

Hamilton County LAW LIBRARY NEWS

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A Monthly Newsletter from the Hamilton County Law Library

April 2014

New Northern District of Ohio Decision Interprets Ohio's Catastrophic Loss Exception to the Cap on Noneconomic Damages

By Bradley A. Wright of Roetzel & Andress. Reprinted with permission.

The Ohio Tort Reform Act, which became effective in 2005, provides a cap on a plaintiff's recovery of noneconomic damages. Under the Act and set forth in Ohio Revised Code ("R.C.") 2315.18, damages for noneconomic loss are limited to the greater of: (1) Three times the economic loss or (2) \$250,000. In addition, three times the economic loss cannot exceed \$350,000 for each plaintiff in the tort action or \$500,000 for each occurrence that is the basis of the tort action.

However, the noneconomic damages cap does not apply when the plaintiff has suffered a catastrophic loss as described in R.C. 2315.18(B)(3). Under the Act, catastrophic losses include the following: (a) Permanent and substantial physical deformities, loss of use of a limb, or loss of a bodily organ system; or (b) Permanent physical functional injuries that permanently prevents the injured person from being able to independently care for

self and perform life-sustaining activities.

There are only a few opinions from Ohio state and federal courts that have interpreted and applied these catastrophic loss exceptions. The latest was decided by the Northern District of Ohio on December 31, 2013, in Giebel v. LaValley. The Giebel case involves a collision between a tractor-trailer and a passenger vehicle. Plaintiff argued the following injuries were permanent conditions:

- Sprain/strain of the neck and lower back;
- Damage to the cerebellum portion of the brain;
- Other organic brain damage; and
- Damage to the optic nerve.

She claimed the permanency of these injuries was supported by her testimony and medical

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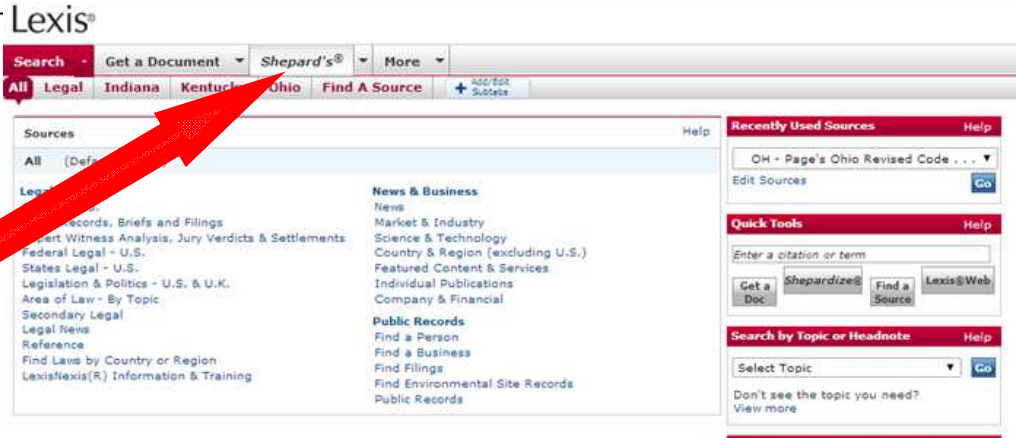
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Tech Tip: Shepardizing Restatements of the Law

