

OHIO HIGH COURT UPHOLDS LAW LIMITING TORT DAMAGES

by

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On December 27, 2007, the Ohio Supreme Court issued a monumental decision upholding the statutory limitations on noneconomic and punitive damages enacted in Amended Substitute Senate Bill 80 (“S.B. 80”)¹ in *Arbino v. Johnson & Johnson*, Slip Op. No. 2007-Ohio-6948. Senate Bill 80, effective April 7, 2005, provides comprehensive tort reform legislation aimed at restoring fairness and balance to Ohio’s civil justice system and financial vitality to Ohio’s economy.

The *Arbino* Court recognized that tort reform has been an ongoing topic of debate in numerous states, including Ohio, for years: “...tort reform has been a major issue of concern in this state over the past several decades and remains one today. Ohio is hardly unique in this regard, as such reforms have been raised in nearly every state in the nation. State legislatures and judiciaries have differed widely in their responses to this issue, and a definite split in authority is clear.” *Arbino*, ¶ 20. The issue has now been settled in Ohio – the statutory limitations on noneconomic and punitive damages in S.B. 80 are constitutional on their face.²

The History of Tort Reform in Ohio. Since 1975, the Ohio General Assembly has made several attempts to reform the state’s civil justice system. Some of these measures were short-lived, while others were the law of Ohio for more than a decade before being stricken as unconstitutional. Regardless of their longevity, these tort reform laws often have been caught in a power struggle between the state legislature and the judiciary on issues involving public policy and judicial authority.

In 1975, the Ohio General Assembly enacted the Ohio Medical Malpractice Act (“Act”). The legislature approved this Act in response to the medical malpractice crisis that swept the country in the early 1970s. In 1991, the Court struck down the cornerstone of the Act – the \$200,000 cap on general damages – on due process grounds in *Morris v. Savoy*, 61 Ohio St.3d 684 (1991).

In 1987, the General Assembly enacted House Bill 1, which made significant changes to Ohio’s punitive damage, product liability and insurance law. By the mid-1990s, the Ohio Supreme Court had invalidated many of these provisions.

¹The entire text of Senate Bill 80 is available at: http://www.legislature.state.oh.us/bills.cfm?ID=125_SB_80.

²The constitutional challenges before the Court in *Arbino* were challenges to the statutes on their face – and not as applied to a particular set of facts.

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In 1995, the Ohio General Assembly began another attempt to reform Ohio's tort liability system. This effort – House Bill 350 (“H.B. 350”) – was a comprehensive tort reform package that included among other things, limitations on punitive and noneconomic damages, statutes of repose, and modifications to joint and several liability. H.B. 350 became effective in January 1997.

Approximately two-and-a-half years later, a 4-3 majority of the Ohio Supreme Court found House Bill 350 unconstitutional *in toto* in *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St. 3d 451 (1999). In this inflammatory decision, the *Sheward* majority held that H.B. 350 violated the doctrine of separation of powers and the single-subject rule of the Ohio Constitution. OHIO CONST. ART. II, §15.

In the years following the *Sheward* decision, the General Assembly approved a number of tort reform measures addressing much narrower issues. Those measures included establishing limitations on the liability of residential care and nursing home facilities; modifying the rule of joint and several liability; reforming Ohio's medical peer review process; reforming Ohio's political subdivision sovereign immunity law; enacting limitations on noneconomic damages in medical malpractice actions; and reforming Ohio's asbestos litigation system.

In May 2003 a more comprehensive tort reform package – S.B. 80 – was introduced. Key components of S.B. 80, which became effective on April 7, 2005, included limitations on noneconomic and punitive damages, and statutes of repose for products and construction.

The Constitutional Challenge to S.B. 80. The issue of the constitutionality of the limitations on noneconomic and punitive damages came before the Ohio Supreme Court on certified questions from the United States District Court for the Northern District of Ohio, which is handling this and other cases alleging defects in the Ortho Evra Birth Control Patch pursuant to a multi-district litigation transfer order.

Arbino argued that S.B. 80's limitations on noneconomic and punitive damages are unconstitutional under Ohio Supreme Court precedent³ on a variety of grounds. The Court rejected this presumptive approach, and made it clear that even though it had previously found some tort reform measures unconstitutional, it had not dismissed “all tort reform as an unconstitutional concept.” *Arbino*, ¶ 23. The Court found that the General Assembly had not simply rehashed former unconstitutional statutes (as Arbino asserted), but instead had tailored the new statutes to address constitutional defects previously identified by the Court. *Arbino*, ¶ 24. Therefore, the new statutes “warrant a fresh review of their individual merits.” *Id.*

The Limitations on Noneconomic Damages in R.C. 2315.18. The Plaintiff argued that the noneconomic damages limitation was unconstitutional on a variety of grounds, including that it violated the right to trial by jury, the right to a remedy and open courts, the right to due process of law, the right to equal protection of the laws and the separation of powers.

