No. 2006-1604

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO
CASE NO. 88062

JAMES SINNOTT, et al.,
Plaintiffs-Appellees,
v.
AMERICAN OPTICAL CORPORATION, PNEUMO ABEX LLC, successor in interest to ABEX CORPORATION, and CBS CORPORATION, a Delaware Corporation, f/k/a Viacom, Inc., successor by merger to CBS Corporation, a Pennsylvania Corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION,
Defendants-Appellants,
and
AQUA-CHEM, INC., et al.,
Defendants.

BRIEF OF APPELLANTS AMERICAN OPTICAL CORPORATION, PNEUMO ABEX LLC, successor in interest to ABEX CORPORATION, and CBS CORPORATION, a Delaware corporation, f/k/a VIACOM, INC., successor by merger to CBS CORPORATION, a Pennsylvania corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION

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I. STATEMENT OF THE FACTS

This case is before the Court as a result of a judgment entered by the Eighth Appellate District dismissing an appeal of a prima-facie-showing order entered by the Cuyahoga County Common Pleas Court under the latter's asbestos docket. Ignoring the unambiguous terms of the final-order statute and the equally unambiguous intent of the General Assembly, the dismissal erroneously sets the stage for thousands of asbestos cases presently pending on the asbestos docket in Cuyahoga County and irretrievably endangers the very resources Ohio's asbestos-litigation reform legislation – Am.Sub.H.B. No. 292 – was meant to protect.

A. The history of asbestos-litigation reform legislation

Beginning in October 2003, the General Assembly began to tackle an "unfair and inefficient" asbestos personal-injury litigation system. This system had not only imposed a "severe burden on litigants and taxpayers alike," but had created an "elephant mass" of cases in both federal and states courts. See Section 3(A)(1), (2), Am.Sub.H.B. No. 292 (R.C. 2307.91, uncodified law), Apx. at 12.

> The current asbestos personal injury litigation system is unfair and inefficient, imposing a severe burden on litigants and taxpayers alike. A recent RAND study estimates that a total of fifty-four billion dollars have already been spent on asbestos litigation and the costs continue to mount. Compensation for asbestos claims has risen sharply since 1993. The typical claimant in an asbestos lawsuit now names sixty to seventy defendants, compared with an average of twenty named defendants two decades ago. The RAND Report also suggests that at best, only one-half of all claimants have come forward and at worst, only one-fifth have filed claims to date. Estimates of the total cost of all claims range from two hundred to two hundred sixty-five billion dollars. Tragically, plaintiffs are receiving less than forty-three cents on every dollar awarded, and sixty-five per cent of the compensation paid, thus far, has gone to claimants who are not sick.
>
> ***

> Nationally, asbestos personal injury litigation has already contributed to the bankruptcy of more than seventy companies *** and the ratio of asbestos-driven bankruptcies is accelerating.[1]

Section 3(A)(2), (4), Am.Sub.H.B. No. 292 (R.C. 2307.91, uncodified law), Apx. at 12-13.

1. The onslaught of asbestos personal-injury litigation

At the time Am.Sub.H.B. No. 292 ("H.B. 292" or "Act"), was enacted, it was estimated that there were more than 200,000 active asbestos cases in courts nationwide and that the vast majority of these cases involved claims of individuals who alleged exposure, but were not sick. Indeed, *more than 600,000 people* had already filed claims for asbestos-related injuries by the end of the year 2000 alone. Section 3(A)(3)(a), (b) and 3(A)(5), Am.Sub.H.B. No. 292 (R.C. 2307.91, uncodified law), Apx. at 12-14.

The impact this volume of litigation has on the economy is staggering. Nobel award-winning economist Joseph Stiglitz in *The Impact of Asbestos Liabilities on Workers in Bankrupt Firms* opined that asbestos-caused bankruptcies have resulted in the loss of up to 60,000 jobs and that each displaced worker from a bankrupt company will lose, on average, an estimated $25,000 to $50,000 in wages over the worker's career, and at least a quarter of the accumulated pension benefits. Id. at Section 3(A)(4)(b), Apx. at 13. A RAND study estimates that the eventual cost of asbestos litigation could reach as high as 423,000 jobs. Id. at Section 3(A)(4)(a), Apx. at 13.

Ohio has not escaped this economic crisis. At least five companies in this state have been forced into bankruptcy because of "an unending flood" of asbestos cases. One Toledo-based company – Owens Corning – has been sued 400,000 times by plaintiffs alleging asbestos-related

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[1] The RAND Corporation is an independent, nonprofit organization dedicated to furthering and promoting scientific, educational, and charitable purposes for the public welfare and security of the United States. See http://www.rand.org/about/history.

injury and forced to file bankruptcy. The "ripple effect" of the resulting job and pension losses faced by Ohio citizens in the Toledo area is predicted to result in a total loss of 500 jobs and a $15 to $20 *million*-dollar loss in regional income. Id. at Section 3(A)(4)(c), (d), (e), Apx. at 13.

This litigation onslaught has made Ohio a "haven" for asbestos claims and has given the state the dubious honor of being one of the top five state-court venues for asbestos filings. Id. at Section 3(A)(3)(b), Apx. at 12-13. In Cuyahoga County alone a dedicated asbestos docket had more than 39,000 pending asbestos cases by the end of October 2003 – with approximately 200 new asbestos cases being filed monthly. Id. at Section 3(A)(3)(b), (e), Apx. at 12-13.

2. The General Assembly enacts H.B. 292 to preserve funds for deserving asbestos claimants.

With very little compensation reaching truly deserving asbestos claimants, the General Assembly recognized the immediate need for asbestos-litigation reform and passed H.B. 292. Effective on September 2, 2004 and codified at R.C. 2307.91 et seq., the Act establishes, among other things, minimum medical criteria for claimants filing certain asbestos claims. The General Assembly found it crucial to establish these criteria because the "vast majority" of asbestos claims "are filed by individuals who allege they have been exposed to asbestos and who have some physical sign of exposure to asbestos, but who do not suffer from an asbestos-related impairment." Id. at Section 3(A)(5), Apx. at 13-14.

> As a result, the General Assembly recognizes that reasonable medical criteria are a necessary response to the asbestos litigation crisis in this state. Medical criteria will expedite the resolution of claims brought by those sick claimants and will ensure that resources are available for those who are currently suffering from asbestos-related illnesses and for those who may become sick in the future.

Id.

The statutory mandate to satisfy certain minimum medical criteria is set forth at R.C. 2307.93 (Apx. at 20-21), which provides:

> The plaintiff in any tort action who alleges an asbestos claim shall file *** a written report and supporting test results constituting prima-facie evidence of the exposed person's physical impairment that meets the minimum requirements specified in division (B), (C), or (D) of section 2307.92 of the Revised Code, whichever is applicable.

Divisions (B), (C), and (D) of R.C. 2307.92 describe the minimum requirements for three different classes of asbestos claims: a claim based on a nonmalignant condition (Division B); a claim based upon lung cancer of an exposed person who is a smoker (Division C); and a claim based upon a wrongful death (Division D). See Apx. at 16-18. All three divisions require that the claimant make a prima-facie showing of asbestos-related impairment by satisfying certain "minimum requirements." Although the prima-facie-showing requirements differ slightly based on the type of claim (compare R.C. 2307.92(B)(1)-(3), (C)(1)-(2), and (D)(1)-(3)), the requirements for all three divisions are primarily medical in nature and indicate to the court that the plaintiff has satisfied a minimum medical threshold sufficient to support that the "person's exposure to asbestos is a substantial contributing factor to the medical condition." R.C. 2307.92(B), (C)(1), and (D)(1), Apx. at 16-18. The medical criteria established under these sections "are reasonable criteria and are the first step toward ensuring that impaired plaintiffs are compensated." Section 3(A)(5), Am.Sub.H.B. No. 292 (R.C. 2307.91, uncodified law), Apx. at 13-14.

When a court determines that the "minimum requirements" are satisfied, a prima-facie showing of exposure has been made. Failure to make a prima-facie showing subjects the plaintiff's complaint to administrative dismissal. R.C. 2307.93(C), Apx. at 20-21.

It was the intent of the General Assembly in enacting H.B. 292 to "conserve the scarce resources of [asbestos] defendants" by authorizing courts to dismiss claims that do not meet the criteria *before* the defendants are required to waste these scarce resources by incurring the expenses of a trial. Section 3(B), Am.Sub.H.B. No. 292 (R.C. 2307.91, uncodified law), Apx. at 14. Doing so not only expedites asbestos claims, but ensures that there will be resources available to compensate injured claimants. Id.

The General Assembly equally realized that preventing the waste of resources by requiring a prima-facie showing under the Act would be meaningless if there was no immediate review of the trial court's determination regarding the prima-facie showing. As a result, the Act amended the final-order statute – R.C. 2505.02 – so that a prima-facie-showing order is a specifically-referenced provisional remedy under R.C. 2505.02(A)(3) that is immediately reviewable when R.C. 2505.02(B)(4) is satisfied.

