

Weston Hurd Client Advisory - February 2012

Ohio Supreme Court Upholds Requirement that Trial Courts Bifurcate Compensatory and Punitive Damage Phases of Trials Upon Motion

Prepared by John G. Farnan, Esq.

In a February 15, 2012 decision, *Havel v. Villa St. Joseph*, 2012-Ohio-552, the Ohio Supreme Court upheld a key component of Ohio's 2005 tort reform. Specifically, that tort reform included a requirement that trial courts bifurcate the punitive damage phase and evidence in a trial from the compensatory damage phase in a trial upon motion of any party. The obvious purpose of that law was to preclude the plaintiff's attorney from inflaming the passions of the jury, with evidence that went to the issue of punitive damages, when the jury had not yet made a determination as to the plaintiff's entitlement to compensatory damages.

O.R.C. §2315.21(B) states that the trial "shall" bifurcate the compensatory and punitive damage phases and evidence in a trial upon request. Under Ohio law, a statute stating "shall" means that the legislative directive is mandatory. However, many trial court judges were ignoring that mandate and refusing to bifurcate the punitive and compensatory damage phases of trials, claiming that it was within their discretion to order the bifurcation or to refrain from doing so. The Courts of Appeal also differed as to the mandatory aspect of that legislative directive.

In *Havel*, the Ohio Supreme Court resolved this issue definitively. In a nursing home medical malpractice case, involving a wrongful death, the defendants moved to bifurcate the trial into two stages, pursuant to O.R.C. §2315.21(B): "an initial stage relating only to the presentation of evidence and determination by the jury as to the plaintiff's entitlement to recover compensatory damages and, if necessary, a second stage involving the presentation of evidence and determination by the jury with respect to the alleged entitlement to recover punitive damages." The trial court denied the motion to bifurcate.

Villa St. Joseph, the defendant, appealed to the Eighth District Court of Appeals which affirmed the trial court's judgment. The Appellate Court held that the statute was unconstitutional because it conflicted with Rule 42(B) of the Ohio Rules of Civil Procedure, which invests trial courts with discretion to bifurcate aspects of a trial, and because the statute allegedly violated the separation of powers provision in the Ohio Constitution.

The Ohio Supreme Court accepted an appeal of the *Havel* appellate decision as it was in conflict with a decision from the Tenth District Court of Appeals in *Hanners v. Ho Wah Genting Wire & Cable SDBHD*, 2009-Ohio-6481.

In reviewing the issue, the Ohio Supreme Court ruled that O.R.C. §2315.21(B) created no ambiguity regarding its application - namely, a trial court " * * * is required to bifurcate a tort action to allow presentation of the claims for compensatory and punitive damages in separate stages" upon the motion of any party. The Ohio Supreme Court explained that Civil Rule 42(B) was also unambiguous in that it vested a trial court with discretion to order a separate trial of

any claims or issues in all civil actions. However, the Supreme Court of Ohio recognized that the punitive damage bifurcation statute and Civil Rule 42 could be applied without conflict in some instances but, in other instances, there is an inconsistency between the statute and the rule. However, when a conflict exists, on the issue of punitive damage bifurcation, the Ohio Supreme Court ruled that the statute trumps the Ohio Rule of Civil Procedure, because the statute " * * * creates a concomitant right to bifurcation * * * ."

Thus, the Ohio Supreme Court ruled that the punitive damage bifurcation statute created a substantive right to insure that evidence of misconduct is not inappropriately considered by the jury in its assessment of liability and in its award of compensatory damages. Thus, the Ohio Supreme Court ruled that O.R.C. §2315.21(B) does **NOT** violate the Ohio Constitution and, since it is a substantive rule of law, not a procedural rule, it prevails over a procedural rule such as Civil Rule 42(B).

Justice O'Donnell authored the majority decision and he was joined by Justices Lundberg Stratton, Lanzinger, and Cupp. Justice O'Conner concurred in the judgment only whereas Justices Pfeifer and McGee Brown dissented.

This is a clear win for Ohio's 2005 tort reform proponents. Trial courts will no longer be able to ignore the plain mandatory bifurcation language in O.R.C. §2315.25(B). Thus, any defendant, going to trial on a punitive damage claim and a compensatory damage claim, should consider filing a motion requesting a bifurcation of those issues so that evidence of an alleged entitlement to punitive damages is not presented to the jury until after the jury determines that the plaintiff is entitled to an award of compensatory damages. The Ohio Supreme Court's *Havel* decision can be found at this link:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2012/2012-Ohio-552.pdf>.



John G. Farnan is a Partner with Weston Hurd LLP. He practices primarily in the areas of insurance coverage, personal injury, premises liability, commercial litigation and appellate practice. Since 2006, John has been named an *Ohio Super Lawyer* in Insurance Coverage by Law & Politics Media, Inc. and since 2011, he has been named to the Best Lawyers in America. He can be reached at (216) 687-3288 (direct) or at JFarnan@westonhurd.com.

For more information about Mr. Farnan and Weston Hurd, please visit www.westonhurd.com.

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