

Approved: 3/13/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m.. on February 11, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Ruff (excused)
Representative Shriver (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Representative Swenson
Henry Lippincott
Susan Arnold, In the Best Interest of the Child
Tim Orrick, Attorney with Parkinson, Foth, & Reynolds
Lynn Rieschick
Tom Young, AARP
Jana Gryder, National Association for Women
Kirk Lowry, Kansas Trial Lawyers Association
Meg Henson, Kansas Medical Society
Wayne Stratton, General Counsel, Kansas Medical Society
Bill Henry, Kansas Association of Defense Counsel
Wayne Maichel /Jim Keele, AFL-CIO-Written only
Diane Poot, State Chairperson-Kansas MADD-Written only

Others attending: See attached list

The Chair called the meeting to order and opened the hearing on HB 2143.

HB 2143: Nonpecuniary damages in wrongful death action.

Representative Dale Swenson testified in support of HB 2143. Representative Swenson stated that this bill proposes to raise the cap from the current \$100,000 for wrongful death action to \$500,000. The conferee stated that the current cap is insufficient to compensate for the loss of non-economic damages when a loved one's life is taken and limits the responsibility of the negligent person. Representative Swenson stated that this injustice was brought to his attention by the Lippincott family tragedy. (Attachment 1)

Mr. Lippincott testified before the Committee in support of HB 2143. The conferee related the account of the accident that caused his son's death. The conferee stated that the current wrongful death cap undermines the wrongdoers' accountability. Mr. Lippincott suggested abolishing the cap because it is wrong for the government to put any price tag on our children's' lives. The conferee suggested that juries should evaluate each case on its unique circumstances and decide accountability. (Attachment 2)

Susan Arnold testified in support of HB 2143. The conferee stated that HB 2143 is about messages not money. The conferee related an example of child abuse which resulted in the death of the child. The conferee called for passage of personal responsibility legislation. The conferee suggested increasing or removing the wrongful death cap. (Attachment 3)

Tom Orrick testified in support of HB 2143. The conferee stated that there should be no cap on non-economic damages. The conferee referring to the Lippincott situation related that the Homestead Act protects 160 acres from being surrendered in an action. (Attachment 4)

Lynn Rieschick testified in support of HB 2143. Mr. Rieschick referred to written testimony of Diane Poot of MADD and related support for the bill on behalf of MADD. (Attachment 17)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 11, 1997.

Mr. Rieschick related the tragedy of an alcohol related accident in which a family member was severely injured. The conferee called for accountability for the guilty offenders. Mr. Rieschick distributed photos of his wife's accident resulting from the actions of a drunk driver. (Attachment 5)

Tom Young, AARP testified in support of **HB 2143**. The conferee stated that this issue is important to the elderly because reduced damage awards whether punitive or compensatory, reflect the presence of age discrimination. The conferee discussed mistreatment of the elderly in nursing homes or by others causing death to an elderly person. The conferee stated that AARP believes punitive damages should be unlimited. (Attachment 6)

Jana Gryder, Kansas National Organization for Women testified in support of **HB 2143**. The conferee stated that economic loss to survivors is hard to calculate especially for homemakers. The conferee stated that wrongful death actions are a significant issue for families affected by domestic violence. (Attachment 7)

Kirk Lowry representing the Kansas Trial Lawyers Association testified in support of **HB 2143**. The conferee stated that Kansas has the lowest cap on wrongful death damages for mental anguish, bereavement and suffering than any state in the country. (Attachment 8) The conferee referred to a map of the United States showing the states with no cap and the cap set by other states. (Attachment 9) The conferee referred to a pie graph showing the breakdown of 135,875 civil cases filed for FY 1992-93. (Attachment 10) The conferee discussed a chart showing the ten lowest states of average auto premiums and the wrongful death cap for each of those states. (Attachment 11) Mr. Lowry discussed a graph displaying what factors increase or affect insurance premiums. (Attachment 12)

Jim Keele referred on behalf of Wayne Maichel, V.P. AFL-CIO to written testimony in support of **HB 2143**. (Attachment 13)

Meg Henson, Associate General Counsel, Kansas Medical Society, stated that KMS has requested that Wayne Stratton, an attorney in private practice testify on their behalf. (Attachment 14)

Wayne Stratton, General Counsel to the Kansas Medical Society expressed the interest of physicians in **HB 2143**. The conferee offered an amendment which would raise the wrongful death limitation 100% from \$100,000 to \$200,000. The conferee stated that this amendment would return to the legislature the limitations adopted by the legislature, but subsequently eroded by the court. The conferee stated that the original wrongful death action had no distinction between pecuniary and non-pecuniary damages. The conferee related history on wrongful death actions and suggested that the offered amendment would clarify the original intention of the legislature. (Attachment 15)

The Committee members discussed with Mr. Stratton issues concerning malpractice, punitive damages and society's responsibility of placing a value on life.

Mr. Bill Henry, Kansas Association of Defense Counsel discussed other areas to be considered that are relevant to the effect on Kansas citizens in addition to the change in the amount of damages for nonpecuniary loss. The conferee suggested that evidence of remarriage of a plaintiff should be considered in determining damages suffered by that plaintiff. The conferee offered that evidence in the defense of a personal injury action as to the financing of an annuity affects the economic aspects of an award. The conferee stated that the action called for in **HB 2143** will likely affect cost ratings of insurance providers. (Attachment 16)

The Chair advised the Committee members that the hearing will continued to the next day with testimony from those who oppose **HB 2143**.

The Committee members discussed the need for some percentages and numbers showing the effect on insurance rates and other costs.

The Chair adjourned the meeting at 5:30 p.m.

The next meeting is scheduled for February 12, 1997.

HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 2-11-97

NAME	REPRESENTING
David Talmaw	KBA
Bob Corkins	KCCI
Wally Henson	Ks Medical Society
Walter Statten	Ks Medical Society
Susan Arnold	Best Interest of the Child, Inc.
Tim Orwick	MADD
Lynn Aeschich	Aeschich family & MADD
PATRICIA HENSHALL	OSA
Kevin Davis	Am. Family
Myrtle Myers	Johnson & Johnson
Steve Blank	Hubbell & Assoc.
Heather Randall	Whitney Samson, PA
Susan M. Baker	Hein & Weir
Callie Hill Denton	Botterberg's Assoc.
Dinda McCune	Ks Insurance Dept.
Tom Young	AARP
Bill Sneed	State Farm
Alan Koehler	Pratt Leadership 2000
Marta Doherty	Pratt Leadership 2000

HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 2-11-97

NAME	REPRESENTING
Georgianne W. Musz	Pruett Leadership 2000
Kirsten Funk	"
Shaun DeWitt	"
Nancy Spelly	"
Jeanette Simons	"
Pat Morris	KAMA
Rita Noll	HCSF
BOB HAYES	HCSF
Mandi Serrone	KTLA
Chris Vesler	KECA
Nathan Lippincott	Ktca
Melissa Lippincott	KJLA
Jacob Lippincott	"
Marlynn Lippincott	KTLA
Henry Lippincott	KTLA
David Hanson	K's Insur Assoc
Val Peterson	KS Insur Assoc
Thymmsmillen	citizen.
Rita Cortez	KS. citizen

#1
 DALE A. SWENSON
 REPRESENTATIVE, DISTRICT 97
 TOPEKA ADDRESS:
 STATE CAPITOL—431-N
 TOPEKA, KANSAS 66612-1504
 (913) 296-7683
 HOME ADDRESS:
 3145 S. FERN
 WICHITA, KANSAS 67217
 (316) 524-3976



TOPEKA

HOUSE OF
 REPRESENTATIVES

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 JUDICIARY COMMITTEE
 TOPEKA HOTLINE
 DURING SESSION · 1-800-432-3924

TO: Members of the House Judiciary Committee
 FROM: Representative Dale Swenson
 DATE: February 11th, 1997
 RE: HB 2143

As you know, I am Dale Swenson. I believe that the Kansas wrongful death law currently lets the wrongdoer off the hook from responsibility.

Did you know in Kansas there is a \$100,000 price tag on your life and your loved one's life? The wrongful death statute in Kansas imposes a \$100,000 cap on non-economic damages, like loss of companionship. Suppose a drunk driver runs over your child. The drunk drivers accountability is limited to \$100,000 for recovery of non-economic damages.