B. Plaintiffs James Sinnott and Freda Sinnott file suit.

In an amended complaint filed after the effective date of H.B. 292, Plaintiffs-Appellees James Sinnott and Freda Sinnott (collectively referred to as "Sinnott") asserted products-liability claims against several defendants, including Defendants-Appellants American Optical Corporation ("AO"), Pneumo-Abex LLC, successor in interest to Abex Corporation ("Abex"), and Defendant-Appellant CBS Corp., f/k/a Viacom, Inc., successor by merger to CBS Corporation, f/k/a Westinghouse Electric Corp. ("Westinghouse").[2]

[2] Sinnott filed the initial complaint on February 10, 2004. The Complaint named several defendants, including AO, Abex, and Westinghouse. See Exh. A to Appellants' Application for Recons. Sinnott voluntarily dismissed AO and Abex from this lawsuit on April 8, 2004. After this date, only claims against Westinghouse and other defendants not parties to this appeal remained pending. Id. at Exh. B. On January 3, 2005, Sinnott amended his complaint to add approximately 30 additional defendants, including AO and Abex among the newly-named

In lieu of providing the prima-facie report as required by H.B. 292, Sinnott instead relied on medical records of his treatment at the Veterans Administration Medical Center in Huntington, West Virginia. The trial court held a separate hearing on the issue of whether Sinnott presented prima-facie medical evidence that would support the complaint as amended. After first stating its position on the applicability of H.B. 292 to Sinnott's Third Amended Complaint, the trial court went on to find that Sinnott made a prima-facie showing as required by R.C. 2307.92.[3] The court stated:

> In determining whether the plaintiff has satisfied the minimum medical requirements contained in H.B. 292, this Court finds that there is sufficient evidence that the treatment received at the Veterans Administration Hospital in Huntington, West Virginia satisfies the intent of the new statute.

See 3/21/06 Order, Apx. at 8.

C. AO, Abex, and Westinghouse appeal to the Eighth Appellate District.

AO, Abex, and Westinghouse thereafter filed an interlocutory appeal of the March 21 Order as authorized under R.C. 2505.02(B)(4). On May 18, 2006, however, the Eighth Appellate District sua sponte dismissed the appeal as premature. See 5/18/06 J. Entry, Mot. No. 384177, Apx. at 6.

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defendants. Id. at Exh. C. Sinnott amended his complaint two more times after that. A Second Amended Complaint was filed on March 14, 2005, which added a newly-named defendant not a party to this appeal, and a Third Amended Complaint was filed on January 30, 2006. The Third Amended Complaint averred the death of Sinnott on August 25, 2005, substituted Freda Sinnott as plaintiff, and added claims for wrongful death against all defendants. Id. at Exh. D.

[3] The applicability of H.B. 292 to this case is not at issue in this appeal. The trial court determined that the Act applies to this case (Apx. at 7) and Sinnott did not challenge that finding.

In the Application for Reconsideration that followed, these appellants argued that the trial court's March 21 Order constituted a "prima-facie showing" under R.C. 2307.92 and thus satisfied the definition of provisional remedy under R.C. 2505.02(A)(3). See, generally, Appellants' Application for Recons. Moreover, the trial court's prima-facie-showing determination satisfied both requirements set forth in R.C. 2505.02(B)(4) because it prevented a judgment in favor of AO, Abex, and Westinghouse and left these appellants without a meaningful or effective remedy. Id.

In opposition, Sinnott did not disagree that the March 21 Order was a provisional remedy. In fact, Sinnott conceded that the order was a prima-facie determination under R.C. 2307.92 as required by R.C. 2307.93(A). Appellee's Br. in Opp'n at 4. He argued nonetheless that the prima-facie-showing order neither prevented a judgment nor left AO, Abex, and Westinghouse without a remedy and, as such, did not satisfy the definition of "final order" under R.C. 2505.02(B)(4). In particular, Sinnott maintained that the order did not impair the ability of these appellants to successfully defend against Sinnott's claims *at trial*, nor did it preclude these entities from seeking appellate review of the final judgment *after* trial. Indeed, Sinnott criticized AO, Abex, and Westinghouse for trying to avoid the "inconvenience" and "risk" of going to trial (id. at 5) when in actuality they were merely seeking the very interlocutory review authorized under R.C. Chapter 2505 as amended – and intended – by H.B. 292. Under Sinnott's reasoning, *no* provisional remedy finding a prima-facie showing under R.C. 2307.92 would ever be capable of immediate review.

The Eighth Appellate District denied – without opinion – the Application for Reconsideration and, on July 12, 2006, journalized its entry dismissing the appeal as premature See 7/12/06 J. Entry, Mot. Nos. 384728 and 384177, Apx. at 5, 6.

This appeal followed (Apx. at 1) and the Court accepted the appeal for discretionary review on December 13, 2006.

II. LAW AND ARGUMENT

Proposition of Law

> **A provisional remedy finding a prima-facie showing under R.C. 2307.92 is a final appealable order under R.C. 2505.02(B)(4) because it prevents a judgment in favor of the appealing party as to the provisional remedy and leaves the appealing party without a meaningful or effective remedy.**

An appellate court has subject-matter jurisdiction to review only orders or judgments that are "final."

> Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district *** .

Section (B)(2), Article IV, of the Ohio Constitution, Apx. at 24; see, also, *In re Estate of Geanangel*, 147 Ohio App.3d 131, 2002-Ohio-850 at ¶10.

An order is "final" and capable of immediate review when it "grants or denies a provisional remedy." R.C. 2505.02(B)(4), Apx. at 22. H.B. 292 amended R.C. 2505.02(A)(3) to include within the definition of "provisional remedy" an order entered in a "proceeding ancillary to an action, including *** a proceeding for *** a prima-facie showing pursuant to section 2307.92 of the Revised Code." See R.C. 2505.02(A)(3), Apx. at 22.

Notwithstanding classification as a provisional remedy, R.C. 2505.02(B)(4) also requires that a provisional remedy under appeal satisfy two additional requirements:

> (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy; and

> (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

R.C. 2505.02(B)(4)(a) and (b), Apx. at 22.

The Ohio Supreme Court first addressed the review of provisional remedies in *State v. Muncie* (2001), 91 Ohio St.3d 440. At issue in that case was whether a forced-medication order was a final appealable order under R.C. 2505.02(B)(4). In determining that it was, the Court explained the three-step analysis required in determining finality under that subdivision.

> *** R.C. 2505.02(B)(4) now provides that an order is a "final order" if it satisfies each part of a three-part test: (1) the order must either grant or deny relief sought in a certain type of proceeding – a proceeding that the General Assembly calls a "provisional remedy," (2) the order must both determine the action with respect to the provisional remedy and prevent a judgment in favor of the appealing party with respect to the provisional remedy, and (3) the reviewing court must decide that the party appealing from the order would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

Id. at 446.

More recently, this Court reaffirmed the tripartite provisional-remedy analysis in *State v. Upshaw*, 110 Ohio St.3d 189, 2006-Ohio-4253.[4] Relying on *Muncie*, the Court in that case determined that an order finding a criminal defendant incompetent to stand trial – and confined to a hospital until restored to competency – is a provisional remedy capable of immediate review because (1) a competency hearing "clearly aids and is subordinate to" the underlying criminal proceeding; (2) the finding of incompetency is a "final determination" as to the issue of competency that is adverse to the criminal defendant; and (3) the defendant would not be afforded meaningful relief because any "mistake is uncorrectable." Id. at ¶16-18.

[4] This Court did the same in *Myers v. Toledo*, 110 Ohio St.3d 218, 2006-Ohio-4353, at ¶23.

Employing the same three-part analysis utilized in *Muncie* and *Upshaw*, the prima-facie-showing order at issue in this appeal is a provisional remedy capable of immediate review under R.C. 2505.02(B)(4).

A. A prima-facie-showing order is a provisional remedy.

The determination made by the trial court in this case satisfied the definition of provisional remedy contained in R.C. 2505.02(A)(3). After first conducting a separate hearing on the prima-facie-showing issue, the trial court entered an order specifically determining that Sinnott "satisfied the minimum medical requirements in H.B. 292" and that Sinnott's medical evidence "satisfies the intent of the new statute." Apx. at 8.

