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ERIC HAYES

Plaintiff,

v.

AG-INDUSTRIAL OF EASTERN P.A., INC.;
AG – INDUSTRIAL, INC.;CNH INDUSTRIAL,
N.V.; CASE NEW HOLLAND INDUSTRIAL
INC.; CNH INDUSTRIAL AMERICA, LLC;
CASE NEW HOLLAND; JEWELL’S RED
WING FARM, LLC; MARK W. JEWELL;
BETH JEWELL; AMBER JEWELL; and A&E
PARTNERSHIP LP

Defendants.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

DOCKET NO.: 2:22-CV-2838

Civil Action

COMPLAINT AND JURY DEMAND

I. PRELIMINARY STATEMENT

1. This is a products liability, negligence and premises liability claim resulting in personal injuries and other damages to Plaintiff, Eric Hayes which occurred on July 23, 2020, in a fire (the “Fire”) at barns located at Red Wing Farm (the “Barns”), 1531 Hilltown Pike, Hilltown, PA 18927 (the “Premises”).

II. PARTIES

2. Plaintiff, Eric Hayes, is an adult individual and citizen of the State of New Jersey.
3. Defendant AG – Industrial, Inc. is a Pennsylvania Corporation with offices located at 110 S. Railroad Avenue, New Holland, PA 17557; Defendant AG - Industrial of Eastern PA, Inc. is a Pennsylvania corporation with offices at 831 S. College Street, Myerstown, Pennsylvania 17067 (“AG Industrial Defendants”).

4. Defendant CNH Industrial, N.V. (“CNH Global”) is a publicly traded global company residing in the country of the Netherlands; Defendant Case New Holland Industrial Inc. (“Case New Holland”) is a wholly owned subsidiary of CNH Global with a registered office in the State of Delaware at 1209 Orange Street, Wilmington, DE 19801; Defendant CNH Industrial America, LLC (“CNH Defendants”) is a limited liability company, duly organized and existing under the laws of the State of Delaware, with a principal place of business located in the State of Wisconsin at 621 State Street, Racine, WI 53402 and is a wholly owned subsidiary of Case New Holland with a registered office in the State of Pennsylvania at 300 Diller Avenue, New Holland, PA 17557.
5. Defendant Jewells Red Wing Farm, LLC (“Red Wing Farm Defendant”) is a Pennsylvania limited liability corporation, located at 6139 Mechanicsville Road, Lumberville, PA 18933. Upon information and belief, its members are Beth Jewell, Amber Jewell, and/or Mark Jewell, all of whom live in the Commonwealth of Pennsylvania.
6. Defendant Mark W. Jewell resides at 6139 Mechanicsville Road, Lumberville, Pennsylvania 18933; Beth Jewell resides at 22339 Perry Hwy. Zelenople, Pennsylvania; and Amber Jewell resides at 1531 Hilltown Pike, Hilltown, Pennsylvania. (“Individual Defendants Jewells”).
7. Defendant A & E Partnership, LP (“A & E”) is a Pennsylvania limited partnership and/or other legal entity with a place of business located at 6139 Mechanicsville Road, Lumberville, PA 18933.
8. The entities in paragraphs three (3) through (9) are collectively referred to as Defendants.

III. JURISDICTION AND VENUE

9. Jurisdiction is conferred upon this Court by virtue of the parties’ diversity of citizenship pursuant to 28 U.S.C. § 1332 as Plaintiff is a citizen of the State of New Jersey, and the other Defendants are citizens of States and Countries other than New Jersey.
10. The amount in controversy in this action is in excess of seventy-five thousand (\$75,000.00) dollars, exclusive of costs and fees.

11. Venue and Vicinage are both proper in the Eastern District pursuant to 28 U.S.C. § 1391 because a substantial portion of the acts and/or omissions giving rise to the within claims occurred within Bucks County, Pennsylvania and because Defendants are subject to personal jurisdiction within the district.

