

SUPREME COURT OF LOUISIANA

No. 06-CC-0898

DOMINICK MARINO, IV

VERSUS

MARTIN'S OIL COUNTRY TUBULAR, INC.

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
THIRD CIRCUIT, PARISH OF LAFAYETTE**

PER CURIAM

The undisputed facts in this tort case show that plaintiff's injury was not intentional, and therefore, plaintiff's exclusive remedy is workers' compensation under La. R.S. 12:1032. *See, Reeves v. Structural Preservation Systems*, 98-1795 (La. 3/12/99), 731 So.2d 208, holding that " '[s]ubstantially certain to follow' requires more than a reasonable probability that an injury will occur and 'certain' has been defined to mean 'inevitable' or 'incapable of failing.'" *Jasmin v. HNV Cent. Riverfront Corp., supra* at 312. "[A]n employer's mere knowledge that a machine is dangerous and that its use creates a high probability that someone will eventually be injured is not sufficient to meet the 'substantial certainty requirement.'" *Armstead v. Schwegmann Giant Super Markets, Inc.*, 618 So.2d 1140, 1142 (La.App. 4 Cir. 1993), *writ denied*, 629 So.2d 347 (La. 1993). "Further, mere knowledge and appreciate of a risk does not constitute intent, nor does reckless or wanton conduct by an employer constitute intentional wrongdoing." *Id.* (Citing *Tapid v. Schwegmann Giant Supermarkets, Inc.*, 590 So.2d 806, 807-808 (La.App. 4 Cir. 1991))." The ruling of the trial court is reversed, defendant's motion for summary judgment is granted, and plaintiff's petition is dismissed with prejudice at his cost.