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Ohio Tort Reform Update

Recently, the Ohio General Assembly significantly changed the laws relating to personal injury claims, and these changes (which take effect on April 6, 2005) could have a substantial impact on pending and future lawsuits.

Senate Bill 80 limits the amount of punitive damages from individuals or small employers (100 employees or less if non-manufacturer or 500 or less for manufacturer) to the lesser of two times the compensatory damages, 10% of the employer's or individual's net worth or \$350,000. Punitive damages from large employers are limited to two times the amount of compensatory damages.

Senate Bill 80 places caps on non-economic damages for product liability, asbestos and survivorship. These caps are \$250,000 per Plaintiff or three times the economic loss up to \$350,000 per Plaintiff. Further, the Ohio General Assembly enacted an overall occurrence limit of \$500,000. However, there are exceptions in the event of permanent and substantial physical deformity and/or permanent physical functional injury.

S.B. 80 additional provisions allow the introduction of "collateral benefits" evidence (sources of other money) to the Plaintiff under certain limited circumstances. Senate Bill 80 also places a 10-year statute of repose on product liability claims against manufacturers and suppliers. Senate Bill 80 "removes" the "Consumer Expectation Test" as a stand alone test of product defect but still allows consumer expectations to be introduced as part of the product defect risk-benefit analysis.

Over the years, the Ohio General Assembly's tort reform efforts have proven challenging due to the Ohio Supreme Court's power to review, uphold and/or declare such efforts unconstitutional. For more information on recent tort reform, including its status in light of inevitable constitutional challenges, please contact one of Wiles, Boyle, Burkholder & Bringardner's experienced litigation attorneys.

By Jay B. Eggspuehler

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**Featured
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Daniel G. Wiles

A straight shooter with nearly 40 years of experience, Dan offers his clients sound advice with sharp insights that only an experienced attorney can provide. A superb trial lawyer, his specialties are medical-legal, products liability, insurance defense and civil litigation.

Dan received his B.S. from The Ohio State University and J.D. from Ohio Northern University. He is a Delta Theta Phi and a member of the CBA, OBA and ABA; Defense Research and Trial Lawyers Association; Ohio Association of Civil Trial Attorneys; and Columbus Defense Association.

Dan and his wife, Cynthia, have two daughters and two grandchildren. Outside of the courtroom, he enjoys golf, fly fishing and hunting.



Steven P. Elliott

A real estate law expert, Steve has been offering legal counsel in financing, acquisitions, loans and other related issues for more than 25 years. Steve has experience in both private and corporate law practices, which gives him a unique edge in providing counsel to his clients.

Steve received his B.A. from Miami University, cum laude and J.D. from The Ohio State University with honors. As a member of the CBA, OBA and ABA, Steve is active on several committees.

Steve and his wife, Jennifer, enjoy spending time with their four school age children. He also enjoys golf and traveling.

Reevaluating Your Business Needs Annually Can Save You Money and Prevent Crises

Each year, you should review your company and personal affairs to ensure that things are in good order. This practice, if done properly, can save and perhaps make money for you.

From the company perspective, determine if there are any significant changes. For example:

Does the company plan to do business in other states that may require special registration or licensing?

Is the company contemplating any major acquisitions or a new venture move where the creation of a new entity would make better sense to protect present company interests?

Is any shareholder or other significant member of the company looking to retire?

Does the company have a buy-sell agreement in

place, and if so, is the stock valuation adequate?

In addition, are existing life insurance and disability policies sufficient to buy out a shareholder, and are payment terms compatible with company cash flow?

Each year, there are numerous changes in employment law. Employment policy manuals and the employee handbook should (and by law) be kept current. Review contracts to verify renewal, termination and option dates, and any applicable changes to price increases or obligations. The same applies to various registrations, such as trade names, trademarks and copyrights.

Lastly, the company minute book should be updated. Adopt director and shareholder minutes to ratify officers' actions

and approve, if applicable, shareholder distributions, director fees and other special compensation, including profit-sharing and benefit plan contributions.

From a personal perspective, review all insurance coverage limitations and deductibles to maximize savings and benefits. Also, consider additional savings with a Roth IRA and 529 plans. Review and update wills and trusts as family situations and tax laws change annually.

An annual review of your company and personal affairs can provide significant benefits and ward off potential problems well in advance. Your business and tax advisors can help you to address these objectives.

By C. William Klausman

Creativity in Lending

Our firm's real estate practice handles a large number of real estate financing transactions, representing both lenders and borrowers.

While real estate financing in Columbus is not all that different today than it was 20 years ago, there have been a few changes and new trends. The most common that I have encountered is the creativity in which lenders are willing to provide, and borrowers have come to expect, in real estate loans.

Loans no longer have to be "standard" in nature. Many loans have unusual terms designed to accommodate borrowers' unique needs. Real estate transaction terms tend to vary dramatically from deal to deal. Today, real

estate lenders seem more willing to adapt their loan terms to borrowers, rather than making borrowers fit their deals within the standard loan parameters.

I encountered an example of this creative lending with a recent phased construction project. Instead of treating the loan as a construction loan for the entire project cost or making different loans for each of the different phases, the lender made the loan as a line of credit with a much lower initial loan amount.

Basically, the borrower was required to pay back certain amounts of the loan before it could take advances of funds for future phases. This approach greatly reduced the borrower's up-front

costs, such as loan fees and title insurance, which were based on the loan amount, without reducing the total loan amount available to the borrower.

I attribute this creativity in lending to a few factors. One is increased competition among lenders for sophisticated lending transactions.

The second is an increase in small, local lending institutions that are staffed by loan officers with sophisticated experience and relationships obtained from their previous work at larger institutions.

Regardless of the factors, the result is a good situation, allowing borrowers with unique conditions to be satisfied.

By Steven P. Elliott

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