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Gallagher Sharp Newsflash: Non-economic/Punitive Damage Caps Upheld

Today, December 27, 2007, the Supreme Court of Ohio upheld "tort reform" legislation enacted by the Ohio General Assembly in 2004. The legislation, effective April 7, 2005, capped the amount of non-economic damages that may be awarded to personal injury plaintiffs and placed limits on the amount of punitive damages that may be awarded in Ohio tort actions. The Court held, in a 5-2 decision, that the Act does not violate the constitutional rights of injured persons to trial by jury, to a remedy at law for their injuries, or to due process and equal protection of the laws. The Court also held that the challenged statutes do not violate provisions of the Ohio Constitution that guarantee open courts and the separation of powers between the legislative and judicial branches of government.

In *Arbino v. Johnson & Johnson*, Slip Opinion No. 2007-Ohio-6948, the Court upheld the challenged provisions in R.C. 2315.18 that limit the amount of "non-economic" damages (damages for intangible injuries such as pain and suffering, loss of consortium, disfigurement, mental anguish, etc.) that may be awarded to a plaintiff in a personal injury lawsuit to the greater of \$250,000 or three times the amount of "economic damages" awarded to the same plaintiff based on the same injuries, up to an absolute maximum of \$350,000. The statute makes an exception to those limits for plaintiffs who suffer permanent disability or the loss of a limb or bodily organ system. Another challenged provision, R.C. 2315.21, upheld by the Court prohibits a plaintiff from recovering punitive damages that exceed the lesser of two times the amount of the compensatory damages awarded to the plaintiff from the defendant or ten percent of the defendant's net worth when the tort was committed up to a maximum of three hundred fifty thousand dollars.

The case arose out of a product liability lawsuit filed against the Johnson & Johnson Pharmaceutical Co. in federal district court in Ohio to recover damages for a series of blood clots and other continuing medical problems suffered by the plaintiff, Melisa Arbino, in 2005 after using a hormonal birth control product known as the Ortho Evra Birth Control Patch. During pretrial proceedings in federal district court, Arbino filed a motion for summary judgment asking the court to declare that provisions of S.B. 80 imposing caps on the potential amounts of non-economic and punitive damages she could recover from Johnson & Johnson were unconstitutional and therefore unenforceable. Before considering the summary judgment motion, the district court submitted four "certified questions of state law" to the Supreme Court of Ohio so that the Court could decide whether the specific Revised Code sections adopted or amended as part of S.B. 80 are constitutional under the provisions of the Ohio Constitution.

In today's decision, while the Supreme Court upheld two of the three challenged statutes, the Court declined to rule on the third statute, R.C. 2315.20, dealing with the admissibility of evidence about a plaintiff's recovery from "collateral sources," on the ground that Arbino did not have legal standing to challenge that provision. Justice Pfeiffer dissented and Justice O'Donnell dissented in part.

The full opinion can be accessed at:

<http://www.supremecourtofohio.gov/rod/newpdf/0/2007/2007-Ohio-6948.pdf>

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