STATE OF MICHIGAN

COURT OF APPEALS

CRAIG REVERS AND CHERI REVERS,

Plaintiffs-Appellants,

v

THE BUDD COMPANY, a Michigan Corporation,

Defendant-Appellee.

UNPUBLISHED
February 21, 1997

No. 185534
Wayne Circuit Court
LC No. 94-425251-NO

Before: Gribbs, P.J., and Marilyn Kelly, and White, JJ.

PER CURIAM.

Plaintiffs appeal the circuit court's grant of defendant's motion for summary disposition pursuant to MCR 2.116(C)(4), dismissing plaintiffs' intentional tort claim brought under Section 131 of the Worker's Disability Compensation Act, MCL 418.131(1); MSA 17.237(131)(1), for failure to establish that defendant intended an injury or had actual knowledge that an injury was certain to occur. We affirm.

I

Defendant produces automobile body parts at a Charlevoix Road plant in Detroit, where plaintiff worked and was injured. The parts are formed in a series of presses on various press lines. The presses are connected by conveyor belts. An operator stands at the front of each press, removes the part from the conveyor and places it inside the press. After the press completes its work, the part is mechanically extracted from the press and placed on the next conveyor belt. There are scrap chutes on either side of each press which drop approximately twenty feet and collect excess metal falling from the presses.

Plaintiff Craig Revers' (Revers) right arm was severed after he slipped on oil on the plant floor and, in order to avoid falling into a scrap chute, grabbed for the conveyor he was overseeing. The conveyor was unguarded, allowing Revers' arm to become caught in it and to be ripped off by the roller. Plaintiffs first amended complaint alleged that the subject conveyor belt was unguarded in the

area where plaintiff's accident occurred, that defendant knew that employees had incidents where limbs, hands, fingers, or other items of clothing were caught up in conveyors, and that it was therefore imperative to guard the conveyors. Plaintiffs alleged that defendant had actual knowledge that an injury was certain to occur unless the belt was properly guarded. Plaintiffs further alleged that for some time prior to Revers' accident, defendant had actual knowledge that the presses in the area of the accident continuously and excessively leaked oil in and about the surrounding area, and that numerous employees of defendant had complained about the slippery and oily conditions in and about the area where Revers fell, and had slipped or lost their balance in that area before Revers' accident. The complaint alleged that Revers was required to work under such conditions, that defendant's willful and intentional conduct constituted a violation of MCL 418.131, and that as a proximate result of this violation, Revers' right arm was severed, he was rendered disabled and suffered other damages. Cheri Revers, plaintiff's wife, alleged loss of consortium.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(4), (8), and (10), arguing plaintiffs' claim was barred by the exclusive remedy provision because, at most, plaintiffs stated a negligence claim against defendant; and that plaintiffs could not establish either that defendant had actual knowledge that an injury was certain to occur, or that defendant intended to injure him.

Plaintiffs' response to defendant's motion argued that the evidence clearly demonstrated that defendant had actual knowledge an injury was certain to occur at the site of Revers' accident. Plaintiffs attached excerpts of Revers' deposition, at which he testified that he began employment with defendant in October 1976, as a spot welder, and had been a press operator since June 1984. Revers testified that at the beginning of the year, and when his accident happened, he did alot of inspection, and was more a racker than a press operator. Revers described the job of racking panels as watching them for defects, splits, and not putting anything bad in the racks. He testified that the panels would come off the conveyor onto a table and he would take them off the table and put them in a rack.

Revers testified that he had been assigned to be group leader on the night of July 30, 1994, and was required to keep Line 8 running, i.e., walk up and down the press line and take care of any problems. Group leaders are hourly, not salaried or managerial employees.

