**LEGAL ACTIVITIES**

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

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

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

By way of background, Jessica Simpkins was a minor when she was sexually assaulted by a youth pastor previously employed by Grace Brethren Church. Simpkins and her father sued the Church, among others, and sought economic damages—more or less objective damages for pecuniary harm, including past and future medical expenses, lost earnings, etc. They also sought noneconomic damages—subjective damages for nonpecuniary harm, including pain and suffering, loss of consortium, and other intangible loss. A jury eventually awarded $3,651,378.85 in damages, of which $3.5 million consisted of noneconomic damages. The trial court subsequently reduced the $3.5 million awarded in noneconomic damages to $370,000, per tort reform legislation that became effective in 2005—Am.Sub.S.B. 80, which is codified by statute at R.C. 2315.18.

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

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

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

**MEMBER RECOGNITION**

**Ohio Heroin and Opioid Task Force Receives Award**

The U.S. Attorney for the Northern District of Ohio Heroin and Opioid Task Force was honored with the Attorney General’s Award, the highest honor given by the Justice Department, at the Attorney General’s Award Ceremony on Nov. 10 in Washington, DC.

The Task Force received the award for Outstanding Contributions to Community Partnerships for Public Safety. This award recognizes outstanding achievement in the development and support of community partnerships designed to address public safety within a community.

The Task Force was established in 2013 to address the region’s expanding epidemic. The group brings together a diverse group of stakeholders, and focuses on solutions from four perspectives: law enforcement; education and prevention; healthcare policy; and treatment. The Academy of Medicine of Cleveland & Northern Ohio (AMCNO) is proud to be a member of the important Task Force.

Successes to which members of the group have contributed include: working to make Narcan more readily available; presentations to tens of thousands of parents, students and other members of the community at hundreds of town hall meetings and schools; increased training for doctors and other medical professionals about the dangers of opioids; the creation of a heroin-involved death investigation team that treats overdoses as crime scenes; and working to increase the availability of drug treatment, among others.

This comprehensive approach has served as a model and is being replicated by several U.S. Attorney’s Offices around the country.

Additional members of the Task Force include: Cleveland Clinic, the Cuyahoga County Sheriff’s Department, MetroHealth Medical Center, Cuyahoga County Common Pleas Court, the Cuyahoga County Prosecutor’s Office, the Ohio Attorney General, Orca House, WKYC Channel 3, the Cleveland Division of Police, the DEA, the FBI, the Ohio State Medical Board, the Ohio State Pharmacy Board, the Cuyahoga County Board of Health, the Cuyahoga County Medical Examiner, University Hospitals, the ADAMHS Board and others.

While scores of people have made significant contributions to this effort, the number of people who were individually honored was capped at 15. The following people received the award:

- Philip Angelo, Cuyahoga County Sheriff’s Department
- Vincent Caraffi, Cuyahoga County Board of Health
- Todd DeKatch, Supervisory Special Agent, Federal Bureau of Investigation
- Dr. Thomas Gilson and Hugh Shannon, Cuyahoga County Medical Examiner’s Office
- Gary Gingell, Commander, Cleveland Division of Police
- Dr. Jason Jerry, Cleveland Clinic*
- Aaron Marks, member of the recovery community
- Keith Martin, Resident Agent in Charge, Drug Enforcement Administration
- Honorable Judge David Matia and Honorable Judge Joan Synenberg, Cuyahoga County Court of Common Pleas
- Dr. Joan Papp, MetroHealth Medical Center*
- Joseph M. Pinjuh, Craig A. Tame, and Mike Tobin, U.S. Attorney’s Office

*The AMCNO congratulates all the awardees, including our members Dr. Joan Papp and Dr. Jason Jerry, on receiving this prestigious award.*

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NORTHERN OHIO PHYSICIAN = January/February 2017