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Gallagher Sharp Newsflash: Supreme Court of Ohio Upholds Tort Reform Legislation

Yesterday, February 21, 2008, in *Groch v. Gen. Motors Corp.*, Slip Opinion No. 2008-Ohio-546, the Supreme Court of Ohio upheld key aspects of Ohio's "tort reform" legislation enacted in 2004 by the General Assembly.

The Supreme Court upheld the constitutionality of Senate Bill 80 provisions that (1) create a 10-year statute of repose barring product liability claims by personal-injury plaintiffs against the manufacturer of a product; and (2) allow the state or a self-insured employer to recover workers' compensation payments made to an injured worker from the proceeds of a civil judgment or settlement subsequently obtained by that worker. However, the Court found the statute of repose unconstitutional to the extent it purports to apply retroactively to causes of action accruing before its enactment.

Specifically, the Court upheld the statute of repose in R.C. 2305.10(C)(1) stating that "no cause of action based on a product liability claim shall accrue against the manufacturer or supplier of a product later than 10 years from the date that the product was delivered to its first purchaser...." Relying upon the strong presumption of constitutionality of Ohio legislation and reasoning that a statute of repose "does not deny a remedy for a vested cause of action but, rather, bars the action before it ever arises", the court upheld the 10-year repose period. The Court substantially limited its 1994 decision in *Brennaman v. R.M.I. Co.*, 70 Ohio St. 3d 460, which had held unconstitutional a statute of repose covering architects and builders for improvements to real property in the former R.C. 2305.131. *Brennaman* is now limited to its specific facts. "To the extent that *Brennaman* stands for the proposition that all statutes of repose are repugnant to Section 16, Article I, we expressly reject that conclusion."

The Court also upheld R.C. 4123.93 and 4123.931, affecting workers' compensation claims arising after April 9, 2003, because the statute contains a formula which bases distributions on the "net amount recovered" without regard to method, and thus treats settlements and jury verdicts equally. While concluding that the Ohio revisions were constitutional "as written," the Court cautioned that their application could provoke further review.

This case was defended on behalf of Kard Corporation and Racine Federated by Gallagher Sharp partners Robert H. Eddy, Esq. (Toledo Office) and Colleen A. Mountcastle, Esq. (Cleveland Office).

The full opinion can be accessed at:

<http://www.sconet.state.oh.us/rod/docs/pdf/0/2008/2008-ohio-546.pdf>

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