- **The Right to Trial by Jury.** According to the *Arbino* Court, the right to a trial by jury is not absolute and limitations may be applied to this right. The right to trial by jury applies to the fact finding process but “does not extend to the determination of questions of law.” *Arbino*, ¶ 37. Thus, according to the majority, a court may apply the limitations in R.C. 2315.18, as a matter of law, to a jury's determination of damages without violating the right to a trial by jury.
- **The Right to a Remedy and Open Courts.** The right to a remedy and open courts requires “an opportunity granted at a meaningful time and in a meaningful manner” and prohibit[s] statutes that effectively prevent individuals from pursuing relief for their injuries.” *Arbino*, ¶ 44. And, “[a]lthough R.C. 2315.18 limits certain types of noneconomic damages,” the Ohio Supreme Court held that “those limits do not wholly deny persons a remedy for their injuries.” *Arbino*, ¶ 47. The remedies that are available under the statute, including full recovery of economic damages, are meaningful.

³See *Morris v. Savoy*, 61 Ohio St.3d 684 (1991); *Sorrell v. Thevenir*, 69 Ohio St.3d 415 (1994); *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552 (1994); and *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451 (1999).

- **The Right to Due Process of Law.** Because the *Arbino* Court had already concluded that R.C. 2315.18 does not violate the right to a trial by jury or the right to a remedy and open courts, no fundamental right was implicated. Therefore, the Court applied a rational basis test to determine whether the statute violates the right to due process of law. *Arbino*, ¶ 49. With respect to the first prong of this test – whether the statute bears a real and substantial relation to the public health, safety, morals, or general welfare of the public – the Court contrasted the S.B. 80 record before the General Assembly with legislative records in other cases in which the Court criticized the lack of evidence demonstrating a rational connection between the tort reform measures and the public good to be achieved, and concluded that “there is a clear connection drawn between limiting uncertain and potentially tainted noneconomic damage awards and the economic problems demonstrated in the evidence.” *Arbino*, ¶ 56. Although the Plaintiff attacked the evidence before the General Assembly as “specious” and “threadbare” and requested the Court to evaluate it and reach its own conclusion, the Court deferred to the legislature, stating that “[s]uch an intensive examination is beyond the scope of our review.” *Arbino*, ¶ 58. In connection with the second prong of the rational basis test – whether the statute is arbitrary or unreasonable – the Court found that R.C. 2315.18 “...is tailored to maximize benefits to the public while limiting damages to litigants” and that “logic is neither unreasonable or arbitrary.” *Arbino*, ¶¶ 61.
- **The Right to Equal Protection of the Laws.** *Arbino* urged the Court to apply strict scrutiny, arguing that a fundamental right is implicated because the damage limitations disproportionately affect women, children, minorities, the elderly, and people with low incomes. The Court rejected this argument because facially neutral laws that may have a disproportionate impact do not violate equal protection. Because the statute is facially neutral and does not implicate a fundamental right, the Court applied a rational basis test. And, after reviewing the General Assembly’s findings set forth in the uncodified law of S.B. 80, the Court concluded that “R.C. 2315.18 is rationally related to the legitimate state interests of reforming the state civil justice system to make it fairer and more predictable and thereby improving the state’s economy.” *Arbino*, ¶ 69. After stating that although the noneconomic damage limitations in R.C. 2315.18 “may not be the best way to address the perceived problems in the civil justice system,” the Court noted that its role is to determine whether the statute complies with the Constitution and not to second-guess the policy choices made by the General Assembly. *Arbino*, ¶¶ 70-71.
- **The Separation of Powers.** The Court found “[t]he [Plaintiff’s] argument that R.C. 2315.18 infringes on the judicial power to decide damages lacks merit” because the General Assembly is not prohibited from regulating the amount of damages available in certain circumstances. *Arbino*, ¶ 74. The Court also rejected the Plaintiff’s argument that the General Assembly exceeded its authority by re-enacting legislation previously found unconstitutional. In this regard, the Court reiterated that R.C. 2315.18 is sufficiently different from the previous damage limitations statute enacted under House Bill 350.

