instructions given on how to safely clean it, it was not foreseeable that the supervisor would violate those explicit employer instructions.

Section 287.120 RsMo effective August 2012 states as follows:

“Any employee of such employer shall not be liable for any injury of death for which compensation is recoverable under this chapter and every employer and employees of such employer shall be released from all other liability therefor whatsoever, whether to the employee or any other person, except that an employee shall not be released from liability for injury or death if the employee engaged in an **affirmative negligent act that purposefully and dangerously** caused or increased the risk of injury.”

The case has been accepted by the Missouri Supreme Court with a decision from them expected within a few months. In a similar case decided in May from the same eastern district court of appeals, *Mems v Labruyere*, a supervisor was sued in negligence for having ordered the claimant to assist in moving a heavy roller door. He was ordered to stand under the door that became unhinged and fell, impaling the claimant's leg. The court in this case likewise found the 2012 statutory language satisfied with the finding of a personal duty and breach of that duty by the supervisor. This case also is likely to be appealed or stayed pending the Supreme Court's decision in *Danny Brock v Peter Dunne*.

A couple of observations concerning these co-employee liability cases. First, the general liability (GL) coverage is usually triggered with the employer ultimately getting involved thru their GL policy, although these two cases did involve a supervisors' alleged negligence. It is unknown if a non supervisor co-employee would have the GL coverage. Second, it is technically a third party case and arguably the rules of subrogation apply with the Employer's workers' compensation insurance carrier being able to collect against the Employer's GL carrier consistent with the statute.

The third comment I would make is the nebulous nature of the statutory language that mirrors the nebulous nature of the logic in the case law. Phrases such as “affirmative negligence,” “purposefully and dangerously,” along with the case law that trips over itself searching for a co-employee's duty that is separate from the Employer's non-delegable duty to provide a safe work place; these concepts are all as malleable as play-doh. See *Mems* case mentioned above. How are the facts in that case not simply an accident involving a supervisor who simply showed poor judgement? There was no evidence that the supervisor intended to injure. What makes doing something stupid, affirmative negligence? We hope to get some clarity from the Missouri Supreme Court soon.

The erosion of the conservative changes in the Act continues. The goal of the 2012 statutory changes was to re-establish the delicate balance to protect Employers but also punish co-employees who's actions were reckless in causing an accident to occur. The language used was borrowed from *Badami*, a case from a few decades ago that had established a good balance. Unfortunately, a liberal court of appeals seems to want to open the door as wide as possible for these suits to proceed. If co-employee liability suits are permitted based upon such liberal interpretation, the same will threaten the original bargain Employers made that was the bedrock of workers' compensation.

Mesothelioma Update

If you were wondering what that scream was on May 21, 2019 coming from downtown St. Louis in the afternoon, it was me. The court of appeals for the Eastern District reversed and awarded the mesothelioma bonus or enhanced benefit in the *Hegger* case I had won before the ALJ and the Commission. The majority opinion was 13 pages but the dissent was 21 pages. I think the majority simply gave up trying to explain what they were doing and how they arrived at their decision.

The “bonus” is payable in the cases of mesothelioma when a claim is filed after the effective date of the statutory changes on January 1, 2014. The Missouri Supreme Court in the *Accident Fund v Casey* opinion from 2018 had found Accident Fund liable for the bonus as they insured the relevant Employer who last exposed the Claimant although they insured them in 2014, not when the Claimant last worked for the policyholder. The court avoided the constitutional prohibition of applying statutory or substantive law changes retroactively by relying on the fact Accident Fund had provided an endorsement confirming coverage for the mesothelioma benefit, even if Accident Fund certainly had thought the new bonus would apply solely prospectively to exposures to asbestos after January of 2014 when they provided coverage.

In *Hegger*, Amerisure Insurance had the coverage when the Claimant last worked for their policyholder, Valley Farm—who ceased to exist in 1994. The ALJ and Commission denied the bonus as there was no evidence of an election by Valley Farm to pay the bonus to secure their exclusive jurisdiction protection—a right clearly provided for in the statutory framework for this specific toxic exposure. The logic would be that failing the ability to elect or reject, no bonus can be payable.

