



Ohio Supreme Court rules that employment intentional tort claims are excluded from coverage

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In a long-awaited decision important to Ohio employers and their insurers, the Ohio Supreme Court has held that insurance policies which exclude from coverage acts committed with the deliberate intent to injure, do not provide coverage for employment intentional torts claims. Reversing the intermediate appellate court's decision in [Hoyle v. DTJ Enterprises, Inc.](#), the Supreme Court's syllabus provides, "An insurance provision that excludes coverage for acts committed with the deliberate intent to injure an employee precludes coverage for employer intentional torts, which require a finding that the employer intended to injure the employee."

In the facts giving rise to *Hoyle*, the injured worker claimed that his employer's insurer had a potential obligation to indemnify his Ohio Revised Code §2745.01(C) claim. Such a claim involves a situation in which an employee may presumptively establish an employer's deliberate intent to injure. The employee argued that because §2745.01(C) allows employees to prevail by establishing a presumption, claims under that provision do not require actual proof of "deliberate intent to injure," and are therefore not excluded from coverage. Rejecting this argument, the Court held that, even if a claimant only establishes deliberate intent by way of the presumption, he still establishes deliberate intent, and injuries resulting from such deliberate intent are excluded under the policy.

Importantly, the insurer in *Hoyle* was defending the employer under a reservation of rights and did not litigate its obligation to defend the employer in this action. As a result, the Court noted that its decision only analyzed potential indemnification obligations, not defense obligations. That said, because the Ohio Supreme Court has now finally resolved the question of whether indemnification is potentially owed, insurers may much more comfortably begin denying intentional tort tenders, rather than accepting them under a defense reservation of rights.

An additional result of *Hoyle* may be an appreciable drop in the number of employment intentional tort claims asserted, as insurance proceeds no longer exist to pay such claims.

If you have questions regarding this decision or would like to have more information, please contact [Bill Harter](#) in Frost Brown Todd's [Tort and Insurance Defense Practice Group](#).

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