By: Julie Koehne, Systems Librarian

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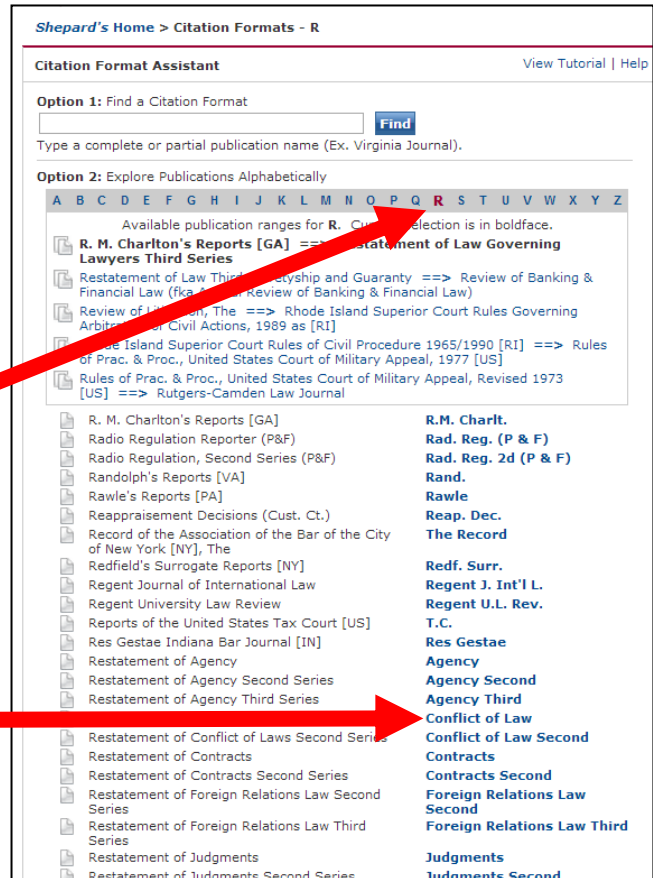


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 Property Second Landlord & Tenant sec. 1.5 cmt. d
 Property Second Landlord & Tenant sec. 1.2 cmt. a illus. 2
 Property Second Landlord & Tenant sec. 5.1 Caveat

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Unrestricted *Shepard's* Summary

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 Other Sources: [Law Reviews \(3\)](#)
[Index - Shepard's reports by court citation...](#)

CITING DECISIONS (20 citing decisions)

3RD CIRCUIT - COURT OF APPEALS

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1. **Cited by:**
 Berger v. Berger, 210 F.2d 403, 1954 U.S. App. LEXIS 2444, 3 V.I. 477 (1954)
 210 F.2d 403 p.405

3RD CIRCUIT - U.S. DISTRICT COURTS

2. **Cited by:**
 Greene v. Keim, 74 F. Supp. 950, 1948 U.S. Dist. LEXIS 3053 (D. Pa. 1948)
 74 F. Supp. 950 p.951

6TH CIRCUIT - U.S. DISTRICT COURTS

3. **Cited by:**
 B. Mifflin Hood Co. v. Lichter, 106 F. Supp. 220, 1950 U.S. Dist. LEXIS 4281 (D. Tenn. 1950)
 106 F. Supp. 220 p.220

(Continued from page 1)

expert testimony. She also alleged the effects of those injuries were permanent in nature, including:

- Pain and restricted motion of the neck and lower back;
- Issues resulting from post-concussion syndrome and/or brain damage, including headaches, dizziness, problems with balance, memory, and concentration, reduced intellectual efficiency, and other cognitive issues;
- Psychological issues, including severe anxiety, depression, and suicidal thoughts;
- Visual problems, including severe impairment of visual processing speed, double vision, and loss of vision in the upper-left quadrant of the visual field in both eyes.

Plaintiff and her physicians also offered testimony that her injuries have affected her life activities in the following ways:

- Inability to perform activities requiring "heavy use of her neck or arms, or bending or twisting," including carrying her children or other heavy objects, going to the grocery store, lifting heavy pots of food, running a vacuum cleaner, etc.;
- Inability to lift over 25 pounds without pain;
- Inability to work for more than four to six hours per day;
- Forgetting things like paying bills and taking medicine;
- Inability to drive;
- Inability to ride as a passenger in a vehicle in certain situations; and
- Difficulty reading.

Defendants disputed whether such evidence justifies lifting the damage cap imposed by R.C. 2315.18(B)(3).

