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Missouri Supreme Court Finds Non-Economic Damage Caps Unconstitutional

The Missouri Supreme Court has ended the debate over the constitutionality of statutory caps on non-economic damages in common law causes of action, including medical malpractice claims for personal injury. In a 4-3 decision returned on July 31, 2012, the court in *Watts v. Lester E. Cox Medical Centers* found that the right to a jury trial includes the plaintiff's right to have both the facts and the resultant damages decided by a jury. Therefore, the court held that to impose the statutory cap set forth in Missouri statute Section 538.210 "necessarily and unavoidably violates the state constitutional right to trial by jury." As a result, that portion of the tort reform legislation adopted by the Missouri General Assembly in 2005 is no longer valid.

The Missouri legislature's first attempts to cap damages awards were enacted in the 1980s. The caps were repeatedly challenged by the plaintiff's bar with little success, and, in 1992, the Missouri Supreme Court upheld the caps in *Adams v. Children's Mercy Hospital*. Over the ensuing years, different court opinions chipped away at various aspects of the caps, including how they were calculated and applied, and by 2005 judges were awarding multiple caps based on the number of "occurrences" involved in the claims. That year, the Missouri legislature enacted new tort reform statutes that closed the loopholes allowing multiple caps.

The *Watts* decision came less than three months after the court upheld the statutory cap on non-economic damages awarded from statutory claims, including wrongful death, in *Sanders v. Ahmed*. The difference between the outcomes lies in the distinction between statutory and common law causes of action.

In *Watts*, the majority opinion, written by Chief Justice Richard Teitelman, used a two-step inquiry to arrive at its decision. First, the Supreme Court asked if the medical negligence action and claim for non-economic damages were entitled to the right of trial by jury as provided in Missouri's Constitution, which states, "the right of trial by jury as heretofore enjoyed shall remain inviolate" The court found that both the cause of action and the claim for relief were cognizable at common law before the Missouri Constitution was enacted and, therefore, remain protected rights.

Next, the court examined whether the right to a trial by jury "remains inviolate" when the statutory cap on non-economic damages requires courts to reduce the jury's verdict. Unlike the *Adams* court, which found that when the trial court applied the non-economic damages cap, it was merely applying the law and did not interfere with the right of trial by jury or the right to have a jury find the facts, the court in *Watts* held that the cap interfered with the right. The court decision explained, "Because the common law did not provide for legislative limits on the jury's assessment of civil damages, Missouri citizens retain their individual rights to trial by jury subject only to judicial remittitur based on the evidence in the case. Statutory damage caps were not permissible in 1820 and, pursuant to the plain language of article 1, section 22(a), remain impermissible today. ... The individual right to trial by jury cannot 'remain inviolate' when an injured party is deprived of the jury's constitutionally assigned role of determining damages according to the particular facts of the case." As for *Adams*, the court concluded that the decision was "flawed" and its interpretation of article 1, section 22(a) of Missouri's constitution was "erroneous" and overruled the case with respect to its holding concerning the constitutionality of caps on non-economic damages.

The *Watts* opinion also addressed the more obscure and less discussed issue in the tort reform legislation contained in RSMo Section 538.220. This section gives defendants an opportunity to request periodic payments of damages awards for medical damages and allows the trial court to both set the periodic payment schedule and decide whether all payments should be made on a periodic basis or if payments should be divided between a lump sum and a payment schedule. The trial court had established a 50 year payment schedule based upon the life expectancy of the injured plaintiff with a low interest rate based on the then-current prevailing rate. The court held that the trial court's decision was an abuse of discretion and remanded the case back to the trial court for another determination.

What This Means to You

The litigation landscape for medical malpractice claims has shifted again in Missouri. As of July 31, 2012, no non-economic damage caps apply to medical malpractice cases for personal injury, although it appears that the \$350,000 cap on non-economic damages will remain for wrongful death cases and other statutorily based claims. The court did not address or discuss the retroactive application of the

decision. Therefore, final judgments that include caps will remain unchanged. All open cases and cases that have not been filed will not be subject to caps on non-economic damages.

Although it was not explicitly mentioned in the opinion, the *Watts* decision may also have an impact on the rare case in which punitive damages are awarded. Section 510.265 limits punitive damages to the greater of \$500,000 or five times the net amount of the judgment awarded to the plaintiff against the defendant. Before *Watts*, the outer limit of any punitive damages award was \$350,000, plus economic damages, times five. The punitive damages cap remains, but the non-economic damages component of the equation does not. Therefore, although punitive damages are not common, an award of non-economic damages greater than \$350,000 may impact the outer limit of a punitive damages award in Missouri.

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If you have questions about this recent development, please contact your Husch Blackwell attorney or Harvey Tettlebaum at 573.761.1107.

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