

§ 12.12 Application to Take a Civil Interlocutory Appeal Under K.S.A. 60-2102(c)

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

[Insert Name],

Plaintiffs,

vs.

[Insert District Court Case Number]

[Insert Name],

Defendants.

APPLICATION TO TAKE A CIVIL INTERLOCUTORY APPEAL UNDER K.S.A. 60-2102(c)

The defendant in this action, arising from an automobile collision, seeks an interlocutory appeal because the district court misinterpreted the statute of limitations.

1. *Background.* An automobile accident occurred between the plaintiff, Wilma Driver, and the defendant, Betty B. Good. Driver has sued Good in the district court of [Insert Name] County, Kansas.
2. *Authority.* Supreme Court Rule 4.01 and K.S.A. 60-2102(c).
3. *Argument.*

The defendant Good moved to dismiss Driver's claim for failure to state a claim upon which relief could be granted, alleging Driver failed to file her claim within the two-year statute of limitations of K.S.A. 60-513. Driver alleged that K.S.A. 60-206(a) controlled and that she had filed her petition within the statute of limitations.

The Court on [Insert Date] denied Good's Motion to Dismiss. The Court held that K.S.A. 60-206(a) controlled the calculation of the statute of limitations under K.S.A. 60-513 and found the plaintiff had filed her petition within the allowed time.

The Court made all findings required by K.S.A. 60-2102(b) and stayed the proceedings until such time as the Kansas Court of Appeals accepts or denies an interlocutory appeal. A certified, file-stamped copy of the Journal Entry is attached as Exhibit "A".

4. The controlling questions of law are:
 - A. Whether K.S.A. 60-206(a) applies in calculating the statute of limitations under K.S.A. 60-513?
 - B. Whether a calendar year, an anniversary year, or a 365-day period is used in calculating the statute of limitations under K.S.A. 60-513?
5. Good contends that K.S.A. 60-206(a) does not apply to calculating the statute of limitations under K.S.A. 60-513.
6. Driver contends that K.S.A. 60-206(a) controls and that an anniversary year must be used in calculating the statute of limitations under K.S.A. 60-513.
7. Resolution of the controlling questions of law would determine whether Driver's claims were barred by the statute of limitations under K.S.A. 60-513 and, therefore, an immediate appeal would materially advance the ultimate termination of the litigation.

Attorney's Signature

/s/ _____

Attorney's Name (typed or printed)

Kansas Attorney Registration Number

Address

Telephone Number

Fax Number

E-mail Address

Name of the Party Represented

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Application was sent by [Insert Method] on [Insert Date] to:

[Insert names and addresses of those on whom service is made.]

/s/ _____

Attorney's Name and Registration Number

PRACTICE NOTE: Most applications will be more factually complex than the form and require citation to case law as well as statutory authority, but the format remains the same. The application must be accompanied by a certified copy of the district court order from which appeal is sought to be taken, and that order must include the findings required by K.S.A. 60-2102(c). See Rule 4.01. If the person seeking an interlocutory appeal filed a motion with the district court to include the findings required by K.S.A.

60-2102(c), the application must be accompanied by certified copies of the initial order, the motion, and the order containing the findings.

A similar format should be adopted for the civil interlocutory appeal under Rule 4.01A.

