

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 12, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Adkins (excused)  
Representative Dahl (excused)  
Representative Kline (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: Bob Corkins, Director of Taxation, KCCI  
Brad Smoot, Coordinator, Kansas Civil Law Forum  
David Hanson, Kansas Association of Property and Casualty Insurance Companies  
William Sneed, The State Farm Insurance Companies  
Steve Dickerson, Kansas Trial Lawyers Association  
Raymond Cochrane, Bartlesville, Oklahoma  
David Payne, Kansas Family Research Institute  
Fred and Linda Halvorsen--Written testimony only  
John W. Johnson, Bradshaw, Johnson & Hund--Written testimony only  
Jerry Slaughter, Kansas Medical Society--Written testimony only  
Kathleen Sebelius, Commissioner of Insurance--Written testimony only

Others attending: See attached list

The Chair called the meeting to order at 3:45 p.m.

**HB 2143: Nonpecuniary damages in wrongful death actions.**

Bob Corkins, Director of Taxation, KCCI, testified in opposition to **HB 2143**. The conferee spoke of studies which include a clear acknowledgment of the links between liability laws and economic growth. The conferee stated that the KCCI opposes the higher civil damage awards which **HB 2143** would permit. (Attachment 1)

The conferee and Committee members discussed the parameters of wrongful death actions, survivorship claims for punitive and compensatory damages.

Brad Smoot, Coordinator, Kansas Civil Law Forum, testified in opposition to **HB 2143**. The conferee related the legal history of wrongful death actions. The conferee stated that personal injury actions and wrongful death actions attempt to compensate different plaintiffs and different injuries. The conferee discussed that the survivorship statute permits the estate to also recover for any pain and suffering prior to death. The conferee stated that plaintiffs can be fairly compensated under current Kansas law. (Attachment 2) The conferee referred to a handout showing the financial impact of **HB 2143**. (Attachment 3) Mr. Smoot discussed a graph showing the verdict and settlement midpoints in Kansas. (Attachment 4) The conferee discussed a graph showing the total settlements and verdicts for Kansas medical Malpractice cases. (Attachment 5) Mr. Smoot referred to a graph comparing compensatory verdicts in Kansas with those of Nebraska and Illinois. (Attachment 6) Mr. Smoot stated that the proponents of this bill have not provided the costs and he suggested that the civil law division of the Judicial Council do a study to determine the cost of this bill.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 12, 1997.

The Committee members and conferee discussed insurance rates of other states where there are not wrongful death caps. The conferee and Committee members discussed jury decisions in regard to determining damages. The conferee and Committee discussed consideration of allowing punitive damages in wrongful death referring to the case decided in 1995. In answer to a request by a Committee member the conferee explained what "wrongful" means in the wrongful death statute means.

The conferee discussed the effect of this bill on raising the limits of the Health Care Stabilization Fund.

David Hanson, Kansas Association of Property and Casualty Insurance Companies testified in opposition to **HB 2143**. The conferee stated that this bill will result in a higher potential for liability. The conferee stated that it is difficult to calculate the exact effects this bill will have in the calculation of rates because there are many factors considered in setting rates. The conferee stated that after the cap was raised in 1984 from \$50,000 to \$100,000 there was an increase in liability insurance rates, but not due solely to wrongful death. The conferee stated that looking at future projections and looking at what happened after the 1984 liability increase it could be anywhere from an 8% to 20% increase in cost in automobile premiums. (Attachment 7)

William Sneed, The State Farm Insurance Companies testified in opposition to **HB 2143**. The conferee related that using an automobile insurance model showed an increase in the amount of premium costing the insured 20% more per policy. (Attachment 8)

Steve Dickerson, Kansas Trial Lawyers Association on behalf of Terry Humphrey, Executive Director testified in opposition to the amendment offered by the Kansas Medical Society. Mr. Dickerson listed several reasons why that amendment should be rejected. The conferee stated that the prevailing effect of that amendment would change the way damages are calculated which could work against survivors. (Attachment 9) The conferee referred to written testimony listing reasons to reject an amendment which would introduce evidence of remarriage of the widow/widower in wrongful death actions. (Attachment 10)

Raymond E. Cochrane, Bartlesville, Oklahoma testified in support of **HB 2143**. Mr. Cochrane related that his grandson was killed in an accident in Kansas. The conferee stated that the loopholes in the law should be removed so cases can be settled with consideration to the loss the victim's family has suffered. (Attachment 11)

David Payne, Kansas Family Research Institute testified in opposition to the proposed amendment by Bill Henry of the Kansas Association of Defense Counsel which would repeal the current "gag rule" regarding evidence of remarriage. (Attachment 12)

The Chair stated that additional written testimony will be distributed as it is received.

Written testimony in support of **HB 2143** was submitted by: Fred and Linda Halvorsen, (Attachment 13); John W. Johnson of Bradshaw, Johnson & Hund, (Attachment 14).

Written testimony in opposition to **HB 2143** was submitted by: Brad Smoot, Kansas Civil Law Forum (Attachment 15), Jerry Slaughter, Kansas Medical Society, (Attachment 16).

Written testimony was submitted by Kathleen Sebelius, Commissioner of Insurance, Kansas Insurance Department taking no position on **HB 2143**. (Attachment 17)

The Chair adjourned the meeting at 5:40 p.m.

The next meeting is scheduled for February 13, 1997.

# HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 2-12-97

NAME	REPRESENTING
David Tolman	KBA
David Payne	Kansas Family Research Inst.
Bob Corkins	KCCI
RAYMOND E. COCHRANE	SELF
Jason Oldham	OJA
David Hanson	Ks Insur Assoc
Nicholas E. Wilkerson	Farmers Alliance
Don Callahan	Kammco
Bill Henry	Ks Assn of Defense Counsel
Kevin Davis	Am Family
Mary Henson	Ks Medical Soc.
Wade Wilford	
Steve Black	Hubbell + Assoc
Heather Spindall	Whitney Samron, P.A.
Callie Hill Denton	K. Peterson's Assoc.
Larrie Ann Brown	KHA
Sandra McCoursey	Ks Insurance Alys
B. H. Snee &	State Farm
Whitney Damron	Ks Bar Assn.

HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

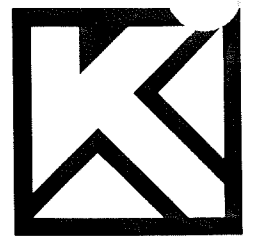
DATE: 2/12/97

NAME	REPRESENTING
<i>Wendy Gail</i>	KTEA
<i>Kirk W Lowry</i>	KTEA
<i>Steve Dickerson</i>	II
<i>Chris Beesha</i>	II
<i>Angela Madd</i>	KTEA
<i>Lynn Ruschick</i>	<i>Ruschick family &amp; Madd</i>

#1  
2-12-97

# LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

HB 2143

February 11, 1997

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Committee on Judiciary

by

Bob Corkins  
Director of Taxation

Honorable Chair and members of the Committee:

My name is Bob Corkins, representing the Kansas Chamber of Commerce and Industry. I appreciate this opportunity to express our members' views on the subject of tort reform and, in particular, their opposition to the higher civil damage awards which HB 2143 would permit.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The business community has assumed a high profile in this area of legislation for many years and our reasons for supporting limitations on tort liability have been consistent throughout. By

*House Judiciary  
Attachment 1  
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aining business costs, we protect and create jobs, help curb inflation, and develop a higher earning power for Kansans at large.

KCCI views this proposal as being contrary to those efforts. Rises in litigation filings and jury awards have historically been closely linked to overly cautious, perhaps even paranoid, business reactions. Such counter-growth responses are logical on their face and intuitively seem correct. Policymakers over the years have also been inundated with anecdotal examples of companies that make one defensive move after another to protect themselves from exposure to litigation, with none of these moves serving to maximize economic growth.

