

HB0083 testimony.pdf

Uploaded by: Aaron Van Rens

Position: FAV

Civil Actions – Noneconomic Damages – Personal

Injury and Wrongful Death

FAV

My name is Aaron Van Rens, and I was the driver of the car involved in a serious accident on Interstate 70 between Hagerstown and Frederick. On October 13th of 2023, while returning home from college for mid-term break, I was struck by a tractor-trailer and forced off the road and through the median near Myersville and into oncoming traffic. As a result of multiple rollovers and impact with an oncoming vehicle, I received extremely serious injuries and was transported to the trauma center at Meritus Medical Hospital in Hagerstown. Once I was stabilized and moved from ICU, I underwent orthopedic surgery to reconstruct my right shoulder, and spent weeks with my left arm immobilized and with my right leg in a brace for a broken knee.

The injuries I suffered as a result of the negligence of another driver have left me facing a lifetime of chronic pain and impairment. Some of the difficulties I face are obvious; for instance, most athletic pursuits are no longer an option. I used to be an avid figure skater, but the possibility of aggravating existing injuries means that is no longer something I can do. Even sleeping has become extremely difficult, because the nature of my shoulder injuries are such that without specific support for my shoulders, they dislocate and cause excruciating pain. Walking just barely too quickly or stepping too hard can cause intense pain in my right knee, limiting my mobility in frustrating ways.

There are other kinds of impairment and indignity that no one considers until it happens to them. It's impossible to shower without covering the surgical scar on my right shoulder because the nerve damage makes both touch and variations of temperature shockingly uncomfortable. Any clothing more structured than athletic wear now has to be re-tailored because my left shoulder is shorter and at a higher angle than it's supposed to be. I can no longer wear a backpack, because my shoulders cannot bear anything above a half a pound. This means I need to use a roller bag to get my laptop and books around campus at college. I can no longer wear heavy winter coats, as they are heavy enough that the weight of them on my injured shoulders causes pain. So many things that I used to do without much thought now require careful planning, or else I can put too much strain on an injury and find myself unable to perform basic daily tasks.

There are things that will affect the rest of my life in significant, fundamental ways. Because I can't wear a heavy coat, I can't live anywhere with long, cold winters or travel to such a place. I cannot pursue any jobs that require me to stand for long periods of time or to lift heavy things or anything in quick succession. Long distance driving is not possible except in the direst of emergencies; it causes a lot of discomfort in my knee and improper support for my shoulders can lead to severe pain and loss of capacity throughout the rest of the day

That is why I am testifying remotely; I go to college in Winchester, VA and driving to and from Annapolis would have meant spending the rest of the week recovering, impacting my classes and academic work.

There is no way to “fix” injuries of the kind that I have suffered. Even the best care leaves scars, loss of function, and a lifetime of chronic pain. Our legal system makes remedy for that by way of awarding victims fair monetary compensation instead. That compensation is supposed to take into account the pain, impairment, and loss of dignity and enjoyment that accident victims will suffer over a lifetime. While it’s difficult to quantify these things, our system has determined that a jury should make the final determination when the parties involved cannot reach an agreeable settlement. It’s unfair for the state to override the will of that jury in considering the value of that compensation. It’s even more unfair when considering that, if an accident occurs over a state border, no such artificial limitation applies.

I ask you to vote “favorable” on HB0083 and help ensure future accident victims more fair and just compensation.

G&B HB83 Support.pdf

Uploaded by: Andrew Bederman

Position: FAV



GREENBERG & BEDERMAN LLC

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(301) 589-2200 | GBLAWYERS.COM

February 5, 2024

Legislative Services Building
90 State Circle
Annapolis, MD 21401

Dear Sir or Madam:

Attached please find attached please find my statement and support of house bill 83.

Thanking you for your prompt attention to this request, we remain,

Yours very truly,


Andrew E. Bederman
GREENBERG & BEDERMAN
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Silver Spring, MD 20910
301 589 2200

Andrew E. Bederman (MD, DC) | Jason W. Fernandez (MD, DC, VA)
Adrienne R. Fernandez (MD) | Eugene Khudoley (MD) | Simba D. T. Hodari (MD, DC, VA)
Ryan J. Frazier (MD, DC) | Christopher Salsman (MD, DC, KY) | Joseph C. Garland (MD, DC)
Gabriela Rubio Gonzalez (MD, DC, PR) | Howlett Jackson, Jr. (MD) | Michael A. Jones (MD, DC)

• Roger E. Greenberg (1943-2013) •

Of Counsel:

Hodari Fernandez, LLC • David S. Bederman

One day about two years ago, at the Friendly Garden Apartments on the 2400 block of Lyttonsville Road in Silver Spring, a maintenance worker was doing plumbing work in the basement. While cutting pipe, the worker negligently severed a gas line, which allowed dangerous and explosive gas to leak out, filling the basement. On the morning of March 3, 2022, that leaking gas exploded.¹

On that day, Jane Doe,² a 60-year-old grandmother, was sitting in her daughter's unit at Friendly Garden Apartments, waiting for her daughter and grandchildren to return. When the gas ignited, the apartment building was destroyed, with Doe still inside her daughter's apartment.

Unconscious but fortunate to survive, Doe was pulled from the smoldering rubble and taken by ambulance to the Burn Unit at Washington Hospital Center. When she woke up, she learned that second and third-degree burns covered her body, including her scalp, face, eyelids, wrists, hands, neck, arms, shoulders, and legs. She needed to breathe through a tube because the searing heat from the explosion had burned her airway, making it hard to breathe on her own.