Not only was the order entered in a proceeding ancillary to Sinnott's asbestos personal-injury case, but a prima-facie showing is specifically referenced in R.C. 2505.02(A). Courts have consistently held that an order entered in a proceeding that grants or denies the provisional relief specifically referenced in the statute satisfies the threshold requirement of "provisional remedy." See *Othman v. Heritage Mut. Ins. Co.*, 158 Ohio App.3d 283, 2004-Ohio-4361, at ¶10 (holding that an order involved a provisional remedy as a matter of law because it was "a specific instance of a provisional remedy mentioned in the statute," R.C. 2505.02(A)); *Penwell v. Nanavati*, 154 Ohio App.3d 96, 2003-Ohio-4628, at ¶5 (order requiring disclosure of privileged matter is specifically identified in R.C. 2505.02(A)(3) as a provisional remedy and otherwise satisfies the requirements of R.C. 2505.02(B)(4) to be a final appealable order); *Blakeman's Valley Office Equip., Inc. v. Bierdeman*, 152 Ohio App.3d 86, 2003-Ohio-1074, at ¶2 (preliminary injunction specifically referenced as a provisional remedy in R.C. 2505.02(A)(3) and is a final appealable order under R.C. 2505.02(B)(4); *Nester v. Lima Mem. Hosp.* (2000), 139 Ohio App.3d 883, 885-886 (order requiring disclosure of privileged matter specifically

referenced in R.C. 2505.02(A)(3) and is a final appealable order because once disclosed the matter cannot be made private again); *Smalley v. Friedman, Domiano & Smith Co. L.P.A.*, 8th Dist. No. 83636, 2004-Ohio-2351, at ¶14 (finding that "the challenged order grants a provisional remedy, as the discovery of privileged matter is expressly listed as a 'provisional remedy'" under R.C. 2505.02(A)(3)); *Cooper v. Cleveland Boat Club Ltd. Partnership*, 8th Dist. No. 81995, 2003-Ohio-2874, at ¶16 (finding that an order denying a preliminary injunction is a provisional remedy because it is expressly "included in the definition of a 'provisional remedy'" under R.C. 2505.02(A)(3)).

The provisional remedy, however, must not only determine the action with respect to the provisional remedy and prevent a judgment in favor of the appealing party, but it must foreclose an adequate remedy following final judgment. R.C. 2505.02(B)(4)(a) and (b). Despite the appellate court's unsupported conclusion to the contrary, a prima-facie-showing order under R.C. 2307.92 satisfies both of these requirements.

B. A prima-facie showing under R.C. 2307.92 satisfies R.C. 2505.02(B)(4)(a) because it establishes that an asbestos plaintiff has met the statute's minimum medical requirements and prevents a contrary judgment in favor of an asbestos defendant.

It is well settled in this state that – for R.C. 2505.02(B)(4)(a) purposes – an order granting or denying a provisional remedy ordinarily not only determines the action as to the provisional remedy, but also prevents a judgment in favor of the appealing party. In *Muncie*, for example, this Court stated that the question of whether a forced-medication order satisfied R.C. 2505.02(B)(4)(a) "is easily answered" because the order "determined the action against Muncie" and prevented a judgment in favor of Muncie "with respect to the proceeding for forced medication." 92 Ohio St.3d at 450-451.

This Court reached the same conclusion in *Upshaw*. The provisional remedy at issue in that case was a finding of incompetency to stand trial. In finding that such an order satisfied R.C. 2505.02(B)(4)(a), this Court stated that the finding of incompetency "determined the competency proceeding" and that the finding was a determination adverse to Upshaw. 110 Ohio St.3d 189, 2006-Ohio-4253, at ¶17.

Both *Muncie* and *Upshaw* compel a conclusion that the provisional remedy at issue in this case – a prima-facie showing under R.C. 2307.92 – similarly satisfies R.C. 2505.02(B)(4)(a). The trial court's March 21 Order *determined* the prima-facie-showing proceeding when the trial court found that Sinnott "satisfied the minimum medical requirements" necessary to establish a prima-facie showing under R.C. 2307.92. Furthermore, this *determination* precluded a judgment in favor AO, Abex, and Westinghouse to the contrary; i.e, that Sinnott had *not* made a prima-facie showing under the statute. *Upshaw*, 110 Ohio St.3d 189, 2006-Ohio-4253, at ¶17; *Muncie*, 92 Ohio St.3d at 450-451; see, also, *Othman*, 158 Ohio App.3d 283, 2004-Ohio-4361, at ¶10 (orders granting a party's motion for a protective order and denying a motion to disqualify counsel "determined the action with respect to the motions"); *Smalley*, 2004-Ohio-2351, at ¶15 (order requiring plaintiff to produce privileged material in discovery "determined the action" with respect to the discovery motion and "prevented a judgment with respect to that remedy"); *Kinsey v. Erie Ins. Group*, 10th Dist. No. 03AP51, 2004-Ohio-579, at ¶12 (order granting defendant's motion for an independent medical examination of plaintiff "determines the action with respect to the provisional remedy and prevents a judgment in favor of the plaintiff with respect to the provisional remedy.").

Here, as in *Muncie*, AO, Abex, and Westinghouse would have "no further opportunity to petition the [trial] court for the remedy being sought" without immediate review of the prima-

facie-showing order. Trial would go forward, and AO, Abex, and Westinghouse would be "forced to proceed" to trial. *Muncie*, 91 Ohio St.3d at 451, quoting *Swearingen v. Waste Technologies Industries* (1999), 134 Ohio App.3d 702, 713. The prima-facie showing had been determined in favor of Sinnott. Once determined, no contrary judgment in favor of AO, Abex, or Westinghouse could be entered. R.C. 2505.02(B)(4)(a) has been satisfied.

C. A prima-facie showing under R.C. 2307.92 satisfies R.C. 2505.02(B)(4)(b) because it forecloses an adequate or effective remedy following trial.

To satisfy R.C. 2505.02(B)(4)(b), an order granting or denying provisional relief must foreclose the opportunity for meaningful or effective relief following final judgment as to all claims. Ordinarily, the test is whether the appellant would have an "adequate remedy from the effects of [the trial court's order] on appeal from final judgment." *Muncie*, 91 Ohio St.3d at 451. "The proverbial bell cannot be unrung and an appeal after final judgment on the merits will not rectify the damage" suffered by the appellant. Id., quoting *Gibson-Myers & Assocs., Inc. v. Pearce* (Oct. 27, 1999), 9th Dist. No. 19358, 1999 WL 980562, at *2.

The focus of R.C. 2505.02(B)(4)(b) is not that an appellant would be denied relief following final judgment, but whether the appellant would be denied *meaningful* or *effective* relief. Central to R.C. 2505.02(B)(4)(b) analysis is the *damage* that an appellant would suffer if *not* afforded the opportunity to immediately appeal. In *Gibson-Myers* for example, the Ninth Appellate District determined that an order compelling the production of documents containing trade secrets was a final appealable order because the party "resisting disclosure of those

documents would have had no ability after final judgment to restore the cloak of secrecy lifted by the trial court's order compelling production." *Muncie*, 91 Ohio St.3d at 451.[5]

The damage suffered by the appellant was the focus of a R.C. 2505.02(B)(4)(b) inquiry in *Upshaw* as well.

> Finally, unless this order is deemed immediately appealable, Upshaw will be unable to obtain meaningful relief. He has maintained that he is competent to withstand prosecution and that he wants to go to trial. If he is correct that his confinement was mistaken, without immediate judicial review, that mistake is uncorrectable.

110 Ohio St.3d 189, 2006-Ohio-4253, at ¶18.

The same is true in this case. If AO, Abex, and Westinghouse are correct and the medical evidence submitted by Sinnott is not sufficient for a prima-facie showing, that mistake is uncorrectable. Trial and trial-related expenses would be incurred and, once incurred, cannot be recovered – the "proverbial bell" cannot be "unrung." Expenses for attorneys to defend the claims through trial – including expenses for depositions and for retaining experts – are expenses that could be avoided had an erroneously issued prima-facie-showing order been resolved earlier in the case.

The General Assembly specifically noted that spiraling asbestos claims have astronomically increased the costs of litigation and that these costs drain the dwindling resources

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[5] The damage suffered can affect many different and varied interests. For example, in *In re Estate of Sneed*, 166 Ohio App.3d 595, 2006-Ohio-1868, the Sixth Appellate District determined that the loss of person's opportunity to be the executor of an estate is a loss that cannot be remedied because, once the estate has been administered, all decisions about asset valuation, investment, disposal, and distribution will have been made. Id. at ¶17; accord *In re Estate of Geanangel*, 147 Ohio App.3d 131, 2002-Ohio-850, at ¶28-29 (removal of executor is a provisional remedy without a meaningful or effective remedy following final resolution of the estate because there would no longer be any opportunity for the executor to act as executor). The analysis is the same regardless of the interest affected.

of asbestos defendants – costs that have been unnecessarily incurred often for the benefit of plaintiffs who manifest no sign of asbestos-related impairment. Section 3, Am.Sub.H.B. No. 292 (R.C. 2307.91, uncodified law), Apx. at 12-13. Funds that would have been available for deserving plaintiffs had the issue of the sufficiency of an asbestos plaintiff's medical evidence been addressed earlier in the litigation are instead expended in the trial of an action when the plaintiff does not or cannot satisfy the minimum medical criteria. Resources already noted to be scarce at the time the General Assembly enacted H.B. 292 will only become more scarce.

This waste of scarce resources is precisely the harm that the enactment of H.B. 292 was meant to prevent. Waiting until final judgment to appeal a prima-facie showing order results in expending funds on claims that very well may be unable to satisfy the Act's minimum medical criteria. Prevailing on appeal following a final judgment, however, does not restore the funds to asbestos defendants or, for that matter, make them available to asbestos plaintiffs that meet the minimum medical criteria and exhibit asbestos-related impairment. The funds are spent. They cannot be unspent. Nor can they be recovered. The relief afforded by an appeal following final judgment, therefore, is ineffective and meaningless.

