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Supreme Court of Ohio Upholds Challenge to Tort Reform Damages Cap

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CLIENT ALERT | 12.28.2022

The Supreme Court of Ohio has upheld a constitutional challenge to Ohio's statutory cap on noneconomic tort damages. The decision in *Brandt v. Pompa*, Slip Opinion No. 2022-Ohio-4525 and announced on December 16, 2022, is the first time that the Supreme Court of Ohio has upheld a constitutional challenge to the statutory cap since it was enacted in April of 2005. The decision could have far-reaching implications for plaintiffs challenging the cap, and defendants' attempts to preserve it, in many situations.

Vorys previously summarized the case in an earlier client alert. The General Assembly passed the statutory cap, codified at Revised Code § 2315.18, to curb frivolous lawsuits' negative impacts on Ohio's judicial system and economy. It did so by capping damages for noneconomic loss—such as pain and suffering and other intangible and subjective measures of damages. Importantly the cap does not apply to economic losses—such as lost wages or medical bills—and also does not apply to noneconomic losses associated with certain permanent and substantial physical injuries.

This exception for noneconomic losses stemming from some physical injuries was important in rejecting previous constitutional challenges. The Supreme Court of Ohio had struck down prior tort reform statutes because they swept too broadly and violated Ohio constitutional guarantees to a jury trial, due process, and the right to a remedy. But in *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468, 2007-Ohio-6948, 880 N.E.2d 420, the Supreme Court of Ohio upheld the cap because, in part, the exception for physical-injury based noneconomic losses was a reasonable policy decision for the General Assembly to make when weighing the need to compensate severely injured individuals with the desire to curb more frivolous claims. Because the cap bore a substantial relationship to the general welfare and was not unreasonable or arbitrary, the Supreme Court of Ohio upheld it.

But the Supreme Court of Ohio found that rationale lacking in *Brandt*. Unlike *Arbino*, which was a products liability claim involving physical injuries, *Brandt* involved a plaintiff who suffered severe and permanent psychological injuries as a result of years of sexual abuse as a minor.

There is no exception to the statutory damages cap for severe and permanent psychological injuries, and that made a difference to the majority in the *Brandt* decision. Without such an exception, the Brandt majority found that the statutory cap violated the Ohio Constitution's guarantee of the right to a remedy by due course of law as it applied to the plaintiff and those similarly situated. Moreover, the General Assembly's stated concern of deterring frivolous lawsuits did not apply in Brandt because the abuser had already been found criminally liable for his acts. The Supreme Court thus found that the statutory cap violated the plaintiff's constitutional right to a remedy by due course of law and ruled it unconstitutional.

Brandt v. Pompa involved an as-applied challenge—that is, a challenge to the damages cap as it applied in that particular situation. It did not invalidate the damages cap in all situations, and the cap currently still applies to lawsuits pending and filed in Ohio courts, including products liability lawsuits. The decision, however, shows that the cap is not absolute. Future products liability claimants will argue for extending the reasoning in Brandt to more situations. As-applied challenges to the constitutionality of the statutory damages cap may see a significant rise in future cases.

Vorys has deep products liability experience, both in Ohio and nationwide. Vorys will continue to monitor the impact of this case and will provide updates as warranted. Should you have questions about this or other products liability matters, please don't hesitate to contact your Vorys attorney.