

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Sean McCormick at 937.224.3333 or send an email to smccormick@green-law.com.

Court of Appeals: Fifth Appellate District

Case Name: *Jefferson v. Benjamin Steel Co., Inc.*, 2010-Ohio-50

Decided: January 8, 2010

Issue(s): R.C. § 2745.01 & intentional torts

Summary of Opinion: Clark Jefferson worked as a maintenance man at the Benjamin Steel Company ("Benjamin Steel"), and he was asked by his supervisor to inspect an overhead door that needed repairs. Mistakenly believing that no one else was in the building at the time, Jefferson jumped into a scissors-lift and raised himself into the air to check the door. Unbeknownst to Jefferson, another employee had entered the building and started an overhead crane which moved steel around the building. The crane struck the scissors-lift and Jefferson fell to the ground, incurring injuries.

Jefferson had attended several training sessions over the years that instructed employees not to raise a scissors-lift unless he or she had shut off and locked down the cranes. Jefferson had a kit to perform this "lockout/tagout" procedure, and he had completed such operations in the past. However, Jefferson testified that he had not been instructed to shut down the cranes, and that he did not believe he needed to because he was fixing the overhead door, not the cranes.

Thereafter, Jefferson filed a complaint against Benjamin Steel alleging that it had committed an intentional tort. Jefferson alleged both statutory and common-law claims against Benjamin Steel, and he further argued that R.C. § 2745.01 was unconstitutional and that pre-statutory law governed his claims.

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Not long after, Cincinnati Insurance Company (“CIC”), which provided liability insurance to Benjamin Steel, intervened. Benjamin Steel filed a Motion for Summary Judgment, and CIC filed a cross-claim seeking a declaration that it did not have to provide coverage under the policy if the claims were governed by R.C. § 2745.01.

The trial court granted Benjamin Steel’s Motion for Summary Judgment, and it found that R.C. § 2745.01 was constitutional and governed Jefferson’s claims. Moreover, it determined that even if the statute was unconstitutional, summary judgment was appropriate under the common-law standard of intentional torts. Because it granted Benjamin Steel summary judgment, the court found that CIC’s cross-claim was moot. Jefferson appealed.

Thereafter, CIC again sought a declaration on the issue of coverage because the dismissed cross-claim had left the issue of whether CIC had to defend Benjamin Steel on appeal unresolved. The trial court overruled the motion because it had no jurisdiction to consider it due to the fact that the foregoing order had been appealed. As a result, CIC appealed.

The Fifth District Court of Appeals explained that under R.C. § 2745.01 an employer is not liable for an employee’s injuries unless the employee can prove 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 court declined to address the constitutionality of the statute. It determined that because Jefferson’s claim also failed under the common-law standard the constitutional question did not affect the outcome of this case.

Because Jefferson had been extensively trained in shutting down the cranes before operating the scissors-lift, the court determined that Jefferson, through his own choice, failed to exercise the proper procedural safeguards. This disregard for procedure led to Jefferson’s injuries, and he was unable to show that Benjamin Steel knew that injury to him was substantially certain to occur.

Additionally, no evidence showed that Benjamin Steel *required* Jefferson to perform his task without following the proper precautions. Lastly, the court dismissed Jefferson’s argument that he did not think he needed to shut off the cranes when fixing an overhead door. The court reasoned that the policy required the cranes to be shut off whenever an employee operated a scissors-lift, regardless of whether or not the employee was fixing the cranes or not.

The judgment was affirmed, and, as a result, CIC’s assignments of error as to coverage issues were once again rendered moot.

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