Both proponents and opponents of H.B. 292 gave scrupulously detailed testimony to the House Civil and Commercial Law Committee about the state of asbestos litigation across the nation and in this state. The General Assembly heard testimony of the billions of dollars that have been spent on asbestos litigation nationwide – at a cost to the economy that one witness before the Committee testified had already surpassed the costs of "the September 11th terrorist

attacks and several of the recent corporate scandals combined."[6] Much of the testimony before the Committee became uncodified law and now serves as an explicit statement of legislative intent – intent that expressly acknowledges the crisis in asbestos litigation and its negative impact not only on asbestos defendants and the national and state economy, but also upon the ability to compensate deserving asbestos plaintiffs who satisfy the statute's minimum medical criteria.

The enactment of H.B. 292 is a fair and reasonable public policy response to a crisis in asbestos litigation that has bankrupted more than 70 companies, become the scourge of a nation, and shortchanged deserving asbestos plaintiffs. Indeed, such a legislative response was called for by the United States Supreme Court in *Amchem Prod., Inc. v. Windsor* (1997), 521 U.S. 591, 117 S.Ct. 2231, 138 L.Ed.2d 689. Quoting the Report of the Judicial Conference Ad Hoc Committee on Asbestos Litigation at 2-3 (Mar. 1991), the Court stated:

> The most objectionable aspects of asbestos litigation can be briefly summarized: dockets in both federal and state courts continue to grow; long delays are routine; trials are too long; the same issues are litigated over and over; transaction costs exceed the victims' recovery by nearly two to one; exhaustion of assets threatens and distorts the process; and future claimants may lose altogether.

Id. at 598.

The *Amchem* court noted that the Judicial Conference Ad Hoc Committee on asbestos Litigation in 1991 called for "real reform," which in the Committee's opinion required "federal legislation creating a national asbestos dispute-resolution scheme." Id. To date, however, Congress, has not enacted any such legislation. Id.; *Ortiz v. Fibreboard Corp.* (1999), 527 U.S.

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[6] *Proponent Testimony on H.B. 292: Hearing before the House Civil and Commercial Law Committee*, October 25, 2003 (statement of Linda Woggon, Vice President of Governmental Affairs, Ohio Chamber of Commerce, citing reports from the Wall Street Journal).

815, 821, fn. 1, 119 S.Ct. 2295, 144 L.Ed.2d 715; see, also, Stengel, The Asbestos End-Game (2006), 62 N.Y.U.Ann.Surv.Am.L. 223 (surveying history of asbestos litigation and attempts at legislation).

Although Congress may not have yet acted, the Ohio General Assembly has. H.B. 292 is "real reform" at the state level. Requiring an asbestos plaintiff to satisfy certain minimum medical criteria by making a prima-facie showing of asbestos-related impairment expedites the resolution of claims brought by claimants who are truly sick and protects the rights of those who have been exposed to asbestos but are not sick. More importantly, it ensures that resources will be available not only for those who are currently suffering from asbestos-related illness, but also for those who may become sick in the future. Section 3(A)(5), Am.Sub.H.B. No. 292 (R.C. 2307.91, uncodified law), Apx. at 13-14.

But these outcomes will never be achieved if the very judgment determining the prima-facie showing is not immediately reviewable. Representative W. Scott Oeslager – the Bill's sponsor – and Representative William Seitz – the Committee Chairperson – recognized this during Committee sessions and emphasized the immediate right to appeal a prima-facie showing order as a provisional remedy. See www.ohiochannel.org, House Video Archive, 12/10/03. They – and the General Assembly that subsequently enacted H.B. 292 – understood that establishing minimum medical criteria would do little to curb the prolific expanse of asbestos litigation if the order determining whether that criteria had been satisfied was not immediately appealable. It was for that reason that H.B. 292 amended R.C. 2505.02 so as to clearly and unambiguously provide that a prima-facie showing order would be immediately reviewable by an appellate court. To further ensure that appellate courts would understand the General Assembly's reason for doing so, it equally clearly and unambiguously expressed its intent in

uncodified law. There can be no mistake that the General Assembly intended for prima-facie-showing orders to be immediately reviewable.

The Eighth Appellate District, however, ignored the clear and unambiguous terms of H.B. 292 and the General Assembly's equally clear and unambiguous legislative intent. Its sua sponte dismissal of this appeal is insupportable.

D. Other appellate courts have recently reviewed prima-facie-showing orders entered before final judgment.

Although the Eighth Appellate District plainly ignored H.B. 292's statutory language and legislative intent, other Ohio appellate courts have not. In *Stahlheber v. Du Quebec, LTEE*, 12th Dist. No. CA2006-06-134, 2006-Ohio-7034, for example, the Twelfth Appellate District was unpersuaded by plaintiff's arguments that orders determining a R.C. 2307.93(A) finding or a R.C. 2307.92 prima-facie showing are not final orders capable of immediate review.

Relying on its earlier decision in *Wilson v. AC & S, Inc.*, 12th Dist. No. CA2006-03-056, 2006-Ohio-6704, the *Stahlheber* court noted that both orders are specifically-referenced provisional remedies under R.C. 2505.02(A)(3). Undertaking the R.C. 2505.02(B)(4) analysis next, the court determined that subsection (B)(4)(a) was satisfied when the trial court entered its order regarding the provisional remedy. And further, that the defendants would be denied a meaningful and effective remedy if they had to wait until final judgment to file an appeal, thereby satisfying subsection (B)(4)(b). Id. at ¶13-25; see, also, *Staley v. AC &S, Inc.*, 12th Dist. No. CA2006-06-133, 2006-Ohio-7033 (reviewing trial court's orders entered under R.C. 2307.93(A)(3) and 2307.92); accord *Wagner v. Anchor Packing Co.*, 4th Dist. No. 05CA47, 2006-Ohio-7097; *Lambert v. Anchor Packing Co.*, 4th Dist. No. 05CA45, 2006-Ohio-7098 (same); *Ackison v. Anchor Packing Co.*, 4th Dist. No. 05CA46, 2006-Ohio-7099 (same).

The Fourth and Twelfth Districts plainly saw what the Eighth Appellate District ignored; i.e., H.B. 292's amendments to R.C. 2505.02 – Ohio's final-order statute – clearly and unambiguously authorizes an appellate court to immediately review a prima-facie-showing order because the order not only *determines* the prima-facie showing, but that determination denies the appealing party the very protection H.B. 292 was meant to provide and, thus, forecloses a meaningful and effective remedy following final judgment. A prima-facie-showing order, by its very terms then, inherently satisfies both requirements of R.C. 2505.02(B)(4). As recognized by appellate courts other than the Eighth Appellate District, such an order is capable of immediate review.

III. CONCLUSION

A prima-facie showing order determining that an asbestos claimant has made a prima-facie showing of impairment is a final appealable order under R.C. 2505.02(B)(4). First, the order is a specifically-referenced provisional remedy under R.C. 2505.02(A)(3). Second, it satisfies R.C. 2505.02(B)(4)(a) because the order determines that a prima-facie showing has been made and prevents a determination in favor of AO, Abex, and Westinghouse that a prima-facie showing has *not* been made. Lastly, the order satisfies R.C. 2505.02(B)(4)(b) because these defendants would be denied the very protection that H.B. 292 was intended to provide and thus be foreclosed from a meaningful and effective remedy following final judgment. By immediately appealing a trial court's judgment regarding the prima-facie showing, the General Assembly's laudable goal of protecting scarce resources for deserving asbestos claimants is attained. Funds once spent on trial and trial-related expenses cannot be unspent or otherwise recovered making an appeal following final judgment ineffective and meaningless.

If the Eighth Appellate District continues to sua sponte dismiss prima-facie-showing orders like that at issue in this case, it will be deserving asbestos claimants who will lose in the end. This is not what the General Assembly intended when it enacted H.B. 292. Defendants-Appellants AO, Abex, and Westinghouse respectfully request this Court reverse the judgment of the Eighth Appellate District and reinstate the appeal for review by that court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing **Brief of Appellants American Optical Corporation, Pneumo Abex LLC, successor in interest to Abex Corporation, and CBS Corporation, a Delaware Corporation, f/k/a Viacom, Inc., successor by merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation** has been served this 2nd day of February, 2007, by U.S. Mail, postage prepaid, upon the following:

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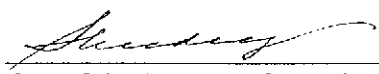

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No. 06-1604

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO
CASE NO. 88062

JAMES SINNOTT, et al.,
Plaintiffs-Appellees,
v.
AMERICAN OPTICAL CORPORATION, PNEUMO ABEX LLC, successor in interest to ABEX CORPORATION, and CBS CORPORATION, a Delaware Corporation, f/k/a Viacom, Inc., successor by merger to CBS Corporation, a Pennsylvania Corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION,
Defendants-Appellants,
and
AQUA-CHEM, INC., et al.,
Defendants.