Does \$100,000 compensate families (children, parents, spouses) for their grief or their life long loss of companionship? NEVER. In 1994, my constituents, MaryAnne and Henry Lippincott were affected by the \$100,000 cap when their seven year old twin son, Jonathan, died in a Kansas turnpike accident due to not only a negligent driver, but a farmer burning his field. At the accident scene, MaryAnne Lippincott watched her son's life fade away. Most of us don't think about the ramifications of the wrongful death cap, until something bad happens. Then we are outraged to learn, as did the Lippincotts, that Kansas has a price tag on our grief and more important, limits the responsibility of a negligent driver, and even a criminal.

The Lippincotts know injustice. The injustice of losing the chance to watch their son, Jonathan, grow up, play ball, graduate from college, get married and have children of his own. Their injustice is compounded by Kansas laws that quantify their son's life at \$100,000. You have the responsibility to your constituents to correct this injustice.

The present wrongful death cap undermines the wrongdoers accountability. As legislators it is our responsibility to protect our constituents families, families like the Lippincotts from needless harm. It is time to increase the wrongful death cap from \$100,000 to \$500,000 and give local communities, through juries, the tools to hold criminals, drunk drivers and other negligent people accountable for their actions.

House Judiciary
 Attachment 1
 2/11/97

TO: House Judiciary Committee Members
FROM: Henry and MaryAnne Lippincott
DATE: April 11, 1997
RE: HB 2143

Good afternoon House Judiciary Committee Members. I am Dale Swenson's constituent, Henry Lippincott. I would like you to listen to my family's tragic story. It was April 17, 1994, MaryAnne and our three sons, Jacob, Nathan and Jonathan, and our daughter, Melissa were traveling to the State House for the Governors signing of the proclamation of twins' week. They never made it, because they became the victims of two wrongdoers—a negligent farmer who was burning his field and a negligent driver who was traveling 70 miles an hour into the burning smoke. The burning smoke had produced zero percent visibility for drivers. Even though this driver couldn't see, he didn't slow down. At this point, I would like to introduce you to my family. Please direct your attention to the t.v. screen. This is a tragedy no family should have to endure. Not your family or your neighbor's family. The second tragedy for us occurred when we learned that Kansas' laws protected the negligent driver from full accountability and put a price tag on our son's life. Therefore, we believe the wrongful death cap should be abolished or at least raised to \$500,000.

Abolish the cap because it is wrong for the government to put any price tag on our childrens' lives. Instead our communities, represented by juries should evaluate each case on its unique circumstances and decide accountability. Don't tie the hands of our juries. Send a strong message to negligent drivers, drunk drivers and other wrongdoers.

Furthermore, the wrongful death cap runs roughshod over justice. If justice is predetermined, then it isn't justice. If there is a "one-size-fits-all" solution regardless of the circumstances, then justice is never served. Unpredictable circumstances dictated our first tragedy, losing our son. Our second tragedy is preventable. It is preventable by making decisions that ensure accountability. As legislators you can guarantee that everyone has the opportunity to hold wrongdoers accountable.

Increase the accountability for wrongful death. Stop letting the wrongdoer off the hook from full responsibility. Offer your constituents, such as my family, faith in the civil justice system and an assurance of accountability for wrongdoers. We urge this committee to abolish the cap or at least raise the cap to \$500,000. Please pass this bill.

House Judiciary
Attachment 2
2/10/97

Arnold #3

KANSANS NEED TO UPHOLD ACCOUNTABILITY FOR WRONGFUL DEATH.

Best Interest of The Child, Inc. supports legislation that forces any person involved in the wrongful death of another to be held personally responsible.

Cain Baker was 2 years, 5 months and 6 days old when his mother's boyfriend beat him to death. Seven months earlier he was in a body cast for a spiral fracture of his femur. Child Protection never removed him from the home. The state never filed a Child in Need of Care petition. His family still grieves for their loss.

The 103th Congress in 1995 passed the Personal Responsibility Act for the nation. The national lawmakers intended to send a clear message to the people, "we must all take FULL responsibility for our actions". No more, "it was someone else's fault". In 1997 we have reached our tolerance and demand "three strikes and your out" for violent crimes. We are demanding tougher sentences for criminals. Kansas is awaiting a Supreme Court decision on a pioneer Sexual Predator law, while the nation watches.

Kansas must now act swiftly and decisively to lead the nation in other personal responsibility legislation, as well. Let other states remember Kansas as a state who values life and holds the taker of that precious live accountable. Let us not continue to be victims to the crimes caused by the irresponsibility of the protected wrongdoers.

Increase the wrongful death cap or remove it all together. We have no other way to measure loss. We cannot always depend on the courts or fair sentences to deter the repeat drunk driver or criminal. We CAN attempt to compensate the family left behind by a senseless death.

House Judiciary
Attachment 3
2/11/97

TO: House Judiciary Committee Members
FROM: Tim Orrick
DATE: February 11, 1997
RE: HB 2143

TESTIMONY IN SUPPORT OF H.B. 2143

My name is Tim Orrick. I am appearing in support of HB 2143. I am a partner in the law firm of Parkison, Foth, and Reynolds of Lenexa, Kansas. The vast majority of my firm's practice is limited exclusively to the representation of accident victims. As a part of my practice, I work closely with Mothers Against Drunk Driving (MADD), its victim advocates and the victims and survivors of victims of drunk driving accidents.

Today I appear before you to request your support of HB 2143 which will raise the Kansas wrongful death cap. Imagine the enormous pain and ordeal of losing a loved one at the hands of a drunk driver is almost incomprehensible until it strikes home and becomes inescapable. Did you know that Kansas, unlike almost every other state, arbitrarily places a \$100,000.00 limitation on a surviving family's recovery of damages for non-economic losses for the wrongful death of a loved one. This is true, regardless of the facts or equities of the case. It is this situation that compounds a family's grief and makes them angry that Kansas has placed a limitation on the drunk drivers responsibility.

Caps are particularly unfair to children and the elderly. When the life of a child or senior citizen is wrongfully taken, it is often difficult to establish how the death caused an economic loss for the surviving family. If economic loss can't be reasonably proved the practical value of the wrongful death claim is capped at \$100,000 the maximum allowed by law for the family's non-economic loss.

The wrongful death cap only benefits wrongdoers whose careless, reckless and willful acts take a life. Wrongdoers ought to be held full accountable when they forever rip a gaping void in the fabric of a family. Unfortunately, they are not held fully accountable under present Kansas law.

There is no valid public policy reason for having a cap. There is only a small percentage of tort cases and an even smaller percentage of wrongful death cases. Furthermore, there is no evidence that raising the cap or repealing it would impact insurance premiums in any way. Instead public policy should support victims and survivors of a tragic loss.

Stop letting the drunk driver, the criminal, and the negligent driver avoid responsibility. Increase the accountability for wrongful death to protect Kansans from needless harm. Abolish the cap or at least raise the cap to \$500,000.00. Support HB 2143. Thank you.

House Judiciary
Attachment 4
2/11/97

#5
TO: House Judiciary Committee
FROM: Lynn Rieschick
DATE: February 11, 1997
RE: HB 2143

Testimony Supporting HB 2143

I'm Lynn Rieschick. I was a member of the seventh and eighth grade class from Soldier Grade School when I first toured the capital building. We had just completed our Kansas History book. When we got here to the capital, the wall mural of John Brown was exactly the same as the picture in my history book. Our teacher explained to us that this mural was not a picture of a man about to be swept away by a wind storm, but was a portrait of a man who was anchored to fight for justice against the evil winds of his time.

My purpose in testifying today is to appeal to your sense of justice and ask you to make the necessary changes in the wrongful death laws. This is especially important in drunk driving cases. My family knows the pain, the suffering and devastation of alcohol related accidents. And we support MADD's position statement. MADD's position statement clearly states that "MADD stands firmly for the rights of victims of alcohol and other drug impaired driving crimes, in particular the right to be compensated fairly for harm suffered at the hands of impaired drivers." My family and I have a real concern for families that might not be as lucky as mine and lose their loved one to a drunk drivers careless actions. It is our responsibility to ensure accountability. Hold the guilty offenders, like drunk drivers, accountable for a victims family's non-economic losses. When it comes to compensation for victims, even well meaning government simply

House Judiciary
Attachment 5
2/11/97

HB 2143--Rieschick

has no business substituting its arbitrary valuation of a wrongful death for a jury's thoughtful determination. The current Kansas wrongful death cap is inexcusable. Instead of justice, this low arbitrary cap shows a disrespect for human life, and the victims pain and suffering.