Revers further testified at deposition that the parts being produced that evening were Chrysler truck floor panels. The panels were square shaped and larger than four feet by four feet, each weighing fifty to sixty pounds. Revers testified it took two people to lift and rack them. Revers testified that the general foreman explained to him at the beginning of the night that they had two hundred pieces to run on line 8, and to keep the line running. Part of Revers' job was to place fallen parts back on the conveyor. Revers further testified that the safety chain which was supposed to be up around the scrap chute by press 8-4 was not up because part of the chain was stuck down inside the crevice between the press and the floor. Revers testified that he had told his group leader, Ben Rios, that the safety chain was down prior to the accident.

Revers testified that in the process of walking up and down the line in the area between the 8-4 and 8-5 presses, a panel fell off the conveyor and lodged against the conveyor and partially over the

scrap chute, and that when he went to dislodge it so that he and another employee could put it up on the conveyor, he started to slip. Had he not reached out to catch

himself, he would have fallen down the scrap chute, which was unguarded and had a drop of more than twenty feet:

> When I went to pull it out, I started to slip. There was oil down there. That press leaks oil like a sieve, all over it. And it's like I had a choice in my eyes. I seen the scrap shoot [sic] coming, I was losing my balance, I started going, and my first instinct was to catch myself.

Revers testified he reached out with his right hand and grabbed at the conveyor to steady himself, his hand entered an unguarded pinchpoint in the conveyor, between two belts, and his arm was drawn into the pinchpoint and torn off by the roller. He testified the scrap chute by Line 8 was a "big hole." Revers testified that the 8-4 press was not running at the time, but the conveyor was.

Plaintiffs presented the deposition testimony of two coworkers who witnessed the incident, Kinzer and McWhorter. McWhorter testified that Revers was standing to the rear of press 8-4 to pick a panel up off the floor, that it was not unusual for a panel to fall off a conveyor, and that it was plaintiff's job that night to pick up fallen panels. McWhorter testified that she had operated all the presses, that oil has been leaking from press 8-4 for years, that oil leaked behind press 8-4, and that the presses have leaked as long as she has worked at the company, twenty-one years. She testified that it was well-known to management that oil accumulated in the area where Revers fell**,** and that the oil drips down from the presses constantly, "you go out and stand there and stay thirty minutes, you'll see."

McWhorter testified that prior to Revers' accident, she had complained about the leaking oil to her supervisor, Gary Bowden. She testified "When you go on your job and it's messy and oily, you have to get him to put some cardboard up so it don't leak on you. You might see oil spots on me now." She added that oil has leaked on her before, on her clothes and head. She testified she did not know of anybody slipping and falling in the area of 8-4 where plaintiff fell, but she knew that there had been slips on oil on 12-1, and that she had slipped due to oil on line 5 once, but was not injured. She also testified that she had heard that a sheet repairman had fallen down a scrap chute several weeks before her deposition.

McWhorter testified that she saw a spot of oil where Revers fell, which was about ten inches by eight inches, and that Revers had lost his balance because of the oil. McWhorter testified that when he was losing his balance, he stuck his right arm out to break his fall and, in the batting of an eye, the arm was gone. McWhorter testified that when she saw Revers' arm, it was going down the scrap chute. She said that it was "common sense" that the arm was severed by the conveyor, because there was nothing else there.

Hart Kinzer testified at deposition that he was a press operator for thirteen years, until he was laid off in September 1994. He had operated press 8-4 within a year of plaintiff's being injured. Kinzer testified that press 8-4 continually "sprays [oil] all over out of the top. It's like a fine mist." He testified that the oil presents a hazard, that he had reported it to management and that he had slipped on the oil. Kinzer testified that a lot of people have slipped in the area of press 8-4 because of the oil, and lost their

footing, but he could not remember anyone falling. Kinzer testified that it was well-known to management that press 8-4 has leaked oil for a long time and that there are problems with oil accumulation, and that a lot of the presses leaked oil badly because they were old. He testified that management said they tried to fix them, but that he did not believe them a lot of times. Kinzer testified that anytime you operated press 8-4 you had to put cardboard up "because otherwise you'll get covered with oil. We always had to put cardboard up." His shoes would get oily from standing in the area, too. Kinzer further testified that he had gone to safety meetings and "many times" prior to plaintiff's injury talked about the leaking of press 8-4. The workers were told to put cardboard up. He testified he believed that press 8-4 had been leaking "pretty bad" for about six years, including at the rear of the press.