NOTICE OF APPEAL OF APPELLANTS AMERICAN OPTICAL CORPORATION, PNEUMO ABEX LLC, successor in interest to ABEX CORPORATION, and CBS CORPORATION, a Delaware corporation, f/k/a VIACOM, INC., successor by merger to CBS CORPORATION, a Pennsylvania corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION

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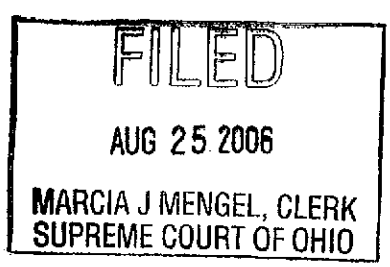

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NOTICE OF APPEAL OF APPELLANTS AMERICAN OPTICAL CORPORATION, PNEUMO ABEX LLC, successor in interest to ABEX CORPORATION, and CBS CORPORATION, a Delaware corporation, f/k/a VIACOM, INC., successor by merger to CBS CORPORATION, a Pennsylvania corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION

Defendants-Appellants American Optical Corporation, Pneumo Abex LLC, successor in interest to Abex Corporation, and CBS Corporation, a Delaware corporation, f/k/a Viacom, Inc., successor by merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corporation, hereby give notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in Court of Appeals Case No. 88062 on July 12, 2006.

This case is one of public and great general interest.

Respectfully submitted,

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Attorneys for Defendants-Appellants American Optical Corporation and Pneumo Abex LLC, successor in interest to Abex Corporation

CERTIFICATE OF SERVICE

A copy of the foregoing **Notice of Appeal of Appellants American Optical Corporation, Pneumo Abex LLC, successor in interest to Abex Corporation, and CBS Corporation, a Delaware corporation, f/k/a Viacom, Inc., successor by merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corporation**, has been served this 24th day of August, 2006, by U.S. Mail, postage prepaid, upon the following:

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James Sinnott et al.

One of the Attorneys for Defendants-Appellants American Optical Corporation, Pneumo Abex LLC, successor in interest to Abex Corporation, and CBS Corporation, a Delaware Corporation, f/k/a Viacom, Inc., successor by merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

JAMES SINNOTT, ET AL.

Appellee

COA NO. 88062 | LOWER COURT NO. CP CV-521874

COMMON PLEAS COURT

-vs-

AQUA-CHEM, INC., ET AL.

Appellant

MOTION NO. 384728

Date 07/12/2006

Journal Entry

MOTION BY APPELLANT FOR RECONSIDERATION IS DENIED.

RECEIVED FOR FILING

JUL 12 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

NOTICE MAILED TO COUNSEL

Judge FRANK D. CELEBREZZE, JR., Concurs

Administrative Judge ANN DYKE

CA06088062 40399196

WB616 M0365

JUL 12 2006

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

CA06088062 39474751

JAMES SINNOTT, ET AL.

Appellee

COA NO. 88062 | LOWER COURT NO. CP CV-521874

COMMON PLEAS COURT

-vs-

AQUA-CHEM, INC., ET AL.

Appellant

MOTION NO. 384177

Date 05/18/06

Journal Entry

SUA SPONTE, UPON RECOMMENDATION OF THE CONFERENCE ATTORNEY, APPEAL IS DISMISSED AS PREMATURE. R.C 2505.02.

ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED

MAY 18 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY_____DEP.

FILED AND JOURNALIZED
PER APP. R. 22(E)

JUL 12 2006

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY_____DEP.

NOTICE MAILED TO COUNSEL

Judge FRANK D. CELEBREZZE, JR., Concurs

Administrative Judge ANN DYKE

CA06088062 40399317

This is an announcement of Court's decision.
Motion for reconsideration must be filed within 10 days from date hereof.

VOL 0616 PG 0389

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

James Sinnott,	)	Case No. CV-04-521874
	)	
Plaintiff,	)	
	)	
v.	)	Judge Leo M. Spellacy
	)	
Aqua-Chem, Inc., et al.	)	
	)	
Defendants	)	ORDER

Plaintiff filed his initial complaint on or about February 10, 2004. On April 8, 2004, plaintiff voluntarily dismissed without prejudice certain defendants from the lawsuit. On January 3, 2005, plaintiff amended his complaint to include certain defendants who had been dismissed on April 8, 2004.

House Bill 292, establishing minimum medical requirements for certain asbestos claims, including lung cancer, became effective on September 2, 2004. Plaintiff contends, however, that the new evidentiary standard contained in H.B. 292 does not apply in this case because the amended complaint "relates back" to the original filing by virtue of Civil Rule 15(C). Defendants argue that the "relation back" provision of Rule 15(C) does not apply because the April 8, 2004 dismissal was voluntary. Moreover, Defendants argue that there is no evidence of a mistake with regard to the identity of the parties involved in this case, and that for Rule 15(C) to apply, such a mistake must have occurred. This Court agrees that Civil Rule 15(C) governs the issue and finds that the amended complaint does not relate back to the original complaint because plaintiff was not mistaken as to the correct parties' identities. Therefore, the parties added in the amended complaint fall under the provisions of H.B. 292.

In determining whether the plaintiff has satisfied the minimum medical requirements contained in H.B. 292, this Court finds that there is sufficient evidence that the treatment received at the Veterans Administration Hospital in Huntington, West Virginia satisfies the intent of the new statute.

At the time of trial for those cases filed after September 2, 2004, the Court will instruct the jury on the law of causation incorporated in H.B. 292.

The wrongful death claim filed after the enactment of H.B. 292 is subject to the provisions of R.C. 2307.91, et seq.

IT IS SO ORDERED.

Judge Leo M. Spellacy

March 2, 2006

Judge Leo M. Spellacy

RECEIVED FOR FILING
MAR 21 2006
GERALD E. FUERST, CLERK
By Deputy

THE STATE OF OHIO } SS.
Cuyahoga County }
I, GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL
NOW ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL OF SAID COURT THIS 21 DAY OF Mar A.D. 20 06
GERALD E. FUERST, Clerk
By Deputy

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R.C. § 2307.91

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIII. COURTS--COMMON PLEAS
CHAPTER 2307. CIVIL ACTIONS
ASBESTOS CLAIMS

➞2307.91 Definitions

As used in sections 2307.91 to 2307.96 of the Revised Code:

(A) "AMA guides to the evaluation of permanent impairment" means the American medical association's guides to the evaluation of permanent impairment (fifth edition 2000) as may be modified by the American medical association.

(B) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

(C) "Asbestos claim" means any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos. "Asbestos claim" includes a claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to asbestos.

(D) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(E) "Board-certified internist" means a medical doctor who is currently certified by the American board of internal medicine.

(F) "Board-certified occupational medicine specialist" means a medical doctor who is currently certified by the American board of preventive medicine in the specialty of occupational medicine.

(G) "Board-certified oncologist" means a medical doctor who is currently certified by the American board of internal medicine in the subspecialty of medical oncology.

(H) "Board-certified pathologist" means a medical doctor who is currently certified by the American board of pathology.

(I) "Board-certified pulmonary specialist" means a medical doctor who is currently certified by the American board of internal medicine in the subspecialty of pulmonary medicine.

(J) "Certified B-reader" means an individual qualified as a "final" or "B-reader" as defined in 42 C.F.R. section 37.51(b), as amended.

(K) "Certified industrial hygienist" means an industrial hygienist who has attained the status of diplomate of the American academy of industrial hygiene subject to compliance with requirements established by the American board of industrial hygiene.

(L) "Certified safety professional" means a safety professional who has met and continues to meet all requirements established by the board of certified safety professionals and is authorized by that board to use the certified safety professional title or the CSP designation.

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(M) "Civil action" means all suits or claims of a civil nature in a state or federal court, whether cognizable as cases at law or in equity or admiralty. "Civil action" does not include any of the following:

(1) A civil action relating to any workers' compensation law;

(2) A civil action alleging any claim or demand made against a trust established pursuant to 11 U.S.C. section 524(g);

(3) A civil action alleging any claim or demand made against a trust established pursuant to a plan of reorganization confirmed under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Chapter 11.

(N) "Exposed person" means any person whose exposure to asbestos or to asbestos-containing products is the basis for an asbestos claim under section 2307.92 of the Revised Code.

(O) "FEV1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

(P) "FVC" means forced vital capacity that is maximal volume of air expired with maximum effort from a position of full inspiration.

(Q) "ILO scale" means the system for the classification of chest x-rays set forth in the international labour office's guidelines for the use of ILO international classification of radiographs of pneumoconioses (2000), as amended.

(R) "Lung cancer" means a malignant tumor in which the primary site of origin of the cancer is inside the lungs, but that term does not include mesothelioma.

(S) "Mesothelioma" means a malignant tumor with a primary site of origin in the pleura or the peritoneum, which has been diagnosed by a board-certified pathologist, using standardized and accepted criteria of microscopic morphology and appropriate staining techniques.

