



## Washington Supreme Court stands firm in high requirement for suing employers in tort

By Anna M. McFaul and Shawna G. Fruin • October 20, 2014

Typically, the only remedy for Washington workplace injuries is pursuing a worker's compensation claim, but one statutory exception allows workers to sue employers in tort (and therefore seek additional damages, such as pain and suffering) for injuries the employer deliberately intended to cause. In *Walson v. the Boeing Company*,<sup>1</sup> the Washington Supreme Court confirmed that the "deliberate intention" standard is a high test, only met when the employer has actual knowledge injury is certain to occur but willfully disregards that knowledge.

Walson was exposed to asbestos while working for the Boeing Company and ultimately passed away from mesothelioma. Walson/his estate attempted to sue Boeing in tort, asserting jurisdiction under the statutory "deliberate intention" exception because Boeing was aware of the dangers of asbestos exposure. However, the Supreme Court determined there was no genuine issue of material fact regarding Boeing's deliberate intent to harm: because asbestos only causes a risk of disease, Boeing did not have actual knowledge Walson's injury was certain to occur.

In reaching its holding, the Washington Supreme Court considered and rejected several alternate, less-restrictive theories for an employer's tort liability. The court specifically noted:

- The "deliberate intention" standard is not met when injury is substantially certain to occur.
- The "deliberate intention" standard is not met by negligence, even gross negligence.
- The "deliberate intention" standard is not met by disregarding a risk of injury.
- The "deliberate intention" standard is not met when the employer knows someone, not necessary the plaintiff, is certain to be injured.
- The "deliberate intention" standard is not met when a workplace exposure causes an asymptomatic cellular-level injury resulting in the risk of compensable injury.

This holding is favorable for employers as it continues to maintain the high standard for litigating workplace injuries in tort. However, the court was closely

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## Washington Supreme Court stands firm (*continued*)

split on this decision by a 5 to 4 vote. The dissent believed Boeing's knowledge of the dangers of asbestos met the "deliberate intention" standard, arguing "certain injury" does not mean absolute certainty that a particular plaintiff would develop a particular disease, and that Boeing's actions were sufficiently egregious to constitute an intentional wrong. The court's narrow split suggests the "deliberate intention" standard may be whittled down as new justices move to the court. However, at least for now, employers without actual knowledge injury is certain to occur to their workers (especially in asbestos cases) should have a strong defense against civil suit. ■

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<sup>1</sup> *Walson v. The Boeing Company*, No. 88511-7 (Wash Sup. Ct. Sept. 18, 2014)