Ohio Precludes Insurance Coverage for Employer Intentional Torts

By David J. Oberly

In the recent case of *Hoyle v. DTJ Enterprises (In re Hoyle),* 2015 Ohio 843, the Ohio Supreme Court effectively eliminated insurance coverage for employer intentional torts in the state when it held that insurance policies which preclude coverage for acts committed with a deliberate intent to injure do not provide coverage for employment intentional tort claims.

In 2008, Duane Hoyle was injured when he fell from a ladder-jack scaffolding while working on a construction project in the course and scope of his employment for DTJ Enterprises and Cavanaugh Building Corporation. Hoyle was working on the scaffold when the platform "lifted up like a teeter totter" and collapsed, bringing both the scaffolding and Hoyle himself crashing to the earth. Importantly, when Hoyle assembled the ladder-jack scaffold on this project, he did not have the bolts or pins to secure the ladder jacks to the vertical side ladders because his employers refused to provide him and his co-workers with the bolts, which the companies claimed were unnecessary and took too much time to use.

Both companies had obtained commercial general liability policies from Cincinnati Insurance Company, and had purchased additional Employer Liability coverage. The additional coverage extended to injuries to employees caused by intentional acts that were "substantially certain to cause injury," but excluded coverage for intentional acts committed "with the deliberate intent to injure." Hoyle filed suit against DTJ and Cavanaugh, alleging statutory claims of employer tort. CIC then intervened and filed a complaint for declaratory judgment that it had no obligation to indemnify the employers for its employee's injuries. In its declaratory judgment action, CIC argued that even if Hoyle prevailed on his employer intentional tort claims, any liability would be excluded from coverage since it necessarily had to be based on the employer's deliberate intent to injure him.

R.C. § 2745.01, which now governs employer intentional torts in Ohio, took effect in 2005 and provides as follows:

(A) In an action brought against an employer by an employee *** for damages resulting from an intentional tort committed by the employer during the course of employment, the employer shall not be liable 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.

(B) As used in this section, "substantially certain" means that an employer acts with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death.

(C) Deliberate removal by an employer of an equipment safety guard *** creates a rebuttable presumption that the removal *** was committed with intent to injure another if an injury or an occupational disease or condition occurs as a direct result.

At issue on appeal was Hoyle's reliance on R.C. § 2745.01(C)'s presumption of an intent to injure resulting from a showing of the deliberate removal of a safety guard by the employer.

Hoyle argued that because subsection (C) of R.C. § 2745.01 permits employees to prevail by demonstrating a presumption, claims under that particular portion of the employer intentional tort statute do not require actual proof of a "deliberate intent to injure" such that they are not barred from coverage. The Ohio Supreme Court disagreed. It found that even if an injured worker only established intent via the presumption, he or she was still required to establish deliberate intent as an essential element of a R.C. § 2745.01 claim. In that case, whether Hoyle proved that intent with direct evidence under R.C. § 2745.01(A) or with an unrebutted presumption under R.C. § 2745.01(C), intent to injure was an essential element of his claim for employer intentional tort. Thus, the Court concluded, although Hoyle might prevail without direct evidence of a deliberate intent to injure, he could not recover without a finding that DTJ and Cavanaugh acted with the intent to injure. As a result of the CIC policy excluding from coverage "liability for acts committed by or at the direction of an insured with the deliberate intent to injure," then, there was no set of facts under which the employers in that case could be legally liable to Hoyle that fell within the policy's coverage.

Because liability for an employer intentional tort under R.C. § 2745.01 requires a finding that the employer acted with the intention to injure an employee, the Court concluded that an insurance provision that excludes from coverage liability for an insured's act committed with deliberate intent to injure an employee precludes coverage for employer intentional torts. In Hoyle's case, regardless of whether he established intent through direct evidence or through an unrebutted presumption, he still could only prevail against his employers by proving intent to injure, the very claim expressly excluded by both the standard commercial general liability policy, as well as the Employer's Liability endorsement. As a result, no facts could give rise to a duty upon CIC to indemnify DTJ or Cavanaugh, even if Hoyle prevailed on his claims against them. Accordingly, CIC was not required to indemnify the employers for Hoyle's injuries.

The results of the *Hoyle* decision are significant for employers, employees, and insurers. For employers, *Hoyle* essentially eliminates insurance coverage for employer intentional tort claims in Ohio. For employees, insurance proceeds will no longer be available to compensate them for intentional tort claims brought against their employers, which will have the likely effect of producing a significant drop in the number of employer intentional tort claims that are filed in the state. And finally, insurers may begin to move away from accepting coverage and defending such claims under a reservation of rights, and transition towards denying employer intentional tort claim tenders and disclaiming all coverage from the outset of the claim.

"Importantly, when Hoyle assembled the ladder-jack scaffold on this project, he did not have the bolts or pins to secure the ladder jacks to the vertical side ladders because his employers refused to provide him and his co-workers with the bolts, which the companies claimed were unnecessary and took too much time to use."

Oberly is an associate in the Cincinnati office of Marshall Dennehey Warner Coleman & Goggin. A member of the firm's professional liability department, he focuses his practice on business and commercial litigation, corporate law, employment and labor law, civil rights law, and personal injury and wrongful death litigation. He may be reached at djoberly@mdwcg.com.