Kinzer testified that he had witnessed two employees getting their shirts get ripped off in conveyors, which had a different type of belt than the conveyor at which Revers was injured. He testified that the part of the conveyor at which Revers was injured had no safety guard. He testified that the belts in that conveyor had been in there only about a month before Revers was injured, and that the belts were "so fast that you don't have a chance to think. The other belts are slow." Kinzer testified that many employees had complained that the newer belts were too fast because, even after you hit the switch to stop the panel, the belts still continue a little way. Kinzer testified that he had witnessed employees getting sleeves or the bottom of their shirts caught when in the front of the press, but not to the rear, where plaintiff was when he was injured.

Kinzer testified that he had partially fallen down a scrap chute on line 5 after slipping, about 6 ½ years ago. He had heard that a couple of people fell all the way down scrap chutes, but had not witnessed the incidents. Kinzer testified that he witnessed plaintiff's being injured from the front right side of 8-4 up on a stand, and that he "could see through real easily." He testified that Revers started to pick up the floor panel, lost his footing and reached real fast to try to catch himself because the scrap chute was right behind him. Kinzer testified that oil caused Revers to slip, that there was some oil in the area where he fell, and that "They cleaned it up right away after it happened, they cleaned the whole mess up." He testified that "they took us in the office . . . for a short time, and then they brought [me and Emma] back out for us to show them what happened, but everything was cleaned up, there was nothing there."

Plaintiffs response to defendant's motion further argued that defendant "willfully required [Revers] and its other employees to work in the face of three known and specific dangers—excessive oil which was certain to cause employees to slip and fall, unguarded conveyor belt pinch points which were certain to injure employees, and an unguarded scrap chute which, combined with the slippery floor, was certain to entrap employees. Plaintiffs also argued that defendant's motion should be denied because discovery remained open and at least six additional depositions were to be taken. One of the depositions plaintiffs referred to in their response was taken and appended to plaintiffs supplemental response to defendant's motion, that of Benjamin Rios, discussed below.

Plaintiffs also attached the deposition of Loverll Dandridge, another employee, who testified that she generally worked on the seven and eight line, and that line 8-4 is one of the eight line presses. Dandridge did not witness Revers' accident. She testified that she had complained once or twice before Revers' accident about press 8-4 leaking oil because "of the ledge which I have to step on to to put the

piece in, it was kind of oily right there," and she was worried she would slip. She testified that the company worked on press 8-4 and "it was fixed for a while," but that it sprinkles oil a little bit in the last six months. She testified that if she were assigned to press 8-4 within the last five years she would not be surprised to find oil on the floor around the press, and a slippery floor. She testified that she has seen puddles of oil around other presses and that the oil leaks are a general problem with some of the presses. The oil leaks have been discussed at safety meetings.

Plaintiffs also attached excerpts of the deposition testimony of Steven Allison, a salaried assistant business unit leader for the press shop. Allison testified that he did not witness Revers' accident. He testified that there have been people that had minor injuries from a conveyor, by getting something stuck in it, or by getting down inside the guard. He also testified that employees have fallen into scrap chutes, both before and after Revers' accident. When asked specifically about oil leak problems with press 8-4, Allison responded "All presses will leak somewhat at some time. I don't remember any excessive problem." He testified that there were times when they put cardboard up for employees. When asked if any employees had slipped on the oil and fallen, he responded "I'm sure they have. I can't remember off the top of my head who slipped or when." When asked what the company did to try to reduce the amount of oil around a press such as 8-4, Allison responded that the company did preventive maintenance and fixups in the form of a cleanup when transitions are made from one part to another, which occur "probably every couple days on the average," depending on the line.