The Northern District of Ohio held that there was no evidence in the record indicating that plaintiff had suffered a "[p]ermanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system" under R.C. 2315.18(B)(3)(a). In other words, it rejected the plaintiff's argument that damage to her eyesight constituted a "loss of a bodily organ system" under R.C. 2315.18(B)(3)(a). However, the court did conclude there was "sufficient evidence in the record to create an issue of fact as to whether plaintiff has suffered a '[p]ermanent physical functional injury that permanently prevents [her] from being able to independently care for [her]self and perform life-sustaining activities' under § 2315.18(B)(3)(b)." (emphasis added). In other words, the court concluded that a jury should decide whether or not the catastrophic loss exception should apply.

On this point, the plaintiff had argued that the emotional effects of her brain injury rendered her unable to perform life-sustaining activities. Specifically, she argued that the inability to stop one's self from committing suicide is the most basic of all life-sustaining activities. The court concluded that whether the plaintiff suffered from suicidal thoughts and impulses as a result of her brain injury was a question of fact for the jury to resolve. The court agreed with the plaintiff that a mental illness that impels one to suicide could be viewed as a paradigmatic instance of inability to care for oneself.

The Giebel case represents yet another instance in which courts conclude that application of the catastrophic loss exception is an

issue for the jury to decide, when there are disagreements about the facts that relate to the issue. Other examples include *Bransteter v. Moore* (jury question as to whether multiple scarring constitutes a "permanent and substantial physical deformity") and *Ohle v. DJO Inc.* (jury question as to whether the nature and location of plaintiff's scarring, removal of a portion of a bone, and/or total loss of cartilage deforms an individual). Yet, other courts will grant summary judgment on this issue, concluding the noneconomic damages cap applies, when plaintiff fails to present evidence that would cause a reasonable jury to conclude one of the catastrophic loss exceptions applies, for example *Weldon v. Presley* (plaintiff's inability to do household chores "is insufficient to defeat the damages cap").

Should you have any questions about the cap on noneconomic damages or the catastrophic loss exception under the Ohio Tort Reform Act, please contact the following Roetzel attorneys: [Bradley A. Wright](#), [Christopher E. Cotter](#) and [Megan Faust](#).

E-books

The Law Library offers a selection of e-books to our subscribers on many topics through Loislaw, available on-site and off. We also have e-books through Westlaw and Lexis here at the library. We're considering other, more expansive e-book options now. It would be helpful to know about our users' familiarity with and interest in e-books. Contact [Mary Jenkins](#) with comments.

Upcoming CLE

Free to subscribers; \$50 for non-subscribers
To register, call 513.946.5300 or via email reference@cms.hamilton-co.org

Lexis CLE: Search Tips & Shepard's

Wednesday, April 9

Noon-1pm

1.0 general hour of CLE in Ohio

Tax and Business Resources

The Law Library has extensive online and print resources on a wide range of tax and business topics. Let us know about your practice area and we'll direct you to the information resources that may be useful to you. If you need tax information, you'll be happy to know that CCH IntelliConnect tax and business resources are available to subscribers and county officials 24/7.

Research Guides

Have you used our online research guides yet? Take a look at Foreclosure Law, Landlord Tenant Law, Child Custody, Appeals, and others at <http://libguides.hamilton-co.org/>. We're developing other guides now. These guides are good starting points for both attorneys and self-represented litigants. We would like to develop other guides this year of interest to our attorney subscribers. [Let us know](#) which topics would be helpful to you, especially for self-help after library hours.

Subscriber Benefits

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Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

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Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

You and the Legal System: Probate Law

Attorney James Grey Wolf is our next speaker in the *You and the Legal System* series for the public. Mr. Wolf will discuss Probate Law on Friday, April 25 in the Law Library.

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513.946.5302.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Save the date for the next event in the *You and the Legal System* series. Ivan Tamarkin will discuss Landlord Tenant issues on May 16.