Our research now allows us to take the argument one step further. The University of Illinois College of Law published a series of papers in 1995 that look at the traditional tort reform rationale and apply an objective empirical analysis. Their review includes a clear acknowledgment of the links between liability laws and economic growth and speaks appreciatively of a study performed by the National Bureau of Economic Research in Cambridge, MA.

The Illinois scholars refer to the NBER study as the "first detailed statistical analysis of the effect of limiting liability on economic growth." The study examined government economic data from 1969 through 1990 and "[a] strong correlation was found between the number of laws limiting liability a state had enacted, such as caps on damage awards, and levels of employment and productivity that state enjoyed." Fourteen of 17 of the business types studied benefited from liability limitations, with employment growing an average of 18% in miscellaneous repair services, 23% in amusement and recreation, and 25% in motion pictures. In contrast, the NBER study concluded, employment fell when laws that favored plaintiffs were enacted. The University of Illinois noted some limitations in the NBER methodology, but reemphasized it as one of the few empirical studies ever done and concluded that it bolsters the arguments business leaders have always made regarding tort reform. Additional results from the NBER study are presented below.

Although not all effects of damage award liberalization can be quantified, a fair assumption is that each business has its own breaking point. Perhaps a few additional dollars in legal costs this year is all that it takes to send Company X into bankruptcy or into closing down their second production shift. Perhaps just a slight expansion of lawsuit exposure is enough to prevent Company Y from marketing their new allergy medication, or from using a new technique which extracts 5%

oil from wells that would otherwise be capped. We suspect that the relationship between jury awards and economic growth is, on the whole, both linear and inverse.

KCCI appreciates the steps the legislature has taken to rein in unreasonable litigation growth. Noncompensatory damage limits have been the most appropriate means for curbing jury awards and, we believe, should continue to serve that function. We therefore respectfully ask for your vote against HB 2143. Thank you for your time and consideration.

#### EFFECT OF LIABILITY ON ECONOMIC GROWTH

Effect	% of Large Firms Reporting Effect	% of Small Firms Reporting Effect
Closed production plants	8%	2%
Laid off workers	15%	9%
Decided against acquiring or merging	17%	11%
Moved production offshore	4%	2%
Lost market share	22%	25%

**SOURCE:** McGuire, *The Impact of Product Liability*, Tables 28, 31, 59, 61, pp. 19-20, 34-35 as cited in Research and Policy Committee of the Committee for Economic Development, *Who Should be Liable?* p. 95 (1989)

#2

**KANSAS CIVIL LAW FORUM**  
**A Coalition of Professionals and Businesses**  
**Interested in the Kansas Court System**

Brad Smoot, Coordinator  
Mercantile Bank Building  
800 SW Jackson, Suite 808  
Topeka, Kansas 66612  
(913) 233-0016 FAX (913) 234-3687

STATEMENT OF BRAD SMOOT, COORDINATOR  
KANSAS CIVIL LAW FORUM  
TO THE HOUSE JUDICIARY COMMITTEE  
REGARDING 1997 HOUSE BILL 2143  
FEBRUARY 11, 1997

Mr. Chairman and Members:

Thank you for this opportunity to appear regarding 1997 House Bill 2143. I appear on behalf of the Kansas Civil Law Forum. Our membership includes numerous businesses, professionals and their associations. A listing of our 1996 membership is attached to the prepared statement for your reference.

On behalf of these members we appear today in opposition to HB 2143 which would amend K.S.A. 60-1903 to increase the liability exposure for non-pecuniary damages in wrongful death cases from \$100,000 to \$500,000.

To begin with, wrongful death actions have a distinct legal history. Under common law there was no right to recover for wrongful death. This cause of action has been created exclusively by statute while the exposure and costs associated with it have expanded radically in the last 100 years. Originally, recovery for pecuniary and nonpecuniary damages was limited by the statutory cap. Later, the cap was removed completely for pecuniary losses (1975) and the cap on non-pecuniary losses was generously increased 400% to \$100,000 in 1984.

It is also important to remember that personal injury actions and wrongful death actions attempt to compensate different plaintiffs and different injuries. In personal injury claims, we compensate the actual victim or his or her estate for any pain and suffering, disfigurement and disability. In wrongful death actions, the heirs are compensated for their emotional and economic losses. Of course, actual economic or pecuniary damages in both cases are unlimited

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and may result in multi-million dollar judgments benefiting plaintiffs, their families and counsel.

Moreover, the survivorship statute permits the estate (and indirectly the heirs) to also recover for any pain and suffering prior to death even when that period of time is a matter of minutes. See Ingram v. Howard-Needles-Tanner & Bergendoff, 234 Kan. 289, 627 P.2d 1083 (1983). In Lieker v. Gafford, 245 Kan. 325 (1989), which upheld the \$100,000 wrongful death cap, the deceased's heirs recovered full economic damages and non-economic damages for both the personal injuries of the deceased and the statutory \$100,000 maximum for wrongful death. In all, plaintiffs were awarded more than \$2.3 million dollars. (See attached list of damages available to plaintiffs.)

Although no amount of money can replace a loved one, between full compensation for economic losses and the frequent opportunity for heirs to collect on both wrongful death and the deceased's survival claim, it would appear that plaintiffs can be fairly compensated under current Kansas law.

In 1986, a well-reasoned article appeared in the Kansas Trial Lawyers own journal and concluded:

"The legislature's increase in the limit on non-pecuniary damages dramatically improves recovery possibilities in all cases. Further, the liberal attitudes courts have taken with survival actions and pecuniary damages, allows claimants to overcome prior legal restrictions on recovery. For years the barriers to relief in wrongful death cases have been artificial legal restrictions and limitations. Now most of those obstacles are gone."

In summary, we believe an increase in the wrongful death damage cap is unnecessary. And since personal injury claims are frequently tried and compensated together with wrongful death claims, we have no reason to believe the current legal framework is unfair to heirs and beneficiaries. Finally, we believe that such a drastic increase in the wrongful death caps as is proposed in HB 2143 will have an adverse affect on businesses and consumers who must ultimately pay the costs of the tort liability system. Consequently, we urge the Committee to report HB 2143 adversely.

Thank you for your time and attention.

**KANSAS CIVIL LAW FORUM**  
**A Coalition of Professionals and Businesses**  
**Interested in the Kansas Court System**

Brad Smoot, Coordinator  
Mercantile Bank Building  
800 SW Jackson, Suite 808  
Topeka, Kansas 66612  
(913) 233-0016 FAX (913) 234-3687

**KCLF MEMBERSHIP LIST - 1996**

American Tort Reform Association  
Beech Aircraft Corporation  
Kansas Association of Defense Counsel  
Kansas Association of Insurance Agents  
Kansas Association of Property and Casualty Insurers  
Kansas Hospital Association  
Kansas Medical Mutual Insurance Company  
Kansas Medical Society  
Pfizer, Inc.  
Southwestern Bell Telephone  
The Boeing Company  
Kansas Railroads  
Western Resources, Inc.

TRADITIONAL CLAIMS FOR DAMAGES IN WRONGFUL  
DEATH CASES (PER K.S.A. 60-1901 et seq.) WITH  
ACCOMPANYING PERSONAL INJURY ACTION ON BEHALF OF  
DECEASED (SURVIVORSHIP ACTION) PER K.S.A. 60-1801 et seq.  
(See also PIK § 9.01 et seq.)

