

Intentional Tort Case Illustrates Dangers of Scaffolding

by James B. Yates

On July 8, 2013, Ohio's Tenth District Court of Appeals affirmed summary judgment in favor of a masonry contractor in a workplace intentional tort case. In the case of *Delores Johnson v. Cincinnati Insurance Co.*, Ms. Johnson filed a lawsuit as the administrator of the estate of her husband who died in a workplace accident when unsecured scaffolding collapsed. The evidence showed that Mr. Johnson, a masonry worker, had completed brick and stone installation in one area and he began to install flashing in another area using a scaffolding that had not yet been secured to the building. The scaffolding collapsed when a corner of an outrigger bracket gave way. Ms. Johnson argued the case should have been allowed to proceed to a jury trial because the employer, International Masonry, Inc., did not expressly prohibit employees from working on the unsecured scaffolding or beyond the area of their initial assignment and other company employees knew the scaffolding had not been released for use but failed to notify Mr. Johnson.

The Court of Appeals discussed recent Ohio Supreme Court decisions upholding Ohio's intentional tort statute restricting recovery to cases where a worker proves that the employer deliberately intended to harm the employee. The Court stated that not affirmatively prohibiting Mr. Johnson from using the scaffolding was not evidence of "deliberate intent to harm."

Despite the favorable outcome for the employer, this case highlights several workplace safety considerations:

1. ***The importance of safety inspections.*** One of the key facts the Court cited favoring the employer was that the outrigger bracket that eventually gave way had been inspected multiple times before the accident with no problems noted.
2. ***Supervisory presence and clear instructions.*** Workers testified they had no clear instructions from their supervisor about what work to perform after they completed their initial assignment. Therefore, the workers proceeded to work on flashing using an unsecured scaffolding. An accessible on-site supervisor providing clear instructions can reduce the likelihood of these types of misun-



Offices

Toledo Office:

One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699
Phone: 419-241-6000
Fax: 419-247-1777

Columbus Office:

100 East Broad St.
Ste. 2100
Columbus, Ohio 43215
Phone: 614-564-1445
Fax: 614-280-1777

Findlay Office:

510 South Main St.
Findlay, Ohio 45840
Phone: 419-424-5847
Fax: 419-424-9860

Novi Office:

28175 Haggerty Rd.
Novi, Michigan 48377
Phone: 248-994-7757
Fax: 248-994-7758

3. ***Employee training regarding scaffolding protocols is critical.*** There was evidence the scaffolding builder knew the scaffolding was not released for use. The record was less clear as to whether there were specific company protocols regarding the release of the scaffolding for use, communicating with supervisors and workers regarding the state of the scaffolding and appropriately securing the scaffolding. While the employer was successful obtaining summary judgment after years of litigation, it was also cited by OSHA and several of those citations were subsequently upheld.

Should you have any questions regarding employer intentional torts, please contact [James B. Yates](mailto:James.B.Yates@eastmansmith.com) or visit our web site www.eastmansmith.com.

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