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Gallagher Sharp Newsflash: Supreme Court Reaffirms Narrow Interpretation of Ohio's EIT Safety Guard Provision

Today, December 18, 2014, in *Pixley v. Pro-Pak Industries, Inc.*, the Supreme Court of Ohio found that the mere failure of an equipment safety guard is not sufficient to create a rebuttable presumption that an employer intended to injure its employee.

Reaffirming its earlier decisions in *Houdek v. ThyssenKrupp Materials N.A., Inc.*, and *Hewitt v. L.E. Myers Co.*, the Court explained that R.C. 2745.01 limits claims against employers for intentional torts to circumstances demonstrating a deliberate intent to cause injury to an employee. Although under R.C. 2745.01(C) the deliberate removal by an employer of an equipment safety guard creates a rebuttable presumption of an intent to injure, "deliberate removal" only occurs when an employer makes a deliberate decision to lift, push aside, take off, or otherwise eliminate that guard from the machine. *Pixley* at ¶18-19.

Phillip Pixley was injured while kneeling in the pathway of a transfer car. The transfer car operator could not see Mr. Pixley, and the car pinned Mr. Pixley's leg against the conveyor line as it moved forward. The accident did not trigger the shut-off mechanism in the transfer car's safety bumper. Mr. Pixley's experts opined that the safety bumper had been deliberately bypassed or disabled because video footage showed that the bumper only partially collapsed without stopping the transfer car. The trial court granted the employer summary judgment which was reversed by the court of appeals. In reversing the appellate court, the Supreme Court of Ohio explained that "[e]ven if there were a factual dispute concerning the operating of the safety bumper on the day of the accident, there is no evidence showing that [the employer] deliberately removed it or otherwise caused it to fail." *Pixley* at ¶21.

Relying on *Hewitt*, the employer also asked the Court to find that a safety feature that protects employees who do not operate machines does not meet the definition of an "equipment safety guard." The employer argued that the rebuttable presumption in R.C. 2745.01(C) only applies when a machine operator is injured by the deliberate removal of an equipment safety guard. The Supreme Court declined to address whether the definition of "equipment safety guard" is limited to devices protecting machine operators. In dissent, Justice Pfeifer would have found that the protections in R.C. 2745.01(C) are not limited to machine operators, but apply to all employees. Justice Lanzinger joined the dissent on this point only. Justices Lanzinger and Pfeifer have taken opposing sides in all of the recently decided employer intentional tort cases, including *Hewitt.* Their agreement on this issue may signal that when and if this issue comes before the Court in the future, the protections in R.C. 2745.01(C) are likely to be found to apply to all employees, and not just to the operators of machines.

In a separate dissenting opinion, Justice O'Neill notes that "there are enough disputed facts in this case to write a law school journal article", and would affirm the Sixth Appellate District on that basis.

A copy of the full opinion can be found at:
http://www.supremecourt.ohio.gov/ROD/docs/pdf/0/2014/2014-Ohio-5460.pdf

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