Imagine seeing a loved one covered with blood from gaping wounds, disfigured body parts from bone fractures, still strapped in the riddled car with the persons leg panned. Imagine in the darkness of the night the whirling sound of the Life Star Chopper blades. Imagine the fading light of the Life Star blending into the dark horizon as if it were just another star in the sky. I don't have to imagine, this happened to my family. I could never imagine the changes such a wrongful act would make in my life.

In conclusion, Kansas needs more John Browns who are anchored and ready to fight society's ills with justice. Justice makes all offenders, like the driver in my case accountable for their crimes. Please pass this bill, so families that DO lose a loved one to a drunk driver, know justice.

THE LEGAL DOCTRINES AND STANDARDS GOVERNING CIVIL DAMAGE SUITS HAVE BEEN THE SUBJECT OF FEDERAL AS WELL AS STATE PROPOSALS FOR "REFORM." KANSAS HAS ADOPTED ONE OF THESE TYPES OF REFORM BY LIMITING THE AWARD THAT CAN BE GIVEN FOR "PAIN AND SUFFERING" AND "PUNITIVE DAMAGES".

IN CASES INVOLVING OLDER PERSON, REDUCED DAMAGE AWARDS WHETHER PUNITIVE OR COMPENSATORY, REFLECT THE PRESENCE OF AGE DISCRIMINATION IN OUR COURTS. THE POINT OF PUNITIVE DAMAGES IS TO DETER FURTHER WRONG DOING BY THE DEFENDANT. WHEN YOU HEAR OF OR READ ABOUT MISTREATMENT OR ABUSE OF AN ELDERLY PATIENT IN A NURSING HOME OR EVEN WHEN A PERSON ABUSES HIS OWN PARENT SOMETIMES TO THE POINT OF CAUSING DEATH. **AARP BELIEVES PUNITIVE DAMAGES SHOULD BE UNLIMITED.** WE WOULD GO EVEN FURTHER THAN THE PRESENT BILL BEFORE YOU WHICH SETS A LIMIT ON LIFE. FACTORS THAT SHOULD BE CONSIDERED IN DETERMINING THE AMOUNT OF DAMAGES SHOULD INCLUDE SUCH THINGS AS LOSS OF COMPANIONSHIP, LOSS TO SOCIETY (FOR INSTANCE, WHAT A GRAND CHILD MIGHT HAVE LEARNED FROM A GRANDPARENT), OR FUTURE ENJOYMENT OF AVOCATIONAL ACTIVITIES. MINIMAL AWARDS FROM JURIES OR JUDGES ARE OFTEN CAUSED BY AGE BIASED INSTRUCTION TO JURIES.

AARP BELIEVES WITHOUT A FAIR AND EXPEDITIOUS SETTLEMENT OPTION, AS I SAID BEFORE THERE SHOULD NOT BE A LIMIT ON DAMAGE AWARDS FOR "PAIN AND SUFFERING" OR THE AMOUNT OF PUNITIVE DAMAGES.

I URGE YOU TO VOTE YES ON HB 2143

House Judiciary
Attachment 6
2/11/97



PO Box 15531
Lenexa, KS 66285-55531

To: **House Judiciary Committee**

Submitted By: **Jana L. E. Gryder**
Kansas National Organization for Women

Date: **February 11, 1997**

Re: **Support to HB 2143**

The Kansas Chapter of the *National Organization for Women* supports legislation that raises civil liability of persons who cause the wrongful death of another.

The survivors of these insensible killings deserve proper compensation for the loss of life so wrongfully taken. Wrongful death actions serve not only to compensate survivors, but to punish the person responsible for the death. This is a historical way to deter such activities, and indemnify the ones left behind to live with the unexpected death.

A tragic scenario, that is not only universal but has hit home recently here in Topeka, is the death of a woman at the hands of her husband. Approximately 1500 women are killed by significant others each year. These fatal acts result in many children and family members left without the support of a loved one.

In the case of a woman, especially homemakers, economic loss to survivors is hard to calculate and even harder to recover. Therefore, the only recovery available is for non-economic losses which in Kansas now stands at \$100,000. If this unjustly murdered woman is the mother of six children the recovery of the \$100,000 would be in the aggregate. In other words, all six children, who are now left without their mother, would only recover a total of \$100,000 in noneconomic damages. Can the legislature put a price on the value of a mother to a child?

A victim's heirs deserve to recover for the life that is wrongfully taken from them. Wrongful death actions are a significant issue for families affected by domestic violence. Unfortunately, as we have seen recently in some high profile cases, these have the tragic result of death. The only way to value these women's lives is to remove the wrongful death cap or at the minimum, raise the amount of recovery to \$500,000 for the survivors that are left behind.

Why are we protecting wrongdoers, and not compensating families for their terrible loss? Kansas needs to hold those who take the life of another accountable by making them civilly liable for their actions.

House Judiciary
Attachment 7
2/11/97

Kirk W. Lowry

February 11, 1997

HB 2143 - Wrongful Death

Good afternoon Mr. Chairman and members of the committee. Thank you for the opportunity to speak with you. My name is Kirk Lowry. I practice law here in Topeka and today I am here representing the Kansas Trial Lawyers Association.

I urge each of you to vote for passage of this bill in its current form. A higher wrongful death cap in Kansas will allow juries to more fairly compensate family members who have lost a loved one at the hands of a drunk driver, murderer or other wrongdoer.

The civil justice system is designed to hold wrongdoers accountable, and dispense justice in an effort to make injured persons whole again. In a wrongful death case, that is impossible. Deceased victims of wrongdoing cannot be brought back to life. The empty spaces in the lives of their loved ones cannot be filled. What is possible, however, is to adequately compensate surviving spouses, children and/or parents for their bereavement, mental anguish and suffering. An arbitrary limit on the amount of this compensation does not serve the interests of justice. While KTLA would prefer that the cap be repealed and believes evidence supports that, we nonetheless support HB 2143 which increases the current cap to \$500,000.

Kansas has the lowest cap on wrongful death damages for mental anguish, bereavement and suffering than any state in the country. Eighty percent of the states have no cap at all on general wrongful death cases.

The Kansas cap delivers a very troubling message to wrongdoers and the message is "you will never be held totally accountable for the pain and suffering you caused, instead your responsibility is capped at the lowest rate in the nation."

House Judiciary
Attachment 8
2/11/97

There is no litigation crisis in Kansas nor are there very many wrongful death cases in Kansas. Kansas juries are trustworthy and conservative. In your packet is a pie chart showing a picture of the types of civil cases in Kansas. Only three percent of all these cases are tort actions. Of the torts, most are auto accident related. Only a tiny fraction of that three percent are wrongful death cases. The charts also show how rare products liability and medical malpractice cases are in this state.

If you have wondered whether insurance premiums will go up as a result of an increase in the wrongful death cap, the answer is simply, NO! According to the 1996 NAI Greenbook there are several states which have lower auto insurance premiums than Kansas and yet have no cap on wrongful death cases. Also in your packet is a chart illustrating the five major factors in determining insurance rates. The insurance industry must be held accountable and not allowed to cry wolf with the veiled threat of premium increases.

The existing cap is especially harsh when a wrongdoer kills a child or an elderly person. If a drunk driver kills a baby the parents can not claim an economic loss. If the negligence of a nursing home results in the death of an elderly resident, there is no economic loss to the surviving adult children. There is only non-economic loss and that is capped at \$100,000. In fact the cap is a per incident award and would be divided among the adult children (all heirs). Further there are no punitive damages allowed in Kansas for wrongful death. As you can see families have few options for holding negligent people accountable.

If the Goldman family's wrongful death suit against O. J. Simpson had been tried and decided in Kansas, the cap we are discussing today would apply. The \$8.5 million award would be reduced by law to \$100,000 for mental anguish and bereavement. In the O. J. Simpson case that would have been a slap on the wrist and justice would not be served.

