



# Agricultural Law Update

August 2014

## COURT OF APPEALS HOLDS OWNER CAN BE HELD LIABLE FOR NEGLIGENCE BECAUSE OF DEFECTIVE FRONT-END LOADER

- Dirk H. Beckwith & Rachel N. Gizicki (Summer Associate)



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On June 19, 2014, the Michigan Court of Appeals issued an unpublished opinion in *Perkins v Mid-Michigan Recycling*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 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](mailto:dbeckwith@fosterswift.com) regarding any questions you may have.

## INCOMING: RECENT NEWS ON FAA DRONE APPROVAL MAY BENEFIT AGRICULTURAL OPERATIONS

- John W. Mashni & Taylor A. Gast (Summer Associate)

The Federal Aviation Administration (FAA) recently approved the first commercial use of low-risk unmanned aircrafts, commonly called drones. This news comes shortly after the FAA's June 2, 2014 press release announcing that it was considering petitions for drone use from seven commercial movie and TV production companies. Once granted, those businesses would be exempt from regulations that address general flight rules, pilot license certificate requirements, manuals, maintenance, and equipment mandates. The only exemption granted so far is to energy corporation, BP, which will use a small drone to survey pipelines and infrastructure in Alaska. The FAA says the drone will save time and support safety and operational-reliability goals while also protecting the Alaskan environment. While many uses for drones have been identified, this news is especially relevant to agricultural operations. The FAA predicts that once the exemptions are enabled, roughly 7,500 commercial drones will be actively flying in the United States.

Commercial drones have many uses in agricultural operations, including thermal imaging to identify stressed areas of crops and target the cause of a problem. In fact, 80 percent of the commercial market for drones will eventually be for agricultural uses according to the Association for Unmanned Vehicle Systems International, the trade group

representing drone producers and users. New companies hoping to capitalize on the use of drones in agriculture claim that their technology will "collect, process and manage imagery from" drones to "provide intelligent decision making resources."

Although many uses for drones have been identified, they are not without risks. The FAA previously announced that a drone nearly collided with a jet over Tallahassee, FL and highlighted the potential hazard of an airliner engine ingesting a drone. While conventional aircraft include advanced collision-avoidance systems, such technology for drones is still far from reality, and could cost as much as \$2 billion to develop.

Users of drones should consider potential legal issues surrounding drone use such as trespass and nuisance causes of action and privacy laws. A recent article highlighted the story of Cy Brown, who received a cease and desist letter from the FAA after using a drone equipped with night vision technology to locate feral pigs that are notorious for harming farmers' crops in Louisiana. Contact Attorney John Mashni with your questions regarding drones at [jmashni@fosterswift.com](mailto:jmashni@fosterswift.com) or 517.371.8257.

## FOSTER SWIFT HEADS TO THE INGHAM COUNTY FAIR

Foster Swift sponsored the Ingham County Fair Little International Animal Showmanship Contest held August 1, 2014. Check out a picture of this year's champions. The champions include:

### Junior Division:

- Champion - Emma Barnum

### Intermediate

- Champion - Anna Bowling

### Senior Division

- Champion - Triston Warner



## LITIGATION CORNER

---

- Liza C. Moore

### WHAT HAPPENS IN A DEPOSITION?

We have all seen lawyers peppering witnesses with questions in fast-paced, high-tension situations in legal dramas on television or in the movies. But what happens in a deposition in real life, and when do they occur? Depositions involve the questioning of a witness under oath and are usually taken during the time period in a lawsuit known as discovery, which is typically after the defendant has answered the complaint and the court has set a scheduling order for the case. Discovery is when the parties obtain information they need to prove their case. Each court has its own rules setting requirements for how parties can ask for and give information in discovery. The parties may ask people with knowledge about the plaintiff's claims or the defendant's defenses

to testify in a deposition during discovery so the parties will learn what the deponent (person to be questioned) knows. Sometimes a deponent is asked to bring all of the documents he or she has about the case along to the deposition. The deponent affirms that he or she will tell the truth in a deposition, meaning the deposition is under oath. Usually a deposition happens outside of court. During a deposition, attorneys ask a witness questions and everything said is typed word-for-word by a court reporter. Attorneys may instruct a witness not to answer to preserve privileges, such as the attorney-client privilege, or object to the way another attorney asks a question. The parties use the typed transcripts of the deposition in the lawsuit.