Over two months in the hospital, Doe endured more than a dozen surgeries, including skin grafts to her arms, legs, shoulders and face. Her eyes and eyelids were so damaged by the fire that her eyesight was impaired and she could not close her eyes to sleep. She had muscle contractures in her hands, limiting her strength and range of motion. On April 15, 2022, a finger on her left hand was amputated because it could not be saved.

Doe was discharged on May 26, 2022, but her nightmarish ordeal has not ended. She spent most of the past twenty (20) months going in and out of hospitals for multiple scar revision procedures, occupational and physical therapy sessions, and treatments for ocular, pulmonary, and cardiovascular injuries that she suffered due to the gas explosion.

Doe has more than \$3 million in medical expenses to date, and her future medical, surgical, rehabilitation, and life care needs will cost much more. Any compensation she might obtain in a lawsuit for medical expenses, however, will go to reimburse her health insurer and to pay doctors and hospitals for the future care that she needs, for the remainder of her life expectancy.

Doe's life as she knew it was changed irrevocably on March 3, 2022. Although the Friendly Garden Apartments have ample insurance coverage, Maryland law arbitrarily and unfairly limits what Doe can recover as compensation for her persistent and ongoing pain, anguish, disfigurement, and loss of enjoyment of the life she once had – the life that she would still be living, but for the unreasonably unsafe conduct of a poorly-trained maintenance worker.

If the incident had happened just 2.0 miles away in Washington DC, the law would not limit Doe's compensation unfairly. Maryland law should not limit fair and just compensation for injured Marylanders. **Please enact HB83 and repeal § 11-108.**

¹ Washington Post, "Silver Spring apartment explosion sends 10 to the hospital, leaves others missing" (Mar. 3, 2022) available at <https://www.washingtonpost.com/dc-md-va/2022/03/03/laytonsville-fire-apartment-collapse/>.

² My client is still recovering from the severe injuries she suffered in this incident and she does not wish for her name to be made public at this time.



















ENH Testimony HB 83.pdf

Uploaded by: Elisha Hawk

Position: FAV

HB 83 – Civil Actions – Noneconomic Damages
Personal Injury and Wrongful Death
The Disparate Impact on Women, Children & the Elderly

Md. Cts. & Jud. Procs. Code § 11-108 limits the recovery of “noneconomic damages” (*i.e.*, every kind of loss other than wages/earnings or medical expenses) when unreasonably unsafe conduct causes personal injury or wrongful death.¹ However, the cap has a disparate impact on women, children, and the elderly.

Women often suffer injuries that cannot be fully compensated because of the cap. For example, in a Maryland case, a 25-year-old woman was kidnapped from her building’s lobby by a felon who got a set of keys from the landlord, despite assurances to tenants that only carefully screened tenants could access common areas. Beaten and sexually assaulted, the young woman’s traumatic experience did not stop her from working, so she had no significant wage loss. The jury’s verdict was entirely non-economic, and was reduced to less than half by § 11-108.² Thus because she was able to return to work, she was subject to a capped recovery which necessarily devalued her injuries.

This is but one example. Decades of legal scholarship has shown that cap statutes like § 11-108 disproportionately limit the recoveries of women injured by negligence, due in part to disparities in wage-earning power, and also because the impact of harms more commonly experienced by women, such as sexual violence and reproductive impairment (such as pregnancy loss or infertility), commonly are compensated as non-economic loss damages: grief and emotional distress, altered sense of self, impaired relationships, *etc.*³

Children and the elderly are also unfairly impacted by § 11-108. For example jury verdicts where unreasonably unsafe conduct injures or kills very young or very old Marylanders do not fairly compensate the injured where there are very low lost wages/earning component. Noneconomic damages are unfairly devalued despite jurors’ intent.

¹ HB 83 would repeal this “general” noneconomic damages cap. HB 83 has no effect on caps applicable to health care providers, local or State government, boards of education, or the cap enacted last year pertaining to claims of sexual assault against a child.

² Solder v. Queen-Anne Belvedere Assocs., Ltd., Case No. 24-L-90002826 (Cir. Ct. Baltimore County, Md. Jul 23, 1993).

³ *See, e.g.*, Finley, “The Hidden Victims of Tort Reform: Women, Children, and the Elderly,” 53 Emory L.J. 1263, 1265 (2004) (“caps on noneconomic damages . . . have a significant adverse impact on women and the elderly”).

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Enacted in 1986 as the first such “cap” statute in the nation, § 11-108 has limited the rights of all Maryland residents to obtain full and fair compensation in our own State Courts for close to four decades. Women, children and the elderly have felt a disproportionate impact from this.

Meanwhile, *none* of Maryland’s neighbors has enacted a similar cap on non-economic damages; indeed, Maryland is the only place on the U.S. Eastern Seaboard where the legislature has limited its own residents’ rights to compensation in all personal injury and wrongful death actions.

The § 11-108 cap on non-economic damages is bad public policy that unfairly impacts women, children and the elderly.

I request a FAVORABLE report on HB 83.

Respectfully submitted,



Elisha N. Hawk

Position Paper -- 2024 HB 83 -- Tolley.pdf

Uploaded by: George Tolley

Position: FAV



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February 5, 2024

Chairman Luke Clippinger
House Judiciary Committee
House Office Building, Room 101
Annapolis, Maryland 21401

**HB 83 – Civil Actions – Noneconomic Damages
Personal Injury and Wrongful Death**

Dear Chairman Clippinger, Vice Chair Bartlett, and Judiciary Committee Members:

I write to urge a FAVORABLE report on HB 83, which would repeal the arbitrary and unjust cap on non-economic damages in personal injury actions contained in Md. Cts. & Jud. Procs. Code Ann. § 11-108.