IV. FACTUAL ALLEGATIONS

12. At all times relevant hereto, Defendants acted by and through their respective trustees, directors, agents, servants, employees, workmen, and/or other representatives, who were, in turn, acting within the course and scope of their employment, agency, and/or service for the same and under the direct control of Defendants.
13. On or about July 21, 2020, CNH Defendants delivered a new New Holland Tractor (the “Tractor”) that was purchased by upon information and belief Individual Defendants Jewells, Red Wing Farm Defendant, and/or A&E.
14. On or about that same date, Individual Defendants Jewells, Red Wing Farm Defendant, and/or A&E notified CNH Defendants that the Tractor was not operable and needed to be repaired.
15. Thereafter, upon information and belief, CNH Defendants contacted AG – Industrial Defendants and arranged for an AG -Industrial Defendants’ repair person to come to the Farm and repair the Tractor.
16. On or about July 22, 2020, upon information and belief a repair person from AG – Industrial Defendants came to the Farm and began its repair work on the Tractor in one of the Barns. At the end of the day, the repair person from AG – Industrial Defendants advised Individual Defendants Jewells, Red Wing Farm Defendant, and/or A&E that it would return to the Barn and finish the Tractor repair the next day.
17. The following morning, upon information and belief, the Tractor caused one of the Barns to catch on fire.

18. Plaintiff was called by the Individual Defendants to come to the Barn and rescue horses that were being stabled there.
19. Plaintiff rescued several horses; but in the course of doing same suffered burn injuries.
20. The Fire and Plaintiff's injuries described herein was due in no manner to negligence on the part of Plaintiff.

COUNT I
ERIC HAYES v. CNH DEFENDANTS
PRODUCTS LIABILITY – STRICT LIABILITY

1. Plaintiff hereby incorporates by the above referenced of the within the Complaint as though the same had been fully set forth at length herein.
2. At all times prior to July 23, 2020, CNH Defendants designed, manufactured, assembled, inspected, installed, marketed, modified, maintained, rented, leased, provided safety recommendations, and/or sold the subject New Holland Tractor and its component parts thereto, including all instruction manuals and associated warnings.
3. CNH Defendants placed into the stream of commerce a defective product, the Tractor, as identified above, that violated the standards created in Tincher v. Omega Flex, 628 Pa. 296, 104 A.3d 399 (Pa. 2014). More specifically, CNH Defendants placed into the stream of commerce a defective product, the Tractor, wherein (a) the danger was unknowable and unacceptable to the average or ordinary consumer, and/or (b) a reasonable person would conclude that the probability and seriousness of harm caused by CNH Defendants' defective product outweighs the burden or costs of taking precautions.
4. The Fire described herein was caused solely and/or in conjunction with the acts and/or omissions of the other Co-Defendants and CNH Defendants' defective design and/or manufacture of the aforesaid Tractor and its component parts, including, but not limited to:
 - (a) Carelessly and negligently distributing, supplying, installing, designing, manufacturing, modifying, and/o selling the subject Tractor and its component parts in a dangerous condition so as to cause injury to Plaintiff;

- (b) carelessly and negligently failing to implement appropriate safety mechanisms to prevent against the type of injury suffered by Plaintiff;
 - (c) failing to reasonably foresee those subsequent alterations would be made to the subject product, rendering the subject product unreasonably unsafe to users;
 - (d) carelessly and negligently creating and allowing a dangerous condition to exist by failing to provide proper safety and operational instructions to end users of its product;
 - (e) failing to exercise the requisite degree of care and caution in the distribution, manufacture, assembly, modification, design, supply, lease, and/or sale of the said Tractor and its component parts;
 - (f) failing to ensure that the subject Tractor and its component parts could be used in a manner which would not cause danger to potential third parties, such as the Plaintiff;
 - (g) failing to include industry-recognized safety specifications in the design of the Tractor;
 - (h) failing to warn purchasers and end users of the dangers of the subject Tractor; and such other acts or omissions constituting negligence and/or gross negligence, or wanton conduct, as shall become evident during pretrial discovery and/or at the trial of this case.
5. At all times relevant hereto, CNH Defendants' aforesaid Tractor and its component parts were defective and unsafe for consumer use.
 6. At all times relevant hereto, there were latent defects in CNH Defendants' aforesaid Tractor and its component parts such that the product's defective condition was unknown to the consumer, therefore rendering the product unacceptable for consumer use.
 7. CNH Defendants distributed and sold the aforesaid Tractor and its component parts in a defective condition in violation of the Restatement (Second) of Torts § 402(A), and those defects were the sole, concurrent, and/or proximate cause of Plaintiff's injuries.
 8. CNH Defendants are strictly liable to Plaintiff as a result of the defective condition of CNH Defendants' product.