The majority opinion in *Hegger* disregarded the plain language in the statute and the precedent in *Accident Fund* made by the Supreme Court in 2018. If it stands, and we are appealing, how could they interpret the statute to provide that two different carriers might have the liability for the same benefit? How can a carrier from three decades ago be forced to provide a benefit that first came into existence in 2014 and how would this not be a retrospective application of law?

We will find out as we appeal for rehearing and or transfer of the case to the Missouri Supreme Court. I will try to keep any more screams to a minimum.

Can you ever really close a case?

The Cornejo Commission has interpreted the Act to not allow the parties to resolve and settle future medical treatment inclusive of the Claimant’s waiving his/her ability to reopen a settled claim for a change in a prosthetic or for treatment for a life-threatening condition related to the case. In *Redzic v Allied Healthcare*, the parties submitted a joint request to resolve and settle an outstanding medical treatment obligation with the funding of a Medicare set-aside account. The Commission refused to approve the settlement on two grounds.

First, the only “claim” or dispute identified by the parties was a general statement that there was a dispute “pertaining to the compensability of treatment not directed by employer/insurer.” Citing the *Dickemann* case from the Supreme Court of Missouri from 2018, and their interpretation of their authority under 287.390, the Commission stated the parties’ expression of the dispute being resolved by settlement was inadequate.

The second point they made in the decision was to simply state they feel they can not approve any settlement that purports to waive by the Claimant the ability to reopen the settlement for the change in prosthetic or for life-threatening treatment under section 287.140.8 RsMo.

Section 287.390.1 RsMo states:

“no agreement by an employee or his or her dependents to waive his or her rights under this chapter shall be valid...nor shall an administrative law judge or the commission approve any settlement which is not in accordance with the rights of the parties as given in this chapter.”

To the extent that we have crossed out on the DWC stipulation the right of the Claimant to reopen under section 287.140.8 even by identifying money set side for future medical, it is unknown if those terms and approved settlements would be honored if challenged. It is also likely that the Administrative Law Judges will no longer approve any settlement that purports to have the Claimant waive 287.140.8 RsMo.

From a practical point of view, the Insurance regulators and procedures have not required insurance carriers or Employers in Missouri to maintain a reserve on all cases for the potential “reopening” of a settled case under section 287.140.8.

Odds and Ends

- I was approached to do some in-house training for **CCMSI** in St. Louis, covering subrogation and recent case law in Missouri workers’ compensation. I enjoy these “lunch and learn” seminars although I admit it is likely more about the food.
- I was asked to speak at the **16th Annual Greater St. Louis Safety and Health Conference** on October 17th. Call for a brochure.
- The **Kids’ Chance of Missouri CLE** I host occurred June 7th at SLU Law School. It was a success with over \$20,000.00 raised “for the kids.”
- If you have not interacted with him yet, introductions may be in order; **Keith Unger** has joined the firm as an Associate. Keith has been an attorney for 25 years practicing in the area of workers’ compensation and corporate law. We are glad to have him.



