

Court to decide if no-sue law goes too far

2005 state rule blocks vast majority of lawsuits from those hurt in workplace

By James Nash

THE COLUMBUS DISPATCH

Workers injured or sickened while performing their job duties can successfully sue their employers in only a tiny percentage of cases under a 2005 state law intended to limit "junk lawsuits," an attorney for one company told the Ohio Supreme Court yesterday.

One company attorney acknowledged that *every* employee would have to die before lawsuits would be allowed under the 4-year-old law.

The state's highest court heard a trio of challenges to the legislature's attempt to block nearly all lawsuits arising from workplace injuries.

Instead, lawmakers said injured employees should avail themselves of the state's workers' compensation system.

Lawmakers did leave a bit of wiggle room: so-called "intentional tort" cases, which could be brought against companies who are so negligent that they seemed to cause the injury on purpose.

It was under that provision that three injured workers sued their employers in cases that reached the high court yesterday:

- Jonathon Klaus, a grain-mill worker in Allen County, lost a hand when a colleague mistakenly re-started a piece of equipment on which Klaus still was performing maintenance. Klaus sued, claiming that the grain mill had failed

to enforce safety protocols and created a "substantial certainty" of injury. His employer, however, responded that Klaus' claim fell short of the 2005 law's requirement that the employer had to have deliberately caused the injury.

- Rose Kiminski, a press operator at a Columbiana County manufacturing facility, was seriously injured when an 800-pound metal coil fell onto her legs and feet. Kiminski alleged that her employer's failure to abide by safety protocols was responsible for the injury. The employer said Kiminski couldn't prove that it had intentionally caused her injury.

- Carl Stetter, a worker for a railroad company in Wood County, suffered multiple broken bones and other serious injuries while inflating a large truck tire on the job. The tire separated from the rim

and exploded. Stetter alleged the company was grossly negligent by failing to provide safety training and failing to install safety equipment. The company, R.J. Corman Derailment Services, said it had not intended to cause his injuries.

In her argument to Supreme Court justices, R.J. Corman attorney Margaret Mattimoe Sturgeon acknowledged that the state law blocks virtually all employees from suing their employers for injury or sickness.

Justice Paul E. Pfeifer asked: "So you can expose people to toxic materials knowing that some of them are going to get desperately sick and may die, but unless 100 percent of them are going to die, no tort?"

Sturgeon responded: "I think that under the statute, that's the conclusion you have to reach."

Pfeifer: "Well, that's a fine

piece of work, isn't it?"

Stetter's attorney, Joseph R. Dietz, argued that the 2005 law deprives people who are injured on the job of their constitutional right to a trial.

"The remedy must be meaningful in order to comply with the constitutional requirements," Dietz said. "There isn't a meaningful remedy unless an employee can bring a civil cause of action."

Justice Terrence O'Donnell asked Dietz whether the law left any room for employees to sue for injuries under any circumstances.

Dietz answered yes, but only in such limited cases "that this court had a hard time even wrapping their mind around what these would look like."

The court is expected to rule in several months.

jnash@dispatch.com