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SPECIAL BULLETIN

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INTENTIONAL ACTS EXCEPTION TO WORKMAN'S

COMPENSATION COVERAGE

Several courts have greatly expanded the scope of the "intentional tort" exception to the workman's compensation laws and allowed legal actions against employers by employees who merely alleged that their injuries were intentionally caused by their employer. These decisions have created a substantial risk for employers. Not only is the employer confronted with the dilemma of having to defend tort actions that previously were covered by the general rule that workman's compensation payments are the exclusive remedy for employees injured on the job, but the employer, if found liable, may have to satisfy any judgments itself and may not be able to rely on its insurance coverage since the injury was "intentionally" caused by the employer.

ISSUE IN BRIEF

Although the general rule in workman's compensation is that payments are the exclusive remedy for employees injured on the job and that such employees cannot sue employers in court for damages, courts in West Virginia, Illinois and Ohio recently have allowed tort actions against employers by employees who alleged that they were harmed by the intentional, willful failure of the employer to warn or protect the employee from injury. These rulings have the potential to greatly expand the scope of the "intentional tort" exception to the workman's compensation laws and, therefore, pose a substantial threat to employers. In effect, these decisions subject an employer to a suit by an employee who is injured while at work, even though he did not intentionally injure the employee. Furthermore, any recovery by an employee, because the cause of action is based upon an intentional act by the employer, probably will not be covered by the employer's worker's compensation or general insurance policies.

DISCUSSION

Workman's compensation laws, although generally providing the exclusive remedy to an employee injured in the workplace, have never covered injuries intentionally inflicted by the employer upon an employee, since such injuries are not deemed to arise in the course of employment. Traditionally, these cases have involved instances of assault or battery or other intentional torts such as false arrest, intentional infliction of mental distress or deceit.

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In the past few years, employees injured in the workplace have attempted to evade the limited recovery available under applicable state workman's compensation statutes by alleging that their injury was caused, for example, by the employer's failure to warn about a hazard, failure to take proper protective action and failure to follow state and Federal health laws. By alleging that these acts are "intentional," plaintiffs' attorneys argue that these cases fall under the intentional tort exception to the general rule that workman's compensation is the exclusive remedy. Most states that have addressed this issue have rejected the theory that these acts fall under the intentional tort exception to workman's compensation. Thus, workman's compensation is generally the exclusive remedy for all workplace injuries of an employee unless it can be demonstrated that the employer specifically intended his act or acts to injure the employee.

However, courts in Illinois, West Virginia and Ohio have held that an employee's allegations of failure of the employer to warn the employee of hazards or failure to correct any problems would constitute an intentional act by the employer and, therefore, survive a motion to dismiss filed by the employer. Because these cases have not yet proceeded to trial, it is unclear what standard of proof will be required to demonstrate the requisite "necessary intent" by the employer to overcome the limitations of workman's compensation liability. But it is fair to state that these decisions have greatly expanded the potential exposure of employers for injury to employees that occurs in the workplace. Until it is made clear that there will be no recovery in the absence of a showing of deliberate intent to cause injury, employers in these and other jurisdictions will likely face an increasing amount of litigation in this area.

The West Virginia Assembly, on February 7, 1983, resolved this judicially-created uncertainty by enacting H.B. 1201, which immunizes employers from tort liability except where an employer deliberately intended to harm the employee. Deliberate intention must be shown by actual specific intent.

At this point, a real problem confronting an employer sued for an alleged intentional tort by an employee is whether its insurance will cover defense costs and a potential damage award. Often, general liability insurance policies specifically exclude damage suits where an employee sues his employer. Another potential problem is that no insurer will provide coverage for damages attributable to "intentional" or "malicious" acts on the grounds that these are contrary to public policy. Therefore, employers need to examine closely the coverage available under their worker's compensation and general comprehensive liability insurance policies to determine the scope of coverage and perhaps attempt to have it broadened.

RECOMMENDED ACTION

Members should report to SPI and to their state manufacturer's association any court cases that appear to expand the scope of the exclusive remedy rule. West Virginia serves as a good example of how prompt action can cause a state legislature to remedy an expansive court decision that ignores the purpose of the workman's compensation legislation. Members should also review their insurance coverage and take steps to secure coverage for suits by employees where the employer did not deliberately harm the employee.