



TO: Health Care Stabilization Oversight Committee

FROM: Chad Austin
Senior Vice President, Government Relations

DATE: October 24, 2019

RE: Caps on Non-economic Damages

In 1988, the Kansas legislature enacted K.S.A. 60-19a02 to limit a plaintiff's personal injury recovery for non-economic losses such as pain and suffering. Insurance carriers, hospitals and physicians welcomed this cap on non-economic damages as it provided predictability and stability in insurance rates at a time when medical malpractice coverage costs and the need to recruit physicians to Kansas were at their peak. In 2012, the Kansas Supreme Court affirmed the constitutionality of this statutory non-economic cap in *Miller v. Johnson*, a wrong-site surgery malpractice case.

K.S.A. 60-19a02 established the cap as follows: "In any personal injury action, the total amount recoverable by each party from all defendants for all claims for non-economic loss shall not exceed a sum total of \$250,000." The cap has increased since the statute was enacted in 1988. In 2014, the statute was revised to incrementally raise the damage cap to \$300,000 through 2018, \$325,000 from 2018 to 2022, and \$350,000 from 2022 onward.

On June 14, 2019, Kansas Supreme Court handed down a 4-2 decision in *Hilburn v. Enerpipe Ltd.*, a personal injury case in which Diana Hilburn was injured when a truck rear-ended her car. After the jury awarded Hilburn \$301,509 in non-economic damages, the trial court reduced the damages to \$250,000 to meet the cap limit. Hilburn then appealed the trial court's decision stating that the cap was unconstitutional.

In its decision, the Kansas Supreme Court stated that K.S.A. 60-19a02 violated Section 5 of the Kansas Constitution which states that the right to a trial by jury shall be inviolate (free from violation or infringement). The Court held that the non-economic damages cap "intrudes upon the jury's determination of the compensation owed personal injury plaintiffs to redress their injuries." The Court rendered the 31-year-old cap on non-economic damages unconstitutional and said it could not be used to limit, or reduce a jury's award for damages. The *Hilburn* decision changed the intent of K.S.A. 60-19a02 and altered the course of the Court's decision in *Miller*. In a press release, the Court specifically stated that its *Hilburn* decision does not apply to medical malpractice cases.

The Kansas Hospital Association will continue to closely monitor any perceived impact the *Hilburn* decision has on future insurance rates and jury awards.

Thank you for your consideration of our comments.

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