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FBT Wins Defense Verdict in Alabama Wrongful Death Case

On June 20, 2008, a twelve member Marshall County, Alabama jury returned a unanimous defense verdict for CNH America LLC in a boom swing product liability lawsuit. Plaintiff alleged that a 1992 Case 580 SK loader backhoe was defective and unreasonably dangerous, and asked the jury to award \$20 million in wrongful death damages and \$1 million in breach of warranty damages. Frost Brown Todd attorneys (Formerly Locke Reynolds) Nick Pappas and Jared Harts represented CNH as lead trial counsel.

Plaintiff alleged the loader backhoe was defective because it did not have a larger guard over the boom swing pedals, and because it did not have an interlock system that would have locked out the backhoe controls when the seat was facing the loader, or when the operator was not in the seat. Plaintiff criticized the on-product warnings and claimed that CNH violated post-sale duties to warn. Plaintiff sought punitive damages for wrongful death and compensatory damages for breach of warranty.

CNH acknowledged that it was theoretically possible to have equipped its 580 SK with pedal guards or an interlock system in 1992, but maintained that doing so would have negatively impacted the utility of the machine and could have created additional safety hazards. CNH also discovered that the subject 580 SK had been improperly modified after CNH sold it. In addition, CNH explained that the force required to depress the swing pedal was a form of guarding. Testing on an exemplar 580 SK equipped with the correct centering spring proved that the accident could not have occurred had the appropriate centering spring been in place.

The jury deliberated for approximately eight hours over two days before returning a complete defense verdict for CNH on all counts.

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