

**Kansas raises its cap on noneconomic damages;  
Missouri tries to reinstate its cap on malpractice damages.**

Senate Bill 311 took effect on July 1, 2014. The bill increases the amount a plaintiff can recover for noneconomic damages in a personal-injury action. "Personal injury" covers a broad spectrum of circumstances — ranging from bodily harm to emotional distress — caused by some other party. Noneconomic damages act as compensation for things that cannot be measured by a fixed amount: things like pain, suffering, or emotional distress.

Before Senate Bill 311 passed, Kansas limited noneconomic damages to \$250,000. That limit will increase to \$350,000 over the next eight years. The law caps damages in any cause of action arising before July 1, 2014 at the current amount of \$250,000. Damages in causes of action arising between July 1, 2014 and July 1, 2018 will be capped at \$300,000, while those arising between July 1, 2018 and July 1, 2022 will be capped at \$325,000. And damages from any cause of action arising after July 1, 2022 will be limited to \$350,000.

Other provisions of Kansas Senate Bill 311 alter how the court weighs potential expert testimony. Kansas has now adopted the federal method for evaluating expert testimony, commonly referred to as the "Daubert" test. *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). Before deciding whether a witness may give expert testimony, *Daubert* requires the court to first determine whether the testimony is "expert" at all. For testimony to qualify as scientific, and therefore be admitted as expert, the witness must demonstrate the evidence is the product of sound scientific methodology. *Id.* The Court defined "scientific methodology" as the process of formulating a hypothesis and conducting experiments to prove it. *Id.* at 592. will look to whether the witness's testimony 1) is based on sufficient facts or data, 2) is the product of reli-

able principles and methods, and 3) reliably applies the principles and methods to the facts of the case. To determine whether the evidence is the product of reliable principles and methods, the court looks to: empirical testing, peer review and publication, the known error rate, standards and controls concerning the technique, and general acceptance by the relevant scientific community. *Id.* This change means Kansas courts will no longer rely on the Frye standard for expert testimony. Kansas joins the majority of other jurisdictions by making this change.

Meanwhile in Missouri, legislators are attempting to restore caps on noneconomic damages in medical malpractice suits, after the Missouri Supreme Court struck those caps down in 2012. *Watts v. Lester E. Cox Med. Centers*, 376 S.W.3d 633 (Mo. 2012), reh'g denied (Sept. 25, 2012). Missouri House Bill 1173, which is currently pending before the Missouri Legislature, would reinstate the \$350,000 cap originally passed in 2005 by converting the right to sue for medical malpractice from a common law right to a statutory right. On March 3, 2014, the Missouri House passed the legislation on to the Senate for approval by a 94-61 vote. The bill has not yet been scheduled for debate in the Missouri Senate. The Missouri House passed a similar bill last year, but it died in the Senate.

For more information about changes in the law, please call Brown & Ruprecht, PC:

July 2014

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