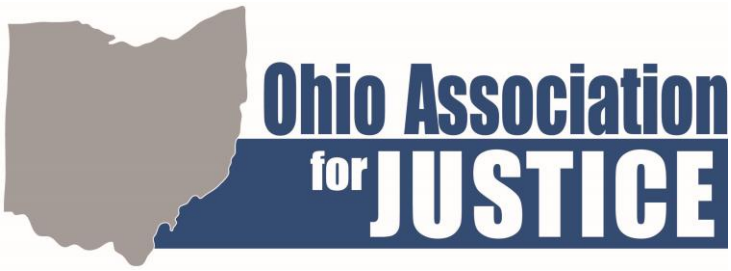

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They Too Walk Among Us: What Remains of Employer Intentional Torts

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Employer Intentional Torts

Sean's Salient Synopses

1. Defining "substantially certain" to mean "deliberate intent to injure" was not a scrivener's error in R.C. 2745.01. The legislature intended to limit employer intentional tort claims to deliberate or specific intent only. *Houdek v. ThyssenKrupp Materials N.A., Inc.,* 134 Ohio St.3d 491, 2012-Ohio-5685.

2. "Removal" of a safety guard means lift, push aside, take off, or eliminate. "Equipment safety guard" means a device designed to shield the operator from exposure to or injury by a dangerous aspect of the equipment. *Hewitt v. L.E. Myers Company,* 2012-Ohio-5317, 134 Ohio St.3d 199.

3. An employer's knowledge of improper and dangerous methods may constitute "deliberate intent to injure." *Cantu v. Irondale Industrial Contractors*, 2012-Ohio-6057, 6th Dist. Case No. F-11-018.

4. Application of the presumption in R.C. 2745.01 necessarily involves weighing of evidence, and therefore, cannot be resolved as a matter of law. *Zuniga v. Norplas Indus.*, 2012-Ohio-3414, 6th Dist. Case Nos. WD-11-066, WD-11-067.

5. Statute protects all employees from injury, not just operators of the machine. *Pixley v. Pro-Pak Industries*, 2013-Ohio-1358, 6th Dist. Case No. L-12-1177.

6. Deliberate decision to ignore OSHA regulations creates question of fact on the issue of employer's intent to injure. *Smith v. Ray Esser & Sons, Inc.*, 2013-Ohio-1095, 9th Dist. C.A. No. 12CA010150.

7. Evidence and expert testimony showed that interlock switch which prevented tire shredder from engaging was something more than a minor safety-related device that was part of the overall safety system, and therefore constituted an "equipment safety guard." *Downard v. Rumpke of Ohio, Inc.,* 2013-Ohio-4760, 12th Dist. Case No. CA2012-11-218.

8. Though R.C. 2745.01 applies only to employers, it does not supercede common law claims for employer intentional tort against fellow employees. *Head v. Reilly Painting and Contracting, Inc.*, 2015-Ohio-688, 8th Dist. Case No. CV-12-793702.

9. Insurance coverage does not apply to employer intentional tort claim, even if the presumption of intent to injure in R.C. 2745.01(C), because liability must be based on finding that employer deliberately intended to injure. *Hoyle v. DTJ Ents., Inc.,* 143 Ohio St.3d 197, 2015-Ohio-843