

Recent Ohio Supreme Court Decisions

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Over the last few months, the Ohio Supreme Court issued three opinions that will have long-lasting effects on litigated civil matters in the years to come. They addressed the issues of employer intentional torts, the admissibility of medical expense write offs, and insurance coverage for attorney fees incurred while defending a punitive damages claim.

1. *Kaminski v. Metal & Wire Products Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027 – In this case, as well as two others decided on the same day, the Ohio Supreme Court held that the employer intentional-tort statute, enacted in April, 2005, is valid and enforceable despite numerous constitutional attacks. Although recovery within the workers' compensation system was to be the exclusive remedy for employee injury in the workplace, the Supreme Court previously recognized an exception to this rule by allowing an employee to enforce common law remedies against his or her employer for an intentional tort. Over the years, the Court and the Ohio legislature have battled over the definition of what constitutes an intentional tort. Now, under Ohio Revised Code Section 2745.01, an employee or the dependent survivors of a deceased employee, must prove, by clear and convincing evidence, that the employer committed a tortious act with the intent to injure another or with the belief that the injury was substantially certain to occur. As used in the statute, "substantially certain" means that an employer acted with deliberate intent to cause an employee to suffer an injury, disease, condition, or death. This is a steep burden, the net effect of which will be significantly fewer employer intentional tort actions being brought by employees.

2. *Jaques v. Manton*, 125 Ohio St.3d 342, 2010-Ohio-1838 - This case expands upon the holding in *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, wherein the Ohio Supreme Court found that the amount accepted by a medical provider as full payment for treatment of a plaintiff is admissible in a personal injury action, even when that amount is less than the amount originally billed. The Jacques Court considered the viability of *Robinson* in light of the provisions of a new collateral source statute, Ohio Revised Code Section 2315.20. The Jacques Court found the new statute to be inapplicable to write-offs and that its prior decision in *Robinson* was not affected – evidence of write-offs remains admissible to show the reasonable value of medical expenses.

3. *Neal-Pettit v. Lahman*, 125 Ohio St.3d 327, 2010-Ohio-1829 – This was a discretionary appeal to determine whether an insurer must pay an attorney fee award on behalf of its insured under her insurance policy, and whether payment of attorney fees awarded solely as a result of punitive damages violates the public policy of Ohio. After reviewing the Allstate insurance policy at issue, the Supreme Court held that since attorney fees were not expressly excluded under the policy, they were covered. The Court then found that attorney fees are distinct from punitive damages, and public policy does not prevent an insurer from covering attorney fees on behalf of an insured when they are awarded solely as a result of an award of punitive damages. Allstate and other insurers will likely seek to amend their punitive damage exclusions to expressly exclude attorney fees and other costs arising out of a punitive damage award.

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