Plaintiffs' response to defendant's motion also attached an affidavit of expert Gary Robinson, former director of safety for General Motors' Pontiac Motor division, and consultant to OSHA. Robinson averred that he reviewed depositions, photographs taken of the site, and personally visited the site. Robinson averred that based on his review of the evidence and of the site, the conditions were certain to cause an injury, that defendant was aware of those conditions and was aware an injury was certain to occur:

> 4. From my perspective as a safety professional, I found the conditions at the site of Mr. Revers accident to be appalling. . .
>
> 5. I found numerous unsafe conditions, which also include specific violations of the OSHA regulations, American National Standards Institute standards and other safety guidelines. Those unsafe conditions include the following:
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> A. The presence of excessive amounts of oil: Excessive amounts of oil presented a clear slip and fall hazard in the area where Mr. Revers was injured. Excessive oil on a factory floor is, alone, sufficient to cause slip and fall injuries. Serious injury is undoubtedly certain where, as in this case, the such dangerous items as unguarded conveyor nip points, unguarded scrap chutes, and presses are present.
>
> OSHA regulations, ANSI standards and generally recognized principals [sic] in the field of safety engineering require an employer to provide a clean and dry floor surface. As a result, the Budd Company was obligated to prevent oil from leaking onto the floor near and

around press line number 8 or, if it was unable to do so, to provide dry standing flooring. There are numerous flooring materials which have long been available that will prevent oil from posing slip and fall hazard. My review of the testimony in this matter indicates that Budd managers knew that oil was present and that the oil posed a hazard.

B. Failure to guard hazardous conveyor belt nip points: OSHA regulations, ANSI standards and generally recognized principals [sic] in the field of safety engineering require guarding of hazardous nip points found on a conveyor. The goal of these requirements is to prevent precisely the type of injury which occurred in this case. ANSI standards have required guarding of nip points for more than 40 years. The Budd Company's failure to guard the nip point in this case is especially egregious in light of the fact that it fabricated the conveyor just a few months before Mr. Revers' accident occurred in July 1994.

I understand that Budd takes the position that no guarding was required because press operators did not routinely stand in or near the area where Mr. Revers was injured. However, this assertion is both inaccurate and irrelevant. General safety principals [sic] require guarding of all conveyor nip points. Moreover, the testimony indicates that employees were regularly present near the site of Mr. Revers' accident. In any event, I have concluded, based on my knowledge of industrial safety and my experience as safety director for Pontiac Motor Division, that there is rarely, if ever, a place on a production line where employees will not be present--whether or not while conducting their specific job duties.

C. Failure to guard the scrap chute: The ends of the scrap chute located next to press number 8-4 were not adequately guarded. Both OSHA and ANSI standards require placement of a guard-rail, complete with a toe plate, around floor openings. In the present case, there was no such device. According to the testimony which I reviewed, the only device present, an "awareness chain," had not been usable for a long period of time before Mr. Revers' accident. Instead the chain was caught in the floor and could not be retrieved. It is also clear from the testimony that Budd's management was aware of this condition.

Plaintiffs attached to their supplemental response to defendant's motion the deposition of Benjamin Rios, an employee of defendant who was a group leader of lines 7 and 8. Rios described his position as "similar to that of first line supervision." Rios was off the weekend of Revers' accident, and Revers performed his job on the night of the accident. Rios testified one of the duties of a group leader is to pick up and replace parts which drop off conveyors, and that such parts generally fall off behind the presses, i.e., in areas like where Revers was injured. Rios testified that when he places parts back on the conveyor he has to go into the area behind the press. Rios testified he had noticed problems with oil leaking on to the floors in the area of the 7 and 8 lines:

. . . on the side where the operators are, we have oil dripping on the operators, from which we put cardboard on the rams and absorbent paper, and also we get oil on the run stands and we put absorbent paper and/or cardboard on those stands also.

