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## Workplace Injuries: Intentional Tort Claims in Ohio Are (Nearly) Dead in the Water

By Bonnie Kristan and Amy Wentz

The Ohio Supreme Court delivered another blow to injured workers who attempt to skirt Ohio's workers' compensation system by pursuing a remedy for their injuries in court. On the heels of another opinion<sup>1</sup> narrowly interpreting Ohio's intentional tort statute, Ohio Revised Code section 2645.01, the Ohio Supreme Court, in *Houdek v. ThyssenKrupp Materials N.A., Inc.*, Slip Opinion No. 2012-Ohio-5685 (Ohio Dec. 6, 2012), confronted the question of whether an injured worker who brings an intentional tort claim against his or her employer is required to prove that the employer acted with a deliberate intent to injure. The court answered this question with an unequivocal "yes."

### Background

The plaintiff in *Houdek* suffered a broken leg and shattered ankle when he was pinned against a piece of machinery by a sideloader while working in a dimly lit, narrow aisle at his employer's warehouse. At the time of the accident, the employee, who was on light duty due to another workplace accident, was standing and labeling inventory located on storage racks. The storage racks were situated in aisles where workers on sideloaders pulled goods from the racks. The operator of the sideloader that injured the plaintiff had allegedly been told that the plaintiff would be working in that aisle that day, but had forgotten. In fact, the week before the injury, the operator asked the plant manager if he should rearrange his assignment to avoid pulling merchandise from the aisles where the employee would be standing, but the plant manager said no. In addition, the plaintiff argued that the company could have taken steps to ensure employee safety, such as using reflective vests and safety cones or gates.

Before the trial court, *Houdek* claimed that the company deliberately intended to injure him by directing him to work in the aisle with the knowledge that injury would be certain or substantially certain to occur, and not taking additional steps to prevent the accident. The court found the evidence was insufficient to support the plaintiff's claim that the company intended to injure him and dismissed the case. The Eighth District Court of Appeals reversed the lower court's dismissal, and the employer appealed to the Ohio Supreme Court.

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<sup>1</sup> See Bonnie Kristan and Amy Wentz, [Ohio's Intentional Tort Statute Means What It Says](#), Littler ASAP (Nov. 29, 2012).

## The General Assembly Meant What It Said

It took the Ohio General Assembly several attempts to enact an employer intentional tort law that would pass the constitutional muster of the Ohio Supreme Court – but it finally succeeded with Ohio Revised Code section 2745.01. Indeed, the legislature was assiduous in its pursuit of statutory language that would strictly limit intentional tort claims against employers by injured workers to the narrowest of circumstances. In creating this limited exception, the General Assembly specified that an employer shall not be liable to an employee for an intentional tort claim unless the employee can prove that the employer acted with “the intent to injure another or with the belief that the injury was substantially certain to occur.” The General Assembly defined “substantially certain” as an employer acting “with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death.”

Before the Ohio Supreme Court, Houdek argued that the company deliberately intended to injure him because it directed him to work in the aisle with the knowledge that an injury was substantially certain to occur. Claiming that the employer’s subjective mental state is impossible to prove absent a confession, he asserted that intent to injure may be established through the employer’s conduct. He maintained that there was sufficient evidence that his employer intended to injure him as it had been warned of the danger posed by working in the aisles, yet it took no action to ensure his safety before requiring him to work there.

The employer, on the other hand, argued that the court of appeals deviated from the intent to injure standard by applying an objective, rather than subjective, test as to what the employer actually believed. It maintained that the appellate court’s decision finding a scrivener’s error in the statute conflicts with case law and ignores the intent of the General Assembly to limit the situations in which an employee may pursue an intentional tort claim against his employer in addition to a workers’ compensation claim.

Consistent with the language of the statute, the Ohio Supreme Court reversed the decision of the appellate court and held, “absent a deliberate intent to injure another, an employer is not liable for a claim alleging an employer intentional tort, and the injured employee’s exclusive remedy is within the workers’ compensation system.” The court reasoned that even if the employer failed to implement other preventative safety measures, such an omission is not evidence of a deliberate intent to injure. In other words, workplace injuries caused by an employer placing an employee in a potentially dangerous situation – absent evidence that the decision was made with a clear and unambiguous intent to injure – will not be the basis for a successful intentional tort claim in Ohio.

## What This Case Means to Ohio Employers

Combined with the Ohio Supreme Court’s opinion in *Hewitt v. L.E. Myers*, employers should feel secure in the predictability of the remedies and liabilities that ensue from an employee who is injured at work. The legislature created a workers’ compensation system to address those injuries and ensure that employees are fairly compensated. In the rare occasion that an employer would act with the specific intent of causing an employee harm, the legislature provides an additional legal remedy for that employee. But *Houdek*, coupled with *Hewitt*, makes it abundantly clear that an intentional tort claim against an employer is the exception, and not the rule. Nevertheless, employers should place a premium on workplace safety to prevent injuries in the first place – effective safety policies, procedures, and training will help minimize high workers’ compensation rates and the potential for meritless but costly lawsuits.

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