In a personal injury lawsuit, a plaintiff presents evidence to show that a defendant's conduct was unreasonably unsafe (i.e., "negligent") and caused harm to the plaintiff. Even when the harms caused by negligence are catastrophic, juries deliberate on the evidence and reach a unanimous verdict about how much money is needed to compensate the plaintiff for their harms.

Every day, in courtrooms all across the United States, juries reach unanimous verdicts to compensate victims of negligence.

Decades ago, the Maryland General Assembly enacted § 11-108 to place an arbitrary "cap" on the compensation that injured Marylanders can receive, no matter what the circumstances of their harms might be. None of Maryland's neighbors – indeed, no other State on the eastern seaboard – has a law like § 11-108. As such, § 11-108 puts "equal justice" beyond the reach of catastrophically injured Marylanders.

With nearly four decades of experience, we can now see clearly that § 11-108 provides no benefit to Maryland or its citizens. Moreover, repealing the cap presents no risk of harm to the State economy – when other state's cap laws were declared unconstitutional by their supreme courts, none of those states experienced any harm to their economies, much less any sort of insurance affordability crisis.

Maryland law should provide equal justice for all. Please enact HB 83 and repeal § 11-108.

Respectfully submitted,

George S. Tolley, III

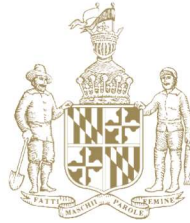
hb83 sponsor testimony ziegler.pdf

Uploaded by: Natalie Ziegler

Position: FAV

NATALIE ZIEGLER
Legislative District 9A
Howard and Montgomery Counties

Environment and Transportation Committee



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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Testimony in Support of HB 83
Civil Actions - Noneconomic Damages - Personal Injury and Wrongful Death

Chair Clippinger, Vice Chair Bartlett, and honorable members of the House Judiciary Committee:

Thank you for considering HB 83 - Civil Actions - Noneconomic Damages - Personal Injury and Wrongful Death. This is a victim's rights bill which I brought last year. This bill would repeal Maryland's cap on noneconomic damages for personal injury and wrongful death. To be clear, this bill does not affect the caps on damages in medical malpractice cases.

The cap dates back to 1986, when the legislature picked a number and decided that was what all victims would receive for pain and suffering, regardless of the facts of the case. In doing so, we chose to protect the perpetrator from heavy damages while denying the victim the opportunity for just compensation. Conversely, there is no cap on economic damages, which means that a corporate executive and a worker making minimum wage could sustain the same injury but receive vastly different compensation. As a result, the cap disproportionately harms women, people of color, the elderly, and the disabled, because these groups tend to earn less money and thus receive less in economic damages, which have no cap.

Caps on compensation change the incentives for companies, making negligence less expensive in many cases than responsible behavior. The existing caps on non-economic damages deny victims reasonable compensation, and wrongly put a decision that should be made by judges and juries in the hands of the legislature.

Eliminating the cap on noneconomic damages would incentivize safer conditions for Marylanders and ensure a more fair and just system for victims and their families. In repealing this outdated and unfair law, Maryland would join the majority of states, 39 of which do not have caps on noneconomic damages.

For these reasons, I respectfully ask for a favorable report.

Sincerely,

A handwritten signature in black ink, appearing to read "Natalie Ziegler".

Delegate Natalie Ziegler
Howard & Montgomery Counties, District 9A

HB0083 -- Civil Actions - Noneconomic Damages - Pe

Uploaded by: Brian Levine

Position: UNF



House Bill 83 -- *Civil Actions - Noneconomic Damages - Personal Injury and Wrongful Death*
House Judiciary Committee
February 7, 2024
Oppose

The Montgomery County Chamber of Commerce (MCCC), the voice of business in Metro Maryland, opposes House Bill 83 -- *Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death*.

House Bill 83 repeals limitations on noneconomic damages in civil actions for personal injury or wrongful death. Non-economic damages compensate injuries and losses that are not easily quantified by a dollar amount while economic damages can be calculated from documents or records, such as medical expenses and earnings.

MCCC is concerned about House Bill 83 and its impact on Maryland's ability to keep the costs of doing business competitive. Limitations on noneconomic damages are generally considered friendly to a state's business climate. This holds especially true for small businesses, which are at greater risk in litigation involving noneconomic damages. Not only would small businesses and other impacted entities confront increased exposure and potential financial burden, but the perception of Maryland's business competitiveness would be harmed as well.

There are many ways to measure whether Maryland has a positive business climate, and that includes its legal and tort environment. When businesses are making decisions regarding location or expansion, they often consider the tort environment. For this reason, Maryland needs to ensure it competes favorably with surrounding and competitor states on tort climate, in addition to factors like taxation, regulations, educational system, and transportation network.

For these reasons, the Montgomery County Chamber of Commerce opposes House Bill 83 and respectfully requests an unfavorable report.

The Montgomery County Chamber of Commerce, on behalf of our nearly 500 members, advocates for growth in business opportunities, strategic investment in infrastructure, and balanced tax reform to advance Metro Maryland as a regional, national, and global location for business success.

Established in 1959, MCCC is an independent non-profit membership organization and a proud Montgomery County Green Certified Business.

*Brian Levine | Vice President of Government Affairs
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Rockville, Maryland 20850
301-738-0015 | www.mcccmd.com*

HB 83_UNF_MAMIC.pdf

Uploaded by: Bryson Popham

Position: UNF



191 Main Street, Suite 310 – Annapolis MD 21401 – 410-268-6871

February 5, 2024

The Honorable Luke Clippinger
Chair, House Judiciary Committee
Room 101, House Office Building
Annapolis, Maryland 21401

RE: House Bill 83 - Civil Actions - Noneconomic Damages - Personal Injury and Wrongful Death - UNFAVORABLE

Dear Chairman Clippinger and Members of the Committee,

On behalf of the Maryland Association of Maryland Insurance Companies (MAMIC), we respectfully oppose House Bill 83.