Most Kansans are unaware of the wrongful death cap until the loss of a loved one. Then they are outraged to learn that Kansas has put such a low value on their loss. Today the following groups have come together to ask your support of HB 2143.

Kansas AFL-CIO
Kansas National Organization of Women
In the Best Interest of the Child
Mothers Against Drunk Driving - Kansas State Office
American Association of Retired Persons
Kansas Trial Lawyers Association

Our local communities represented by juries should be given the freedom to decide accountability based on the facts of the case. Today we trust juries to decide who lives or dies in criminal cases and so we can certainly trust juries to decide appropriate compensation.

Please give HB 2143 your favorable consideration. Don't allow the bill to become weighted down with unfriendly amendments.

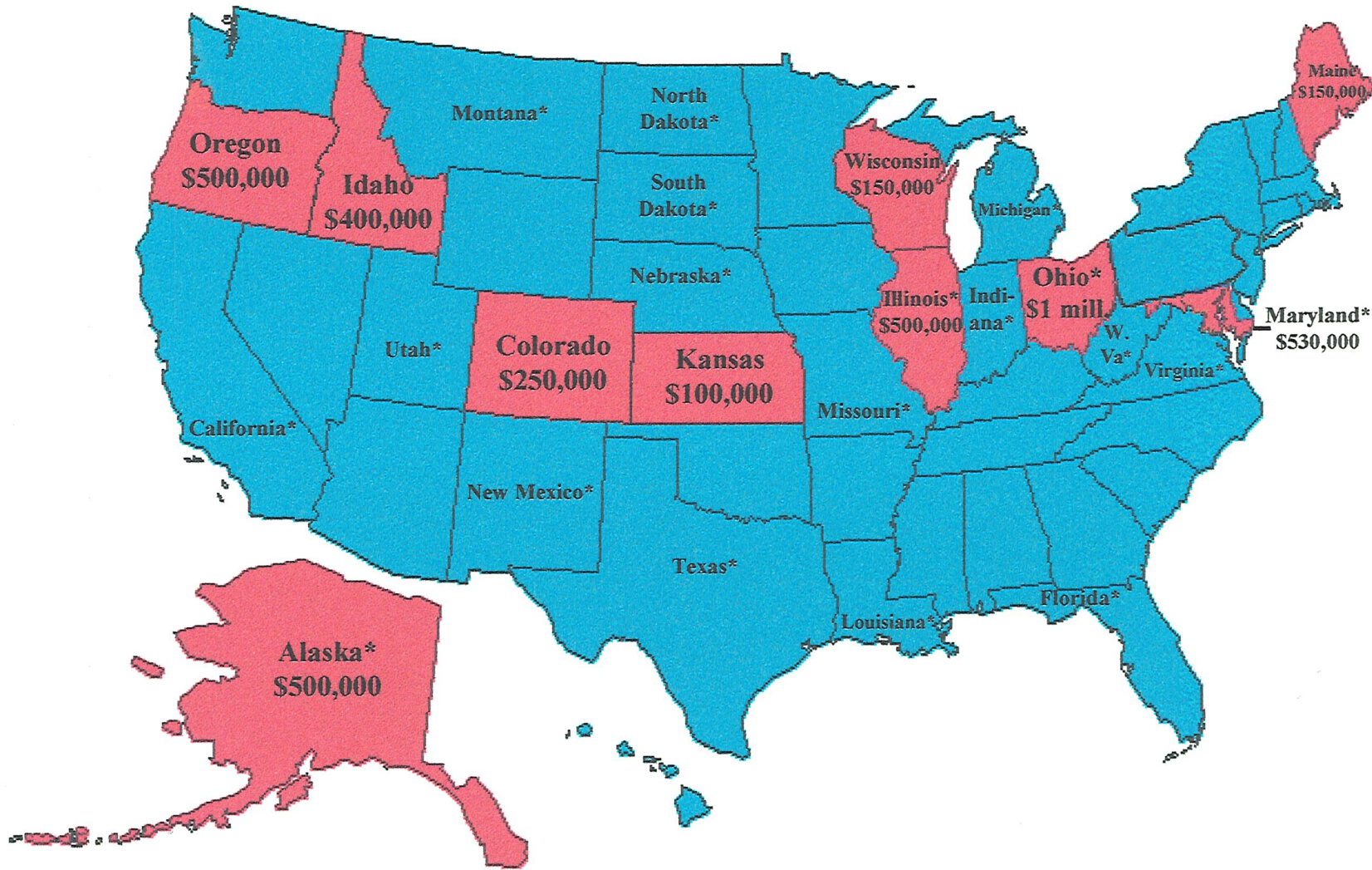
Kansans deserve a clean vote on this issue. Victim rights are important. Today in Kansas it is cheaper to kill than to injure. This is wrong and you can change it.

Please raise the wrongful death cap. Hold wrongdoers accountable by passing this bill.

Thank you.

#9

Eighty percent of the States do not have Wrongful Death Caps (non-economic damages).



House Judiciary Attachment 9 2/11/97

* Cap on Medical Malpractice wrongful death cases only which is unconstitutional in Kansas. Malpractice Victims v. Bell.

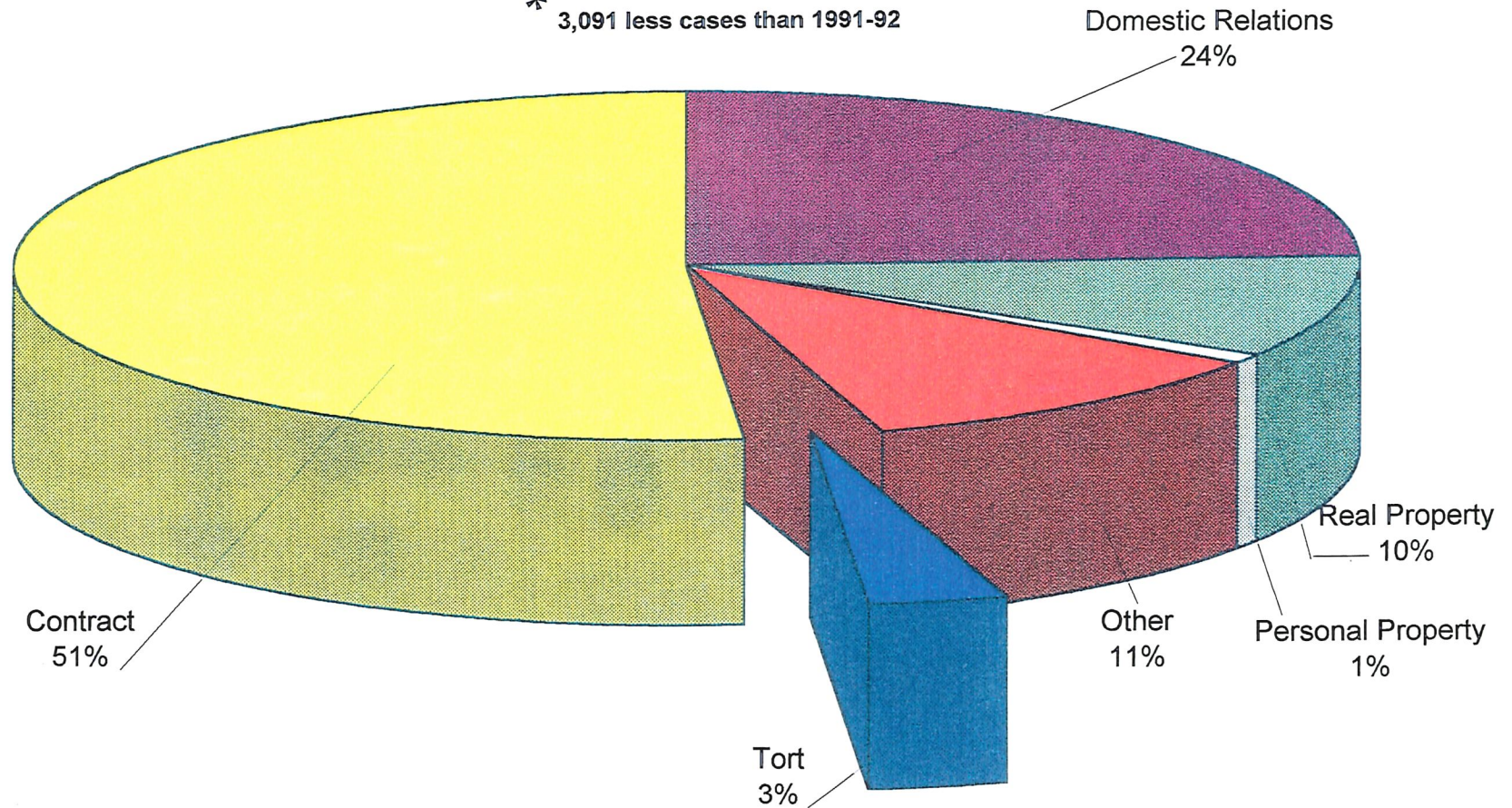
Source: State Trial Lawyer Associations and ATLA.