I. Personal Injuries

a. Economic Damages (unlimited)

Medical care (past & future)  
Hospitalization (past & future)  
Loss of time or income (to date & future)  
Aggravation of pre-existing ailments

b. Non-Economic Damages (limited)

Pain & suffering  
Disabilities  
Disfigurement  
Mental anguish

c. Loss or Impairment of Services (Loss of  
Consortium)

II. Property Damages

Cost of repairs not to exceed value (difference  
in FMV) (unlimited)  
Loss of use (unlimited)

III. Wrongful Death

a. pecuniary losses (unlimited)

1. loss of service, attention, marital care,  
parental care, advice and protection
2. loss of education, physical, moral  
training and guidance
3. loss of earnings
4. expense for care of deceased prior to  
death and funeral expenses

b. non-pecuniary (limited)

1. survivor's mental anguish, bereavement,  
loss of society, loss of companionship

Smart  
3

# TOTAL FINANCIAL IMPACT OF H.B. 2143 ON KANSAS CIVIL JUSTICE SYSTEM

	3,828*	Total Tort cases
X	<u>25%**</u>	Wrongful death cases
	957	Total cases per year
X	<u>\$400,000</u>	Increased Award under HB 2143

**\$ 382,800,000**

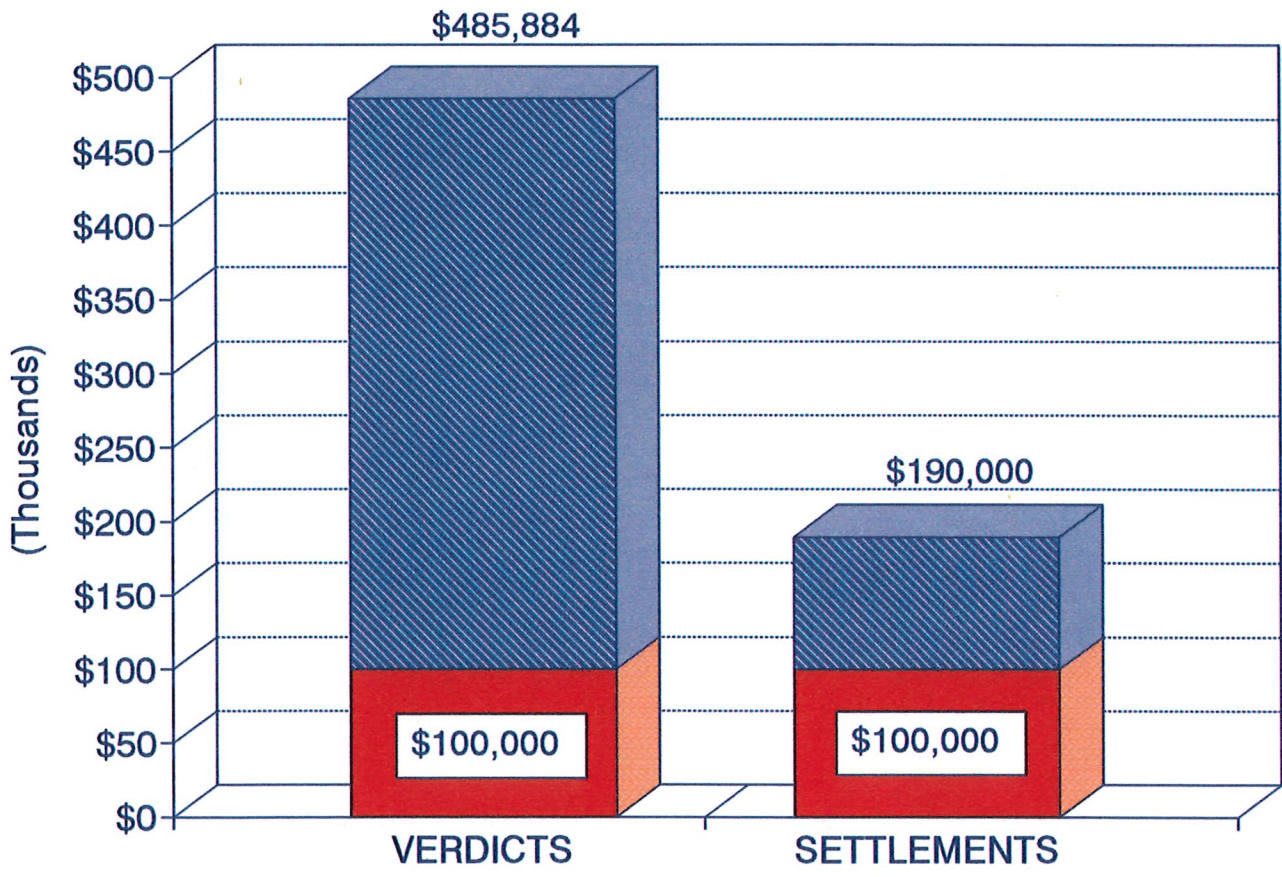
\* Source: Kansas Office of Judicial Administration

\*\* Source: Jury Verdict Research  
(21% settlements + 4% verdicts)

