



Court of Appeals Holds Owner Can be Held Liable for Negligence Because of Defective Front-End Loader

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The Michigan Court of Appeals recently held that a plaintiff who fell from a front-end loader (also known as a pay loader or bucket loader) that was missing part of the ladder used to access the cabin, had a claim of ordinary negligence against the owner.

On June 19, 2014, the Michigan Court of Appeals issued an unpublished opinion in *Perkins v Mid-Michigan Recycling* regarding an owner's duty with respect to a defective front-end loader. The defendant in this case recycles wood into wood chips and uses services from independent contractors to transport wood chips to local power stations. The plaintiff in the case was an independent contractor working for the defendant and was using a front-end loader at the time of the accident.

The front-end loader at issue in this case was missing the "swing step," which made the lowest step on this particular front-end loader almost 4 feet off the ground. The plaintiff had complained about this missing swing step on many occasions, even offered to pay for it, but the defendant declined the plaintiff's help and continued to reassure him that he would "check into it." However, the defendant never fixed the front-end loader and the plaintiff suffered serious back injuries after falling off of the front-end loader due to the missing step.

The Court of Appeals held this apparent injury was not the result of an "open and obvious" issue and instead, the owner could be liable for negligence. The court ruled that the defendant owed a duty to the plaintiff based on his ownership and possession of the front-end loader to maintain it "in a safe, operable condition."

The ruling in this case may open up owners of farm equipment to litigation. If there is something wrong with the farm equipment, including a harvester, grain cart, combine or other farm equipment, the owner of the equipment could be liable for not fixing it. On the other end, if an independent contractor or employee is injured as the result of a defect on equipment and the owner was aware of the defect, he

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may have a negligent claim against the owner.

It is important to keep in mind that if there is a defect on equipment such as a tractor, harvester, or grain cart, it is good practice to fix the defect to prevent the possibility of a future lawsuit.

Please contact Dirk H. Beckwith at 248-539-9918 or dbeckwith@fosterswift.com regarding any questions you may have.