As you may recall, MAMIC is comprised of 12 mutual insurance companies that are headquartered in Maryland and neighboring states. Approximately one-half of our members are domiciled in Maryland, and are key contributors and employers in our local communities. Together, MAMIC members offer a wide variety of insurance products and services and provide coverage for thousands of Maryland citizens.

House Bill 83 completely upends the system of determining noneconomic damages under Maryland's tort liability law that has been in place for many years. MAMIC is aware of no evidence that would support such a radical change. While MAMIC has opposed such legislation in the past, our focus this year is different. The Committee is well aware that inflation has been a major driver in the increasing cost of property and liability insurance in Maryland and across the country. As smaller insurers in the highly competitive Maryland market, MAMIC members strive to keep costs as low as possible for our policyholders.

Like all insurers, MAMIC members must purchase reinsurance – essentially, insurance for insurance companies. The cost of reinsurance has been rising rapidly as well and that places extra pressure on our members who are offering their Maryland policyholders various products and services.

We should point out that MAMIC includes the second oldest mutual insurer in the United States, located in District 46 in Baltimore City. We have other domestic insurer-members headquartered in Bel Air, Hagerstown and Frederick. Other members may be headquartered in adjoining states, but Maryland is a very important market for them. For example, one MAMIC member is a major writer of residential property (homeowners) insurance on the Lower Eastern Shore. Experienced legislators know that coastal insurance exposures are among the most difficult to insure. In short, MAMIC members offer insurance products that is vitally important to many Marylanders.

All MAMIC members depend heavily on solid, stable, reinsurance programs. Reinsurers in Maryland, by extension, depend on a solid, stable, tort liability environment in order to offer their products at affordable rates. The passage of House Bill 83 would completely disrupt our statutorily constructed model for assessing noneconomic damages in our State. This model has developed over decades, and it serves Maryland citizens well. To be effective, the model requires a healthy, competitive liability insurance market that can pay claims, including claims for noneconomic damages, when necessary. For these reasons MAMIC and its members do not believe that any material change to the system of ascertaining noneconomic damages is warranted. In fact, we believe the dangers far outweigh any speculative benefit offered by the proponents of this bill. We respectfully request an unfavorable report on House Bill 83.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeane A. Peters', is written over a light blue horizontal line.

Jeane A. Peters, President

Opposition to HB 83.pdf

Uploaded by: Carville Collins

Position: UNF



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MARYLAND EMPLOYERS FOR CIVIL JUSTICE REFORM COALITION

OPPOSES HB 83

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 HB 83. The bill calls for the repeal of Maryland’s noneconomic damages caps, an inappropriate and unfounded public policy.

Caps on noneconomic damages 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 crisis in the State, following the issuance of a 1985 report from the Governor’s Task Force to Study Liability Insurance that, among other findings, 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

The House Judiciary Committee helped craft the 1986 legislative solution to the crisis, noting in its 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 HB 83 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 HB 83.

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Counsel for Maryland Employers for
Civil Justice Reform Coalition

February 7, 2024

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).

ATRA 2024 Maryland Noneconomic Damages Written Tes

Uploaded by: Cary Silverman

Position: UNF

**Testimony Before the Maryland House Judiciary Committee
in Opposition to H.B. 83
A Bill That Would Allow Unlimited Pain & Suffering Awards
in Personal Injury and Wrongful Death Cases**

February 7, 2024

**Cary Silverman
On Behalf of the American Tort Reform Association**

On behalf of the American Tort Reform Association (“ATRA”), thank you for providing me with the opportunity to testify today. ATRA opposes H.B. 83, which would eliminate Maryland’s statutory limits on noneconomic damages in personal injury cases. As a result, the bill would lead to unreasonable settlement demands and unpredictable awards in a wide range of cases, which will be felt by Maryland’s drivers, homeowners, and businesses in the form of higher insurance rates.

ATRA is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources with the goal of ensuring fairness, balance, and predictability in civil litigation. I am a Maryland resident, a member of the Maryland Bar, and a partner in the Washington, D.C. office of Shook, Hardy & Bacon L.L.P. As part of my practice, I have studied the issue of noneconomic damage awards, authoring law review articles and research papers on the topic. I have had the privilege of testifying before this Committee when it considered legislation to raise or repeal Maryland’s limits on noneconomic damages in past sessions.

There is no true way to place a monetary value on the pain and suffering associated with an injury. The instinct to permit large awards for pain and suffering to those who have suffered serious injuries, on top of what is already likely to be a large award for medical expenses, lost income, and other economic losses, must be balanced against the adverse effects that rising damage awards have on homeowners, drivers, and businesses, the economy, and the civil justice system. H.B. 83 would disturb the careful balance that the General Assembly has set, which has positively contributed to a stable civil liability environment in Maryland for decades.

Damages Available Under Maryland Law

In considering the limit on noneconomic damages, it is helpful to consider the full picture of damages in personal injury and wrongful death cases.

Economic Damages. Maryland residents who experience an injury as a result of the negligence or other wrongful conduct of others are entitled to be made whole for

their losses. They can seek and recover compensation for their medical expenses, lost wages, and other costs. Recoveries for these types of expenses—economic damages—are *not* limited by Maryland law. In cases of severe permanent injuries or death, economic damages can reach into the millions of dollars.