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Smoot  
Chart 1  
#4

# KANSAS VERDICT & SETTLEMENT MIDPOINTS

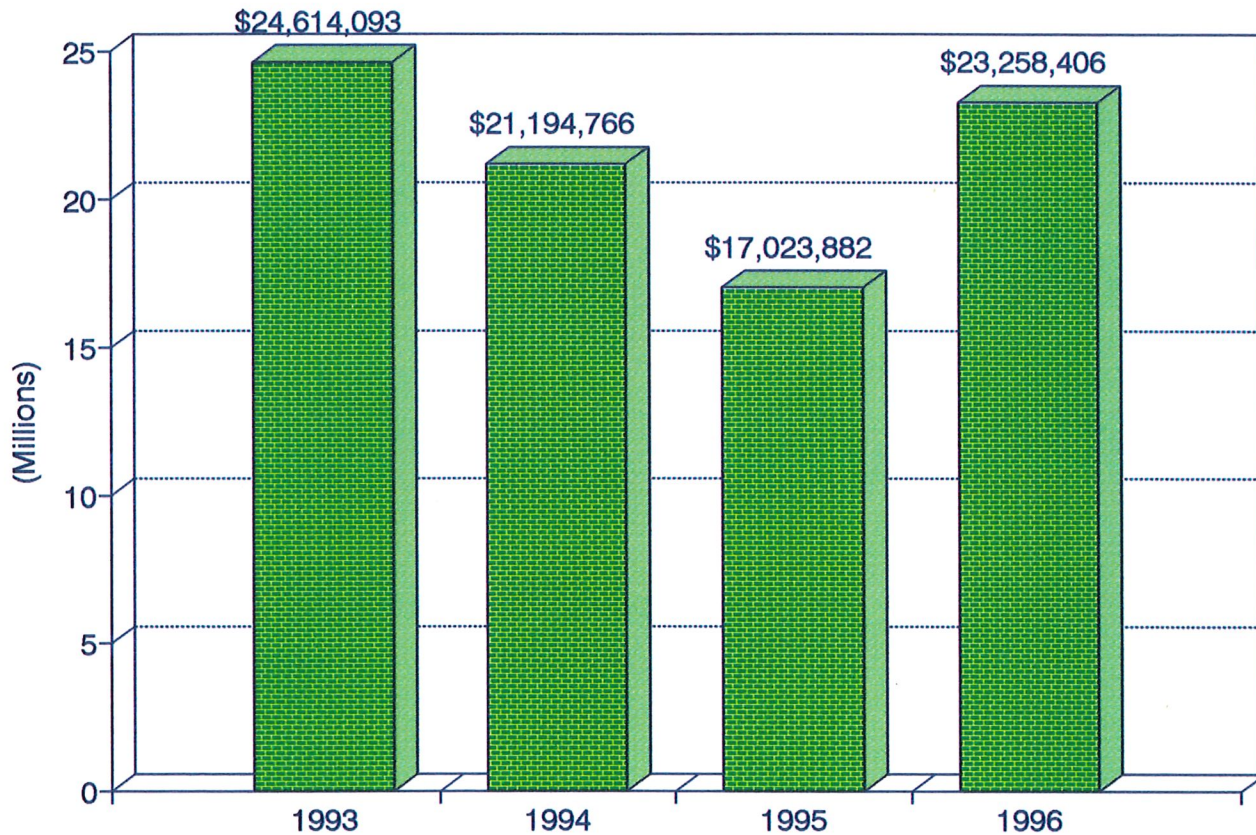


SOURCE: JURY VERDICT RESEARCH

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Smoot  
Chent 2  
#5

# KANSAS MEDICAL MALPRACTICE TOTAL SETTLEMENTS & VERDICTS

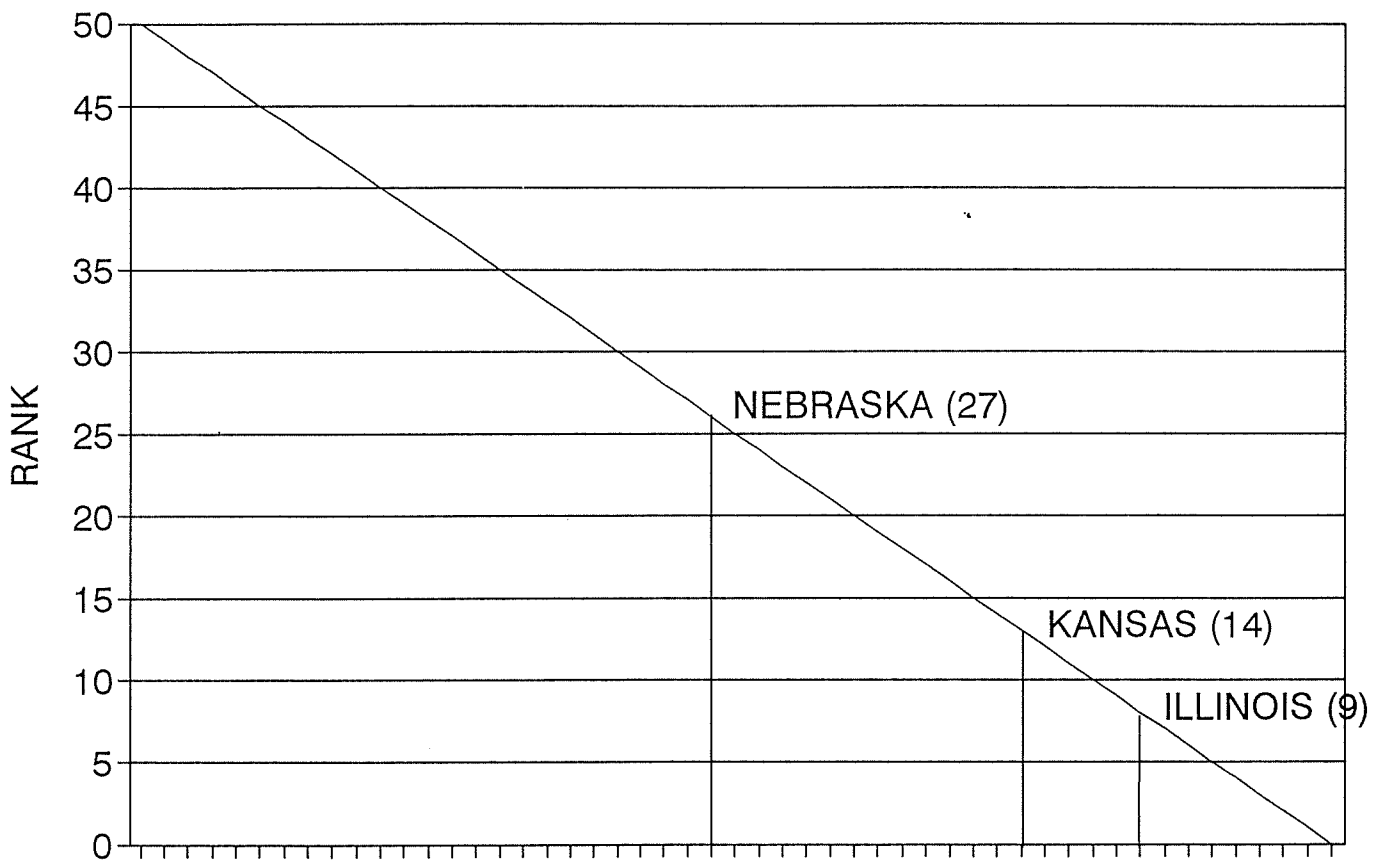


SOURCE: KANSAS HEALTH CARE STABILIZATION FUND

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Smart  
Chart 3  
#6

# MILLION DOLLAR COMPENSATORY VERDICTS



SOURCE: JURY VERDICT RESEARCH

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Attachment 6  
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#7  
David A. Hanson  
Kansas Association of Property  
and Casualty Insurance Companies  
Topeka, Kansas  
(913) 232-0545

TESTIMONY ON HB2143  
February 11, 1997

TO: House Judiciary Committee  
State Capitol  
Topeka, Kansas

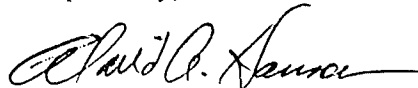
RE: House Bill No. 2143

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to appear before the Committee. I am David Hanson and am appearing on behalf of the Kansas Association of Property and Casualty Insurance Companies, whose members are domestic insurance companies in Kansas. We are very concerned that the proposed increase in nonpecuniary damages from \$100,000 to \$500,000 is unwarranted and will result not only in more litigation with the potential for substantially higher verdicts, but also increased costs to the insuring public in Kansas from higher premiums necessary to insure against the increase in potential liability. We must therefore oppose this proposal.

Thank you for your consideration.

Respectfully,



DAVID A. HANSON

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2/12/97



Attachment 8

**MEMORANDUM**

TO: The Honorable Tim Carmody, Chair  
House Judiciary Committee

FROM: William W. Sneed  
The State Farm Insurance Companies

DATE: February 11, 1997

RE: H.B. 2143

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Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for The State Farm Insurance Companies. We appreciate the opportunity to present our testimony in opposition to H.B. 2143. This legislation would raise the cap on nonpecuniary damages in a wrongful death action from \$100,000 to \$500,000.

State Farm rises in opposition to this bill because of the burden it would place on Kansas insurance consumers. For instance, Kansans who purchase automobile insurance to cover wrongful death and related claims up to the current cap amounts will be forced to purchase more insurance simply to ensure that they are covered to the maximum limits against nonpecuniary damages in a wrongful death claim. We estimate that the additional insurance necessary to provide coverage to the proposed maximum cap on wrongful death damages will cost insurance consumers 20% more per policy.

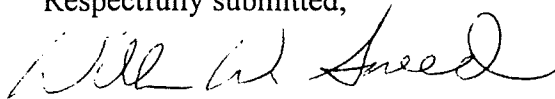
This is not to say that consumers will be forced to purchase insurance coverage up to the maximum limits to cover a wrongful death claim. However, the alternative to rising premiums is facing the potential exposure to such a claim with inadequate insurance to cover the award. Kansas insurance consumers are thus trapped in a "catch-22." They must either pay higher premiums to provide coverage for the increased cap, or face exposure to a \$500,000 award with policy limits far

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below that amount.

The provisions of this bill in no way impact the amount a claimant can recover for pecuniary loss--for instance, the cost of medical bills, etc. This bill would simply raise the recoverable amount on nonpecuniary damages in a wrongful death suit, with the effect of driving up insurance rates and/or exposing individuals to greater risk of loss at the hands of a wrongful death claim. We urge the committee to reject H.B. 2143.

Respectfully submitted,

A handwritten signature in cursive script that reads "William W. Sneed". The signature is written in black ink and is positioned below the typed name.

