

Employment Alert

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At Long Last: A Constitutional Intentional Tort Statute

by Peggy Mattimoe Sturgeon

In two long-awaited decisions, the Ohio Supreme Court recently held that the General Assembly finally enacted a constitutional intentional tort statute, thereby limiting employer exposure in workplace accidents. In *Kaminski v. Metal & Wire Products Company* and *Stetter v. R. J. Corman Derailment Services, LLC*, both of which were decided on March 23, 2010, the Court found constitutional Ohio Revised Code 2745.01. The statute requires that, to recover for an intentional tort, an injured worker prove that his or her employer acted with deliberate intent to cause injury to the employee. R.J. Corman, the defendant in the *Stetter* case, was represented by Eastman & Smith Ltd. Eastman attorneys Robert J. Gilmer, Jr., Peggy Mattimoe Sturgeon and Sarah Pawlicki briefed the case, and Ms. Sturgeon argued it before the Court.

By way of background, in 2005, the General Assembly enacted ORC 2745.01 in reaction to the judicially-created common law intentional tort that allowed employees to recover from their employers beyond their workers' compensation recovery if they could prove their injury was "substantially certain" to occur. This version of ORC 2745.01 is the General Assembly's fourth attempt at enacting an intentional tort statute that would limit the exposure of employers to intentional torts. The Court had found the prior intentional tort statutes to be unconstitutional in *Johnson v. BP Chemicals, Inc.*, *State ex rel. Ohio AFL-CIO v. Voinovich* and *Brady v. Safety-Kleen Corp.*

Offices

Toledo Office:

One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699-0032
Telephone: 419-241-6000
Fax: 419-247-1777

Columbus Office:

100 E. Broad Street, Suite 600
Columbus, Ohio 43215
Telephone: 614-564-1445
Fax: 614-280-1777

Findlay Office:

725 S. Main Street
Findlay, Ohio 45840
Telephone: 419-424-5847
Fax: 419-424-9860

Novi Office:

28175 Haggerty Road
Novi, Michigan 48377
Telephone: 248-994-7757
Fax: 248-994-7758

www.eastmansmith.com

The most recent version of ORC 2745.01 states that, in an intentional tort action, the employer shall not be liable unless the plaintiff proves that the employer committed the tortious act with the intent to injure another or with the belief that the injury was substantially certain to occur. While, at first glance, this language sounds like the familiar language from previous Ohio Supreme Court decisions, the General Assembly went on to define “substantially certain” as meaning “an employer acts with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death.” The statute further states, “Deliberate removal by an employer of an equipment safety guard or deliberate misrepresentation of a toxic or hazardous substance creates a rebuttable presumption that the removal or misrepresentation was committed with intent to injure another if an injury or an occupational disease or condition occurs as a direct result.”

Kaminski was on appeal from Ohio’s Eighth District Court of Appeals and involved the appeal of the denial of employer’s motion for summary judgment in an intentional tort case. *Stetter* was originally filed in the Wood County Common Pleas Court, then removed by R.J. Corman to the United States District Court for the Northern District of Ohio. That court certified eight questions involving the constitutionality of ORC 2745.01 to the Ohio Supreme Court.

In upholding the statute, the *Kaminski* court held the current intentional tort statute differs significantly from the version addressed by the *Johnson* court, limited *Johnson* to the statute that was at issue in that case and called the *Johnson* court’s reasoning “flawed.” Further, the court found ORC 2745.01 does not conflict with the legislative authority granted to the General Assembly by Sections 34 and 35, Article II of the Ohio Constitution. The *Stetter* court addressed challenges to the statute based upon the Ohio Constitution’s trial-by-jury, right-to-a-remedy, open-courts and due-course-of-law provisions, and the separation-of-powers doctrine. The court held the statute does not violate any of those provisions or doctrines, and is, therefore, constitutional on its face. Finally, the *Stetter* court opined that while ORC 2745.01 does not eliminate the common-law cause of action for employer intentional tort, it significantly limits the tort.

The import of these decisions for Ohio employers is they finally get the benefit of the exclusivity of the Ohio workers’ compensation system. That is, so long as the employer does not act deliberately to injure an employee, that employee’s exclusive remedy for his or her injuries is through the workers’ compensation system. Having this constitutional intentional tort statute in effect should provide certainty to Ohio employers, consequently limiting lawsuits and litigation costs for employers.



Ms. Sturgeon is a member of the Firm. She represents employers before federal and state courts, as well as federal and state administrative agencies. Her practice also includes counseling of employers regarding a wide variety of employment matters. Should you wish to discuss these cases or any workers’ compensation matters, please contact either our Toledo (419-241-6000) or Columbus (614-564-1445) offices.

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