(T) "Nonmalignant condition" means a condition that is caused or may be caused by asbestos other than a diagnosed cancer.

(U) "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies and that there is no other more likely explanation for the presence of the fibrosis.

(V) "Physical impairment" means a nonmalignant condition that meets the minimum requirements specified in division (B) of section 2307.92 of the Revised Code, lung cancer of an exposed person who is a smoker that meets the minimum requirements specified in division (C) of section 2307.92 of the Revised Code, or a condition of a deceased exposed person that meets the minimum requirements specified in division (D) of section 2307.92 of the Revised Code.

(W) "Plethysmography" means a test for determining lung volume, also known as "body plethysmography," in which the subject of the test is enclosed in a chamber that is equipped to measure pressure, flow, or volume changes.

(X) "Predicted lower limit of normal" means the fifth percentile of healthy populations based on age, height, and gender, as referenced in the AMA guides to the evaluation of permanent impairment.

(Y) "Premises owner" means a person who owns, in whole or in part, leases, rents, maintains, or controls privately owned lands, ways, or waters, or any buildings and structures on those lands, ways, or waters, and all privately owned and state-owned lands, ways, or waters leased to a private person, firm, or organization, including any buildings and structures on those lands, ways, or waters.

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(Z) "Competent medical authority" means a medical doctor who is providing a diagnosis for purposes of constituting prima-facie evidence of an exposed person's physical impairment that meets the requirements specified in section 2307.92 of the Revised Code and who meets the following requirements:

(1) The medical doctor is a board-certified internist, pulmonary specialist, oncologist, pathologist, or occupational medicine specialist.

(2) The medical doctor is actually treating or has treated the exposed person and has or had a doctor-patient relationship with the person.

(3) As the basis for the diagnosis, the medical doctor has not relied, in whole or in part, on any of the following:

(a) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the claimant's medical condition in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which that examination, test, or screening was conducted;

(b) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the claimant's medical condition that was conducted without clearly establishing a doctor-patient relationship with the claimant or medical personnel involved in the examination, test, or screening process;

(c) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the claimant's medical condition that required the claimant to agree to retain the legal services of the law firm sponsoring the examination, test, or screening.

(4) The medical doctor spends not more than twenty-five per cent of the medical doctor's professional practice time in providing consulting or expert services in connection with actual or potential tort actions, and the medical doctor's medical group, professional corporation, clinic, or other affiliated group earns not more than twenty per cent of its revenues from providing those services.

(AA) "Radiological evidence of asbestosis" means a chest x-ray showing small, irregular opacities (s, t) graded by a certified B-reader as at least 1/1 on the ILO scale.

(BB) "Radiological evidence of diffuse pleural thickening" means a chest x-ray showing bilateral pleural thickening graded by a certified B-reader as at least B2 on the ILO scale and blunting of at least one costophrenic angle.

(CC) "Regular basis" means on a frequent or recurring basis.

(DD) "Smoker" means a person who has smoked the equivalent of one-pack year, as specified in the written report of a competent medical authority pursuant to sections 2307.92 and 2307.93 of the Revised Code, during the last fifteen years.

(EE) "Spirometry" means the measurement of volume of air inhaled or exhaled by the lung.

(FF) "Substantial contributing factor" means both of the following:

(1) Exposure to asbestos is the predominate cause of the physical impairment alleged in the asbestos claim.

(2) A competent medical authority has determined with a reasonable degree of medical certainty that without the asbestos exposures the physical impairment of the exposed person would not have occurred.

(GG) "Substantial occupational exposure to asbestos" means employment for a cumulative period of at least five years in an industry and an occupation in which, for a substantial portion of a normal work year for that occupation, the exposed person did any of the following:

(1) Handled raw asbestos fibers;

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(2) Fabricated asbestos-containing products so that the person was exposed to raw asbestos fibers in the fabrication process;

(3) Altered, repaired, or otherwise worked with an asbestos-containing product in a manner that exposed the person on a regular basis to asbestos fibers;

(4) Worked in close proximity to other workers engaged in any of the activities described in division (GG)(1), (2), or (3) of this section in a manner that exposed the person on a regular basis to asbestos fibers.

(HH) "Timed gas dilution" means a method for measuring total lung capacity in which the subject breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of the inert and insoluble gas in the lung is then compared to the concentration of that type of gas in the spirometer.

(II) "Tort action" means a civil action for damages for injury, death, or loss to person. "Tort action" includes a product liability claim that is subject to sections 2307.71 to 2307.80 of the Revised Code. "Tort action" does not include a civil action for damages for a breach of contract or another agreement between persons.

(JJ) "Total lung capacity" means the volume of air contained in the lungs at the end of a maximal inspiration.

(KK) "Veterans' benefit program" means any program for benefits in connection with military service administered by the veterans' administration under title 38 of the United States Code.

(LL) "Workers' compensation law" means Chapters 4121., 4123., 4127., and 4131. of the Revised Code.

(2004 H 292, eff. 9-2-04)

UNCODIFIED LAW

2004 H 292, § 3 and § 4, eff. 9-2-04, read:

SECTION 3. (A) The General Assembly makes the following statement of findings and intent:

(1) Asbestos claims have created an increased amount of litigation in state and federal courts that the United States Supreme Court has characterized as "an elephant mass" of cases.

(2) The current asbestos personal injury litigation system is unfair and inefficient, imposing a severe burden on litigants and taxpayers alike. A recent RAND study estimates that a total of fifty-four billion dollars have already been spent on asbestos litigation and the costs continue to mount. Compensation for asbestos claims has risen sharply since 1993. The typical claimant in an asbestos lawsuit now names sixty to seventy defendants, compared with an average of twenty named defendants two decades ago. The RAND Report also suggests that at best, only one-half of all claimants have come forward and at worst, only one-fifth have filed claims to date. Estimates of the total cost of all claims range from two hundred to two hundred sixty-five billion dollars. Tragically, plaintiffs are receiving less than forty-three cents on every dollar awarded, and sixty-five per cent of the compensation paid, thus far, has gone to claimants who are not sick.

(3) The extraordinary volume of nonmalignant asbestos cases continue to strain federal and state courts.

(a) Today, it is estimated that there are more than two hundred thousand active asbestos cases in courts nationwide. According to a recent RAND study, over six hundred thousand people have filed asbestos claims for asbestos-related personal injuries through the end of 2000.

(b) Before 1998, five states, Mississippi, New York, West Virginia, Texas, and Ohio, accounted for nine per cent

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of the cases filed. However, between 1998 and 2000, these same five states handled sixty-six per cent of all filings. Today, Ohio has become a haven for asbestos claims and, as a result, is one of the top five state court venues for asbestos filings.

(c) According to testimony by Laura Hong, a partner at the law firm of Squire, Sanders & Dempsey who has been defending companies in asbestos personal injury litigation since 1985, there are at least thirty-five thousand asbestos personal injury cases pending in Ohio state courts today.

(d) If the two hundred thirty-three Ohio state court general jurisdictional judges started trying these asbestos cases today, Ms. Hong noted, each would have to try over one hundred fifty cases before retiring the current docket. That figure conservatively computes to at least one hundred fifty trial weeks or more than three years per judge to retire the current docket.

(e) The current docket, however, continues to increase at an exponential rate. According to Judge Leo Spellacy, one of two Cuyahoga County Common Pleas Court judges appointed by the Ohio Supreme Court to manage the Cuyahoga County case management order for asbestos cases, in 1999 there were approximately twelve thousand eight hundred pending asbestos cases in Cuyahoga County. However, by the end of October 2003, there were over thirty-nine thousand pending asbestos cases. Approximately two hundred new asbestos cases are filed in Cuyahoga County every month.

(4) Nationally, asbestos personal injury litigation has already contributed to the bankruptcy of more than seventy companies, including nearly all manufacturers of asbestos textile and insulation products, and the ratio of asbestos-driven bankruptcies is accelerating.

(a) As stated by Linda Woggon, Vice President of Governmental Affairs of the Ohio Chamber of Commerce, a recent RAND study found that during the first ten months of 2002, fifteen companies facing significant asbestos-related liabilities filed for bankruptcy and more than sixty thousand jobs have been lost because of these bankruptcies. The RAND study estimates that the eventual cost of asbestos litigation could reach as high as four hundred twenty-three thousand jobs.

(b) Joseph Stiglitz, Nobel award-winning economist, in "The Impact of Asbestos Liabilities on Workers in Bankrupt Firms," calculated that bankruptcies caused by asbestos have already resulted in the loss of up to sixty thousand jobs and that each displaced worker in the bankrupt companies will lose, on average, an estimated twenty-five thousand to fifty thousand dollars in wages over the worker's career, and at least a quarter of the accumulated pension benefits.

(c) At least five Ohio-based companies have been forced into bankruptcy because of an unending flood of asbestos cases brought by claimants who are not sick.

