

# KANSAS TRIAL LAWYERS ASSOCIATION



To: Special Committee on the Judiciary  
Senator Eric Rucker, Chairman  
Representative Fred Patton, Vice Chairman

From: David R. Morantz, Shamberg Johnson and Bergman, Chartered, Kansas City  
On behalf of Kansas Trial Lawyers Association

Date: October 2, 2019

Re: *Hilburn v Enerpipe Ltd.* (112,765) (2019)

My name is David R. Morantz and I am with Shamberg Johnson and Bergman Chartered, Kansas City. I am President of the Kansas Trial Lawyers Association and I am testifying on behalf of KTLA.

It has been KTLA's long-held position and experience that non-economic damage caps interfere with a citizen's constitutional and inviolate right to trial by jury. KTLA believes in the jury system and we trust Kansas jurors.

Juries are composed of ordinary Kansans from all walks of life who have no personal interest in the outcome of a case. Juries are in the best position to resolve disputes fairly because they represent the local community. Our fellow Kansans are more than qualified to sit on a jury, hear the evidence, and assess fair and reasonable damages. Indeed, Kansas juries have been empowered to render a verdict when a criminal defendant is accused of capital murder and may face a death sentence.

KTLA members represented clients before the enactment of the non-economic damage cap in 1988. We have fought in the courts and the Legislature for elimination of the cap since its enactment because we've witnessed the unavoidable inequities damage caps cause. Damage caps protect wrongdoers—who are often from outside of Kansas—from the full weight of the jury's verdict. Caps disproportionately harm women employed at home, the elderly, children and infants, minorities, and low-income Kansans.

*Hilburn* restores individual accountability and stops wrongdoers from evading and shifting their responsibilities. We are pleased that in *Hilburn v Enerpipe Ltd.* the Kansas Supreme Court clearly and unambiguously ruled that noneconomic damage caps are unconstitutional in all personal injury actions, and that KSA 60-19a02 is null and void.

The *Hilburn* decision is a victory for all citizens of Kansas because it restores the inviolate constitutional right to trial by jury. Thankfully, most of us will never experience the misfortune of circumstances in which we, or loved ones, sustain non-economic injuries due to the dangerous and unsafe actions of another. But for Kansans who experience such life-changing injuries, *Hilburn* is much more personal. It

represents the end of an arbitrary and oppressive government intervention where lawmakers more than 30 years ago sought to substitute their judgment for that of Kansas citizen jurors.

KTLA believes no legislative action is needed in response to *Hilburn*. Any legislative action that affects the right to trial by jury is dangerous and likely unconstitutional based on the reasoning in *Hilburn*. The most important consideration for policymakers should be protection of individual rights of Kansas citizens, whether it is the right to trial by jury or other rights found in the Kansas Bill of Rights or the Bill of Rights of the US Constitution.

On behalf of the members of the Kansas Trial Lawyers Association, I respectfully request that the Committee protect all citizens' inviolate right to trial by jury.