Noneconomic Damages. Plaintiffs can also recover noneconomic damages, the subject of H.B. 83. Noneconomic damages provide plaintiffs with compensation for types of harms that cannot be documented with a dollar value, such as pain, suffering, inconvenience, and loss of consortium.¹ Traditionally, noneconomic damage awards were relatively small in amount and high awards were uniformly reversed.² For various reasons,³ the size of pain and suffering awards increased exponentially between the 1950s and 1980s.⁴ By that time, pain and suffering awards had become the largest single item of recovery in personal injury cases, exceeding medical expenses and lost wages.⁵ This prompted state legislatures to enact limits on these inherently subjective damage awards.

Punitive Damages. Finally, when an injury or death is caused by malicious conduct, a plaintiff can also recover punitive damages in Maryland. About half of the states limit punitive damages to an amount set by statute or a multiple of compensatory damages. A half dozen other states generally do not authorize punitive damage awards. In Maryland, punitive damages are available and *uncapped*. Such awards are

¹ Md. Cts. & Jud. Code Ann. § 11-108(a)(1).

² See Ronald J. Allen & Alexia Brunet, *The Judicial Treatment of Non-economic Compensatory Damages in the Nineteenth Century*, 4 J. Empirical Legal Studies 365, 396-87 (2007) (finding that prior to the Twentieth Century, there were only two reported cases affirmed on appeal involving total damages in excess of \$450,000 in current dollars, each of which may have included an element of noneconomic damages); see also Fleming James, Jr., *The Columbia Study of Compensation for Automobile Accidents: An Unanswered Challenge*, 59 Colum. L. Rev. 408, 411 (1959) (observing that an award in excess of \$10,000 was rare).

³ Scholars largely attribute the initial rise in noneconomic damage awards to: (1) the availability of future pain and suffering damages; (2) the rise in automobile ownership and personal injuries resulting from automobile accidents; (3) the greater availability of insurance and willingness of plaintiffs' attorneys to take on lower value cases; (4) the rise in affluence of the public and a change in attitude that "someone should pay"; and (5) a campaign to increase such awards by the organized plaintiffs' bar. See Philip L. Merkel, *Pain and Suffering Damages at Mid-Twentieth Century: A Retrospective View of the Problem and the Legal Academy's First Responses*, 34 Cap. U. L. Rev. 545, 553-68 (2006); Joseph H. King, Jr., *Pain and Suffering, Noneconomic Damages, and the Goals of Tort Law*, 57 SMU L. Rev. 163, 170 (2004); see also Melvin M. Belli, *The Adequate Award*, 39 Cal. L. Rev. 1 (1951) (seminal article arguing for higher noneconomic damage awards).

⁴ See David W. Leebron, *Final Moments: Damages for Pain and Suffering Prior to Death*, 64 N.Y.U. L. Rev. 256, 301 (1989).

⁵ See *Nelson v. Keefer*, 451 F.2d 289, 294 (3d Cir. 1971). Judge Paul Niemeyer, a former Maryland federal judge who currently serves on the U.S. Court of Appeals for the Fourth Circuit, observed, "Money for pain and suffering . . . provides the grist for the mill of our tort industry." Paul V. Niemeyer, *Awards for Pain and Suffering: The Irrational Centerpiece of Our Tort System*, 90 Va. L. Rev. 1401, 1401 (2004).

permissible so long as they are supported by the evidence of malicious conduct and are not unconstitutionally excessive.

Maryland's Limit on Noneconomic Damages

The General Assembly first limited noneconomic damages in 1985 in response to an insurance crisis and initially set the cap at \$350,000. It did so after Maryland Governor Harry Hughes and the General Assembly established two task forces, the Governor's Task Force to Study Liability Insurance and the Joint Executive/Legislative Task Force on Medical Insurance, both of which, after hearings, meetings, and substantial research, recommended statutory limits. As the Governor's Task Force concluded:

[T]he 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, lead to more settlements, and enable insurance carriers to set more accurate rates because of the greater predictability of the size of judgments. The limitation is designed to lend greater stability to the insurance market and make it more attractive to underwriters.

A substantial portion of the verdicts being returned in liability cases are for noneconomic loss. The translation of these losses into dollar amounts is an extremely subjective process as these claims are not easily amenable to accurate, or even approximate, monetary valuation. There is a common belief that these awards are the primary source of overly generous and arbitrary liability claim payments. They vary substantially from person to person, even when applied to similar cases or similar injuries, and can be fabricated with relative ease.

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.

Franklin v. Mazda Motor Corp., 704 F. Supp. 1325, 1328 (D. Md. 1989), (quoting report of the Governor's Task Force to Study Liability Insurance issued Dec. 20, 1985).

There are now separate limits applicable to general personal injury and medical malpractice cases that rise to account for inflation by \$15,000 per year.⁶ The Maryland

⁶ The noneconomic damage limit in personal injury cases increases each year on October 1. Md. Cts. & Jud. Proc. Code Ann. § 11-108(b)(2)(ii).

Supreme Court has repeatedly upheld the limit on noneconomic damages as constitutional.⁷

Today, the inflation-adjusted limit on noneconomic damages in personal injury actions is \$935,000. This amount rises to \$1,402,000 (150% of the individual limit) in wrongful death actions involving two or more beneficiaries. In wrongful death cases, pain and suffering can also be recovered on behalf of the person who died as a result of negligent conduct in addition to beneficiaries, such as a spouse or children. In those actions, the limit on noneconomic damages is also \$935,000. Combined, in actions alleging that a person died as a result of negligence, total noneconomic damaged can reach \$2,337,500 million (\$935,000 for the decedent plus \$1,402,000 for his or her family). These limits will automatically increase to \$950,000/\$1,425,000/\$2,375,000 in October 2024.

The statutory limit is accomplishing its goal. It has prevented outlier awards and provided for greater consistency and predictability in Maryland's civil justice system. It has ensured that those who are injured as a result of another party's tortious conduct can receive full compensation for economic losses plus a reasonable, though not unlimited, amount for pain and suffering. It has also provided consistency for plaintiffs by precluded widely varying noneconomic damage awards for similar injuries.