(d) Owens Corning, a Toledo company, has been sued four hundred thousand times by plaintiffs alleging asbestos-related injury and as a result was forced to file bankruptcy. The type of job and pension loss many Toledoans have faced because of the Owens Corning bankruptcy also can be seen in nearby Licking County where, in 2000, Owens Corning laid off two hundred seventy-five workers from its Granville plant. According to a study conducted by NERA Economic Consulting in 2000, the ripple effect of those losses is predicted to result in a total loss of five hundred jobs and a fifteen-million to twenty-million dollar annual reduction in regional income.

(e) According to testimony presented by Robert Bunda, a partner at the firm of Bunda, Stutz & DeWitt in Toledo, Ohio who has been involved with the defense of asbestos cases on behalf of Owens-Illinois for twenty-four years, at least five Ohio-based companies have gone bankrupt because of the cost of paying people who are not sick. Wage losses, pension losses, and job losses have significantly affected workers for the bankrupt companies like Owens Corning, Babcox & Wilcox, North American Refractories, and A-Best Corp.

(5) The General Assembly recognizes that the vast majority of Ohio asbestos claims are filed by individuals who allege they have been exposed to asbestos and who have some physical sign of exposure to asbestos, but who do not suffer from an asbestos-related impairment. Eighty-nine per cent of asbestos claims come from people who do not

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have cancer. Sixty-six to ninety per cent of these non-cancer claimants are not sick. According to a Tillinghast-Towers Perrin study, ninety-four per cent of the fifty-two thousand nine hundred asbestos claims filed in 2000 concerned claimants who are not sick. As a result, the General Assembly recognizes that reasonable medical criteria are a necessary response to the asbestos litigation crisis in this state. Medical criteria will expedite the resolution of claims brought by those sick claimants and will ensure that resources are available for those who are currently suffering from asbestos-related illnesses and for those who may become sick in the future. As stated by Dr. James Allen, a pulmonologist, Professor and Vice-Chairman of the Department of Internal Medicine at The Ohio State University, the medical criteria included in this act are reasonable criteria and are the first step toward ensuring that impaired plaintiffs are compensated. In fact, Dr. Allen noted that these criteria are minimum medical criteria. In his clinical practice, Dr. Allen stated that he always performs additional tests before assigning a diagnosis of asbestosis and would never rely solely on these medical criteria.

(6) The cost of compensating exposed individuals who are not sick jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases, now and in the future; threatens savings, retirement benefits, and jobs of the state's current and retired employees; adversely affects the communities in which these defendants operate; and impairs Ohio's economy.

(7) The public interest requires the deferring of claims of exposed individuals who are not sick in order to preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries and to safeguard the jobs, benefits, and savings of the state's employees and the well being of the Ohio economy.

(B) In enacting sections 2307.91 to 2307.98 of the Revised Code, it is the intent of the General Assembly to: (1) give priority to those asbestos claimants who can demonstrate actual physical harm or illness caused by exposure to asbestos; (2) fully preserve the rights of claimants who were exposed to asbestos to pursue compensation should those claimants become impaired in the future as a result of such exposure; (3) enhance the ability of the state's judicial systems and federal judicial systems to supervise and control litigation and asbestos-related bankruptcy proceedings; and (4) conserve the scarce resources of the defendants to allow compensation of cancer victims and others who are physically impaired by exposure to asbestos while securing the right to similar compensation for those who may suffer physical impairment in the future.

SECTION 4. (A) As used in this section, "asbestos," " asbestos claim," "exposed person," and " substantial contributing factor" have the same meanings as in section 2307.91 of the Revised Code.

(B) The General Assembly acknowledges the Supreme Court's authority in prescribing rules governing practice and procedure in the courts of this state, as provided by Section 5 of Article IV of the Ohio Constitution.

(C) The General Assembly hereby requests the Supreme Court to adopt rules to specify procedures for venue and consolidation of asbestos claims brought pursuant to sections 2307.91 to 2307.95 of the Revised Code.

(D) With respect to procedures for venue in regard to asbestos claims, the General Assembly hereby requests the Supreme Court to adopt a rule that requires that an asbestos claim meet specific nexus requirements, including the requirement that the plaintiff be domiciled in Ohio or that Ohio is the state in which the plaintiff's exposure to asbestos is a substantial contributing factor.

(E) With respect to procedures for consolidation of asbestos claims, the General Assembly hereby requests the Supreme Court to adopt a rule that permits consolidation of asbestos claims only with the consent of all parties, and in absence of that consent, permits a court to consolidate for trial only those asbestos claims that relate to the same exposed person and members of the exposed person's household.

2004 H 292, § 6 and § 7, eff. 9-2-04, read:

SECTION 6. If any item of law that constitutes the whole or part of a section of law contained in this act, or if any

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application of any item of law that constitutes the whole or part of a section of law contained in this act, is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end, the items of law of which the sections contained in this act are composed, and their applications, are independent and severable.

SECTION 7. If any item of law that constitutes the whole or part of a section of law contained in this act, or if any application of any item of law contained in this act, is held to be preempted by federal law, the preemption of the item of law or its application does not affect other items of law or applications that can be given affect. The items of law of which the sections of this act are composed, and their applications, are independent and severable.

R.C. § 2307.91, OH ST § 2307.91

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R.C. § 2307.92

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIII. COURTS--COMMON PLEAS
CHAPTER 2307. CIVIL ACTIONS
ASBESTOS CLAIMS

➡2307.92 Requirements for prima-facie showing of physical impairment for certain tort actions involving asbestos exposure

(A) For purposes of section 2305.10 and sections 2307.92 to 2307.95 of the Revised Code, "bodily injury caused by exposure to asbestos" means physical impairment of the exposed person, to which the person's exposure to asbestos is a substantial contributing factor.

(B) No person shall bring or maintain a tort action alleging an asbestos claim based on a nonmalignant condition in the absence of a prima-facie showing, in the manner described in division (A) of section 2307. 93 of the Revised Code, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to asbestos is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(1) Evidence verifying that a competent medical authority has taken a detailed occupational and exposure history of the exposed person from the exposed person or, if that person is deceased, from the person who is most knowledgeable about the exposures that form the basis of the asbestos claim for a nonmalignant condition, including all of the following:

(a) All of the exposed person's principal places of employment and exposures to airborne contaminants;

(b) Whether each principal place of employment involved exposures to airborne contaminants, including, but not limited to, asbestos fibers or other disease causing dusts, that can cause pulmonary impairment and, if that type of exposure is involved, the general nature, duration, and general level of the exposure.

(2) Evidence verifying that a competent medical authority has taken a detailed medical and smoking history of the exposed person, including a thorough review of the exposed person's past and present medical problems and the most probable causes of those medical problems;

(3) A diagnosis by a competent medical authority, based on a medical examination and pulmonary function testing of the exposed person, that all of the following apply to the exposed person:

(a) The exposed person has a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides to the evaluation of permanent impairment.

(b) Either of the following:

(i) The exposed person has asbestosis or diffuse pleural thickening, based at a minimum on radiological or pathological evidence of asbestosis or radiological evidence of diffuse pleural thickening. The asbestosis or diffuse pleural thickening described in this division, rather than solely chronic obstructive pulmonary disease, is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the exposed person has any of the following:

(I) A forced vital capacity below the predicted lower limit of normal and a ratio of FEV1 to FVC that is equal to or greater than the predicted lower limit of normal;

(II) A total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal;

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(III) A chest x-ray showing small, irregular opacities (s, t) graded by a certified B-reader at least 2/1 on the ILO scale.

(ii) If the exposed person has a chest x-ray showing small, irregular opacities (s, t) graded by a certified B-reader as only a 1/0 on the ILO scale, then in order to establish that the exposed person has asbestosis, rather than solely chronic obstructive pulmonary disease, that is a substantial contributing factor to the exposed person's physical impairment the plaintiff must establish that the exposed person has both of the following:

(I) A forced vital capacity below the predicted lower limit of normal and a ratio of FEV1 to FVC that is equal to or greater than the predicted lower limit of normal;

(II) A total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal.

(C)(1) No person shall bring or maintain a tort action alleging an asbestos claim based upon lung cancer of an exposed person who is a smoker, in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.93 of the Revised Code, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to asbestos is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(a) A diagnosis by a competent medical authority that the exposed person has primary lung cancer and that exposure to asbestos is a substantial contributing factor to that cancer;

(b) Evidence that is sufficient to demonstrate that at least ten years have elapsed from the date of the exposed person's first exposure to asbestos until the date of diagnosis of the exposed person's primary lung cancer. The ten-year latency period described in this division is a rebuttable presumption, and the plaintiff has the burden of proof to rebut the presumption.

(c) Either of the following:

(i) Evidence of the exposed person's substantial occupational exposure to asbestos;

(ii) Evidence of the exposed person's exposure to asbestos at least equal to 25 fiber per cc years as determined to a reasonable degree of scientific probability by a scientifically valid retrospective exposure reconstruction conducted by a certified industrial hygienist or certified safety professional based upon all reasonably available quantitative air monitoring data and all other reasonably available information about the exposed person's occupational history and history of exposure to asbestos.

