



Intentional Tort Exception to Michigan Workers' Compensation Act – Court of Appeals Reaffirms High Standard

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It is well established that the Michigan Worker's Disability Compensation Act (the "Act") provides that the recovery of benefits under the Act shall be the injured employee's exclusive remedy against an employer. See MCL 418.131. The only exception to this rule allows an injured employee to sue the employer by alleging an "intentional tort." To prevail, the worker must show that he or she was injured "as the result of a deliberate act of the employer and the employer specifically intended an injury." *Id.* The statute goes on to provide that "if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge[,]" then the employer acted with the required intent. *Id.* In practice, this is a very high standard for any injured employee to meet.

Case Law Background

On April 17, 2018, the Michigan Court of Appeals decided *Shumaker v. Meritt Tool & Die & Eugene D. Miller*, No. 336866. In *Shumaker*, the plaintiff worked as a laborer at a tool and die company. He was working on a large press used to cut steel. Employees were instructed to never put their hands on top of the steel part to be cut while it was in the press. In an unfortunate accident, the plaintiff lost three fingers when the press unexpectedly double-cycled. A few years prior, MIOSHA issued the employer citations for failure to provide tools to place and remove parts in the press and for failure to safely cover the foot pedal which operated the press.

The injured employee sued the employer under the intentional tort exception of the Act. Foster Swift attorney John Nicolucci argued the case before the Court of Appeals on behalf of the employer resulting in a positive outcome. Ultimately, the Court of Appeals held that (1) despite the employer having actual knowledge that the machine could double-cycle, the plaintiff failed to show there was a genuine issue of material fact about whether an injury was "certain to occur" as is required by MCL 418.131; and (2) even if the plaintiff had established

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that the defendant had actual knowledge that the injury was certain to occur, the plaintiff showed no evidence that the employer "willfully disregarded" such knowledge.

Conclusion

The Michigan Supreme Court has indicated that the standard a plaintiff must meet to prevail in an intentional tort action arising out of a workplace injury is "extremely high." *Travis v. Dreis & Krump Mfg. Co.*, 453 Mich. 149, 174 (1996). Following the Michigan Court of Appeals' decision in *Shumaker*, that "extremely high" standard still applies in full force.