



TUCKER ELLIS LLP

CLIENT ALERT – APPELLATE UPDATE

NOVEMBER 2012

SUPREME COURT OF OHIO LIMITS EMPLOYEE SUITS FOR WORKPLACE INJURIES *TUCKER ELLIS APPELLATE TEAM SCORES WIN FOR CLIENT*

On November 20, 2012, the Supreme Court of Ohio issued a decision that limits employee suits for workplace injuries. In *Hewitt v. L.E. Myers Co.*, Slip Opinion No. 2012-Ohio-5317, the Court accepted the arguments of defense counsel Tucker Ellis that the statutory exception allowing employees to sue employers for the “deliberate removal” of an “equipment safety guard” does not apply to injuries arising out of an employer’s alleged failure to tell an employee to use available safety equipment.

The plaintiff in *Hewitt* claimed that his employer’s alleged failure to require him to wear rubber gloves and sleeves when working on a deenergized power line amounted to the “deliberate removal” of “an equipment safety guard” – entitling him to a presumption of intent to injure under Ohio’s intentional tort statute. The trial court sent the case to the jury on this theory, which returned a verdict in favor of the plaintiff. The Court of Appeals affirmed, and the Ohio Supreme Court accepted the case to resolve two questions of first impression: What do “equipment safety guard” and “deliberately removed” mean?

The Court accepted the argument of Tucker Ellis attorneys that “equipment safety guard” means a device “shielding” an employee from a dangerous part of a machine, clarifying that personal items like rubber gloves and sleeves are *not* equipment safety guards. The Court also determined that “deliberate removal” refers to something an employer has control over (and decides to do), not something the employee has control over (and fails to do). The Court

emphasized that failing to instruct an employee to follow safety procedures is not “deliberate removal,” and ordered that judgment be entered in favor of the employer.

The Supreme Court opinion represents the culmination of efforts by Tucker Ellis attorneys to promote a rational and consistent implementation of legislative intent to limit intentional workplace tort actions ...

Ohio’s current workplace intentional tort statute was enacted in 2005 to limit the ability of employees who have received workers’ compensation benefits to pursue another recovery against their employer through the court system. The statute received broad support among Ohio small business owners, manufacturers, and insurers. Tucker Ellis attorneys represented the employer in the 2010 Ohio Supreme Court case declaring the statute to be constitutional (*Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027).

Hewitt was watched closely by attorneys and businesses across the state of Ohio as it was the first case to go to a jury under the new statute. The Ohio Supreme Court opinion represents the culmination of efforts by Tucker Ellis attorneys to promote a rational and consistent implementation of legislative intent to limit intentional workplace tort actions, resolving a split of appellate authority concerning the scope of the rebuttable presumption of intent.

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