(2) If a plaintiff files a tort action that alleges an asbestos claim based upon lung cancer of an exposed person who is a smoker, alleges that the plaintiff's exposure to asbestos was the result of living with another person who, if the tort action had been filed by the other person, would have met the requirements specified in division (C)(1)(c) of this section, and alleges that the plaintiff lived with the other person for the period of time specified in division (GG) of section 2307.91 of the Revised Code, the plaintiff is considered as having satisfied the requirements specified in division (C)(1)(c) of this section.

(D)(1) No person shall bring or maintain a tort action alleging an asbestos claim that is based upon a wrongful death, as described in section 2125.01 of the Revised Code of an exposed person in the absence of a prima-facie showing, in the manner described in division (A) of section 2307. 93 of the Revised Code, that the death of the exposed person was the result of a physical impairment, that the death and physical impairment were a result of a medical condition, and that the deceased person's exposure to asbestos was a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(a) A diagnosis by a competent medical authority that exposure to asbestos was a substantial contributing factor to the death of the exposed person;

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(b) Evidence that is sufficient to demonstrate that at least ten years have elapsed from the date of the deceased exposed person's first exposure to asbestos until the date of diagnosis or death of the deceased exposed person. The ten-year latency period described in this division is a rebuttable presumption, and the plaintiff has the burden of proof to rebut the presumption.

(c) Either of the following:

(i) Evidence of the deceased exposed person's substantial occupational exposure to asbestos;

(ii) Evidence of the deceased exposed person's exposure to asbestos at least equal to 25 fiber per cc years as determined to a reasonable degree of scientific probability by a scientifically valid retrospective exposure reconstruction conducted by a certified industrial hygienist or certified safety professional based upon all reasonably available quantitative air monitoring data and all other reasonably available information about the deceased exposed person's occupational history and history of exposure to asbestos.

(2) If a person files a tort action that alleges an asbestos claim based on a wrongful death, as described in section 2125.01 of the Revised Code, of an exposed person, alleges that the death of the exposed person was the result of living with another person who, if the tort action had been filed by the other person, would have met the requirements specified in division (D)(1)(c) of this section, and alleges that the exposed person lived with the other person for the period of time specified in division (GG) of section 2307.91 of the Revised Code in order to qualify as a substantial occupational exposure to asbestos, the exposed person is considered as having satisfied the requirements specified in division (D)(1)(c) of this section.

(3) No court shall require or permit the exhumation of a decedent for the purpose of obtaining evidence to make, or to oppose, a prima-facie showing required under division (D)(1) or (2) of this section regarding a tort action of the type described in that division.

(E) No prima-facie showing is required in a tort action alleging an asbestos claim based upon mesothelioma.

(F) Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies, shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment incorporated in the AMA guides to the evaluation of permanent impairment and reported as set forth in 20 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the interpretive standards set forth in the official statement of the American thoracic society entitled "lung function testing: selection of reference values and interpretive strategies" as published in American review of respiratory disease, 1991:144:1202-1218.

(G) All of the following apply to the court's decision on the prima-facie showing that meets the requirements of division (B), (C), or (D) of this section:

(1) The court's decision does not result in any presumption at trial that the exposed person has a physical impairment that is caused by an asbestos-related condition.

(2) The court's decision is not conclusive as to the liability of any defendant in the case.

(3) The court's findings and decisions are not admissible at trial.

(4) If the trier of fact is a jury, the court shall not instruct the jury with respect to the court's decision on the prima-facie showing, and neither counsel for any party nor a witness shall inform the jury or potential jurors of that showing.

(2004 H 292, eff. 9-2-04)

UNCODIFIED LAW

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R.C. § 2307.92

2004 H 292, § § 3, 4, 6 and 7: See Uncodified Law under 2307.91.

R.C. § 2307.92, OH ST § 2307.92

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BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIII. COURTS--COMMON PLEAS
CHAPTER 2307. CIVIL ACTIONS
ASBESTOS CLAIMS

➞2307.93 Filing of report and test results supporting physical impairment claim; defendant's challenge of evidence; dismissal

(A)(1) The plaintiff in any tort action who alleges an asbestos claim shall file, within thirty days after filing the complaint or other initial pleading, a written report and supporting test results constituting prima-facie evidence of the exposed person's physical impairment that meets the minimum requirements specified in division (B), (C), or (D) of section 2307.92 of the Revised Code, whichever is applicable. The defendant in the case shall be afforded a reasonable opportunity, upon the defendant's motion, to challenge the adequacy of the proffered prima-facie evidence of the physical impairment for failure to comply with the minimum requirements specified in division (B), (C), or (D) of section 2307.92 of the Revised Code. The defendant has one hundred twenty days from the date the specified type of prima-facie evidence is proffered to challenge the adequacy of that prima-facie evidence. If the defendant makes that challenge and uses a physician to do so, the physician must meet the requirements specified in divisions (Z)(1), (3), and (4) of section 2307.91 of the Revised Code.

(2) With respect to any asbestos claim that is pending on the effective date of this section, the plaintiff shall file the written report and supporting test results described in division (A)(1) of this section within one hundred twenty days following the effective date of this section. Upon motion and for good cause shown, the court may extend the one hundred twenty-day period described in this division.

(3)(a) For any cause of action that arises before the effective date of this section, the provisions set forth in divisions (B), (C), and (D) of section 2307.92 of the Revised Code are to be applied unless the court that has jurisdiction over the case finds both of the following:

(i) A substantive right of a party to the case has been impaired.

(ii) That impairment is otherwise in violation of Section 28 of Article II, Ohio Constitution.

(b) If a finding under division (A)(3)(a) of this section is made by the court that has jurisdiction over the case, then the court shall determine whether the plaintiff has failed to provide sufficient evidence to support the plaintiff's cause of action or the right to relief under the law that is in effect prior to the effective date of this section.

(c) If the court that has jurisdiction of the case finds that the plaintiff has failed to provide sufficient evidence to support the plaintiff's cause of action or right to relief under division (A)(3)(b) of this section, the court shall administratively dismiss the plaintiff's claim without prejudice. The court shall maintain its jurisdiction over any case that is administratively dismissed under this division. Any plaintiff whose case has been administratively dismissed under this division may move to reinstate the plaintiff's case if the plaintiff provides sufficient evidence to support the plaintiff's cause of action or the right to relief under the law that was in effect when the plaintiff's cause of action arose.

(B) If the defendant in an action challenges the adequacy of the prima-facie evidence of the exposed person's physical impairment as provided in division (A)(1) of this section, the court shall determine from all of the evidence submitted whether the proffered prima-facie evidence meets the minimum requirements specified in division (B), (C), or (D) of section 2307.92 of the Revised Code. The court shall resolve the issue of whether the plaintiff has made the prima-facie showing required by division (B), (C), or (D) of section 2307.92 of the Revised Code by applying the standard for resolving a motion for summary judgment.

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R.C. § 2307.93

(C) The court shall administratively dismiss the plaintiff's claim without prejudice upon a finding of failure to make the prima-facie showing required by division (B), (C), or (D) of section 2307.92 of the Revised Code. The court shall maintain its jurisdiction over any case that is administratively dismissed under this division. Any plaintiff whose case has been administratively dismissed under this division may move to reinstate the plaintiff's case if the plaintiff makes a prima-facie showing that meets the minimum requirements specified in division (B), (C), or (D) of section 2307.92 of the Revised Code.

(2004 H 292, eff. 9-2-04)

UNCODIFIED LAW

2004 H 292, § § 3, 4, 6, and 7: See Uncodified Law under 2307.91.

R.C. § 2307.93, OH ST § 2307.93

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R.C. § 2505.02

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXV. COURTS--APPELLATE
CHAPTER 2505. PROCEDURE ON APPEAL
FINAL ORDER

→2505.02 Final order

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305. 234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018, and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

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R.C. § 2505.02

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

(2004 H 516, eff. 12-30-04; 2004 S 80, eff. 4-7-05; 2004 S 187, eff. 9-13-04; 2004 H 292, eff. 9-2-04; 2004 H 342, eff. 9-1-04; 1998 H 394, eff. 7-22-98; 1986 H 412, eff. 3-17-87; 1953 H 1; GC 12223-2)

R.C. § 2505.02, OH ST § 2505.02

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C
BALDWIN'S OHIO REVISED CODE ANNOTATED
CONSTITUTION OF THE STATE OF OHIO
ARTICLE IV. JUDICIAL

➞O Const IV Sec. 3 Organization and jurisdiction of courts of appeals

(A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district wherein the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B) (1) The courts of appeals shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2 (B) (2) of this article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

(1994 HJR 15, am. eff. 1-1-95; 132 v HJR 42, adopted eff. 5-7-68)

Const. Art. IV, § 3, **OH CONST** Art. **IV, § 3**

Current through 2006 File 196 of the 126th GA (2005-2006),
apv. by 1/28/07, and filed with the Secretary of State by 1/28/07.

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