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Gallagher Sharp Newsflash: Asbestos Legislation Does Not Violate Ohio Constitution

Yesterday, September 4, 2008, in a 2-1 decision, the Eighth District Court of Appeals held that the prima facie filing requirements contained in Ohio's asbestos legislation ("H.B. 292") can be applied retroactively without violating Ohio's Constitution.

The defendants in *In re Special Docket No. 73958*, 2008-Ohio-4444, sought to apply R.C. 2307.92 (enacted by H.B. 292) to approximately 39,000 asbestos-related personal injury cases. For these cases to remain on the court's active docket, R.C. 2307.92 requires a prima facie showing that an exposed person's physical impairment is a result of a medical condition, and that the person's exposure to asbestos is the substantial contributing factor to the medical condition. R.C. 2307.92(B). The Cuyahoga County Common Pleas Court held that the retroactive application of R.C. 2307.92 to cases pending prior to its enactment is unconstitutional.

The appellate court disagreed, determining that no substantive right is impaired by applying R.C. 2307.92 because plaintiffs have "nothing more than a mere expectation of future benefit founded upon an anticipated continuance of the law." Relying on *Norfolk S. RR. Co. v. Bogle*, 115 Ohio St.3d. 455, 2007-Ohio-5248 and *Wilson v. AC&S, Inc.*, 169 Ohio App.3d 720, 2006-Ohio-6704, it reversed the lower court's decision and held that "the retroactive application of H.B. 292 does not offend the Ohio Constitution."

The full opinion can be found at:

<http://www.sconet.state.oh.us/rod/docs/pdf/8/2008/2008-ohio-4444.pdf>

Gallagher Sharp attorneys Kevin Alexandersen, Colleen Mountcastle and Holly Olarczuk-Smith represented several defendants in the above case and also Norfolk Southern Railway Company in the *Bogle* case. If you have any questions about either, please contact:

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