## GOVERNMENT GRANTS ONE YEAR EXEMPTION FROM 30-MINUTE BREAK REQUIREMENT FOR LIVESTOCK

---

- Liza C. Moore

Commercial motor vehicle drivers generally have to take a 30-minute break during the first eight hours of a shift, as part of the Federal Motor Carrier Safety Administration (FMCSA) Hours-of-Service rules. This break requirement does not apply to drivers transporting agricultural commodities, including livestock, within a 150 air-mile radius of the source of those commodities. But those livestock haulers to which the requirement does apply should be aware of an exemption granted by the FMCSA. Back in 2013, the FMCSA granted livestock haulers a 90-day waiver of the 30-minute break requirement for the summer months. The National Pork Producers Council, along with many other agriculture industry groups, requested this exemption

because of the health risks posed by summertime heat to livestock. Requiring a truckload of livestock to stop in extreme temperatures could seriously jeopardize the health and welfare of the animals. The FMCSA noted there were "no adverse effects to safety" as a result of the 2013 exemption. In June 2014, the FMCSA granted a one-year exemption from the break requirement for livestock haulers.

To view the press release, please visit:  
<http://1.usa.gov/1vducGg>

To view the FMCSA notice, please visit:  
<http://1.usa.gov/1lfpdEI>



## DO YOU KNOW ABOUT THE USDA'S NEW FARMER WEBSITE?

Are you a new farmer looking to start your own business or carry on your family's legacy? The USDA has a website specifically geared to providing new farmers with information about USDA programs that can help them start with a firm footing. The website overviews educational, lending,

business planning and other programs offered through the USDA that can help young farmers grow, with helpful links all collected in one location. Check out the website at: <http://1.usa.gov/1w5rOWh>

## COST SHARE ASSISTANCE AVAILABLE FROM MDARD FOR ORGANIC CERTIFICATION

The Michigan Department of Agriculture and Rural Development will pay 75 percent of the certification and user costs for Michigan organic handlers and producers, up to \$750 per certification. Your operation must have been inspected and certified by a National Organic Program

accredited certifying agent during the period of October 1, 2013 through September 30, 2014 to qualify. Applications for this cost share assistance must be postmarked on or before October 1, 2014. For more information, please visit: <http://1.usa.gov/1oXfMV7>

## NEW AGRICULTURAL MAPPING TOOL

The Michigan Agri-Business Association's "Agricultural Mapping Tool" is now available to the public, providing access to historic and real time data sets on frost-free days, location of high-capacity wells, soil types, wind speeds, topography infrastructure and more across the state. The

web-based resource was developed in partnership with the Michigan Department of Agriculture and Rural Development and intends to assist in strategic business decisions allowing agriculture to seize new opportunities for economic growth. This free tool can be accessed at: <http://bit.ly/1qOmAVK>

### AGRICULTURAL ATTORNEYS:

#### GROUP LEADER

**Liza C. Moore**  
517.371.8281  
lmoore@fosterswift.com

**Charles E. Barbieri** | 517.371.8155  
**Scott A. Chernich** | 517.371.8133  
**James B. Doezema** | 616.726.2205  
**Julie I. Fershtman** | 248.785.4731  
**Brian G. Goodenough** | 517.371.8147  
**Todd W. Hoppe** | 616.726.2246  
**Charles A. Janssen** | 517.371.8262  
**Ryan E. Lamb** | 616.796.2503

**David M. Lick** | 517.371.8294  
**Steve L. Owen** | 517.371.8282  
**Jean G. Shtokal** | 517.371.8276  
**Patricia J. Scott** | 517.371.8132  
**Scott A. Storey** | 517.371.8159  
**Deanna Swisher** | 517.371.8136  
**Lynwood P. VandenBosch** | 616.726.2201  
**David VanderHaagen** | 517.371.8102

LANSING

FARMINGTON HILLS

GRAND RAPIDS

DETROIT

HOLLAND

Foster Swift Collins & Smith, PC **Agricultural Law Update** is intended for our clients and friends. This newsletter highlights specific areas of law. This communication is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.

**IRS Circular 230 Notice:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication.

Proud supporter  
of