4/10

Kansas Civil Cases FY 1992-93

Breakdown of 135,875 civil cases filed

* 3,091 less cases than 1991-92



House Judiciary
Attachment 10
2/11/97

Ten Lowest States of Average Auto Premiums.

RANK	STATE	AVERAGE AUTO PREMIUM	WRONGFUL DEATH CAP
42	Kansas	\$561.74	\$100,000
43	Wisconsin	\$555.20	\$150,000
44	Wyoming	\$549.72	NO CAP
45	Maine	\$547.51	\$150,000
46	North Carolina	\$547.08	NO CAP
47	Idaho	\$533.21	\$400,000
48	Nebraska	\$526.21	NO CAP
49	South Dakota	\$516.18	NO CAP
50	Iowa	\$484.89	NO CAP
51	North Dakota	\$467.15	NO CAP

There are nine states with lower average auto premiums than Kansas. Most of them do not have wrongful death caps.

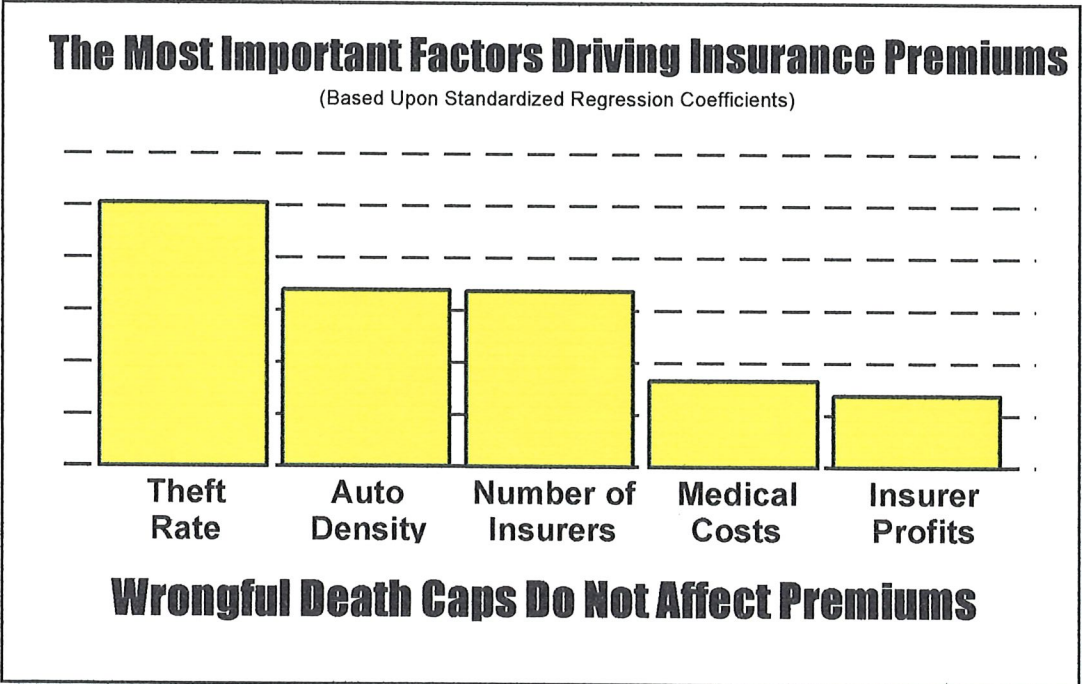
Source: National Association of Independent Insurers (NAII) Greenbook, 1996, p. 55. (District of Columbia was included in this study that is the reason for the 51 states.)

House Judiciary
Attachment 11
2/11/97

#12

Insurance Premiums

What Drives Insurance Premium Rates?



- ◆ **Wrongful Death Caps Have No Statistically Significant Effect on Insurance Premiums***
- ◆ **Caps Only Take Away Rights**
- ◆ **Caps Do Not Save Consumers Money**

Results are based upon a regression analysis using data from the fifty states. The model explains almost 90% of the variance in premium rates. The other 10% is attributable to idiosyncratic factors in each state. Data was obtained from the Statistical Abstract of the States, the All Industry Research Advisory Council, and the National Association of Insurance

House Judiciary
Attachment 12
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#13
Kansas AFL-CIO

2131 S.W. 36th St.

Topeka, KS 66611

913/267-0100



February 11, 1997

President
Dale Moore

Executive Secretary
Treasurer
Jim DeHoff

Executive Vice
President
Wayne Maichel

Executive Board

- Richard Aldrich*
- James Banks*
- Mike Bellinger*
- Bill Brynds*
- Gary Buresh*
- Eugene Burrell*
- Ken Doud, Jr.*
- Richard Durow*
- David Han*
- Jim Hastings*
- Jerry Johnson*
- Greg Jones*
- Frank Mueller*
- Dwayne Peaslee*
- Craig Rider*
- Wallace Scott*
- Debbie Snow*
- Betty Vines*

Representative Tim Carmody, Chairman
House Judiciary Committee
State Capitol, Rm. 115-S
Topeka, KS 66612

Dear Representative Carmody:

The Kansas AFL-CIO represents active members and retirees in over 100,000 households across the state of Kansas. On behalf of those members, the Kansas AFL-CIO supports passage of HB 2143 to increase the cap in the wrongful death stature to \$500,000.

We work with issues of workplace safety and accident prevention every day and are quite aware of the devastating effect unexpected deaths have on the families of the deceased person. The most devastating impact on the wrongful death cap occurs when the victim is a small child or a retiree. The ability to hold the wrongdoer accountable in such cases is critically important to the ability of the surviving loved ones to deal with their loss and resume their roles in society. The current \$100,00 cap does not allow Kansas juries to dispense justice in a manner that promotes full accountability of the wrongdoer and allows the survivors to adequately deal with their loss.

This is a simple matter of justice. Please act favorably on HB 2143 and raise the wrongful death cap in Kansas.

Sincerely,

Jim DeHoff
Executive Secretary

Wayne Maichel
Executive Vice President

opeiu #320, afl-cio



House Judiciary
Attachment 13

2/11/97






KANSAS MEDICAL SOCIETY

February 11, 1997

To: House Judiciary Committee

From: Meg Henson 
Associate General Counsel
Director of Government Affairs

Subj: HB 2143 - Wrongful Death

The Kansas Medical Society appreciates the opportunity to appear today in support of HB 2143 regarding wrongful death damages.

We have asked Wayne Stratton, a well-respected attorney in private practice in Topeka, to provide testimony on this issue on behalf of KMS. Mr. Stratton is very knowledgeable about this issue because of his years of experience in civil litigation and his position as KMS General Counsel.

Thank you for considering our comments.

House Judiciary
Attachment 14
2/11/97

15
14

STATEMENT OF WAYNE T. STRATTON
GENERAL COUNSEL OF THE KANSAS MEDICAL SOCIETY
TO THE HOUSE JUDICIARY COMMITTEE
REGARDING 1997 HOUSE BILL 2143
FEBRUARY 11, 1997

Mr. Chairman and Members:

Thank you for the opportunity to appear regarding House Bill 2143. I am a member of the firm of Goodell, Stratton, Edmonds & Palmer, LLP, and serve as General Counsel to the Kansas Medical Society. The Kansas Medical Society consists of 4,200 Kansas physicians.

Physicians are uniquely interested in House Bill 2143 since in a great majority of instances they are in attendance at the time of death. The filing of a medical malpractice action under such circumstances really requires only the obtaining of an opinion from some physician, usually outside the State of Kansas, that there has been a deviation from the standard of care which caused or contributed to the death.

