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## Why Damage Cap Exceptions Must Extend To All Claims Arising From A Catastrophic Injury, Including Derivative Claims – A Statutory Analysis

by Brenda M. Johnson

Section 2315.18 of the Revised Code imposes caps on noneconomic damages in tort actions, except where the injury at issue is sufficiently catastrophic. In those cases, R.C. § 2315.18(B)(3) provides that no limitation on noneconomic damages applies. The injured person, however, is seldom the only person with tort claims arising from those injuries. Family members have their derivative claims, which raises the question of whether the caps on noneconomic damages are lifted as to those claims as well. The statutory language is not expressly clear on the issue, and there's no case law offering any guidance. But the most reasonable interpretation of the statute is that the cap exception is not limited to the injured person alone, but extends to *all* persons who have claims as a result of those injuries.

As with any exercise in statutory interpretation, the analysis must begin with the language of the statute itself. Our focus is on R.C. § 2315.18(B), which is quoted in full below with an emphasis on certain key terms:

In a *tort action* to recover damages for injury or loss to person or property, all of the following apply:

(1) There shall not be any limitation on the amount of compensatory damages that represents the economic loss of *the person who is awarded the damages* in the tort action.

(2) Except as otherwise provided in division (B)(3) of this section, the amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a tort action under this section to recover damages for injury or loss to person or property shall not exceed the greater of two hundred fifty thousand dollars or an amount that is equal to three times the economic loss, as determined by the trier of fact, of the *plaintiff* in that tort action to a maximum of three hundred fifty thousand dollars for *each plaintiff* in that tort action or a maximum of five hundred thousand dollars for each *occurrence* that is the basis of that *tort action*.

(3) There shall not be any limitation on the amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a *tort action* to recover damages for injury or loss to person or property if the noneconomic losses of the *plaintiff* are for either of the following:

(a) Permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system;

(b) Permanent physical functional injury that permanently prevents *the injured person* from being able to independently care for self and perform life-sustaining activities.

Of the highlighted terms, two are defined in the statute. “Tort action” is defined as “a civil action for damages for injury or loss to person or property,” with the exception of medical claims.<sup>1</sup> “Occurrence” is defined as “all claims resulting or arising out of any one person’s bodily injury.”<sup>2</sup> Other key terms, like “plaintiff” and “injured person,” are not defined, but under standard principles of statutory interpretation, they should be “read in context and construed according to the rules of grammar and common usage.”<sup>3</sup>

Applying these standards, it is clear that (B)(2) sets forth caps that are designed to apply separately to each individual plaintiff who has a claim arising from a single person’s physical injuries, subject to a maximum per-occurrence cap, and that division (B)(3) removes these caps with respect to *all* claims arising from a single person’s physical injuries if the injuries satisfy (B)(3)’s requirements.

Division (B)(2) specifically links caps on noneconomic damages to the damage claims of individual plaintiffs, while at the same time applying a separate overall cap for each “occurrence,” except as provided in division (B)(3). “Occurrence,” as noted above, is a term that is specifically defined to include “all claims” arising from “any one person’s bodily injury.” Division (B)(3) operates to lift the cap, providing that there “shall not be any limitation” on noneconomic damages recoverable in a “tort action . . . if the noneconomic losses of the plaintiff” arise from injuries that satisfy the requirements of the statute. Division (B)(3), however, does not specify that the plaintiff’s noneconomic losses must arise from physical injuries sustained directly by that plaintiff in order for the caps to be lifted. Instead, to the extent this division of the statute speaks to the issue at all, it references “the injured person” rather than “the plaintiff” or “a plaintiff.”

In light of this, the only reasonable interpretation of Division (B)(3) is that it is designed to remove caps on noneconomic damages for derivative claims, such as loss of consortium, arising from injuries that satisfy the requirements of that division, and not just those of the injured person alone. To interpret the statute otherwise would violate basic principles of statutory interpretation, and would lead to illogical results.

If the statute is interpreted in a way that would lift caps on noneconomic damages available to the individual who sustained injury, while at the same time imposing caps on the derivative claims arising from the same injury, a situation could arise where the plaintiffs with derivative claims arising from the worst sorts of injuries would be prevented from recovering any noneconomic damages at all.

Consider the following scenario: An individual with a spouse and children sustains physical injuries that satisfy the requirements of division (B)(3). Assume that in the ensuing tort action, which would by necessity have to include the derivative claims of the spouse and children, a jury awards the injured individual noneconomic damages that exceed \$500,000, and also awards noneconomic damages to the spouse and children. Division (B)(3) would apply to the injured individual’s noneconomic damages, which would be unlimited and would exceed \$500,000. If the caps in division (B)(2) were to be applied to the derivative claims of the spouse and children under these circumstances, a trial court would either have to ignore division (B)(2)’s per-occurrence maximum cap of \$500,000, or it would have to enter a judgment awarding no noneconomic damages whatsoever to the family of the injured party in a case where their noneconomic damages are likely to be profound. Standard principles

of statutory interpretation, however, require that “all words [in a statute] should have effect and no part should be disregarded.”<sup>4</sup> Thus, there is no way to apply caps to some, but not all, claims arising from a single injury without risking a scenario in which the families of catastrophically injured people receive no compensation whatsoever for their noneconomic injuries.

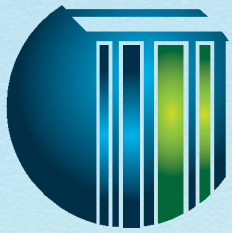
This would be an absurd result, and it would violate basic principles of statutory interpretation, as well as the intent of the statute itself. It is “an axiom of judicial interpretation that statutes be construed to avoid unreasonable or absurd consequences.”<sup>5</sup> Section 2315.18 clearly was designed to allow for the unlimited recovery of noneconomic damages in the most tragic of cases. Interpreting this statute in a manner that would deprive family members of catastrophically injured people of a full recovery would be both unreasonable and absurd.

A similar analysis applies to R.C. § 2323.43, which limits noneconomic damages in medical cases. The default tier of damage caps in R.C. § 2323.43(A)(2) cannot be applied to derivative claims arising from injuries that satisfy the requirements of division (A)(3) of that section without creating an unreasonable tension between the per-occurrence damage caps in division (A)(2) and the higher caps in division (A)(3). ■

#### End Notes

1. R.C. § 2315.18(A)(7).
2. R.C. § 2315.18(A)(5).
3. R.C. § 1.42.
4. *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172, ¶ 19, 773 N.E.2d 536; see also R.C. § 1.47(B).
5. *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St.3d 382, 384, 481 N.E.2d 632 (1985).





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