April Meeting of the Law Library's Board

The Hamilton County Law Library Resources Board is scheduled to meet at 12 noon on Thursday, April 10th in the Robert S. Kraft Board Room in the Law Library. Meetings of the board are open to the public. Minutes of previous meetings are available at

<http://www.hamilton-co.org/cinlawlib/about/trustees.html>

Torts Resources

The Law Library offers a variety of print and electronic resources on torts. If you have questions about access to any of these resources, just call us at 513.946.5300.

Damages in tort actions
KF1250 .D35 2013

Handling the police liability claim
KFO535 .P651 2011

Insurance and negligence law update
KFO185 .B7 2012

Jury instructions of damages in tort actions
KF8984 .E23 2012

Law of premises liability
KF1287 .P33 2014

Law of torts
KF1250 .D6 2011

Litigating back and neck injuries
KF8925 .P4 T37 2012

Personal injury: actions, defenses, damages
KF1256 .A8 F7 2014

Privacy Torts
KF1262 .E38 2013

Punitive damages
KF1249 .S34 2012

Tort law desk reference: a fifty-state compendium
KF1250 .T6 2013

Tort Law (Kentucky)
KFKFK1280 .K4 v.13 2013

Tort Law (Ohio)
KFO195 .E78 2010

Toxic Tort Litigation
KF8925.T69 2013

Online Resources/Remote Access*

Aspen/Loislaw

Business Torts Library:

Business Torts Reporter
Business Torts: A Fifty-State Guide
Civil False Claims and Qui Tam Actions
Civil RICO Practice Manual

Personal Injury Law Library

Forms & Checklists
Tort Law Desk Reference: A Fifty-State Compendium
Personal Injury: Forms and Procedures
Understanding the AMA Guides in Workers' Compensation
Malingering and Deception in Litigation
2013 Expert Witness Update
2012 Expert Witness Update
2011 Expert Witness Update
Stedman's Medical Dictionary, 28th Edition

Products Liability Library

Forms & Checklists
The Preparation of a Product Liability Case, Third Edition
Product Liability Case Digest
Product Liability Desk Reference
Product Warnings, Defects and Hazards
Scientific Evidence and Experts Handbook
Malingering and Deception in Litigation
Product Liability Desk Reference Smart Charts

CCH Intelliconnect

Preparation of a Product Liability Case
Product Liability Desk Reference: A Fifty-State Compendium
Products Liability Reporter
Proving and Defending Damage Claims: A Fifty-State Guide
Shapo on the Law of Products Liability - Tort Law Desk Reference: A Fifty-State Compendium

*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

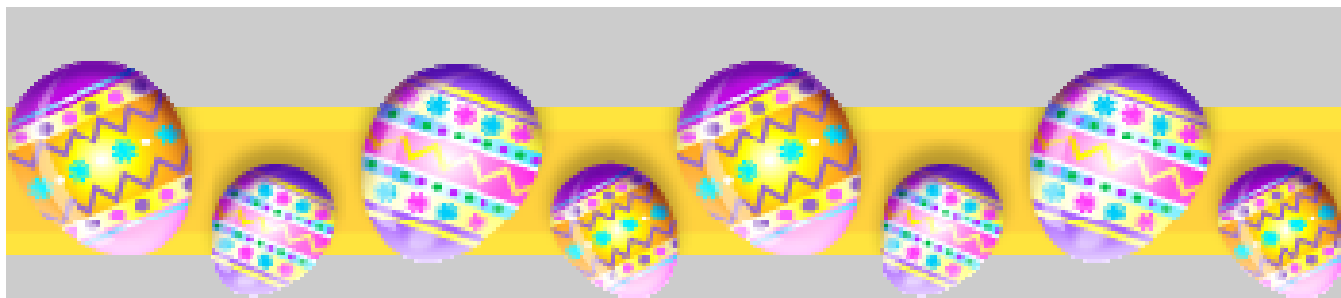
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