The Medical Society supports an amendment to the present statute but not in the form suggested by the proponents of House Bill 2143.

Attached to this statement is a suggested amendment which you will notice accomplishes two things:

1. It raises by 100% the wrongful death limitation from \$100,000 to \$200,000. This is a substantial increase in the present limit.

2. It returns to the legislature the limitations adopted by the legislature but subsequently eroded by the court. Let me explain what I mean by that.

The original wrongful death action had no distinction between pecuniary and non-pecuniary damages. It merely prescribed a limit upon such damages.

The separate treatment of pecuniary and non-pecuniary damages first appeared in 1975. I am sure the legislature was confident that a financial loss to the heirs by virtue of the loss of financial contributions that the decedent would have made was the type of pecuniary loss that is unlimited under the law.

House Judiciary
Attachment 15
2/11/97

Over the years, a combination of resourceful plaintiffs' attorneys, imaginative economists and liberal interpretations of the statute has completely altered the original legislative intent.

When I started the practice of law in 1958, the limitation was \$25,000. Interestingly, it specified the elements of damages which are similar to those currently found in K.S.A. 60-1904 (a copy of which is attached) and include (a) mental anguish, suffering and bereavement; (b) loss of society, companionship, comfort and protection; (c) loss of marital care, attention, advice or counsel; (d) loss of filial care or attention and (e) loss of parental care, training, guidance or education.

When the 1975 legislature amended the statute to provide an unlimited recovery for ~~non~~ pecuniary damages, I am sure it had no idea that the types of damages itemized above would be construed to be pecuniary in nature, and, hence, unlimited. However, this has been the result.

I recently took a deposition of an economist who not only projected thousands of dollars of loss based upon the household services that were rendered by the decedent but then asserted that the parent was a nurturer/counselor and concluded the hourly rate of a clinical psychologist, social worker, residential counselor and secondary teacher should be considered to claim an additional financial loss of over \$15,000 a year.

In summary, what has occurred is that there are now two types of pecuniary damages:

(a) Those customarily thought, and I believe intended by the legislature, to be pecuniary damages, such as funeral expenses, medical bills and the financial contributions that the decedent would have made to the heirs and,

(b) Non-financial which has come to be labelled "pecuniary."

We suggest that the enclosed amendment would clarify the original intention of the legislature.

I would be glad to respond to any questions.

HOUSE BILL No. 2143

By Representatives Swenson, Flaharty, Garner, Howell, Nichols,
O'Connor, Pauls, Powers and Spangler

1-30

10 AN ACT concerning civil procedure; relating to wrongful death; amend-
11 ing K.S.A. 60-1903 and repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 60-1903 is hereby amended to read as follows: 60-
15 1903. (a) In any wrongful death action, the court or jury may award such
16 damages as are found to be fair and just under all the facts and circum-
17 stances, but the damages, other than pecuniary loss sustained by an heir
18 at law, cannot exceed in the aggregate the sum of ~~\$100,000 \$500,000~~ and
19 costs.

\$200,000

20 (b) If a wrongful death action is to a jury, the court shall not instruct
21 the jury on the monetary limitation imposed by subsection (a) upon re-
22 covery of damages for nonpecuniary loss. If the jury verdict results in an
23 award of damages for nonpecuniary loss which, after deduction of any
24 amounts pursuant to K.S.A. 60-258a and amendments thereto, exceeds
25 the limitation of subsection (a), the court shall enter judgment for dam-
26 ages of ~~\$100,000 \$500,000~~ for nonpecuniary loss. ^{200,000}

27 (c) In any wrongful death action, the verdict shall be itemized by the
28 trier of fact to reflect the amounts, if any, awarded for:

- 29 (1) Nonpecuniary damages;
- 30 (2) expenses for the care of the deceased caused by the injury; and
- 31 (3) pecuniary damages other than those itemized under subsection
- 32 (c)(2).

33 (d) Where applicable, the amounts required to be itemized pursuant
34 to subsections (c)(1) and (c)(3) shall be further itemized by the trier of
35 fact to reflect those amounts awarded for injuries and losses sustained to
36 date and those awarded for injuries and losses reasonably expected to be
37 sustained in the future.

38 (e) In any wrongful death action, the trial court shall instruct the jury
39 only on those items of damage upon which there is some evidence to base
40 an award.

41 Sec. 2. K.S.A. 60-1903 is hereby repealed.

42 Sec. 3. This act shall take effect and be in force from and after its
43 publication in the statute book.

which damages shall include those elements in K.S.A. 60-1904 listed in (a)(1) through (5) and, in addition, shall include any claims for loss of services, nurturing, loss of a complete family or similar such claims of damage.

15-3

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ome evidence to

0-1903; L. 1967,
§ 1; L. 1975, ch.
L. 1987, ch. 224,

ch. 182, § 419; R.S.
1947, ch. 319, § 1;

vey & Thomas, 60-

nces:
O'Keefe, 37 J.B.A.K.

7 L.J. 26 (1977).
Parental Society and
20 W.L.J. 652, 657

erview," Howard N.

isruption of Parental
7 L.J. 78, 93 (1982).
urrent Trends in the
e," Craig C. Blum-

sas Wrongful Death
o. 3, J.K.T.L.A. 21

Wentling v. M.A.S.,"

ry Act: Implications
ims," Sandra Jaquot,

menting the Kansas
ion and Ron Smith,

L.A., Vol. XIII, No.

Review of Changes
and Mark Sachse,

ful Death Actions,"
(1992).

Nature of Loss of
on, J.K.T.L.A. Vol.

ages in Tort: Kansas
Scott M. Adam, 63

"Questioning Authority: Modifying P.I.K. Instructions to Get the Law Right," Benjamin M. Kieler and Thomas E. Hayes, J.K.T.L.A. Vol. XVII, No. 4, 20, 22 (1994).

CASE ANNOTATIONS

Prior law cases, see G.S. 1949, 60-3203 and the 1961 Supp. thereto.

1. Adequacy of amount of damages considered. *Roda v. Williams*, 195 K. 507, 514, 407 P.2d 471.

2. Section applied in action for wrongful death resulting from attractive nuisance. *Bartlett v. Heersche*, 204 K. 392, 393, 404, 462 P.2d 763.

3. Action hereunder not barred by previous action brought by insurance company, without right of subrogation, where there was no determination of issues of wrongful death between parents of deceased child and the alleged wrongdoer, and no privity existed between the parents and the insurance company which would bar an action for wrongful death. *Penachio v. Walker*, 207 K. 54, 56, 483 P.2d 1119.

4. Statutes in pari materia must be construed together. *Flowers, Administratrix v. Marshall, Administrator*, 208 K. 900, 902, 494 P.2d 1184.

5. Evidence in wrongful death action sustained award for death of child who drowned in swimming pool. *Burgert v. Tietjens*, 499 F.2d 1, 2, 7.

6. Act applied in construing provisions of no fault insurance act (40-3109 and 40-3113); insurer's right as to reimbursement and indemnity determined. *Farm & City Ins. Co. v. American Standard Ins. Co.*, 220 K. 325, 338, 552 P.2d 1363.

7. Construed; in resolving conflict with 60-258a greater weight should be given to the comparative negligence statute. *Benton v. Union Pac. R.R. Co.*, 430 F.Supp. 1380, 1385.

8. Construed; when 60-258a applies jury will not be instructed about the \$50,000 limitation on plaintiff's recovery. *Benton v. Union Pac. R.R. Co.*, 430 F.Supp. 1380, 1386.

9. Section held not in violation of subject-title requirements of Article 2, Section 16 of the Kansas Constitution. *Stueve v. American Honda Motors Co., Inc.*, 448 F.Supp. 167.

10. Section construed; statutes that increase, decrease, or repeal maximum limits on damages for wrongful death are not retroactive. *Kleibrink v. Missouri-Kansas-Texas Railroad Co.*, 224 K. 437, 444, 581 P.2d 372.

11. Applied; plaintiff may sue to recover unlimited amount for pecuniary loss. *Stueve v. American Honda Motors Co., Inc.*, 457 F.Supp. 740, 744.

