



December 2, 2011

***IS BIFURCATION OF LIABILITY AND COMPENSATORY AND PUNITIVE DAMAGE CLAIMS MANDATORY?***

On November 18, 2011, the Fifth District Appellate Court said **NO**, and affirmed a Licking County Common Pleas Court's decision denying a motion to bifurcate the compensatory and punitive damage claims in *Hill v. Steel Ceilings, Inc.*, 2011-Ohio-6040. A copy of this decision can be found [here](#). Plaintiff filed an intentional tort suit against his employer, who moved to bifurcate the compensatory and punitive damage claims. After conducting a hearing, the trial court denied the motion and the employer appealed.

Pursuant to Ohio Civ. R. 42(B), the decision to deny a motion to bifurcate lies within the discretion of the trial judge and can only be reversed upon a finding of an abuse of discretion, which requires evidence the trial court's decision was unreasonable, arbitrary or unconscionable. The trial court's decision indicated it would aid the jury in its instructions to alleviate any confusion regarding the issues of liability and damages. As such, the appellate court did not find evidence of an abuse of discretion.

Citing the language of the statute and relying on decisions from the Eight and Tenth District Appellate Courts, defendant also claimed bifurcation was mandatory pursuant to R.C. 2315.21(B) and as such, the trial court committed reversible error by denying a substantive right. The Fifth District Appellate Court disagreed, finding R.C. 2315.21(B) is not substantive, because it does not create or define a party's rights; rather, it only sets out procedures for courts to follow. As the procedural mandate of the statute requiring bifurcation conflicts with the Supreme Court's Rules, placing the decision to bifurcate within the discretion of the trial judge, the Rule controls pursuant to Ohio's Constitution and according to the Fifth District Appellate Court, the statute is therefore unconstitutional.

As there appears to be a conflict amongst some of the appellate districts in Ohio, this issue could well be certified for review by the Ohio Supreme Court. We are monitoring this matter to see if any action is indeed taken by the Supreme Court and will notify you of any further developments. Please do not hesitate to contact with any questions you may have on this decision or its implications.

Sincerely yours,

M. Andrew Sway