

Context Is Key In Agriculture Equipment Manufacturer Defense

By **Reid Carpenter** (January 20, 2022)

The agricultural industry has never been risk free. For farmers, there are always challenges posed by weather, pests and shifting market prices. For the industries that serve farmers, there are risks too.

Right now, a number of federal policy changes under President Joe Biden's administration are on the horizon that have the potential to add significant liability to industry stakeholders, including regulatory review. Since a change in regulations often has the potential to spawn litigation, this should be of particular concern to all players in the agriculture industry — and equipment manufacturers specifically.



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Let's face it — agricultural equipment can be dangerous. It is large. It is heavy. And all too often, the person operating the equipment is not as familiar with operational safety as he or she should be. Because of this, farm accidents are going to happen. Unfortunately for equipment manufacturers, this often leads to litigation.

It could also be said that a good lawyer can find a way to make a product liability lawsuit out of any accident involving the use of a product. There is always something that the manufacturer could have done to the product that would have prevented the accident or injuries. This is the reality that agriculture equipment manufacturers, and product manufacturers in general, face on a daily basis.

When it comes to defending these cases, it is really all about providing context for juries. This is particularly the case with respect to (1) the date of manufacture for the given product, and (2) other similar incidents involving the same or similar products. This article looks at the importance of providing the appropriate context to the jury on these two issues, in order to allow them to more properly assess the evidence that is presented.

Date of Manufacture — A Snapshot in Time

It is the goal of every good agricultural equipment manufacturer to make products that last. These machines operate in tough environments, so the equipment must be tough as well. Consequently, many tractors — and other types of equipment — that are being used today left the factory decades ago.

In most jurisdictions, a product is judged based on the date that it left the manufacturer's possession and control, regardless of what technology may have been developed by the time the accident occurred. Generally speaking, a manufacturer should not be responsible for failing to incorporate technology not available when the equipment was manufactured, regardless of whether it would have prevented the accident or injuries.

For this reason, when defending a decades-old product, it is imperative to identify the state of the art in terms of technology that was available at the time of manufacture, including an analysis of what competitors were doing at the time.

It is equally important to provide the appropriate context to a jury for what life was like at the time of manufacture. Sitting here now at the beginning of 2022, it is difficult for many of us to remember a life without cellphones, social media or personal computers. But for

much of the agriculture equipment being used today, that was the reality when it was originally built. The goal is to take the jury back to that point in time.

For a machine built in the early 1980s, for example, the defense attorney may want to talk about how Jimmy Carter was president, about how Elvis Presley had just died a few years before, or about how the price of gasoline was 90 cents a gallon. Regardless of how it is done, providing the appropriate context to the jury will make it easier for them to understand why a piece of equipment did not incorporate some technology or safety device that may seem obvious today.

Other Similar Incidents — Context Is Key

Many agricultural equipment manufacturers maintain reports of incidents involving their products as a useful monitoring tool for how machines are performing in the field. However, these reports often become the subject of discovery and are used as evidence that a product is defective or that the manufacturer should have been on notice regarding an alleged defect.

Of course, there are typically evidentiary attacks that will be waged by the defense team in an effort to keep incident reports or other similar evidence from being shown to the jury at trial.

But what happens when the judge allows the evidence to be presented? How do you deal with the situation where the plaintiffs attorney is allowed to argue to the jury that your client should be punished for manufacturing a tractor that has injured or killed over 120 people, based on its own internal incident reports?

While these types of arguments in a vacuum can be very effective against product manufacturers, the key as a defense team is to provide the appropriate context for these numbers. When it is explained to the jury that the 120 other incidents occurred over a period of 40 years and included all tractor models across the entire U.S., the number does not seem quite as offensive.

Further, noting that the 120 incidents included a total pool of 1.5 million tractors manufactured by the defendant over those four decades does even more to blunt the effectiveness of that evidence.

Although virtually every agricultural equipment manufacturer will admit that they do not want any operators to be injured on one of their machines, the reality is that accidents are going to occur. Jurors realize that, as well. The key is to give them the appropriate information to allow them to evaluate the overall context for the other incidents offered by the other side.

By ensuring that the jury understands the appropriate context behind these numbers, jurors are better able to process the significance — or lack thereof — for the other incident evidence that a plaintiff may offer.

Conclusion

Everyone in the business of manufacturing agricultural equipment will have to, at some point, contend with lawsuits. It is inevitable. When faced with this reality, it is imperative that an effective defense strategy begin by defining the appropriate context for date of manufacture and other incident evidence.

Then, and only then, will the highly technical evidence and case-specific defenses have the impact on the jury that it should.

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