Q What are the run stands?

A Platforms that operators stand on to put parts in the press.

Q Does that pose a slip and fall problem if there's oil on the run stands?

A Yeah, it could be a problem. Most all operators take care of their own cardboard, make sure that its slip free, hazard free.

Q What if oil gets on the floors around the presses, can that be a problem if people are walking around that area?

A Yeah.

Q In terms of it can make the floor slippery?

A Yeah.

Q When you've had to go in and put a part back on a conveyor line, have you ever slipped at all because of oil?

A Yeah. There's different types of oils out there that pose a problem, but I've never hit the ground.

When questioned specifically about oil around press 8-4, Rios equivocally testified that he could not recall if it was leaking behind the press at the time of the accident, and that it was leaking a little:

> . . . Like I said, right now there's a little oil back there, but I mean, there's a little oil everywhere. I don't know if you've been through our shop, there's oil all over the place. To me, a slip and fall can happen virtually anywhere in the plant. As far as back then, I can't recall, you know, anything about it really quite frankly.

Rios also testified that the oil on the floor and the scrap chute chain guards not being up were topics brought up at safety meetings by employees. Rios further testified that prior to Revers' accident there were chain guards that were stuck in the floor, although he could not remember which specific ones.

Defendant argued at the motion hearing and argues on appeal that Revers was injured in a freak accident involving a conveyor when he slipped at the non-operator end of a press, which was not a regular work station, after he decided, without defendant's knowledge, to lift a fallen panel without first turning off the conveyor or seeking co-worker assistance. Defendant argues that Revers was injured "only because, in an effort to break his fall, he inserted his arm between the frame of the conveyor and the conveyor belt in an area which would never be accessed during the normal course of the operation." Defendant argued that no one had been injured at the back of the press, and that although on occasion someone may go in there, there were supposed to be barrier chains up and it was Revers' responsibility

to ensure they were up and he did not. Defendant argued none of the conveyors in the plant are guarded at the nonoperator end, that there were no MIOSHA citations regarding conveyors and scrap chutes in the last five years. Defendant disputed that Revers' accident happened as he described, arguing that Revers "had to stick his arm down and inside the conveyor, because the belt is not exposed, and is inside." Defendant argued no one had requested corrections to the oil leak problems, and that if they were requested they were taken care of right away. Defendant argued Revers was not ordered to work on equipment with known defects, nor was he ordered to retrieve the panel in the way he chose.

The trial court granted defendant's motion, noting after hearing argument from counsel:

> . . . it's not enough that the employer knew or had knowledge that an injury was likely to occur, but that it was certain to occur. And this is the difficulty that I have in this case.
>
> The plaintiff does have an expert who testified regarding the oil on the floor and excess amounts of oil. And the issue is whether or not this excess amount of oil is such a hazard that the employer knew that injury was certain to occur and that it ignored or didn't take any action to take care of this.
>
> But all and all as I read the case, this is very hard for me to do because I feel very bad for this plaintiff, but it appears to me that the motion should be granted and the plaintiff's remedy is in workers comp and that's because of the many various factors:
>
> That there was no knowledge that injury was certain. Nobody had been hurt in this rear area before. There is no prior notice regarding fixing any defect in terms of the oil in the back area. Nobody else had ever fell [sic] down in that area or was caused any injury. The employees themselves said it was a freak accident. And the plaintiff himself, though this at trial the Court recognizes would be comparative as opposed to a complete bar, but he was the one who indicated that he would have reported, he was the lineman for the night, that he would have reported any areas that he thought were dangerous, and therefore, as very serious an injury as this is, the Court does not find that there was a knowledge by the defendant Budd Company that it was certain to occur and <u>there clearly was no evidence that there was an intent to injure</u>. For that reason the motion is granted.