William W. Sneed

#9  
Dickinson



KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

February 11, 1997

TO: Members of the House Judiciary Committee  
FR: Kansas Trial Lawyers Association  
Terry Humphrey, Executive Director  
RE: Response to proposed amendments to HB 2143

KTLA is pleased that the Kansas Medical Society agrees the existing \$100,000 cap on non-economic damages in Kansas wrongful death cases is too low. However, we ask you to reject their amendments as proposed by Wayne Stratton during yesterday's hearing.

**Reasons to reject the amendments:**

1. Most states do not have a cap. Why should Kansas?
2. Raising the amount of the cap to \$200,000 and also shifting a whole host of damages under the cap which are not now capped, does not remedy the injustice.
3. Many surviving families would be entitled to less of a recovery for the death of a loved one under this change.
4. In many cases, these changes take away more than they are giving. How does that promote justice?

**The peanut of these amendments, then, is a change in the way damages are calculated which could work against survivors.**

**Please reject these amendments.**

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*Terry Humphrey, Executive Director*

#10

## **The Current Exclusion of Evidence of Remarriage in Wrongful Death Cases Protects and Preserves the Family**

**Allowing evidence of remarriage in wrongful death cases  
lets wrongdoers off the hook.**

Kansas has consistently followed the vast majority of other states which exclude the introduction of evidence of remarriage of the widow/widower in wrongful death actions. Evidence of remarriage will be used by wrongdoers as an excuse for avoiding full responsibility for the destruction of a family.

### **Reasons to reject this amendment:**

1. Admitting evidence of remarriage punishes families seeking to rebuild shattered lives. This is anti-family. A surviving parent should not be discouraged from remarrying so as to provide a new mother for a child of tender years, or a new father for a troubled teenager.
2. The "new" spouse may have no legal obligation to support the children of the deceased.
3. Evidence of remarriage could distract a jury and lead to reduced damages for the surviving children. For surviving children there can never be a "substitute parent" in love or in law.
4. Introduction of this evidence could needlessly extend the litigation.

Allowing evidence of remarriage is a mere distraction for the jury to avoid the real issues - determination of fault and fair compensation. A wrongful death lawsuit may take two to four years. Victimized families should not have to put their lives on hold while their case is tried.

**Protect and Preserve the Family**  
Kansas Trial Lawyers Association  
913-232-7756\*Fax 913-232-7730

House Judiciary  
Attachment 10  
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Dear Mr Carmody,

I'd like to make an input  
to your committee for bill No. 2143.

As I see it your 500,000 is low

My grandson was killed in an  
accident where a semi-trailer truck  
turned left at St 442<sup>nd</sup> from K-10  
a highway as busy as the Turnpike.

Raymond E. Cochran  
351 SE Fleetwood Dr.  
Bartlesville, OK 74006

918-335-0619

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House Judiciary  
Attachment 11

2/12/97

Kansas Family Research Institute  
2250 N. Rock Rd., Ste. 118-224  
Wichita, KS 67226  
316-634-2622

MEMO

To: House Judiciary Committee

From: David Payne

Date: February 13, 1997

Re: Response to suggested amendment by Mr. Bill Henry to HB 2143

I was informed late yesterday about a suggested amendment to HB 2143 that was submitted by Mr. Bill Henry of the Kansas Association of Defense Counsel. I responded briefly at the hearing yesterday but did not have time to prepare written testimony. The following is a summary of my remarks for your consideration.

Kansas Family Research Institute is opposed to the suggested amendment by Mr. Henry that would repeal the current "gag rule" regarding evidence of remarriage. This change, if adopted, would place attorneys in the awkward position of counseling their clients to remain single or cohabitate instead of marry in order to avoid jeopardizing their case. Any such policy that would inadvertently discourage marriage for those couples who would otherwise desire to be married is not in the best interests of the individuals involved or society in general.

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Attachment 12  
2/12/97

February 13, 1997

FROM: Fred and Linda Halvorsen  
TO: Tim Carmody and Members of the House Judiciary  
Committee  
IN REFERENCE TO: House Bill 2143 that raises the Wrongful Death  
Cap from \$100,000.00 TO \$500,000.00

Dear Chairman:

My wife and I lost our daughter, Jennifer, in a drunk driving incident. She was 14. I work for SRS Audits and my wife works for a doctor's office.

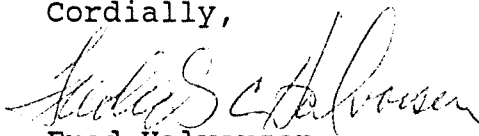
We felt strongly that we should hold the driver responsible. The case was tried in Shawnee County in 1996. The jury awarded \$225,000.00 for bereavement and loss of companionship, and \$5,000.00 for funeral expenses.

We did not make a predeath pain and suffering claim, as she died instantly. We could not claim punitive damages.

The \$100,000.00 wrongful death cap does not reflect our loss, nor the jury's value of our loss.

Please consider House Bill 2143, raising the caps could allow a family justice for their losses.

Cordially,

  
Fred Halvorsen

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14

**BRADSHAW  
JOHNSON  
&  
HUND**

ATTORNEYS AT LAW

150 CENTRE CITY PLAZA  
151 N. MAIN  
WICHITA, KANSAS 67202-1402  
FACSIMILE (316) 264-0789  
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CECILIA T. MARIANI  
JAMES R. HOWELL

ARDEN J. BRADSHAW  
JOHN W. JOHNSON  
EDWARD J. HUND  
\*ALSO ADMITTED IN MINNESOTA  
\*\*CERTIFIED CIVIL TRIAL ADVOCATE  
NATIONAL BOARD OF TRIAL ADVOCACY

February 12, 1997

Representative Timothy Carmody  
Chairman, House Judiciary Committee

In re: House Bill - 2143

Dear Chairman Carmody and Members of the Committee:

My name is John W. Johnson, and I am the attorney who represented Henry, MaryAnne, and Nathaniel Lippincott. I was present during the testimony yesterday and would like to address a couple of issues wherein I feel some confusion exists.

A wrongful death action was brought by Henry and MaryAnne for the death of their twin son Jonathan. Jonathan immediately lost consciousness upon impact and died in his mother's arms. The wrongful death action was brought pursuant to K.S.A. 60-1901, et seq. Since this was a wrongful death case, there were not any punitive damages. If Jonathan had been conscious and experienced pain and suffering prior to his death, a separate action could have been brought by the personal representative of his estate pursuant to K.S.A. 60-1801. As you will remember from the testimony, that is a survivorship action.

Survivorship actions can only be brought in conjunction with wrongful death actions if there is reliable evidence the decedent did in fact consciously suffer prior to his/her death. Any award made under a survivorship action is paid to the estate of the decedent and distributed pursuant to the decedent's will or in the absence of a will, pursuant to intestate succession.

House Judiciary  
Attachment 14  
2/12/97



Representative Timothy Carmody

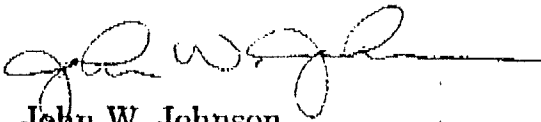
Page 2

February 12, 1997

In my practice as a personal injury attorney, I would estimate that less than 25 percent of my wrongful death cases involve an accompanying survivorship claim.

While it is true that if there is malicious or willful and wanton conduct a punitive damages claim may be made pursuant to a survivorship action, such claim for punitive damages cannot be made in a wrongful death action. By far, the great majority of wrongful death actions do not have an accompanying survivorship claim and therefore punitive damages are not allowed.

