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MARYLAND EMPLOYERS FOR CIVIL JUSTICE REFORM COALITION

OPPOSES SB 538

Civil Actions – Noneconomic Damages – Personal Injury or Wrongful Death

Maryland Employers for Civil Justice Reform Coalition, comprised of many of the largest employers, businesses, and health care providers in Maryland, opposes SB 538. The bill calls for the repeal of Maryland’s noneconomic damages caps, an inappropriate and unfounded public policy.

Caps on noneconomic damages addressed in the Bill have been an important public policy in Maryland for more than 37 years. Back in 1986, after careful study the General Assembly concluded there was a severe insurance problem in the State, following the issuance of a 1985 report from the Governor’s Task Force to Study Liability Insurance that concluded:

The current availability and affordability crisis in certain lines of insurance . . . is not a manufactured crisis, as some have charged. . . . The civil justice system can no longer afford unlimited awards for pain and suffering.

The ceiling on noneconomic damages will help contain awards within realistic limits, reduce the exposure of defendants to unlimited damages for pain and suffering, and lead to more accurate [insurance] rates because of the greater predictability of the size of the judgments. The limitation is designed to lend greater stability to the insurance market. . . .

A cap on allowable pain and suffering awards will help reduce the incidence of unrealistically high liability awards, yet at the same time protect the right of the injured party to recover the full amount of economic loss, including all lost wages and medical expenses.¹

On the strength of these study findings, the General Assembly crafted the 1986 legislative solution, noting in a Committee Report that the legislative purpose was “assuring the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injury.”

In light of this well studied foundation for the current caps on noneconomic damages, why ever would the General Assembly want to risk inviting back the insurance crisis of 1986 by removing these caps? Perhaps this foundation is why more than a dozen legislative proposals identical or similar to SB 538 have failed each and every time in Annapolis since first introduced back in the early 2000s.

¹ *Franklin v. Mazda Motor Corp.*, 704 F. Supp. 1325, 1328 (D. Md. 1989) (quoting the Report of the Governor’s Task Force to Study Liability Insurance, issued Dec. 20, 1985). This issue was also studied in 1985 by the Joint Executive/Legislative Task Force on Medical Insurance, resulting in a similar recommendation for statutory limits or caps.



A further reason favoring the preservation of caps on noneconomic damages is that these damages, for pain and suffering and other nonpecuniary injuries, are difficult to quantify. Quite simply, these damages involve no direct economic loss and have no precise monetary value. Given the emotional sensitivities and differing perspectives surrounding these injuries, courts and juries often struggle to calculate fair and rational awards. Caps are the correct and best public policy to balance the need for recovery for these injuries with the avoidance of unrealistically high and excessive awards. For this reason, more than half the states have caps currently in effect on noneconomic damages.

In addition, the current caps are reasonable. The caps were originally set at \$350,000 when first implemented in 1986, and then in 1994 they were raised to \$500,000 and tied to an annual escalator of \$15,000 to adjust for inflation. Today, these inflation-adjusted caps in personal injury actions have risen to \$935,000 for the injured party.

Moreover, in wrongful death cases, pain and suffering can be recovered on behalf of the person who died as a result of the negligent conduct. In addition, two or more beneficiaries, such as immediate family members, can also recover noneconomic damages in wrongful death cases under current law. Accordingly, in actions where a person is alleged to have died as a result of negligence, the total availability of noneconomic damages is up to \$2.337 million (\$935,000 for the decedent, plus \$1,402,500 for the immediate family). Significantly, as the 1985 Governor's Task Force aptly noted, noneconomic damages are not a sole remedy, as damages for the full and unlimited amount of *economic* losses are also available to plaintiffs in these actions.

Finally, the Coalition notes that the validity of the current caps has been reviewed on three separate occasions by the Court of Appeals (now Supreme Court) of Maryland. In every instance, the noneconomic damage caps have been upheld by the high court.² Allegations that caps on noneconomic damages are unconstitutional are unfounded and inconsistent with established case law.

For all these reasons, the Coalition respectfully urges an unfavorable report on SB 538.

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² *DRD Pool Service v. Freed*, 416 Md. 46, 62 (2010); *Oaks v. Connors*, 339 Md. 24, 37 (1995); *Murphy v. Edmonds*, 325 Md. 342, 366 (1992). *See also, Martinez v. Hopkins*, 212 Md. App. 634, 656 (2013) (constitutionality of the caps was challenged but not struck down, finding that the constitutionality of the caps was moot).