



Weston Hurd Client Advisory - December 2012

Ohio Supreme Court Closes Door on Workplace Intentional Tort Cases

Prepared by Harry Sigmier, Esq.

The Ohio Supreme Court has effectively ended 30 years of contentious workplace intentional tort litigation by its decision in *Houdek v. ThyssenKrupp Materials N.A., Inc.*, 2010-Ohio-1694. Until 1982, Ohio employers could rely on constitutional and statutory immunity from civil tort liability, on claims by workers injured in the course of employment, by complying with the state's workers' compensation laws. Things changed when the Supreme Court handed down *Blankenship v. Cincinnati Milacron Chems., Inc.*, 69 Ohio St.2d 608 (1982) holding that intentional torts did not arise out of the employment relationship and created a basis for civil liability. In later decisions, the Supreme Court ruled that when injury was "substantially certain" to occur an intent to injure was inferred. In the courtroom, this standard was so amorphous that it was difficult for juries to distinguish it from common negligence. It was very risky for employers to take cases to trial, especially in death and serious injury situations.

Starting in 1986, the Ohio legislature embarked on efforts to limit intentional tort liability to cases where the employer deliberately intended injury. The Ohio Supreme Court struck down two such enactments as unconstitutional. The legislature tried again in 2005 and this time the statute was upheld in *Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027.

To avoid another constitutional challenge, the legislature retained the "substantially certain" phrase in the new statute; R.C. 2745.01, but defined it to mean acting with "deliberate intent" to injure. In *Houdek*, the lower court disregarded the deliberate intent definition and held the old substantial certainty test still controlled. The Supreme Court reversed, holding that injured employees, hurt in the course and scope of employment, could not overcome the employer's constitutional and statutory immunity to such employees' claims, unless the plaintiff-employee could prove that the defendant-employer truly deliberately intended to injure the employee.

Last month the Supreme Court held the portion of the statute under which an employer can be held liable for removing safety devices is limited to the rare situations where an employer actually removes a safety guard from equipment. *Hewitt v. L.E. Myers Co.*, 2012-Ohio-5317.

It's too soon to say the plaintiffs' bar won't try another approach to get around the statute, but this time the door appears to be closed.

The *Houdek* decision can be found at [Houdek v. ThyssenKrupp Materials N.A., Inc.](#), 2010-Ohio-1694.

Please contact Weston Hurd if you have any questions about how this decision may impact your pending claims.



Harry Sigmier is a Partner with Weston Hurd LLP. He focuses his practice on products liability, construction, personal injury and insurance coverage. Harry can be reached at (216) 687-3324 or HSigmier@westonhurd.com.

For more information about Mr. Sigmier and Weston Hurd, please visit www.westonhurd.com.

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