Respectfully submitted,



John W. Johnson  
of BRADSHAW, JOHNSON & HUND

mm

**KANSAS CIVIL LAW FORUM**  
**A Coalition of Professionals and Businesses**  
**Interested in the Kansas Court System**

Brad Smoot, Coordinator  
Mercantile Bank Building  
800 SW Jackson, Suite 808  
Topeka, Kansas 66612  
(913) 233-0016 FAX (913) 234-3687

February 14, 1997

The Honorable Tim Carmody  
Chairman House Judiciary Committee  
Capitol, Room 115-S  
Topeka, Kansas 66612

Re: 1997 HB 2143/Wrongful Death Cap Increase

Dear Chairman Carmody:

Pursuant to your invitation to submit additional testimony on the above-referenced matter, we are taking this opportunity to confirm, in writing, several comments made to the Judiciary Committee on Wednesday.

To begin with, we provided four charts (attached) in addition to my written testimony and were asked questions about each. The first chart is captioned "MILLION DOLLAR COMPENSATORY VERDICTS." The chart depicts the relative status of the various states as to the number of \$1 million dollar jury verdicts in the three years 1990-1993. The chart is awkward in that the states with the most verdicts are shown in the lower right hand corner. Illinois is shown and ranked as 9th while Kansas is 14th. The chart does not show the number of \$1 million verdicts for any particular state. The point, of course, is that Kansas, despite its small population, has far more than its fair share of large plaintiff's verdicts. This phenomenon suggests that our current tort and civil procedure laws do not bar adequate recoveries. With regard to this chart, you inquired whether the \$1 million award covered by this data included awards for property damages, contracts or civil rights cases. The answer is "no." The chart is based exclusively on compensatory damages in personal injury actions. See attached title and introduction pages of the Current Award Trends in Personal Injury, published by Jury Verdict Research Series.

The second chart is captioned "KANSAS VERDICT & SETTLEMENT MIDPOINTS." As I advised the Committee, midpoints are not averages but are rather the "median" dollar amount for both verdicts and awards in wrongful death cases. We consider this chart to be the most critical

House Judiciary  
Attachment 15  
2/12/97

because it clearly demonstrates that plaintiffs are recovering well in excess of the \$100,000 cap on wrongful death claims. As you know, proponents of HB 2143 did not advise the Committee that the capped awards for non pecuniary damages are only a small portion of the damages that are normally claimed, awarded and paid.

The third chart, captioned "KANSAS MEDICAL MALPRACTICE TOTAL SETTLEMENTS & VERDICTS," was derived from recently published Statistical Claims Report of the Kansas Health Care Stabilization Fund. The dollar amount reflected in the chart includes HCSF contributions as well as payments by other levels of insurance coverage. We made the point in response to questions that medical malpractice cases represent a small portion of the total tort claims and litigation in Kansas but still produce large liability exposure.

The fourth chart is entitled "TOTAL FINANCIAL IMPACT OF H.B. 2143 ON KANSAS CIVIL JUSTICE SYSTEM." When I introduced this chart I informed the committee that I was uncomfortable with the chart because the number of cases (3,828) and the wrongful death cases as a percentage of all Kansas torts (25%) were derived from two different documents, both cited at the bottom of the page. I indicated a fear that the calculation may be comparing "apples and oranges," and that I doubted whether there are really that many wrongful death cases resolved in Kansas each year. I then noted that the difficulty in locating reliable statistics on short notice only reaffirmed the need for independent research and a studious approach to the issues surrounding the wrongful death cap.

At this point, I also argued that the burden for proving the statistics and costs associated with HB 2143 should be shouldered by the bill's advocates and not its opponents, citing two state statutes which require economic impact statements to accompany certain proposed changes in laws and administrative rules and regulations. Finally, I noted that the point of the chart was not whether we had one thousand wrongful death cases or one hundred, since we can all do the math when an accurate total is located and agreed to. The point is that raising the cap adds to the size of each wrongful death claim since it is inconceivable that any plaintiff would pray for less than the maximum in non-pecuniary damages. Larger claims will then drive increases in settlements and awards. I also advised that nothing in this chart addresses the issue of whether the plaintiff can collect from the defendant, whether the defendant has adequate insurance or whether the parties might settle for less than the maximum in non-pecuniary damages.

Our overnight effort to generate information on the number of wrongful death cases and costs associated with the proposed 500% increase in the non pecuniary cap represents our best efforts to respond to committee questions that were not answered by the bill's proponents. In my opinion, an issue of this magnitude deserves more than 24 hours worth of study. Furthermore, balancing of the interests of the individual plaintiff and those of society can only be done when the intricacies of the law are thoroughly described and the fiscal impact is accurately disclosed. I do not believe the House Judiciary Committee has had the benefit of either at this stage in the process.

Thank you for the opportunity to express our opposition to this measure. You and your Committee have shown the KCLF every courtesy and afforded us equal time with the bill's proponents. I also appreciate the opportunity to reduce my oral comments to writing for the Committee's records. The KCLF and its members remain interested in a thorough review of the wrongful death law, its caps and evidentiary aspects, and remain willing to seek reasonable alternatives to harsh results which occur in those few cases. Of course, we are equally committed to controlling litigation costs, which negatively impact business and medicine while raising insurance costs and increasing the ranks of the uninsured and underinsured.

If we can be of assistance to your or your Committee in this or any other matter, please do not hesitate to contact me.