12. Heir and heir at law construed as synonymous terms; widow of childless deceased is sole heir and has exclusive right to bring an action hereunder. *Johnson v. McArthur*, 226 K. 128, 130, 596 P.2d 148.

13. Jury required to separately determine pecuniary and nonpecuniary damages; application of comparative negligence statute to determination of nature and amount of damages. *McCart v. Muir*, 230 K. 618, 619, 620, 624, 625, 626, 629, 631, 641 P.2d 384 (1982).

14. Evidence that widow remarried in less than seven months after death not admissible on question of mitigation of her damages. *Pape v. Kansas Power & Light*, 231 K. 441, 445, 647 P.2d 320 (1982).

15. Error to show benefits received by plaintiff from source independent of wrongdoer; collateral source rule considered. *Allman v. Holleman*, 233 K. 781, 788, 789, 667 P.2d 296 (1983).

16. Plaintiff satisfies pecuniary damages burden by showing nature and extent of losses; fact triers capable of con-

verting to money. *Wentling v. Medical Anesthesia Services*, 237 K. 503, 506, 514, 701 P.2d 939 (1985).

17. Nonpecuniary damage limitations herein do not violate any constitutional rights. *Leiker v. Gafford*, 245 K. 325, 365, 778 P.2d 823 (1989).

18. Determination of pecuniary damages considered in denying motion for summary judgment. *Barnes v. Robison*, 712 F.Supp. 873, 875 (1989).

19. Loss of enjoyment of life as an element of disability, pain and suffering noted. *Gregory v. Carey*, 246 K. 504, 512, 791 P.2d 1329 (1990).

20. Mother of deceased daughters could plead wrongful death damages in excess of \$100,000 because of comparative fault; actual recovery limited. *Mahomes-Vinson v. U.S.*, 751 F.Supp. 913, 925 (1990).

21. On question certified (60-3201 et seq.), 40-3403(h) abrogating certain common-law vicarious liability held constitutional. *Bair v. Peck*, 248 K. 824, 834, 811 P.2d 1176 (1991).

22. Appellant's failure to include instructions regarding accidental death of road maintenance worker in record on appeal precludes court's examination of their propriety. *Sterba v. Jay*, 249 K. 270, 279, 816 P.2d 379 (1991).

23. Cited in determining application of comparative fault under 60-19a01 in workers compensation/personal injury action. *Bright v. Cargill, Inc.*, 251 K. 387, 416, 837 P.2d 348 (1992).

24. Viewed along with PIK instructions on child's recovery for parental care and wrongful death. *Laterra v. Treaster*, 17 K.A.2d 714, 726, 844 P.2d 724 (1992).

25. Whether legislature intended wrongful death cause of action to permit award of punitive damages examined. *Smith v. Printup*, 254 K. 315, 334, 866 P.2d 985 (1994).

26. Whether trial court erred in verdict form and jury instructions regarding pecuniary and nonpecuniary damages examined. *Griffith v. Mt. Carmel Medical Center*, 842 F.Supp. 1359, 1366 (1994).

60-1904. Elements of damage. (a) Damages may be recovered for, but are not limited to:

- (1) Mental anguish, suffering or bereavement;
- (2) loss of society, companionship, comfort or protection;
- (3) loss of marital care, attention, advice or counsel;
- (4) loss of filial care or attention;
- (5) loss of parental care, training, guidance or education; and
- (6) reasonable funeral expenses for the deceased.

(b) If no probate administration for the estate of the deceased has been commenced, expenses for the care of the deceased which resulted from the wrongful act may also be recovered by any one of the heirs who paid or became liable for them. Those expenses and any amount recovered for funeral expenses shall not

be included in the limitation of K.S.A. 60-1903 and amendments thereto.

History: L. 1963, ch. 303, 60-1904; L. 1984, ch. 214, § 2; July 1.

Source or prior law:

G.S. 1868, ch. 80, § 422; L. 1909, ch. 182, § 419; R.S. 1923, 60-3203; L. 1939, ch. 233, § 2; L. 1947, ch. 319, § 1; L. 1955, ch. 277, § 1.

Research and Practice Aids:

Death — 80 et seq.
Hatcher's Digest, Death §§ 32 to 38.
C.J.S. Death § 98 et seq.
Gard's Kansas C.C.P. 60-1904.
Vernon's Kansas C.C.P.—Fowks, Harvey & Thomas, 60-1904.

Law Review and Bar Journal References:

"Survey of Tort Damages," Jerry G. Larson, Tim O'Sullivan, 14 W.L.J. 466, 474 (1975).
Wrongful death, Mark A. Buck, 17 W.L.J. 26 (1977).
"Infants: Child Can Sue for Loss of Parental Society and Companionship," Stuart L. Shapiro, 20 W.L.J. 652, 658 (1981).
"Euthanasia: A Medical and Legal Overview," Howard N. Ward, 49 J.B.A.K. 317, 325 (1980).
"Child's Right to Sue for Negligent Disruption of Parental Consortium," Derenda J. Mitchell, 22 W.L.J. 78, 93, 97 (1982).
"Maximizing Recovery under the Kansas Wrongful Death Act," Mark V. Parkinson, Vol. VIII, No. 3, J.K.T.L.A. 21 (1984).
"The Scope of 'Pecuniary Loss' Since Wentling v. M.A.S.," Vol. IX, No. 2, J.K.T.L.A. 7 (1985).
"Punitive Damages in Wrongful Death Actions," Gregory M. Dennis, 11 J.K.T.L.A. No. 2, 14 (1987).
"Our Statutory System for Actual Damages in Tort: Kansas in Wonderland?" Bruce Keplinger and Scott M. Adam, 63 J.K.B.A. No. 1, 18, 21 (1994).
"Questioning Authority: Modifying P.I.K. Instructions to Get the Law Right," Benjamin M. Kieler and Thomas E. Hayes, J.K.T.L.A. Vol. XVII, No. 4, 20, 22 (1994).

CASE ANNOTATIONS

Prior law cases, see G.S. 1949, 60-3203 and the 1961 Supp. thereto.

1. Court considered grief, anguish, suffering, etc., in holding award inadequate for loss of child. *Corman, Administrator v. WEG Dial Telephone, Inc.*, 194 K. 783, 786, 402 P.2d 112.
2. Inadequacy of verdict not shown from judgment. *Roda v. Williams*, 195 K. 507, 514, 407 P.2d 471.
3. Mentioned in holding surviving spouse to be heir at law for purposes of 60-1902. *Barr, Administratrix v. MacHarg, Administrator*, 203 K. 612, 614, 455 P.2d 516.
4. Section applied in action for wrongful death resulting from attractive nuisance. *Bartlett v. Heersche*, 204 K. 392, 393, 404, 462 P.2d 763.
5. Court's damage instruction not improper; statute considered. *Wilkins v. Hogan*, 425 F.2d 1022, 1025 (1970).
6. Statutes in pari materia must be construed together. *Flowers, Administratrix v. Marshall, Administrator*, 208 K. 900, 902, 494 P.2d 1184.
7. Evidence in wrongful death action sustained award for death of child who drowned in swimming pool. *Burgert v. Tietjens*, 499 F.2d 1, 2, 8.

8. Act applied in construing provisions of no fault insurance act (40-3109 and 40-3113); insurer's right as to reimbursement and indemnity determined. *Farm & City Ins. Co. v. American Standard Ins. Co.*, 220 K. 325, 327, 346, 552 P.2d 1363.

9. Heir and heir at law construed as synonymous terms; widow of childless deceased is sole heir and has exclusive right to bring an action hereunder. *Johnson v. McArthur*, 226 K. 128, 130, 137, 139, 596 P.2d 148.

10. Jury not required to award damages for all elements authorized; must not disregard law and evidence and award nothing. *Putter v. Bowman*, 7 K.A.2d 323, 328, 641 P.2d 411 (1982).

11. Consideration of elements of pecuniary and nonpecuniary damages recoverable; application of comparative negligence statute to determination of nature and amount of damages. *McCart v. Muir*, 230 K. 618, 625, 626, 641 P.2d 384 (1982).

12. Plaintiff satisfies pecuniary damages burden by showing nature and extent of losses; fact triers capable of converting to money. *Wentling v. Medical Anesthesia Services*, 237 K. 503, 506, 514, 701 P.2d 939 (1985).

