

# LEGAL ACTIVITIES

## The Constitutionality of Caps on Noneconomic Damages Survives Supreme Court Scrutiny

By Susan M. Audey, Esq., Tucker Ellis, LLP

A deeply divided Supreme Court effectively upheld the caps on noneconomic damages in a splintered decision released on December 14, 2016—*Simpkins v. Grace Brethren Church of Delaware, Ohio*, Slip Opinion No. 2016-Ohio-8118. Justice French, joined fully by Justice Kennedy and in judgment only by Justice Lanzinger, affirmed the decision of Fifth District Court of Appeals, which rejected the constitutional challenges made by plaintiffs Jessica Simpkins and her father, and upheld the caps on noneconomic damages.

By way of background, Jessica Simpkins was a minor when she was sexually assaulted by a youth pastor previously employed by Grace Brethren Church. Simpkins and her father sued the Church, among others, and sought economic damages—more or less objective damages for pecuniary harm, including past and future medical expenses, lost earnings, etc. They also sought noneconomic damages—subjective damages for nonpecuniary harm, including pain and suffering, loss of consortium, and other intangible loss. A jury eventually awarded \$3,651,378.85 in damages, of which \$3.5 million consisted of noneconomic damages. The trial court subsequently reduced the \$3.5 million awarded in noneconomic damages to \$350,000, per tort reform legislation that

became effective in 2005—Am.Sub.S.B. 80, which is codified by statute at R.C. 2315.18.

Simpkins argued on appeal to the Fifth District that the cap on noneconomic damages was unconstitutional as applied to victims of sexual abuse or, alternatively, that each act of sexual abuse was a separate “occurrence” as that term is used in the statute so that her damages award would be increased. The appellate court disagreed and relied on the Supreme Court’s 2008 decision in *Arbino v. Johnson & Johnson* to find that Simpkins’s constitutional challenges were meritless. It also rejected her “occurrence” argument.

The Ohio Supreme Court (OSC) accepted discretionary review and affirmed. Plaintiffs were supported by amicus—or “friend of the

court”—briefs for both Simpkins and the Church. Because the caps on noneconomic damages under R.C. 2315.18 are similar to the caps on noneconomic damages for medical-malpractice claims, Tucker Ellis was pleased to prepare an amicus brief for the Ohio Supreme Court on behalf of the Academy of Medicine of Cleveland & Northern Ohio (AMCNO), urging that the caps on noneconomic damages be upheld under *Arbino*. The AMCNO was not alone in this argument. The Ohio Alliance for Civil Justice and the Ohio Association for Civil Trial Attorneys also filed an amicus brief supporting the caps on noneconomic damages.

Although the Supreme Court was divided—two justices would have dismissed the appeal as “improvidently allowed” (Chief Justice O’Connor and Justice O’Donnell) while two justices dissented (Justices Pfeifer and O’Neill)—in the end, the Fifth District’s decision was affirmed, *Arbino* applied and upheld as argued by the AMCNO in its amicus brief, and the caps on noneconomic damages survived yet another constitutional challenge—for now. Continued vigilance, however, is needed and the AMCNO is here to keep abreast of these changes, keep you informed, and advocate on your behalf. ■