The Limitations on Punitive Damages in R.C. 2315.21. With respect to punitive damages, the Plaintiff argued that the limitations were unconstitutional, on a variety of grounds, including that they violated the right to trial by jury, the right to a remedy and open courts, the right to due process of law, the right to equal protection of the laws and the separation of powers.

- **The Right to Trial by Jury.** As the Court previously explained, “the fact that a statute limits potential damages as a matter of law does not mean that it violates the right to a trial by jury.” *Arbino*, ¶ 90. The Court disagreed that *Zoppo v. Homestead Insurance Co.* (1994), 71 Ohio St. 3d 552 and *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St. 3d 451 provide controlling authority. The Court noted that the punitive damage statute in *Zoppo* was different because it required the court to determine the amount of punitive damages in all cases, completely removing this function from the jury. Under R.C. 2315.21 the trier of fact determines the amount of punitive damages and “[t]he subsequent application of a statute to this decision does not abrogate the established function of the jury.” *Arbino*, ¶ 92. Further, the Court

maintained that *Sheward* was not controlling because the *Sheward* Court's statements on this issue were dicta. The Court stated, however, that even if it were bound by the reasoning in *Sheward*, it would be required to revisit such reasoning in light of United States Supreme Court decisions after *Sheward*⁴ which "conclusively establish that regulation of punitive damages is discretionary and that states may regulate them as a matter of law without violating the right to trial by jury." *Arbino*, ¶¶ 94-95.

- **The Right to a Remedy and Open Courts.** The punitive damage limits in R.C. 2315.21, according to the Court, do not deny plaintiffs the right to seek a meaningful remedy, primarily because punitive damages are not compensation for an injury; they are private fines levied separate and apart from any remedy for a plaintiff's injuries. *Arbino*, ¶ 97.
- **The Right to Due Process of Law.** The Court applied the rational basis test and found that R.C. 2315.21 met it. The Court found that the first part of the rational basis test was met for reasons similar to those articulated in connection with the noneconomic damage limitations. Notably, the Court agreed with the Plaintiff that the legislative record "is thin" with respect to specific evidence or testimony supporting its claim that the unpredictability of punitive damages is harming the state's economy. *Arbino*, ¶ 102. Nonetheless, the Court found that the General Assembly's reasoning was sufficient to show a real and substantial relation to the general welfare of the public. The Court found that the statute is neither arbitrary nor unreasonable and, thus, the second part of the rational basis test was met. More specifically, the Court stated: "Setting the limitation at double the amount of compensatory damages received by the plaintiff ensures that the defendant may still be punished. Further, the exceptions for small employers and individuals strike a balance between imposing punishment and ensuring that lives and businesses are not destroyed in the process. This careful compromise represents a level of thought and attention to detail not seen in arbitrary or unreasonable statutes." *Arbino*, ¶ 103.
- **The Right to Equal Protection of the Laws.** For the same reasons articulated in connection with the noneconomic damage limitations, the *Arbino* Court held that the punitive damage limitations do not violate equal protection of the laws.
- **The Separation of Powers.** The Plaintiff's argument that the General Assembly simply re-enacted a statute previously found unconstitutional lacked merit because *Sheward* did not invalidate the punitive damage caps for violating the right to trial by jury. While the *Sheward* majority discussed a potential conflict between the punitive damage caps and the right to trial by jury, it did not invalidate the statute on that ground. Instead, it struck H.B. 350 in its entirety on the bases that it violated the separation of powers doctrine and the single-subject rule.

Conclusion. *Arbino* clarifies that even though *Sheward* held Ohio's former comprehensive tort reform bill – H.B.350 – unconstitutional in *toto*, *Sheward* is not controlling authority on the merits of individual tort reform provisions enacted in S.B. 80 and other bills. In holding that S.B. 80's statutory limitations on noneconomic and punitive damages are constitutional on their face, the *Arbino* Court settled the long-awaited question of whether the General Assembly could craft limitations on noneconomic and punitive damages that withstand constitutional scrutiny. *Arbino* "places Ohio firmly with the growing number of states that have found such reforms to be constitutional." *Arbino*, ¶ 112.

⁴See *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 433 (2001), 121 S. Ct. 1678, 149 L.Ed.2d 674, citing *BMW of N. Am., Inc. v. Gore* (1996), 517 U.S. 559, 568, 116 S. Ct. 1589, 134 L.E.2d. 809 (1996).