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Gallagher Sharp Newsflash: Ohio Asbestos Reform Legislation

Today, October 15, 2008, the Supreme Court of Ohio held that Ohio's asbestos reform legislation applies to non-malignant asbestos-related claims that were pending on September 2, 2004, the effective date of H.B. 292. The Court's decision in *Ackison v. Anchor Packing Co.*, Slip Op. 2008-Ohio-5243 will have a significant impact on asbestos litigation throughout the state because the majority of Ohio's pending asbestos-related actions were filed before September 2, 2004.

In *Ackison*, the Supreme Court reversed the Lawrence County Court of Appeals which had declared that H.B. 292's evidentiary requirements could not be retroactively applied to a person's non-malignant asbestosis claim, which was already pending when H.B. 292 became effective, without violating the Ohio Constitution. *Ackison*'s complaint had been administratively dismissed by the trial court for failing to satisfy H.B. 292's required prima facie showing that the plaintiff's physical impairment was a result of a medical condition, and that exposure to asbestos was the substantial contributing factor to that medical condition.

Citing its 2007 decision in *Norfolk S. RR. Co. v. Bogle*, the Supreme Court held that H.B. 292's prima facie pleading requirements can be constitutionally applied to pending cases because those requirements "do not relate to the rights and duties that give rise to this cause of action or otherwise make it more difficult for a claimant to succeed on the merits of a claim. Rather, they pertain to the machinery for carrying on a suit. They are therefore procedural in nature, not substantive." In particular, the Ohio Supreme Court upheld the retroactive application of the term "competent medical authority." Although the Court found the definition of "substantial contributing factor" to be somewhat ambiguous, it construed the statute in such a way that the statutory definition "does not alter the common law that existed at the time *Ackison* filed her claim."

The Court rejected the plaintiff's argument that provisions found in H.B. 292 are inconsistent with the Court's 1995 decision in *Horton v. Harwick Chem. Corp.* Significantly, the Supreme Court also found that pleural thickening alone is not sufficient to constitute an asbestos-related injury.

The full opinion is available at:

<http://www.sconet.state.oh.us/rod/docs/pdf/0/2008/2008-ohio-5243.pdf>

Gallagher Sharp attorneys Kevin Alexandersen, John Valenti, Colleen Mountcastle and Holly Olarczuk-Smith represented defendants in the above case. If you have any questions, please contact:

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