

Kansas Supreme Court Strikes Cap on Non-economic Damages for Personal Injuries

June 18, 2019

On June 14, 2019 the Kansas Supreme Court ruled in *Hilburn v. Enerpipe Ltd* (No. 112,765.) that the statutory cap (K.S.A. 60-19a02) on non-economic damages in personal injury actions violates the "right to trial by jury" in Section 5 of the Kansas Bill of Rights. The Court held "the noneconomic damages cap under K.S.A. 60-19a02 violates [the plaintiff's] right protected by Section 5 because it intrudes upon the jury's determination of the compensation owed to redress her injury."

In *Hilburn*, the plaintiff (Diana Hilburn) was injured when a commercial truck driver rear-ended the vehicle she was riding in. Hilburn sued the truck's owner alleging that its driver's negligence was the cause of her injuries. At trial the jury awarded \$335,000 in damages to the plaintiff, which consisted of \$33,490.86 in economic damages (medical expenses) and \$301,509.14 in non-economic damages (e.g., pain and suffering). Applying the cap in section 60-19a02 that was applicable at the time of trial, the trial court reduced the non-economic damages award to \$250,000. (In 2014, the Kansas legislature passed Senate Bill 311 that gradually increased the cap on non-economic damages. The most recent cap on non-economic damages was \$325,000 and was set to increase to \$350,000 after July 1, 2022.) The plaintiff appealed on the grounds that the damages cap was unconstitutional, and the Kansas Supreme Court ultimately ruled in her favor.

The *Hilburn* Court specifically overturned its own earlier holding in *Miller v. Johnson* 295 Kan. 636 (2012), which had rejected a similar constitutional challenge to the statutory non-economic damages cap in a medical malpractice action. In *Miller*, the Supreme Court applied both Section 5 and Section 18 of the Kansas Bill of Rights. Section 18 provides that "[a]ll persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay." Applying Section 18, the *Miller* Court recognized an implied "quid pro quo" due process test when determining if a statute constitutionally infringes upon a jury's damages award. Under Section 18's two-pronged quid pro quo test, a jury's determination could be statutorily altered if, first, a court determined a modification was reasonably necessary in the public interest to promote public welfare, and second, if the court determined the legislature substituted an adequate statutory remedy for the modification. Essentially, the *Miller* Court held Section 5's impairment was permissible so long as the "quid pro quo" test as applied to Section 18 was satisfied. The *Hilburn* Court disagreed, holding the right to a jury award provided by Section 5 of the Bill of



Rights was not altered by Section 18, because these sections are different concepts, with different purposes, and require their own unique analyses.

In short, after *Hilburn*, the cap on non-economic damages in Section 60-19a02 is unconstitutional, and thus cannot be used to limit or reduce a jury's damage award. Kansas has also abandoned the quid pro quo test when analyzing whether a statutory non-economic damages cap is unconstitutional. This change may have a sweeping impact on litigation in Kansas, especially for personal injury cases with potential for high-dollar non-economic damage awards.

If you have any questions about this alert, please contact your Lathrop Gage attorney or one of the attorneys listed above.