13. Evidence sufficient to support \$1,000,000 jury verdict for pecuniary loss in wrongful death action examined. *Leiker v. Gafford*, 245 K. 325, 348, 778 P.2d 823 (1989).

14. Loss of services recovered in third-party action under workers compensation act determined subject to subrogation. *McGranahan v. McCough*, 15 K.A.2d 24, 29, 802 P.2d 593 (1990).

15. Viewed along with PIK instructions on child's recovery for parental care and wrongful death. *Laterra v. Treaster*, 17 K.A.2d 714, 726, 844 P.2d 724 (1992).

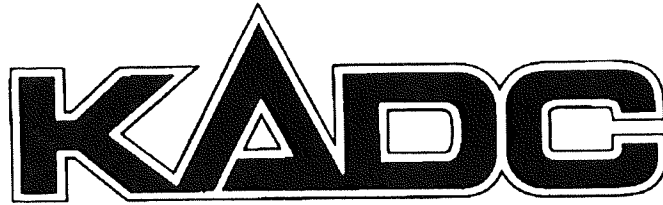
16. Whether legislature intended wrongful death cause of action to permit award of punitive damages examined. *Smith v. Printup*, 254 K. 315, 334, 866 P.2d 985 (1994).

17. Whether trial court erred in verdict form and jury instructions regarding pecuniary and nonpecuniary damages examined. *Griffith v. Mt. Carmel Medical Center*, 842 F.Supp. 1359, 1366 (1994).

60-1905. Apportionment of recovery.

The net amount recovered in any such action, after the allowance by the judge of costs and reasonable attorneys fees to the attorneys for the plaintiffs, in accordance with the services performed by each if there be more than one, shall be apportioned by the judge upon a hearing, with reasonable notice to all of the known heirs having an interest therein, such notice to be given in such manner as the judge shall direct. The apportionment shall be in proportion to the loss sustained by each of the heirs, and all heirs known to have sustained a loss shall share in such apportionment regardless of whether they joined or intervened in the action; but in the absence of fraud, no person who failed to join or intervene in the action may claim any error in such apportionment after the order shall have been entered and the funds distributed pursuant thereto.

History: L. 1963, ch. 303, 60-1905; Jan. 1, 1964.



TESTIMONY
House Judiciary Committee
HB 2143
Tuesday, February 11, 1997

Chairman Carmody, members of the committee, I am Bill Henry, the Executive Secretary of the Kansas Association of Defense Counsel. The Kansas Association of Defense Counsel is composed of attorneys across the state who do defense work in civil litigation and who are concerned with all matters affecting the Code of Civil Procedure.

The issue you have before you in House Bill 2143 is clearly a public policy position to consider in terms of benefits to the citizens of the State of Kansas.

The Kansas Association of Defense Counsel feels however that when discussing damages there are other important areas that should be taken into account by this committee that are relevant to the effect on the citizens of Kansas in addition to the change in the amount of damages for nonpecuniary loss.

For example, currently under our Civil Code of Procedure the defense in civil litigation cannot introduce the evidence of remarriage of a plaintiff in terms of determining damages suffered by that plaintiff. Another area that should be considered in our code of civil procedure is whether or not the financing of an annuity affects the economic aspects of an award. Under case holdings members of the Kansas Association of Defense Counsel cannot introduce such evidence in the defense of a personal injury action. My members are certainly not experts on the cost ratings of insurance providers but the action you are considering in House Bill 2143 will clearly affect the insurance rates paid by Kansans across the state dependent on increasing the wrongful death loss cap to five times its current amount.

If the committee would wish to receive more information in other areas of civil procedure that would affect the award of damages I would be most pleased to request some of our members to appear before the committee to give particular examples of how the code might be changed in terms of evidentiary rules.

On behalf of the Kansas Association of Defense Counsel I thank you for your time and consideration.

Respectfully submitted,

Bill Henry, Executive Secretary Kansas Association of Defense Counsel

*House Judiciary
Attachment 16
2/11/97*



MADD

TM

Mothers Against Drunk Driving

3601 SW 29th Street • Topeka, KS 66614 • (913) 271-7525 • 1 (800) 228-6233

KANSAS STATE OFFICE

2/7/97

Rep. Tim Carmody, Chairman
House Judiciary Committee
Room 115-S
Statehouse
Topeka, Kansas 66612

Dear Rep. Carmody and Committee Member:

Kansas MADD will be unavailable to have a member at the scheduled hearings February 11th and 12th regarding House Bill 2143. However, as the primary advocate for victims of drunk driving crashes, Kansas MADD would like to be placed on record in support of House Bill 2143.

Included, you will find MADD's formal position and viewpoint regarding Tort Reform and Victims Rights as it applies to House Bill 2143.

Sincerely,

Diane Poot
State Chairperson
Kansas MADD

House Judiciary
Attachment 17
2/11/97



MADD

TM

Mothers Against Drunk Driving

3601 SW 29th Street • Topeka, KS 66614 • (913) 271-7525 • 1 (800) 228-6233

KANSAS STATE OFFICE

MOTHERS AGAINST DRUNK DRIVING

POSITION STATEMENT

TORT REFORM AND VICTIM RIGHTS

POSITION

MADD stands firmly for the rights of victims of alcohol and other drug impaired driving crimes, in particular the right to be compensated fairly for harm suffered at the hands of impaired drivers.

VIEWPOINT

The dictionary defines a "tort" as a "civil wrong, not including a breach of contract, for which the injured party is entitled to compensation."

At the present time, a great deal of controversy is being focused on efforts to modify tort and liability laws on the state and federal level. While the complexity and variety of laws in this area make it difficult to adopt a single position which will address all issues surrounding tort reform, MADD recognizes that there is a need to promote and sustain the rights of victims of impaired driving crashes to be fully compensated for harm resulting from these crashes. Such compensation includes financial recovery through state administered Victim Compensation Programs and civil tort actions in state or federal court. In light of this stand, a number of principles can be pronounced which bear on these issues.

As an advocate for victims of impaired driving crashes, MADD needs to protect and support victims and guard against passage of laws which would diminish or restrict the rights of these victims to be compensated. However, the MADD National Organization, MADD State Organization, and local MADD Chapters should not align themselves with other groups organizes to support or oppose tort reform measures. Neither should MADD's name be used in public service announcements, commercials or other endorsements developed by other groups or coalitions.

MADD should speak up independently on behalf of the victims and their rights and needs. MADD can also speak out on the impact a proposed law would have on victims rights to recover compensation.

OVER

17-2

Fair financial compensation for victims of impaired driving crashes is appropriate and necessary and MADD will firmly support measures which protect this right.

In this regard, MADD makes the following statements concerning specific tort reform issues which are paramount to victims rights to recover:

1. MADD opposes any measure which will restrict or in any way limit the rights of victims of impaired driving crashes to seek and recover punitive damages in any cause of action arising out of impaired driving crashes.

2. MADD opposes any measures, such as joint and several liability revisions, which would prohibit the victim of an impaired driving crash from seeking full recovery of damages awarded from each defendant in cases where the evidence supports a finding that the conduct of each defendant, independent of the other defendant or defendant, was or could have been the proximate cause of the death or injury.

3. MADD opposes any measure that would limit the amount of damages that a victim of an impaired driving crash could recover in cases resulting in death or injury.

4. MADD opposes any measure to modify laws which could limit the rights of victims of impaired driving crashes to seek recovery in any dram shop or other third-party liability action which may be brought against the seller or provider of any alcoholic beverage.

5. MADD opposes any measures which would modify the "collateral source rule" so as to provide for a reduction in the amount of damages awarded to the victim of an impaired driving crash based on benefits which may be available to the victim through policies of insurance purchased by the victim or provided on his behalf by a third party.

6. MADD takes no position on the following issues:

- (a) "no-fault insurance" laws
- (b) The "English Rule" or loser pays provisions relating to the award of attorney fees in civil cases.
- (c) limitations on medical benefits available under policies of insurance where the insured has the option of selecting the amount of coverage at the time of purchase of the policy.

These provisions on tort reform measures are not intended to be all inclusive. MADD will continue to evaluate tort reform issues as they arise in light of the rights of victims of impaired driving crashes to be fairly and fully compensated for death or injury caused by impaired drivers.