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Case Bulletin: Tort Law

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West Virginia Supreme Court rules that in a deliberate intent cause of action the violation of a statute, rule, regulation or standard is a proper foundation for the element of deliberate intent.

Joseph E. Ryan v. Clonch Industries, Inc. and H & D Lumber Distributor, Inc.
The Supreme Court of Appeals of West Virginia
No. 33001
Filed October 27, 2006

The West Virginia Supreme Court ruled that in a deliberate intent cause of action, the violation of a statute, rule, regulation or standard is a proper foundation for the element of deliberate intent where such statute, rule, regulation or standard imposes a specifically identifiable duty upon an employer, as opposed to merely expressing a generalized goal and where the statute is applicable to the specific type of work at issue. The Court further held that, where the employer has failed to perform a reasonable evaluation to identify hazards in the workplace in violation of a statute imposing such a duty, the performance of which may have readily identified certain workplace hazards, the employer is prohibited from denying that it possessed a "subjective realization" of the hazard asserted in the deliberate intent action, and the employee, upon demonstrating such violation, is deemed to have satisfied the burden of proof with respect to showing "subjective realization" pursuant to W.Va. Code § 23-4-2(c)(2)(ii)(C).

Plaintiff Joseph Ryan was an employee of Clonch Industries. While cutting metal banding material, Ryan was injured when a piece of the metal lacerated his left eye. In support of his deliberate intent claim, the Plaintiff introduced evidence that the employer had failed to conduct a hazard assessment in conformity with OSHA regulation 29 C.F.R. § 1910.132(d)(1)(2006). The statute requires employers to conduct a hazard assessment to determine if hazards are present which necessitate the use of personal protective equipment. The regulation directs employers to require the use of personal protective equipment by employees exposed to the hazard.

Clonch argued that the statute was a general regulation requiring a safe workplace and therefore did not qualify as a regulation specifically applicable to the working condition involved in the employee's injury as required under the deliberate intent statute. They further argued that they lacked the subjective knowledge of any unsafe working condition related to the plaintiff's injury required under prong (B) of W.Va. Code 23-4-2(c)(2)(ii).

The Court held that the OSHA regulation at issue was not a general requirement for a safe workplace in that it imposed an affirmative duty on the employer to conduct a hazard analysis. The Court also disagreed with Clonch's argument that the regulation did not meet the criteria for a deliberate intent claim because it was not specifically applicable to the particular work involved. The Court noted first that prong C of the deliberate intent statute does not require that the employer violate a statute which specifically names the work in question. The Court noted that the general words of W.Va. Code § 23-4-2(c)(2)(ii)(C) simply require that the statute, rule, regulation or standard asserted by an employee be capable of application to the specific type of work at issue. As the OSHA regulation in question requires employers to "assess the workplace" the Court held it would apply to the operations conducted by the Plaintiff at the time of his injury as being "in the workplace", and the statute therefore applies specifically to the work in question for purposes of prong C.

Clonch also argued that the Plaintiff had failed to show that the employer had a subjective realization and appreciation of any specific unsafe working condition regarding the work at issue. Although the Court agreed that no evidence was presented to show that any of the Plaintiff's supervisors or managers had actual subjective knowledge of an unsafe working condition, the Court held that, the employer's failure to comply with the OSHA regulation to conduct a hazard analysis of the workplace, prohibited them from denying a subjective realization of an unsafe condition. Specifically, the Court held, "where the defendant employer has failed to perform a reasonable evaluation to identify hazards in the workplace in violation of a statute, rule or regulation imposing a mandatory duty to perform the same, the performance of which may have readily identified certain workplace hazards,



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the defendant employer is prohibited from denying that it possessed ‘a subjective realization’ of the hazard asserted in the deliberate intent action, and the employee, upon demonstrating such violation, is deemed to have satisfied his or her burden or proof with respect to showing ‘subjective realization’ pursuant to W.Va. Code § 23-4-2(c)(2)(ii)(C).”