9. As a direct and proximate result of the defective nature and condition of the aforementioned Tractor and/or its component parts, Plaintiff, Eric Hayes, suffered severe and permanent bodily injuries including, but not limited to, a burn injury.
10. As a result of the aforesaid strict liability of CNH Defendants, Plaintiff has been and will be obliged to receive and undergo medical attention and care and to expend various sums for the treatment of his injuries and incur such expenditures for an indefinite time in the future.
11. As a further result of the aforesaid accident, Plaintiff has in the past and may in the future suffer a loss of his earnings and/or earning power, and he may incur such loss for an indefinite period in the future.
12. Further, by reason of the aforesaid occurrence, Plaintiff has and/or may hereinafter incur other financial expenses all in an effort to treat and cure himself of the injuries sustained in the aforesaid accident.
13. As a further result of the aforesaid accident, Plaintiff has or may have suffered injuries resulting in the serious and/or permanent loss of use of a bodily function, dismemberment, and/or scarring, which may be in full or part cosmetic disfigurements which are or may be permanent, irreparable, and severe.
14. In addition, Plaintiff has suffered a loss of the enjoyment of his usual duties, avocations, life's pleasures and activities, and the shortening of his life expectancy all to his great detriment and loss.
15. As a further result of the CNH Defendants' aforesaid negligence, Plaintiff has suffered great and unremitting physical pain, suffering and mental anguish all of which may continue in the future.

WHEREFORE, Plaintiff, Eric Hayes, demands judgment against CNH Defendants for strict liability together with all lawful damages and costs of suit.

COUNT II
ERIC HAYES v. CNH DEFENDANTS
PRODUCTS LIABILITY – NEGLIGENCE

16. Plaintiff hereby incorporates by the above referenced of the within the Complaint as though the same had been fully set forth at length herein.
17. At all times material hereto, CNH Defendants owed a duty to end users of its product, such as Plaintiff, to exercise reasonable care in designing and manufacturing the aforesaid Tractor and its component parts, and to sell/distribute that product in a reasonably safe condition.
18. CNH Defendants were negligent in designing, manufacturing, assembling, modifying, marketing, installing, and distributing the defectively designed and manufactured Tractor, as set forth which is hereby incorporated by reference.
19. The aforesaid negligence was the sole, concurrent, and/or proximate cause of Plaintiff's injuries, which were due in no manner to negligence on the part of Plaintiff.
20. As a result of the aforementioned negligence, Plaintiff suffered the injuries described in the paragraphs above which are incorporated by reference as though fully set forth at length.

WHEREFORE, Plaintiff, Eric Hayes, demands judgment against the CNH Defendants for all lawful damages and cost of suit.

COUNT III
ERIC HAYES v. CNH DEFENDANTS
BREACH OF WARRANTY

21. Plaintiff hereby incorporates by the above referenced of the within the Complaint as though the same had been fully set forth at length herein.
22. As a result of the foregoing, CNH Defendants are liable to Plaintiff for the breach of express and/or implied warranties that the subject Tractor was merchantable, fit for use, and suitable and fit for its particular purpose under common law and 13 Pa. Cons. Stat. §§ 2314 and 2315.

23. As a result of the aforementioned negligence, Plaintiff suffered the injuries described in the paragraphs above which are incorporated by reference as though fully set forth at length.

WHEREFORE, Plaintiff, Eric Hayes, demands judgment against the CNH Defendants for all lawful damages and cost of suit.

COUNT IV
ERIC HAYES v. AG – INDUSTRIAL DEFENDANTS
NEGLIGENCE

24. Plaintiff hereby incorporates by the above referenced within the Complaint as though the same had been fully set forth at length herein.

