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Ohio Supreme Court Refuses to Expand Definition Of “Equipment Safety Guard”

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Ohio employers just received some good news from the Ohio Supreme Court. On November 20, 2012, the Ohio Supreme Court reversed a lower court decision which expansively interpreted the definition of “equipment safety guard” under Ohio’s intentional tort statute. In *Hewitt v. L.E. Myers Co.*, Slip Opinion No. 2012-Ohio-5317, the Ohio Supreme Court specifically limited the definition of “equipment safety guard” to “a device designed to shield the operator from exposure to or injury by a dangerous aspect of the equipment.” Further, the Court found that a “deliberate removal ... of an equipment safety guard” only occurs “when an employer makes a deliberate decision to lift, push aside, take off, or otherwise eliminate that guard.” The decision abruptly halts a re-emergence of intentional tort claims under the statutory provision which grants a “rebuttable presumption” to the plaintiff of the requisite employer “intent to injure another” where an employer deliberately removes an equipment safety guard.

In *Hewitt*, the plaintiff was severely burned when his hand came into contact with an energized power line while working as an apprentice lineman. Mr. Hewitt filed for and received workers’ compensation benefits and also filed an application for a violation of a specific safety requirement, which was settled. It was undisputed that Mr. Hewitt was not wearing protective rubber gloves and sleeves at the time of the injury. Although gloves and sleeves were available, there was a factual dispute over whether a supervisor told Mr. Hewitt that he did not need to wear the personal protective equipment. The trial court allowed the case to proceed to a jury, over the employer’s objections, under the theory that the protective rubber gloves and sleeves were “equipment safety guards” under R.C. 2745.01(C). The jury returned a verdict in favor of Mr. Hewitt. The Eighth District Court of Appeals agreed with the trial court that the rubber gloves and sleeves were “equipment safety guards.” The Ohio Supreme Court reversed and rejected the expanded definition of “equipment safety guards.” The Court reasoned: “To construe ‘equipment safety guards’ to include any generic safety-related item ignores not only the meaning of the words used but also the General Assembly’s intent to restrict liability for intentional torts.”

The practical result of this decision for employers will be to limit non-meritorious claims under the equipment safety guard provision of the intentional tort statute. For a more detailed discussion of recent decisions under this statutory provision, please refer to our *August, 2012 Workers’ Compensation Alert*. Of course, there are still many reasons for employers to maintain good safety practices related to equipment guarding and personal protective equipment (including employee safety training) which include an employer’s legal and moral obligation to the safety of its employees as well as possible exposure to workers’ compensation claims, violations of specific safety requirements and OSHA’s aggressive enforcement initiatives.

If you have any questions concerning intentional torts, or any other workers’ compensation or workplace safety issues please contact James B. Yates, jbyates@eastmansmith.com, (419) 247-1830, or Mark A. Shaw, mashaw@eastmansmith.com, at (614) 564-1441.

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