



Oct. 29, 2019

Chairman Olson and members of the 2019 Special Committee on Financial Institutions and Insurance, thank you for the opportunity to provide comments. Kansas Advocates for Better Care (KABC) is a not-for-profit organization, beholden to no commercial interests and is supported almost entirely by donations from citizens who support our mission of improving the quality of care in all long-term settings. KABC was among a handful of non-profit consumer advocacy groups which worked to win passage of the Nursing Home Reform Act of 1987.

The charge to the 2019 Special Committee on Financial Institutions and Insurance is to: “**consider the implications of the recent *Hilburn decision on healthcare costs on Kansas.***” Today, this committee considers the recent Supreme Court decision to *Hilburn v. Enerpipe Ltd.*, No. 112,765 and a possible legislative response during the upcoming 2020 session.

KABC steadfastly opposes caps on noneconomic damages. Most recently, KABC was among seven amicus curiae in support of plaintiffs in the medical malpractice case of *Miller v. Johnson* No. 99,818. In that brief, we joined other consumer advocates in opposing caps on noneconomic damages because they discriminate against older adults, women, children, racial and ethnic minorities and the poor.

The right of an injured party to sue for negligent actions is supposed to be a deterrent to bad behavior and/or practices; capping damages protects the wrongdoer. Damages, especially noneconomic damages, are a form of sanction visited upon the person or entity whose behavior harms people. Capping noneconomic damages does the opposite; it protects negligent entities for noneconomic damages above \$325,000, rewarding those who cut corners and skimp on safety. Large, powerful entities can absorb capped – and therefore reduced – damages as ‘the cost of doing business.’

Caps on noneconomic damages unfairly and disproportionately burden older adults. Injured individuals over the age of 65 whose working days are generally behind them, have far lower recoveries for lost income. Given their shorter life expectancy, older victims often suffer debilitating pain and reduced quality of life, with no opportunity to receive adequate recovery for their injuries. Compensation for an older individual is thus significantly lower because of the cap, proportionate to the same injuries to a wage earner.

The *Hilburn* decision restores the right of juries to determine and award appropriate damages. It restores to plaintiffs the right to a judgment determined by a jury of their peers and supported by the evidence. It enables juries in appropriate cases to evaluate on a case-by-case basis and impose compensation in instances where severe, life-altering and avoidable injuries result.

Thank you for the opportunity to provide comments. We strongly recommend that the legislature **not** consider any legislation that is intended to dilute the *Hilburn* decision or eliminate the right of any Kansas citizen’s right to his or her trial by jury.