The Proposed Legislation

H.B. 83 would eliminate the limit on noneconomic damages that applies in general personal injury cases effective October 1, 2024. This bill is identical to last year's H.B. 862 and goes even further than prior proposals that the General Assembly chose not to enact, which proposed increasing the limit or eliminating it only in certain cases.

Implications for Maryland for Eliminating the Statutory Limit

The Maryland Supreme Court has recognized that the General Assembly enacted the statutory limit to preserve “the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public.”⁸ Limiting noneconomic damages “may lead to greater ease in calculating premiums, thus making the market more attractive to insurers, and ultimately may lead

⁷ *Martinez v. The John Hopkins Hosp.*, 70 A.3d 397, 410 n.19 (2013); *DRD Pool Serv., Inc. v. Freed*, 5 A.3d 45, 63 (Md. 2010); *Oaks v. Connors*, 660 A.2d 423, 430 (Md. 1995); *Murphy v. Edmonds*, 601 A.2d 102, 118 (Md. 1992).

⁸ *DRD Pool Serv.*, 5 A.3d at 67 (Md. 2010) (quoting *Murphy*, 601 A.2d at 115).

to reduced premiums, making insurance more affordable for individuals and organizations performing needed services.”⁹

As we see a resurgence of massive pain and suffering awards nationwide, now is certainly not the time to eliminate this limit. Awards in excess of \$10 million, known as “nuclear verdicts,” are rising in frequency and size in personal injury and wrongful death cases.¹⁰ The largest component of these awards are noneconomic damages.¹¹ While about one quarter of nuclear verdicts are reached in medical liability cases, auto accident, product liability cases, and premises liability cases make up similar shares.¹² In other states, we have seen juries, prompted by plaintiffs’ lawyers, award amounts for past and future pain and suffering for \$12 million, \$33 million, \$40 million, even \$85 million or more.¹³ These verdicts are sometimes improperly prompted by a push by the plaintiffs’ lawyer for the jury to “send a message,” even if a defendant has not committed misconduct that would warrant punitive damages.

In states that lack limits on noneconomic damages, personal injury lawyers have long understood that the more you ask for, the more you get,¹⁴ and they have become increasingly bold in their requests to juries for extraordinarily high pain and suffering awards. This tactic, known as “anchoring,” implants in the minds of jurors an arbitrary sum or a mathematical formula (such as an amount per day or hour, referred to as a “per diem” argument) designed to lead to an excessive award. An “anchor” creates a psychologically powerful baseline for jurors struggling with assigning a monetary value to pain and suffering. Once a lawyer provides an anchor, jurors accept the suggested amount or “compromise” by negotiating it upward or downward. Studies show that both use of a specific sum or mathematical formula leads juries to reach a substantially higher award—double¹⁵ or quadruple¹⁶ the amount they would have if left to determine a just and reasonable award on their own.

⁹ *Id.*

¹⁰ Cary Silverman & Christopher E. Appel, Nuclear Verdicts Trends, Causes, and Solutions, at 8-10 (U.S. Chamber Inst. for Legal Reform 2022) (examining 1,376 reported personal injury and wrongful death verdicts over \$10 million between 2010 and 2019).

¹¹ *Id.* at 10-11.

¹² *See id.*

¹³ *See* Mark A. Behrens, Cary Silverman & Christopher E. Appel, *Summation Anchoring: Is it Time to Cast Away Inflated Requests for Noneconomic Damages*, 44 *Am. J. of Trial Advoc.* 321, 327-29 (2021) (providing examples from several states).

¹⁴ Gretchen B. Chapman & Brian H. Bornstein, *The More You Ask For, the More You Get: Anchoring in Personal Injury Verdicts*, 10 *Applied Cognitive Psychology* 519, 534 (1996).

¹⁵ *See* Bradley D. McAuliff & Brian H. Bornstein, *All Anchors are Not Created Equal: The Effects of Per Diem Versus Lump Sum Requests on Pain and Suffering Awards*, 34 *L. & Human Behavior* 164, 167 (2010).

Fortunately, Maryland is not known for excessive awards. While anchoring is permissible in Maryland,¹⁷ this type of manipulation and the potential for excessive awards has been constrained by the statutory limit on noneconomic damages. I'll give you one example that is a preview of what is to come if the statutory limit is eliminated. In a case arising from a Maryland inmate who fractured his wrist during a fight, the plaintiffs' attorney requested that the jury award his client \$100 per day for pain and suffering for his remaining life expectancy of fifty years. That doesn't sound like much, but it adds up to nearly \$2 million. The defendant's counsel objected to the arbitrary amount as highly prejudicial, noting that he had never seen this done before, but the trial court allowed it. Prompted by that high figure, the jury ultimately returned a \$3 million verdict. The trial court reduced that \$3 million award pursuant to the noneconomic damage limit in place at the time, \$770,000. That judgment was affirmed on appeal.¹⁸ Without a statutory limit, these types of arguments, and awards at significantly higher levels, will become the norm in Maryland.

How Maryland's Noneconomic Damage Limit Compares to Other States

Maryland is not alone in trying to restrain rising pain and suffering awards. When Maryland enacted its statutory limit in 1986, it was the first state to adopt a limit generally applicable to personal injury cases.¹⁹ Now, it is among several states that have done so outside of healthcare liability. For example:

- Colorado's inflation-adjusted limit on noneconomic damages in any civil action other than medical malpractice actions is \$642,180, which may increase upon clear and convincing evidence to \$1,284,370.²⁰
- Idaho's current inflation-adjusted limit on noneconomic damages in personal injury cases is \$458,729.²¹

¹⁶ See John Campbell, et al., *Time is Money: An Empirical Assessment of Non-Economic Damages Arguments*, 95 Wash. U. L. Rev. 1, 22 (2017).

