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PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

Can Personal Injury Law Trump Workers' Compensation Law for Some Workplace Injuries?

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There's an interesting lawsuit pending in Florida that addresses just this issue. The lawsuit, *Janowski v. Publix*, may not be permitted to go forward based upon a Florida statute enacted in 2003, which effectively prevents any lawsuit by injured workers against their employers. However, the plaintiff's attorney contends that the 2003 statute is unconstitutional to the extent that it prevents access to the courts.

In *Janowski*, the plaintiff, an employee of Publix, was killed at work when a recently fired co-worker returned to the store with a gun and opened fire. The basis of the wrongful death lawsuit is the contention that Publix should have known that the shooter was potentially dangerous, had no policies or procedures for addressing workplace violence and failed to notify other employees that the shooter had been terminated or of the danger that she presented. A copy of the complaint can be found [here](#).

As explained in this ABA Journal [blog post](#), this lawsuit faces a major hurdle due to the enactment of the 2003 statute:

Because state law was revised in 2003 to make it virtually impossible for a worker to sue an employer even in a situation where the injury was substantially certain to occur...

And, under a state supreme court decision (decided) three years earlier, the



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family of Greg Janowski has a strong wrongful death case against the Publix supermarket in Tarpon Springs where he worked with the woman who shot him to death, the Tampa practitioner tells the ABA Journal.

The supreme court case, *Turner v. PRC Inc.*, 754 So.2d 683 (Fla. 2000), holds that workers' compensation law doesn't provide the exclusive remedy when a workplace injury was substantially certain to occur, explains a [National Council on Compensation Insurance magazine article](#) (PDF).

Common sense dictates that the family of deceased worker who sustained fatal injuries under these circumstances should be permitted to pursue remedies for personal injury and shouldn't be limited to recovery under the Workers' Compensation statutes. This was not your typical workplace injury and Mr. Janowski's surviving family members should be permitted their day in court.

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) handles [workers' compensation](#) and [personal injury cases](#). Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.