COA Opinion: Circumstantial evidence may be used to show that an employer knew an injury was "certain to occur" under the intentional tort exception to the Worker's Disability Compensation Act

16. June 2010 By Julie Lam

Plaintiffs, employed as power plant operators, suffered injuries when hot ash exploded out of one of the boilers while they were emptying bottom ash from it. Plaintiffs alleged that the employer was liable under the intentional tort exception to the Worker's Disability Compensation Act's (WDCA) exclusive remedy provision, MCL § 418.131(1). Under the second sentence of MCL § 418.131(1), the plaintiff can satisfy the specific intent requirement of an intentional tort claim if the plaintiff can show that the employer had "actual knowledge" that an injury is "certain to occur" yet "willfully disregards" it. In a *per curiam* opinion in *Johnson v. Detroit Edison Co.*, No. 289763, published on June 15, 2010, the Court of Appeals determined that plaintiffs proffered sufficient circumstantial evidence in support of their intentional tort claim to survive summary disposition. The Court of Appeals held that a jury may conclude that an employer knew the injury was "certain to occur" where a plaintiff can show that (1) the employer subjects the employee to a continuously operative dangerous condition that it knows will cause an injury; (2) the employer knows that its employees are taking insufficient precautions to protect themselves against the danger; and (3) the employer takes no action to remedy the situation.