25. At all times prior to July 23, 2020, AG – Industrial Defendants were in the business of repairing, replacing, maintain, modifying, and providing safety recommendations for New Holland Tractors, including the Tractor involved in this matter.

26. On or about July 22, 2020, AG – Industrial owed a duty to exercise reasonable and ordinary care in performing the repair work on Tractor and/or to warn of any dangers associated with the Tractor.

27. AG – Industrial Defendants failed to exercise reasonable and ordinary care in repairing the Tractor.

28. AG – Industrial Defendants’ failure to exercise reasonable and ordinary care in repairing the Tractor was a direct and proximate cause of Plaintiff’s injuries.

WHEREFORE, Plaintiff, Eric Hayes, demands judgment against the AG – Industrial Defendants for all lawful damages and cost of suit.

COUNT V
ERIC HAYES v. RED WING FARM DEFENDANTS,
INDIVIDUAL DEFENDANTS, AND A & E PARTNERSHIP, LP
PREMISES LIABILITY

21. Upon information and believe, all times relevant hereto, Red Wing Farm Defendants, Individual Defendants, and A & E (the “Premises Defendants”) were the owner, operator, possessor, lessor, lessee, and/or otherwise legally responsible for the Barn, buildings and premises located on and at 1531 Hilltown Pike, Hilltown, PA 18927 (the “Premises”).
22. At all times relevant hereto, Premises Defendants were responsible for all maintenance, upkeep, and safety precautions relative to the Premises, including fire detection, prevention, and suppression systems.
23. At all times, Premises Defendants had a duty to Plaintiff and to other lawful invitees to maintain the premises and surrounding areas of the premises in question in a safe and secure condition and to guard against and/or warn of dangerous or potentially dangerous conditions existing on the Premises.
29. On or about July 23, 2020, Plaintiff was lawful invitee of the Premises Defendants at the Premises.
30. At all times material hereto, Premises Defendants their duty by failing to exercise reasonable care to protect Plaintiff against the dangers created by their negligent and/or careless acts and omissions of Premises Defendants and their agents, servants, workmen, licensees, and/or employees.
31. The negligent and/or careless acts and omissions of Premises Defendants and its agents, servants, workmen, licensees, and/or employees were the direct and proximate cause of the aforesaid Fire and Plaintiff’s injuries.

WHEREFORE, Plaintiff, Eric Hayes, demands judgment against the Premises Defendants for all lawful damages and cost of suit.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all Counts in the above action.

Respectfully submitted,
**FLORIO PERRUCCI STEINHARDT
CAPPELLI TIPTON & TAYLOR, LLC**

Dated:

7/20/22


By: John R. Mininno, Esq.
PA Bar ID 69255

Defendant Names and Address:

<p>1) AG – Industrial of Eastern P.A., Inc. 831 S. College Street Myerstown, Pennsylvania 17067</p>	<p>7) Jewells Red Wing Farm, LLC 6139 Mechanicsville Road Lumberville, Pennsylvania 18933</p>
<p>2) AG – Industrial, Inc. 110 S. Railroad Avenue New Holland, Pennsylvania 17557</p>	<p>8) Mark W. Jewell 6139 Mechanicsville Road Lumberville, Pennsylvania 18933</p>
<p>3) CNH Industrial, N.V. Global Company Country of the Netherlands</p>	<p>9) Beth Jewell 22339 Perry Highway Zelienople, Pennsylvania 16063</p>
<p>4) Case New Holland Industrial Inc. 1209 Orange Street Wilmington, Delaware 19801</p>	<p>10) Amber Jewell 1531 Hilltown Pike Hilltown, Pennsylvania 18927</p>
<p>5) CNH Industrial America, LLC 621 State Street Racine, Wisconsin 53402</p>	<p>11) A&E Partnership, LP 6139 Mechanicsville Road Lumberville, Pennsylvania 18933</p>
<p>6) Case New Holland 300 Diller Avenue New Holland, Pennsylvania 17557</p>	