II

The intentional tort exception to the workers' compensation act, MCL 418.131(1); MSA 17,237(131)(1), provides:

> An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and wilfully disregarded that

knowledge. The issue of whether an act was an intentional tort shall be a question of law for the Court. This subsection shall not enlarge or reduce rights under law.

The issue whether the facts alleged by the plaintiff are sufficient to constitute an intentional tort is a question of law for the court, while the issue whether the facts are as plaintiff alleges is a jury question. *Travis v Dreis & Krump Mfg Co, Golec v Metal Exchange Corp*, 453 Mich 149, 154; 551 NW2d 132 (1996).

The phrase "deliberate act" in the statute encompasses both commissions and omissions, and includes a situation in which an employer consciously fails to act. *Id.* at 169. The phrase "specifically intended an injury" means that the employer "must have determined to injure the employee; in other words, he must have had the particular purpose of inflicting an injury upon his employee." *Id.* at 172.

When the employer is a corporation, the corporation is vicariously liable only where some employee acts with the requisite intent. *Id.* at 171-172.

The alternative standard, applicable when there is no direct evidence of intent to injure and intent must be proved with circumstantial evidence, is articulated in the second sentence: "An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and wilfully disregarded that knowledge." *Id.* at 172-173. Constructive, implied, or imputed knowledge is insufficient to establish the "actual knowledge" required. Nor is it sufficient to allege that the employer should have known, or had reason to believe, that injury was certain to occur. *Id.* at 173.

Regarding the phrase "injury certain to occur," the Court noted "[w]hen an injury is 'certain' to occur, no doubt exists with regard to whether it will occur." *Id.* at 174. The employer must be aware that injury is certain to occur from what the actor does; it is not enough that the employer know that a dangerous condition exists. *Id.* at 176. Conclusory statements by experts are insufficient to allege the certainty of injury contemplated by the Legislature. *Id.* at 174.

The term "willfully" "is intended to underscore that the employer's act or failure to act must be more than mere negligence, that is, a failure to act to protect a person who might foreseeably be injured from an appreciable risk of harm. An employer is deemed to have possessed the requisite state of mind when it disregards actual knowledge that an injury is certain to occur." *Id.* at 178-179.

The *Travis* court summarized the standards under the intentional tort exception as follows:

> Thus, in order to effect the intent of the Legislature, we would hold that the second sentence of the intentional tort exception is one means of proving the specific intent to injure element of the first sentence. Under the second sentence, an employer may be deemed to have intended to injure if he has actual knowledge that an injury is certain to occur, yet disregards that knowledge.

> If we read both sentences of the intentional tort exception together, it becomes evident that an employer must have made a conscious choice to injure an employee and have deliberately acted or failed to act in furtherance of that intent. The second sentence then allows the employer's intent to injure to be inferred if the employer had actual knowledge that an injury was certain to occur, under circumstances indicating deliberate disregard of that knowledge. [*Id.* at 180.]

A majority of the Court concluded that the plaintiff in *Travis*, who sought to establish intent under the second sentence, had established the employer's actual knowledge that the press that seriously injured her hands was malfunctioning, but concluded that "an injury was not certain to occur because plaintiff was not required to confront a continuously operating dangerous condition." *Id.* at 182. The Court concluded that the plaintiff did not establish that her employer had a specific intent to injure her, noting that "Unlike a situation in which an employer orders an employee to confront a continuously operating danger while concealing the danger from the employee, the evidence does not suggest that [the plaintiff's supervisor] Clarke disregarded a continuously operative dangerous condition that would lead to certain injury." *Id.* at 183. The justices who dissented in *Travis* noted that the plaintiff did not know that the press was malfunctioning, while the supervisor had actual knowledge of that risk. The dissenters further noted that "it should be clear that knowledge of its potential malfunction would make operating it safely considerably more likely. . . . Indeed, had the employer informed Travis of the problem with the machine, it is possible recovery would be less appropriate, and likely the injury would not have occurred."