Sincerely,

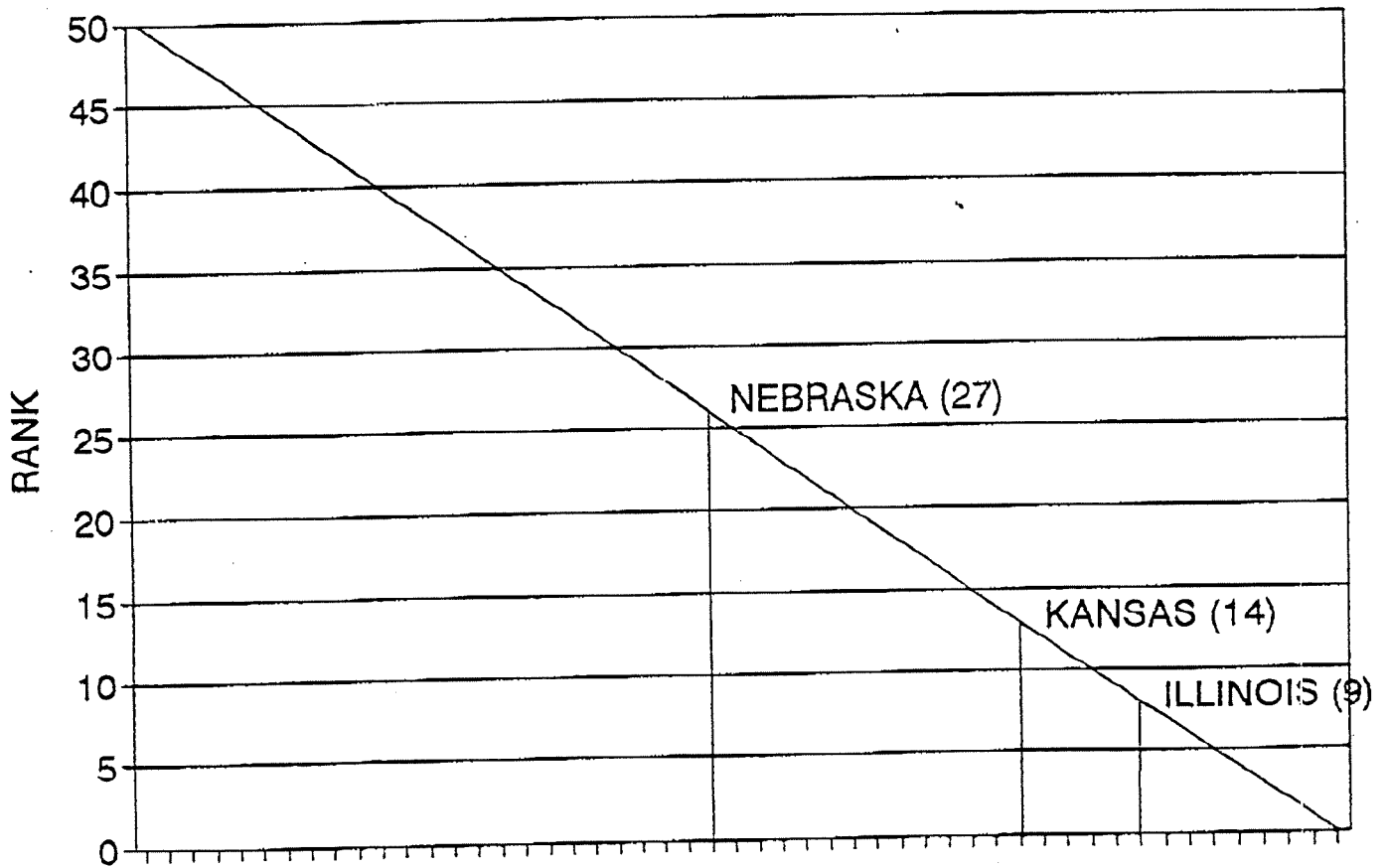


Brad Smoot  
Coordinator  
Kansas Civil Law Forum

Attachments

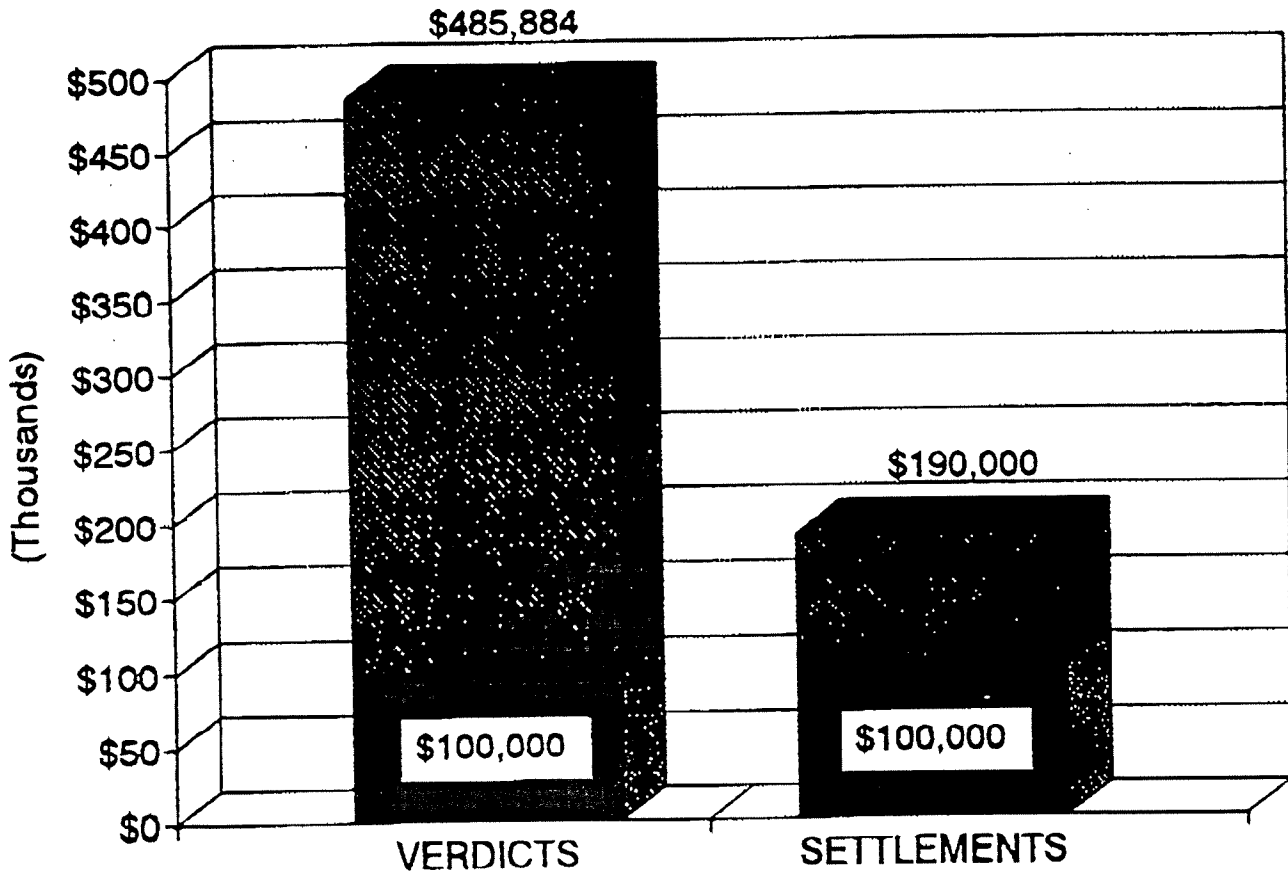
cc: Terry Humphrey  
Kansas Trial Lawyers Association

