

STATE OF MICHIGAN
COURT OF APPEALS

FLOYD R. JOLIFF and MELISSA JOLIFF,

Plaintiff-Appellees,

v

DETROIT CITY DAIRY, INC.,,

Defendant-Appellant.

UNPUBLISHED
September 6, 2002

No. 232530
Wayne Circuit Court
LC No. 99-932905-NP

Before: Cooper, P.J., and Hoekstra and Markey, JJ.

HOEKSTRA, J., (*dissenting*).

I respectfully dissent.

In my opinion, plaintiff has failed to establish that his injury was certain to occur. As a result, the intentional tort exception to the exclusive remedy provision does not apply. MCL 418.131(1); MSA 17.237(131)(1). In light of the fact that plaintiff knew that the brakes on the pallet jack were not working properly, and knew how to slow or stop the pallet jack in the event the brakes did not work, an injury was not certain to occur.

/s/ Joel P. Hoekstra