Employment Alert

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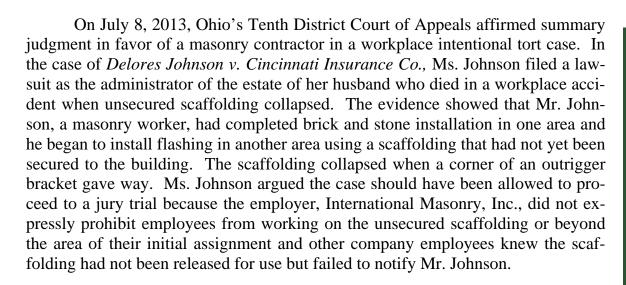
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Established 1844

January 2014

Intentional Tort Case Illustrates Dangers of Scaffolding

by James B. Yates



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-



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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 <u>James B. Yates</u> or visit our web site <u>www.eastmansmith.com</u>.

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