¹⁷ *Bauman v. Woodfield*, 223 A.2d 364, 373 (Md. 1966); *E. Shore Pub. Serv. Co. v. Corbett*, 177 A.2d 701, *adhered to sub nom.*, 180 A.2d 681 (Md. 1962); *Giant Food Inc. v. Satterfield*, 603 A.2d 877, 881 (Md. Ct. Spec. App. 1992).

¹⁸ *Rivera-Ramirez v. Hall*, No. 756, 2023 WL 1987860, at *4 (Md. Ct. Spec. App. Feb. 14, 2023). This case was brought against a contractor that provided medical services to correction facilities, alleging that its physician provided inadequate care for the inmate's injury. The same tactics, however, can occur in any personal injury case.

¹⁹ See *Maryland Legislature Puts Ceiling on Personal Injury Awards*, N.Y. Times, Apr. 13, 1986.

²⁰ Colo. Rev. Stat. § 13-21-102.5, as adjusted, https://www.sos.state.co.us/pubs/info_center/files/damages_new.pdf.

²¹ Idaho Code § 6-1603, as adjusted, https://iic.idaho.gov/wp-content/uploads/2023/07/Benefits-Non-economic-caps-effective-07_01_23.pdf.

- Ohio limits noneconomic damages in personal injury cases to \$250,000, or three times economic loss, up to a maximum of \$350,000, which does not apply to certain permanent and substantial physical injuries.²²
- Michigan’s inflation-adjusted limit for noneconomic damages in product liability actions is \$537,900, rising to \$960,500 in catastrophic injury cases in 2023.²³
- Mississippi limits noneconomic damages in personal injury cases outside of healthcare liability to \$1 million.²⁴
- Tennessee limits noneconomic damages in personal injury cases to \$750,000, which rise to \$1 million in cases involving specified catastrophic injuries.²⁵
- Alaska limits noneconomic damages in personal injury cases to the greater of \$400,000 or injured person’s life expectancy in years multiplied by \$8,000. In cases involving “severe physical impairment or severe disfigurement,” the limit increases to the greater of \$1 million or injured person’s life expectancy in years multiplied by \$25,000.²⁶
- Hawaii limits damages for pain and suffering in personal injury actions to \$375,000 with certain exceptions.²⁷

As these state laws shows, Maryland’s current limit on noneconomic damages – at nearly a million dollars in personal injury cases, significantly more in wrongful death cases, and adjusted upward each year – is well within the mainstream. Indeed, it is at the higher end of these limits.

²² Ohio Rev. Code Ann. § 2315.18.

²³ Mich. Comp. Laws § 600.2946a, as adjusted, State of Michigan, Dep’t of Treasury, Limitation on Noneconomic Damages and Product Liability Determination of Economic Damages, Jan. 31, 2023.

²⁴ Miss. Code Ann. § 11-1-60(2)(b).

²⁵ Tenn. Code Ann. § 29-39-102.

²⁶ Alaska Stat. § 09.17.010.

²⁷ Haw. Rev. Stat. § 663-8.7.

Conclusion

The General Assembly's foresight in enacting a reasonable limit on noneconomic damages is an important, rational measure that continues to control outlier awards. It provides consistency and predictability in Maryland's civil justice system. It has avoided the rise of nuclear verdicts that we have seen in other states.

The bill's proposal to allow unlimited pain and suffering awards outside of healthcare liability claims will have adverse effects. It will:

- Complicate the ability to reach reasonable settlements, since plaintiffs' lawyers will demand significantly higher amounts for immeasurable harm. Some may hold out for the chance of a jackpot verdict.
- Lead to more frequent excessive verdicts for a wide range of businesses and nonprofit organizations and lengthy appeals.
- Result in higher insurance costs for Maryland drivers, homeowners, and businesses.

Thank you for considering our concerns. We respectfully ask that you not favorably report this bill.

MSDA Opposition to HB 83 Noneco. damages.pdf

Uploaded by: Daniel Doherty

Position: UNF



**The Maryland State Dental Association Opposes HB 83 – Civil Actions –
Noneconomic Damages – Personal Injury and Wrongful Death**
Submitted by Daniel T. Doherty, Jr. on Behalf of the Maryland State Dental Association

The limitations on the amount of non-economic damages were enacted in 1985 in response to the serious threat that physicians, dentists and some other health care providers would cease practicing in Maryland due to the exposure to huge jury awards to noneconomic damages, and the withdrawal of many insurers from the medical malpractice market. Noneconomic damages include emotional pain and suffering, loss of society, and many other results of injury or death that cannot be quantified on a monetary basis, leaving valuation to the subjective determination of a jury. Initially the cap on these damages was set in statute as \$350,000 for personal injury after July 1, 1986, and \$500,000 for personal injury or wrongful death after October 1, 1994. Beginning on October 1, 1995 that cap amount increased by \$15,000 each year. The enactment of this legislation in 1985 stabilized the medical insurance crisis in Maryland.

Today, we are in an environment where insurance companies are consistently reducing reimbursement rates to a point that the profitability of many medical or dental practices are operating at paper thin margins. To repeal the cap on noneconomic damages likely will lead to a negative domino effect. Malpractice rates will increase significantly, narrowing even more the profitability of medical practices, driving many practitioners either into retirement or force them to move to another state with better tort protections.

For these reasons the Maryland State Dental Association requests that HB 83 receive an unfavorable report.