AMERICAN SOCIETY OF SAFETY PROFESSIONALS

2019-20 Rolling Calendar of Meetings and Events

Date	Meeting Topic & Presenter
April 8, 2019 Monday Lunch*	Defensive Communication Speaker Mary Sue Love, Ph.D - Associate Professor SIU-Edwardsville.
May 13, 2019 Monday Lunch*	Employment Law Speaker James Paul, SHRM, SCP, Ogletree, Deakins, Nash, Smoak & Stewart, P.C. Review of some of the regulations that govern the workplace
June 14, 2019 Friday ALL DAY	ASSP Scholarship Golf Tournament Fundraiser The Prairies Golf Club, Cahokia, Illinois - Registration is OPEN NOW!
July 8, 2019 Monday Lunch*	Developing Safety Leaders Speaker Ray Boehm, Sr. Vice President, Risk Management, Keeley Companies
August 12, 2019 Monday Lunch*	Joint Mtg AIHA Speaker Kerry Goyette presents a new perspective on safety and the behaviors that it affects. She will provide data driven solutions to help your team to be more safe, and in turn, more engaged.
September 9, 2019 Monday Tour Day, No meeting	Join us for a tour of Watlow Electric Manufacturing Co., a family-owned company that designs and manufactures industrial electric heaters, sensors, and controllers.
October 14, 2019 Monday Lunch*	Workers Compensation Speaker Chris Archer of Archer & Lassa LLC. will provide us with the latest information in the legal circles that affect worker's compensation.
November 11, 2019 Monday Lunch*	Joint Mtg GSHMM Flint Walton , Technical Services & Training Specialist of Missouri Employers Mutual will be speaking on Understanding Your Experience Modifier and Workers' Comp – a practical review of the experience modifier and a real world look at understanding it and key factors to help control it
December 9, 2019 Monday Lunch*	OSHA Update Speaker Bill McDonald, OSHA's Area Director in St Louis will provide his annual OSHA fiscal year update and quick review of new/old initiatives.
January TBD, 2020 Thursday 5 pm Bristol Seafood Grill	Membership Appreciation Night <u>No luncheon meeting this month!</u> Enjoy food and libations at Bristol Seafood Grill on Olive and relax with others in your field at this event. Exclusively for St Louis Chapter Members.
February 10th, 2020 Monday Lunch*	OSHA Defense Speaker Julie O'Keefe, Attorney at Law of Armstrong Teasdale Law Firm. Update on strategies to defend against OSHA citations
March TBD, 2020 Monday ALL DAY Location TBD	Professional Development Conference Joint conference with the American Industrial Hygiene Association (AIHA) to bring you high quality training at the best price, CEU's awarded.

*Lunch at Sybergs Dorsett, 2430 Old Dorsett Rd, Maryland Heights, MO 63043
Lunch will include house salad, bread and dessert in addition to the entree.

American Society of Safety Professionals

St. Louis Chapter Committees

Website – Dave Callies – dcallies@kelpe.com

Maintains website with updated news, chapter events, and job postings

Newsletter – Dan Bembower – dan.bembower@usi.com

Publishes and distributes the chapter newsletter to all chapter members

PDC Chair – Dennis Pivin – DPivin@aegion.com

Coordinates logistics of professional development activities

Membership – Dianne Gibbs – dianne@ideasftp.com

Ensures new members are recognized & introduced at membership meetings

Public Relations – Steve Williams – swilliams@bellelectrical.com

Promotes chapter activities to the general public. Coordinates poster contest

Awards & Honors – Bill Kincaid – billkincaid@yahoo.com

Recognizes member achievement through chapter awards

Scholarship – Rob Miller – robertmiller91@yahoo.com

Promotes student scholarships & continuing education scholarships for members

Programs – Jim Latta – jlatta@nbwest.com

Plans the program time and needs for presentations & coordinates schedule

Social Media – JaNola Rigsby – jrigsby@qualsafesolutions.com

Maintains Face book & Twitter accounts promoting discussion with local membership

Please contact the committee chair with comments or if you would like to participate.

Mid Missouri Officers

Bret Derrick, Chairman

bderrick@broadwayergonomics.com

Mark Woodward, Vice Chair

mwoodwar@mem-ins.com

Bethany Watson, Membership Chair

bethany@365safetyservices.com

Job Opportunities

Job opportunities are posted frequently on the website:

<https://stl.assp.org/current-openings/>

Remember, the St. Louis Chapter offers unemployed ASSE members a free lunch at our monthly meeting!

WISH Chapter of WISE

Our St. Louis WISH Chapter of WISE took home the Silver Level of Distinction for ASSP WISE. This is their very first year to compete so we couldn't be more proud! Left to right, Domini Montgomery, Erica Heinssen, JaNola Rigsby and Patte Ackermann.

WISE (Women in Safety Excellence) is a sub-group of ASSP (American Society of Safety Professionals) and this award is for recognition of our group's activities that support the WISE mission. They organize networking meetings, technical and educational events and presentations, act as mentors and mentees, and organize community volunteer involvement and student outreach.



WISE

Women in Safety Excellence

St. Louis Chapter Board Members 2019-2020

Rick Reams – President, 618-670-6589 (ricky_reams@hotmail.com)

Steve Williams – Vice President, 314-213-5859 (swilliams@frenchgerleman.com)

Rudy May – Secretary, 636-677-3421x362 (rudym@h-j.com)

Erica Heinssen – Treasurer, 314-941-4545 (elheinssen@hotmail.com)

Mark Krieger – Past President, 314-435-3630 (mark.krieger2007@gmail.com)

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