

## Vorys Appellate Team Wins Supreme Court of Ohio Case Upholding Constitutionality of Asbestos Reform Statute

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On October 15, the Supreme Court of Ohio upheld significant portions of Ohio's asbestos reform statute (H.B. 292) against a constitutional challenge based on the Retroactivity Clause of the Ohio Constitution. The case is *Ackison v. Anchor Packing, Co.*, \_\_\_ Ohio St.3d \_\_\_, 2008-Ohio-5243 (Slip. Op. Oct. 15, 2008). In a 6-1 decision, the Court held that the statute's screening criteria for certain asbestos personal injury cases are applicable to cases filed before the statute's September 2, 2004 effective date.

The screening criteria upheld in *Ackison* require asbestos personal injury claimants to submit reports from treating physicians and comply with standards to assure that their injuries arose from asbestos exposure and from another cause. The screening criteria hold the potential to place more than 30,000 pending cases on administrative dismissal and clear Ohio's crowded asbestos dockets.

*Ackison* confirms the General Assembly's broad powers to alter the common law, even retroactively. The decision suggests that rights based on the common law are not vested unless proclaimed by Ohio Supreme Court precedent. The decision also holds that laws retroactively changing non-substantive matters, such as those akin to rules of evidence, pass constitutional muster.

With the *Ackison* decision, the Ohio Supreme Court is the first state supreme court in the country to uphold a state statute addressing the judicial crisis spawned by the mass filing of asbestos lawsuits. A 2006 decision in Georgia struck down a similar law. The Florida version of the reform legislation currently faces a challenge before that state's Supreme Court.

The result in *Ackison* arises from more than three years of related appellate litigation in Ohio's District Courts of Appeals and in the Ohio Supreme Court. Members of the Vorys Appellate Practice Group coordinated and litigated more than a dozen predicate appeals that culminated in the *Ackison* decision.

Richard Schuster argued the case before the Supreme Court of Ohio. With him on the briefs were Nina Webb-Lawton and Michael Hendershot, of the Vorys Appellate Practice Group. For further information visit [www.vorys.com](http://www.vorys.com).

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