Our task is to attempt to discern whether a majority of the Supreme Court would conclude that plaintiffs assertions, if believed, would constitute an intentional tort under §131. We conclude that given the parameters set forth in *Travis* and *Golec*, we are compelled to affirm the trial court's dismissal of plaintiffs' claims. In the instant case, plaintiffs presented evidence that the accumulations of oil, the unguarded conveyors, and unguarded scrap chutes were well-known to management. Plaintiffs presented Revers' deposition testimony and that of co-workers stating that the excessive amounts of oil had been reported to management. At the same time, however, it is also clear that these dangers were well known to Revers and to his co-workers. Several of Revers' co-workers testified that there was a practice in the plant of using cardboard to prevent the oil from leaking onto the floor and to avoid slipping. A co-worker, Dandridge, testified that the company worked on press 8-4 and that it was fixed "for a while." One of defendant's salaried employees, Allison, testified that the company did preventive maintenance and fixups in the form of a cleanup when transitions were made from one part to another, which he stated occurred every couple of days on the average. Although we by no means view these measures as adequate, it cannot be said that the dangers arising from the accumulations of oil, and unguarded conveyors and scrap chutes were concealed from Revers or that he was unaware of them. In that regard, this case is not similar to *Golec*, (or the dissent's view of *Travis*). The plaintiff in *Golec* was a furnace loader assigned to load a furnace with scrap metal that the plaintiff alleged the defendant knew contained closed aerosol cans and was damp, both of which can lead to explosions. The plaintiff asserted that he was loading the scrap in the manner directed by his employer. The standard tractor used for furnace loading was equipped with a plexiglass splash guard, but was out of service, and the plaintiff had to use the tractor without a splash guard. The plaintiff was injured when a

minor explosion occurred, which he reported to his shift leader, who reported it to his supervisor. The plaintiff was ordered to return to the job, and plaintiff was then severely burned after a huge explosion. The Supreme Court concluded that the facts as alleged by the plaintiff if proven at trial would support a finding that his employer possessed the requisite intent to injure. The Court noted that the plaintiff established a genuine issue of material fact regarding whether his employer had actual knowledge that an injury would occur, *id.* at 185, and as to whether the injury was certain to occur. *Id.* at 186. As to the latter, the Court noted that the plaintiff contended that every load of scrap "had the potential to explode because each load could have contained a closed aerosol can or water. If the facts as alleged by plaintiff are established at trial, then plaintiff has proved the existence of a continually operative dangerous condition."

We conclude that plaintiffs in the instant case established that defendant had actual knowledge of the conditions that acting together led to plaintiff's injury—accumulation of oil on the plant floor, and an unguarded conveyor belt and scrap chute. See *Golec*, *id*. at 185. However, given the parameters set forth in *Travis* and *Golec*, we cannot conclude that plaintiffs established a genuine issue of fact regarding whether defendant wilfully disregarded knowledge that injury was certain to occur. Despite plaintiffs' having established appalling and unsafe working conditions, which in combination led to Revers' injury, plaintiffs have not established that Revers was required to confront a continuously operative dangerous condition by which an injury was certain to occur, as required under *Travis* and *Golec*. *Id.* at 182, 186-187. Revers' injury was caused by a "freak accident" during which a series of risks, which would not ordinarily operate together, did, in fact, combine to cause injury – the oil on the floor, the unguarded shoot, and the unguarded conveyor, and the circumstance of the floor panel falling off the conveyor at those points of hazard. While these unsafe conditions and hazards were constant, they did not under *Travis* present a "continuously operative dangerous condition that would lead to certain injury." While the accident and injury was foreseeable under an ordinary negligence standard, one cannot conclude that defendant had actual knowledge that injury was certain to occur.

Affirmed.

/s/ Roman S. Gribbs
/s/ Marilyn Kelly
/s/ Helene N. White