# MILLION DOLLAR COMPENSATORY VERDICTS



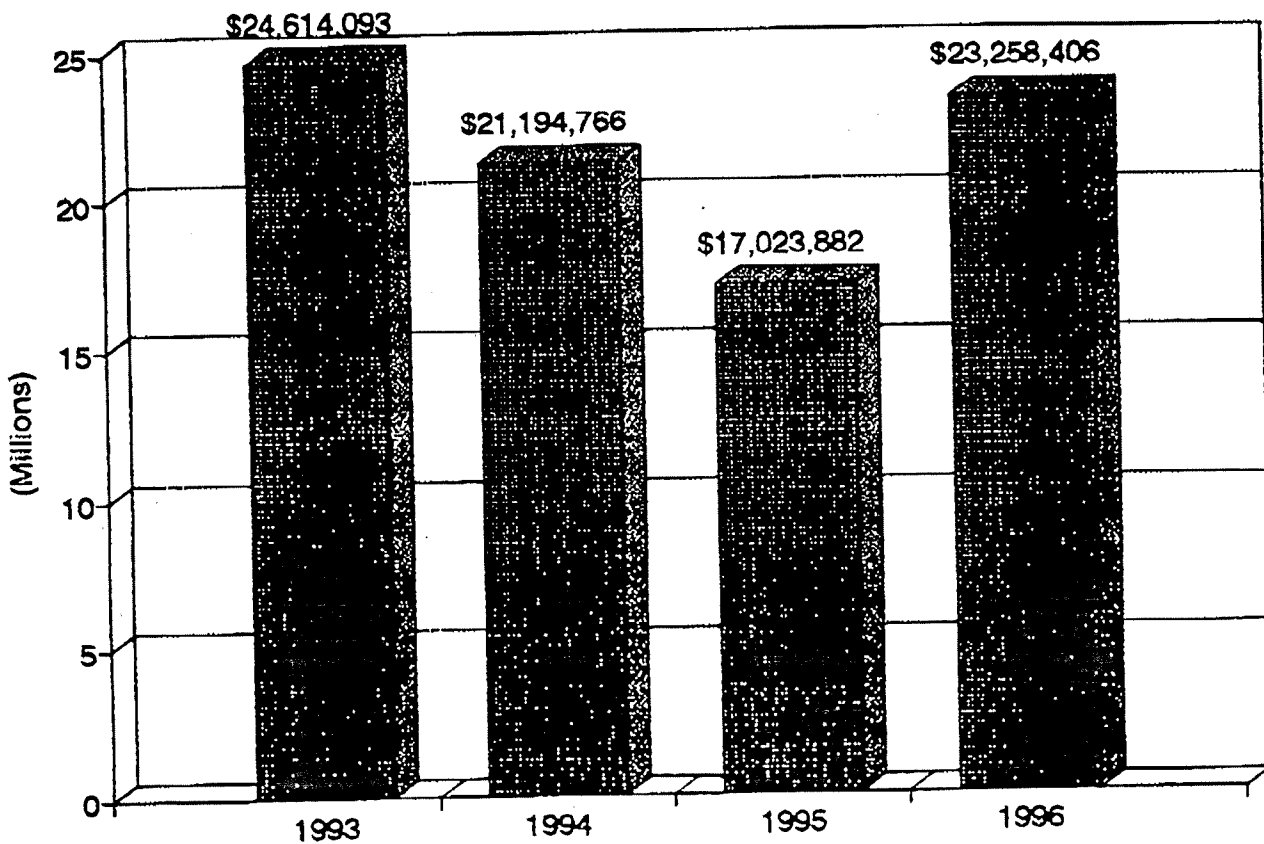
SOURCE: JURY VERDICT RESEARCH

# KANSAS VERDICT & SETTLEMENT MIDPOINTS



SOURCE: JURY VERDICT RESEARCH

# KANSAS MEDICAL MALPRACTICE TOTAL SETTLEMENTS & VERDICTS



SOURCE: KANSAS HEALTH CARE STABILIZATION FUND

# TOTAL FINANCIAL IMPACT OF H.B. 2143 ON KANSAS CIVIL JUSTICE SYSTEM

	3,828*	Total Tort cases
X	<u>25%**</u>	Wrongful death cases
	957	Total cases per year
X	<u>\$400,000</u>	Increased Award under HB 2143

**\$ 382,800,000**

\* Source: Kansas Office of Judicial Administration

\*\* Source: Jury Verdict Research  
(21% settlements + 4% verdicts)



**JURY  
VERDICT  
RESEARCH  
SERIES** | **CURRENT  
AWARD TRENDS  
IN PERSONAL INJURY**

**1994 Edition**

**FILING INSTRUCTIONS:**

**File:** This release, No. 1.20.0, should be filed in Volume 1 of the Personal Injury Valuation Handbooks behind the "CURRENT AWARD TRENDS" tab.

**Discard:** The "Current Award Trends, 1993 Edition" study, release No. 1.09.7, should be removed from Volume 1 at this time.

**JURY VERDICT RESEARCH SERIES**



No. 1.20.0

# 1994 CURRENT AWARD TRENDS

## Introduction

The purpose of the *1994 Current Award Trends* is to statistically summarize jury verdicts rendered for personal injury claims for the last several years so as to identify emerging trends. This report includes a breakdown of awards by type of liability and type of defendant; provides verdict values for five commonly claimed injuries; details the number of million-dollar awards reported to our database for each state and for several specific liabilities and injuries; and analyzes trends in medical malpractice, products liability, business negligence, government negligence, and vehicular accidents. This study also provides an analysis of plaintiff recovery probabilities for vehicular, nonvehicular, medical malpractice, products, and premises liabilities and tracks the history of plaintiff recovery probabilities for the last several years.

**Data . . .** LRP Publication maintains a nationwide database of plaintiff and defense verdicts and settlements rendered for personal injury claims. The database is reported, verified, tabulated, and analyzed to determine values, trends, and deviations in personal injury verdicts for this publication and other LRP personal injury publications, which include the *Personal Injury Valuation Handbooks*, *State Verdict Surveys*, and *Personal Injury Verdict Reviews*.

Although LRP does not receive 100 percent of the personal injury verdicts rendered nationwide, LRP does believe that it receives a sufficient sample of data to produce descriptive statistics for specific areas of personal injury litigation. The sample which has been collected is impartial, with an equal emphasis on the collection of plaintiff and defense verdicts with no intentional bias toward extreme awards or geographic regions.

LRP is supplied with abstracts of personal injury verdicts on a continuing basis from every state in the nation. Reports are furnished by court clerks, plaintiff and defense attorneys, law clerks, legal reporters, media sources, and law students.

Each case that is entered into the database is forwarded to all known interested parties to provide missing or incomplete information and to verify the accuracy of the case description.

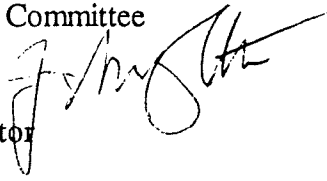
Only original, compensatory jury verdicts rendered to individual plaintiffs for claims of physical, mental, or emotional injury or trauma are included in the analyses of this publication. Awards for punitive damages, property loss, special damages, additurs, remittiturs, and interest were excluded from the verdicts used in this analysis, unless otherwise noted.



KANSAS MEDICAL SOCIETY

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February 17, 1997

To: House Judiciary Committee  
From: Jerry Slaughter   
Executive Director  
Subj: House Bill 2143 - Wrongful Death Claims

The Kansas Medical Society would like to again voice its strong opposition to HB 2143 as currently drafted. The bill would result in a five-fold increase in the amounts that could be claimed for non-pecuniary damages in a wrongful death claim.

KMS will not oppose this bill if the amendments presented by our General Counsel, Wayne Stratton, are included. Our proposed amendments would double the limitation on wrongful death, from \$100,000 to \$200,000, which is a significant increase. Additionally, they would define "non-pecuniary damages" to reflect the original intent of the Legislature. As Mr. Stratton explained, originally recoveries for things like mental anguish, loss of companionship, loss of attention and loss of parental care, guidance and education were classified as non-pecuniary damages. Pecuniary damages, on the other hand, reflected the economic losses that could be accurately calculated in monetary terms. Broad interpretations by the courts and resourceful trial lawyers have altered this original intent by classifying the losses listed above as pecuniary, so recovery is now unlimited for these types of loss. Our amendment would codify the original intent of the Legislature by defining these as non-pecuniary damages.

Increasing the cap on wrongful death damages by 500% will result in increased settlements and verdicts in medical malpractice cases. Premiums will increase for insureds, in our case physicians who are required by law to carry professional liability insurance. Ultimately, these increased liability costs are reflected in higher health care costs for patients.

Thank you for allowing us to comment on this very important issue. We urge you to adopt the balloon attached or hold the bill for further study about the impact this legislation will have on claim settlement costs. Please contact either Meg Henson or myself if you have any questions.

House Judiciary  
Attachment 16  
2/12/97

# HOUSE BILL No. 2143

By Representatives Swenson, Flaherty, 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.

16-2



# 17

**Kathleen Sebelius**  
Commissioner of Insurance  
**Kansas Insurance Department**

The Honorable Dale Swenson  
State Representative  
Kansas State Capitol - Room 431 N  
Topeka, KS 66612

February 10, 1997

Dear Representative Swenson:

I am writing in response to your question about how automobile insurance rates are approved in Kansas. Automobile rates are subject to "prior approval" by the Insurance Department and companies may not use a rate until it is reviewed and authorized by the Commissioner. Insurance carriers are required to submit information to the Department, including past claims data, to justify any changes in the rates. The Insurance Department can approve rate changes. However, this statute directs that the rates "shall not be excessive, inadequate or unfairly discriminatory."(K.S.A. 40-927).

The law provides that any rate increases or decreases must be evidenced by historical loss data. In order to evaluate rate change requests, the Insurance Department looks primarily at what claims the companies have incurred in Kansas and not at speculation about future potential risks.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Sebelius".

KATHLEEN SEBELIUS  
Commissioner of Insurance

420 SW 9th Street  
Topeka, Kansas 66612-1678  
ksebelius@ins.wpo.state.ks.us

913 296-3071  
Fax 913 296-2283

House Judiciary  
Attachment 17  
2/12/97

**Consumer Assistance Hotline**  
1 800 432-2484 (Toll Free)  
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