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In a pair of decisions issued March 23, 2010, the Ohio Supreme Court upheld the state's workplace intentional tort statute, Revised Code section 2745.01, which limits injured employees' ability to bring suit against their employers for workplace injuries outside the workers' compensation system. The statute, which was challenged on multiple Constitutional grounds, requires injured workers asserting intentional tort claims to prove that the act or omission that caused their injuries was committed with a deliberate intent to cause injury.

## Ohio Supreme Court Upholds Employer Intentional Tort Statute

By Bonnie Kristan and Kathryn E. Siegel

On March 23, 2010, in two companion cases, *Kaminsky v. Metal & Wire Products Co.*, No. 2010-Ohio-1027, and *Stetter v. R.J. Corman Derailment Services, L.L.C.*, No. 2010-Ohio-1029, the Ohio Supreme Court upheld the constitutionality of a state law limiting workers' claims against their employers for their on-the-job injuries. This decision is a significant one for employers as it confirms that an injured worker's remedy in Ohio comes exclusively from the workers' compensation system unless the employee can satisfy the extremely high burden of proving that the employer's acts or omissions that resulted in the injured worker's injuries were taken with a deliberate intent to cause injury.

### Ohio Statute

The 2005 law in question, Revised Code section 2745.01, significantly restricts the claims injured workers can bring outside of the workers' compensation system. The law, referred to as the "employer intentional tort law," specifically provides that the employer is not liable for damages resulting from an intentional tort 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.

The current law is the third permutation of Ohio's employer intentional tort law as two statutory predecessors had been ruled unconstitutional. Cases typically involve workplace injuries which allegedly stem from exposure to known dangerous conditions or processes or failure to properly maintain equipment, guard machinery or use proper safety devices or procedures. The statute itself codifies some types of intentional torts, such as "deliberate removal by an employer of an equipment safety guard or deliberate misrepresentation of a toxic or hazardous substance."

### Cases Before the Ohio Supreme Court

In the cases before the Ohio Supreme Court, two plaintiffs brought similar suits

challenging the constitutionality of the statute. The first suit was filed in 2005 by Rose Kaminski. Unsatisfied with workers' compensation benefits after she was injured while attempting to load a coil into a steel press, Kaminski filed suit alleging that her employer, Metal & Wire Products, Co., had committed a common law, as opposed to statutory, intentional tort and that the statute limiting such claims was unconstitutional. Carl Stetter, a former employee of R.J. Corman Derailment Services L.L.C., filed a similar lawsuit in 2007.

In her case, Kaminski alleged that the statute violated two sections of the Ohio Constitution that provided limitations on the General Assembly's power to legislate. The Ohio Supreme Court rejected this argument, finding that the sections on which Kaminski based her challenges were *grants* of powers to the General Assembly rather than limits on the authority of the General Assembly.

In *Stetter*, the companion case, which was filed in Wood County Common Pleas Court but then removed by the employer to federal district court, the employer argued that because Stetter's injuries occurred after the statute's April 2005 effective date, his claim should be dismissed due to his failure to produce evidence of the employer's "deliberate intent" to injure him, as required by the statute. Stetter responded by asking the court to find that the statute violated multiple provisions of the Ohio Constitution. Since the Ohio Supreme Court had not yet ruled on whether Revised Code statute 2745.01 was constitutional, the district court requested the state court to address Stetter's eight constitutional challenges. The questions before the court not already addressed in *Kaminski* included whether the statute violated the Ohio Constitution's trial by jury provision, the right to a remedy and open-courts provisions, the due-course of law provision, the equal protection provision or the separation of powers doctrine.

The court resoundingly rejected the constitutional challenges. As to the plaintiff's claims that the statute violated the right to open court and right to a remedy, the court found that in drafting the current version of the statute, the legislature had created a more limited statute than those previously declared unconstitutional. It responded to the court's prior decisions by eliminating many of the features identified as "unreasonable, excessive and onerous." Specifically, previous permutations of the statute had imposed a heavier burden on the plaintiff, creating a cause of action that was in effect illusory with unreasonable and excessive requirements, while the current version of the statute has taken away some of the more onerous requirements preventing relief, such as the requirement that plaintiffs establish the tort through clear and convincing evidence, that the employee could recover damages only in excess of what was received in workers' compensation benefits, and providing for sanctions for failing to comply with certification requirements. Moreover, the court found that even injured workers who cannot meet the "deliberate intent" standard required to prevail in an intentional tort suit are provided meaningful remedies through the workers' compensation system.

The court also quickly jettisoned plaintiffs remaining challenges and found that while the statute limits an injured worker's ability to pursue common law intentional tort claims, it does not eliminate the right. Finally, the court concluded that it was not its role to "establish legislative policies or to second-guess the General Assembly's policy choices," and that the General Assembly had not exceeded its authority to change the common law in the area of employer intentional torts.

## What This Means for Employers in Ohio

The constitutionality of this statute, and its predecessors, has been in question since 1991. The decision provides some long-awaited finality to the issue. Moreover, the confirmation from the Ohio Supreme Court that the statute is constitutional in its current form keeps the bar high for plaintiffs by maintaining the high standard for getting past summary judgment and proving their claims.

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