

KANSAS SUPREME COURT FINDS NON-ECONOMIC DAMAGES CAP UNCONSTITUTIONAL

The Kansas Supreme Court recently ruled that the state's statutory cap on non-economic damages violates the right to a jury trial guaranteed by the state's constitution, overturning the ruling in *Miller v. Johnson*. By striking down the statutory cap, the court drastically increased defendants' potential exposure in personal injury cases in Kansas.

The statutory cap limited monetary damages awarded for pain and suffering, loss of enjoyment of life, disability, disfigurement, and mental anguish in personal-injury cases. In passing the damages cap, the legislature's intent was to cap non-economic damages in exchange for requiring mandatory insurance coverage amounts, such as automobile and medical malpractice insurance, to keep insurance available and affordable, while still ensuring compensation to accident victims.

In *Hilburn v. Enerpipe Ltd.*, Diana Hilburn was riding in a car that was rear-ended by a semi-truck in November 2010. A jury awarded Hilburn approximately \$34,000 for her medical bills and over \$300,000 in non-economic damages. The trial court reduced the judgment from \$335,000 to approximately \$284,000 because of the cap on non-economic damages which, at the time, was \$250,000. The cap amount was raised from \$250,000 to \$325,000 after Hilburn's accident and was set to increase again to \$350,000 on July 1, 2022, to account for inflation.

Hilburn challenged the constitutionality of the cap, arguing it violated her right to a jury trial under Section 5 of the Kansas Constitution, which states, "[t]he right of trial by jury shall be inviolate." The Supreme Court agreed and ruled the cap unconstitutional. The court did not grant deference to the legislature as it previously did in *Miller v. Johnson*.

Justice Carol Beier wrote, "The decisions from 14 of our sister states that have upheld damages caps under attack for violating constitutional jury trial protections do not persuade us." Justice Beier quoted the Washington Supreme Court ruling the ultimate determination of damages is reserved for the jury, not the legislature. Two justices dissented to the *Hilburn* decision

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stating they would apply the same test used in 2012 in *Miller v. Johnson*, which upheld the non-economic damages cap in a medical malpractice case.

Non-economic damages can reach millions of dollars depending on the facts of a case. Along with the possibility of higher jury verdicts for plaintiffs, the number of personal injury litigation cases brought in Kansas is also expected to increase. Defendants sued in Kansas should be aware of this decision and should consult legal counsel regarding the defense of personal injury cases.

Nicholas D. Slovikoski contributed to the writing of this alert.