

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

BRIAN MILLER,

Plaintiff,

v.

CNH INDUSTRIAL AMERICA LLC

Defendant.

Case No. 20-1293-DDC-TJJ

**FIRST AMENDED COMPLAINT**

**The Parties**

1. Plaintiff Brian Miller is an adult and is domiciled in Reno County, Kansas. He is a dairy farmer and was 31 years old when he was severely injured by Defendant's product.

2. Brian is the husband of Amanda Miller and just before his injury, the two of them had recently completed all but the final class for foster care certification. In addition to becoming foster/adoptive parents, they also had hoped to have their own children naturally.

3. Defendant CNH Industrial America LLC (hereinafter "CNH") is a Delaware limited liability corporation whose sole member is Case New Holland Industrial, Inc., which is a Delaware corporation with its principal place of business in Racine, Wisconsin. CNH designs, manufactures, markets and sells farm machinery, including the New Holland T7.270 Autocommand tractor. CNH does business in Kansas.

**Jurisdiction/Venue**

4. This Court has original jurisdiction of this matter pursuant to 28 U.S.C. § 1332, diversity citizenship. The Plaintiff is domiciled in and a citizen of Kansas. The Defendant is a limited liability company whose sole member is Case New Holland Industrial, Inc. which is a

citizen of the state where it is incorporated and where it has its principal place of business, neither of which is Kansas. The amount in controversy exceeds \$75,000.

5. The court has personal jurisdiction over the Defendant because it conducts business in Kansas and its product caused injury in Kansas.

6. Venue is proper in Kansas because Kansas is the judicial district in which a substantial portion of the events or omissions giving rise to the claim occurred and also because Defendant is a corporation subject to the court's personal jurisdiction in Kansas.

### **Purchase of New Holland Tractor and Receipt of Manual**

7. Plaintiff and his father operate a dairy farm. Plaintiff's father's corporation purchased a previously owned 2011-12 New Holland T7.270 Autocommand tractor, tractor number ZBBZ 16664, from Agri-Center in Reno County, Kansas for \$132,557 on December 31, 2015. The tractor was purchased to be used in their dairy operation. Concurrent with the purchase, the Millers were provided a manual drafted by Defendant, which Plaintiff utilized in operating the tractor.



8. The New Holland T7.270 manual states at page 2-78: "EPB [electronic park brake] will automatically engage at key-off or if the operator leaves the seat." As evidenced from the events described below, this is untrue.

9. The New Holland T7.270 manual states at page 2-79, second bullet point: “The park brake is automatically engaged in the following situation...The operator leaves the seat for more than five seconds.” As evidenced from the events described below, this is untrue.

10. The New Holland T7.270 manual states at page 2-112: “If the operator leaves the seat for more than 5 seconds with the engine running and without engaging the electronic park brake (EPB), the transmission will not drive until the operator is re-seated and the clutch pedal has been cycled (depress/release).” As evidenced from the events described below, this is untrue.

11. The New Holland T7.270 tractor displays within the cab an illuminated “!” and “P” icon and also emits an alert tone when the tractor is stationary and the operator leaves the seat for more than five seconds. These signal to the operator that the EPB is applying. When the tractor is stationary, the EPB does apply.

12. The New Holland T7.270 tractor displays within the cab an illuminated “!” and “P” icon and also emits an alert tone when the tractor is moving and the operator leaves the seat for more than five seconds. These also signal to the operator that the EPB is applying. However, when the tractor is moving, the EPB does not apply.

13. Whether the New Holland T7.270 tractor is stationary or moving, if the operator leaves the seat, the dashboard and the audible tone communicate to the operator that the EPB is applying. But the EPB only applies if the machine is not moving.



Tractor moving and operator out of seat



Tractor in neutral and operator out of seat

14. Prior to October 23, 2018, Brian Miller had, on many occasions, left the seat of the tractor when it was stationary. When he did so, within the cab he saw the illuminated “!” and “P” icons and heard the alert tone. These signals indicated that the EPB was applying and, in fact, it did apply.

15. On October 23, 2018, in Reno County, Kansas, Brian was operating the T7.270 tractor while pulling a CrustBuster, Model 4030 All Plant, DD 48 x 7.5 seed drill.

16. Brian was traveling at a speed less than 5 mph as he planted wheat.

17. At approximately 3:00 p.m., Brian saw a piece of debris in the field ahead of the tractor/seed drill. As he did not want to run over the debris, he moved the hydrostat/throttle to the zero or near-zero position and stood up out of the seat to move the debris.

18. Within the cab the “!” and “P” icons displayed and the alert tone sounded. Brian heard these, as he had on previous occasions, and he understood them to signify the EPB was applying, and Brian believed it would apply – bringing the tractor to a stop.

19. Despite Brian’s expectation, and contrary to the manual, the EPB did not apply. The transmission did not disengage and the tractor continued to move forward.

20. While standing in the field and looking for the debris, Brian was struck from behind by the seed drill. As he fell to the ground, he grabbed the upper part of the drill's frame and held himself up as high as he could to avoid being run over by the steel discs that were cutting the earth just behind him. Brian's leg was wedged under the drill's wheel, so he could not pull himself above the drill. As the tractor continued forward, Brian literally held on as if his life depended on it. The tractor and Brian continued this way for many seconds, if not well over a minute. Brian clung desperately to the drill while being drug for over 100 yards as the tractor continued to move forward without a driver in the cab.

21. Ultimately, Brian lost his grip, was pulled under the machine, and run over by the seed drill.

22. After running over Brian, the New Holland T7.270 Autocommand tractor continued on, completely unoccupied, through both the field where he had been planting and another adjacent field, for approximately one-quarter of a mile.



Tracks showing continued movement of unoccupied tractor to tree row on horizon

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