



## **I Can't Get Sued Twice by the Same Person over the Same Car Accident, Can I?? The Non-Preclusive Effects of Conciliation Court Actions on Later Personal Injury Claims**

By: Matthew Moehrle, Rajkowski Hansmeier Ltd.

The woman you rear-ended won a case against you in small claims court for a couple thousand bucks to repair her bumper. It was not your finest moment, but considering the outcome things could have been worse, right? Even though she seemed a bit banged up on the scene of the accident, she made no mention in the courtroom of any injuries. And she even admitted to you in the hall just after the hearing that she had consulted an attorney who said to “just go ahead and take care of the property damage claim in conciliation court.” Your insurance company paid the award and you could rest easy knowing that the matter had resolved itself in a matter of just a few months after the accident.

But then, about four years later, you and your insurance company get another demand from the same woman claiming injuries from the same accident that had already brought you before the judge. You think, surely I cannot be sued again by the same person for the same accident? You remember having heard somewhere that a rule exists which is similar to the double jeopardy rule in the criminal courts (in civil litigation it is called *res judicata*; which, with some caveats, generally bars claims when a prior case has been litigated involving the same parties and factual circumstance(s)). And because the woman had admitted to consulting an attorney before suing you in small claims court, you figured that she must have known that the earlier lawsuit would preclude a later lawsuit related to injuries. You have to assume that any attorney consulted on such a matter would advise a person that their small claims court action for property damages would likely prohibit them from making later claims for injury. Shouldn't this alone be enough for the court to throw out the injury lawsuit under *res judicata*? According to the Minnesota Supreme Court in 2011, the answer is a resounding, “No.” Instead, it seems that the ultimate issue that will decide such a question is whether the claimant him- or herself in conciliation court was aware of the potentially disastrous effect such a claim might have on later injury claims.

On July 20, 2011, the Minnesota Supreme Court handed down its decision in *Kern v. Torborg, et al.*, Case No. A10-0355 (Minn. 2011). The *Kern* case involved a situation much like that described in the hypothetical, above. Ms. Kern's vehicle was struck by Ms. Torborg's vehicle in September, 2004. In December, 2004, Kern obtained an award in small claims court against Torborg for the money to fix her car. Prior to doing so, she had consulted an attorney who told her to “just go ahead and take care of [the] property damage claim in conciliation court.” Kern won her small claims action for just over \$3,000 and it was paid by Torborg's insurer.

Then, in 2008, Kern filed a claim with Torborg's insurer related to injuries suffered in the same September, 2004 accident. Torborg's insurer denied the claim. In doing so, the insurer asserted that *res judicata* barred Kern from splitting her claims into two different lawsuits and that Ms. Kern had legal representation during the conciliation court process. Kern then initiated a tort lawsuit for

her injuries against Torborg, as well as another person who was involved with Kern in a different auto accident and was not an interested party at the Supreme Court hearing.

Before trial, Torborg requested that the trial court dismiss all claims against her under *res judicata*. She argued that the fact that Kern had consulted a lawyer was the sole factor the court needed to consider to dismiss the claims. Based on such a consultation, a person must be deemed to know that bringing a small claims case for damage to a vehicle would preclude a later personal injury case against the same person for the same accident. But the trial court disagreed and, at the request of Kern, vacated the earlier small claims court judgment. After a successful appeal by Torborg to the Minnesota Court of Appeals, which reversed the trial court's decision and effectively dismissed all claims against Torborg, the Supreme Court sided with the trial court and determined that the trial court judge had not abused his discretion in vacating the earlier judgment and keeping Torborg in the personal injury lawsuit.

The Minnesota Supreme Court said that the question of whether a person consults with a lawyer prior to bringing a conciliation court action is just one of several factors that a judge can consider when faced with a request such as that by Kern to vacate a prior small claims court judgment. According to the Supreme Court, this question alone is not entirely determinative of the issue. The Supreme Court re-asserted a balancing test of several other factors stated in the previous cases of *Mattsen v. Packman*, 358 N.W.2d 48 (Minn. 1984) and *Jorissen v. Miller*, 399 N.W.2d 82 (Minn. 1987). These factors include whether: (1) the party seeking vacation of the conciliation court judgment consulted with an attorney about the claim before or during the conciliation court proceedings; (2) the party seeking vacation of the conciliation court judgment was aware of the threshold requirements of the No-Fault Act when the conciliation court claim was filed; (3) the moving party could have asserted a personal injury claim as part of the conciliation court proceedings; and (4) the moving party was aware when the conciliation court proceeding was filed of the rules against splitting causes of action. See *Jorissen*, 399 N.W.2d at 84; *Mattsen*, 358 N.W.2d at 51.

In ruling for Kern, the Supreme Court identified several factors that supported a decision in her favor. First, although Kern had consulted a lawyer before bringing her small claims court action, there was no evidence that the lawyer had made her aware of the fact that bringing such an action might harm her chances of suing for personal injury later on. Second, at the time Kern brought her conciliation court action, she had not yet met the \$4,000 threshold of medical expenses incurred before a person is allowed by Minnesota law to bring a personal injury lawsuit resulting from a car accident. The Supreme Court noted that Kern did not reach this threshold until about two years after obtaining the judgment in small claims court. It determined that Kern was excusably ignorant of the effect her small claims court judgment might have had and, thus, upheld the trial court's decision to vacate that earlier judgment and let Kern proceed with her injury lawsuit against Torborg.

The effect of this decision is to stress that anyone who (1) brings a conciliation court lawsuit for damage to their vehicle in an accident and (2) is unaware of the principles of *res judicata* – no matter who they have consulted, attorney or otherwise – is likely to be able to have the property damage award vacated if a personal injury lawsuit later becomes viable.

These alerts are intended to be informational and not to solve individual legal problems. Use of and access to this alert does not create an attorney-client relationship between

Rajkowski Hansmeier Ltd. and the user. The opinions expressed at or through this alert are the opinions of the individual author and may not reflect the opinions of the firm or any individual attorney. If you have further questions about this information, please contact us for an attorney's opinion.