**Submitted by
Daniel T. Doherty, Jr.
February 7, 2025**

HB 83 MDCC Civil Actions - Noneconomic Damages - P

Uploaded by: Hannah Allen

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

House Bill 83

Civil Actions - Noneconomic Damages - Personal Injury and Wrongful Death

House Judiciary Committee

Wednesday, February 7, 2024

Dear Chairman Clippinger and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 6,800 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

House Bill 83 seeks to repeal limitations on noneconomic damages in civil actions in specified personal injury or wrongful death incidents. The Maryland Chamber of Commerce is deeply concerned about the negative impact this bill would have on employers and their employees. **For employers, they will see their property and casualty insurance rates increase due to the greater liability exposure this higher limit on noneconomic damages will bring.** This is especially problematic for small businesses with razor-thin revenue margins. **For both employers and employees, they will see their healthcare costs rise as a product of physicians and hospitals passing along their increased premium rates to patients.** This cost will be even more burdensome with the consistently rising cost of insurance premiums. The National Association of Insurance Commissioners found that premium rates were lower in states that regulated the amount of noneconomic damages.¹

In the fiscal note for similar legislation introduced in the 2020 Legislative Session that would have lifted limitations on noneconomic damages, Maryland's Department of Legislative Services indicated that, "Under this bill, liability risk for small businesses, including health care providers, significantly increases." In the fiscal note for this legislation introduced in the 2023 Legislative Session, the fiscal note included that the bill would have meaningful impact on small businesses that are parties to civil actions. If passed, HB 83 could lead to more frequent excessive verdicts for a wide range of businesses and nonprofit organizations, along with lengthy appeals. With Maryland's consumers already struggling to adjust in this historic and prolonged inflation crisis, continuing to increase the cost of doing business in Maryland will devastate our small business community and deliver worse outcomes for our most vulnerable communities.

Maryland's current limits on noneconomic damages in personal injury and wrongful death cases contribute to a predictable and stable business and healthcare environment.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **HB 83**.

¹ NAIC, *Profitability by Line by State, various reports*

HB 83_Civil Actions – Noneconomic Damages_LOO.pdf

Uploaded by: Jake Whitaker

Position: UNF



Maryland
Hospital Association

February 7, 2024

To: The Honorable Luke Clippinger, Chair, House Judiciary Committee

Re: Letter of Opposition - House Bill 83 - Civil Actions – Noneconomic Damages – Personal Injury and Wrongful Death

Dear Chair Clippinger:

On behalf of the Maryland Hospital Association’s (MHA) member hospitals and health systems, we appreciate the opportunity to comment on House Bill 83. Maryland hospitals oppose efforts that would make the state’s highly litigious environment even more unsustainable. HB 83 would needlessly raise the cost of health care and make it difficult to attract and retain the doctors necessary to continue to provide the highest quality care.

A plaintiff in Maryland currently can seek economic and noneconomic damages for an injury. Compensation for economic damages, which are calculated to include lost wages or earning capacity and future medical care, is unlimited. These damages ensure the plaintiff will be cared for and that any income losses are adequately compensated not only to the plaintiff, but also to their family.

Noneconomic damages, on the other hand, are not established using traditional methods. These damages purport to consider the plaintiff’s pain and suffering as a result of the injuries sustained. **Maryland currently has one of the highest caps in the country at \$935,000, and it automatically increases each year by \$15,000. For combined survival and death actions the damages can be as much as \$2,337,500.**

In 1986, the General Assembly enacted reasonable limits on noneconomic damages in response to disproportionate jury awards. These limits on noneconomic damages help to ensure the stability of Maryland’s liability insurance market and civil justice system, while allowing reasonable compensation for pain and suffering. Reasonable limits on jury awards for noneconomic damages help preserve “the availability of sufficient liability insurance, at reasonable cost, in order to cover claims for personal injuries to members of the public.”¹ Eliminating the caps on noneconomic damages would threaten the viability of Maryland’s liability insurance market, raise insurance costs, and potentially limit access to care.

For these reasons, we request an *unfavorable* report on HB 83.

For more information, please contact:
Jake Whitaker, Director, Government Affairs
Jwhitaker@mhaonline.org

¹ Murphy v. Edmonds, 325 Md. 342, 369 (1992).

FINAL-Medical Mutual - 2024 Testimony - HB 83 - C

Uploaded by: Lauren Graziano

Position: UNF

MEDICAL MUTUAL

Liability Insurance Society of Maryland

Bill: House Bill 83 – Civil Actions – Noneconomic Damages – Personal Injury and Wrongful Death

Date: February 7, 2024

Position: *Oppose*

Bill Summary

House Bill 83 eliminates the cap on noneconomic damages in civil actions for personal injury or wrongful death.

Medical Mutual's Position

Medical Mutual opposes House Bill 83. Eliminating the cap on noneconomic damages in personal injury and wrongful death actions would expose Maryland residents and businesses to unpredictable and potentially unlimited liability that could adversely affect the availability and affordability of casualty insurance in the State.

In a personal injury or wrongful death action, a plaintiff may be entitled to recover economic damages and noneconomic damages. Economic damages include past and future loss of earnings and medical expenses.¹ Noneconomic damages, on the other hand, include pain, suffering, inconvenience, and other nonpecuniary losses.² Noneconomic damages do not include punitive damages, which may be awarded in cases where the plaintiff has proven, by clear and convincing evidence, that the defendant acted with actual malice.³

Economic damages for past and future medical expenses, past and future loss of income, and other pecuniary losses are calculable and can be objectively measured. In contrast, noneconomic damages for pain and suffering, loss of consortium, emotional distress, and other nonpecuniary losses have no calculable economic basis and are inherently subjective. Removing the cap on noneconomic damages would allow for limitless jury awards. The possibility of unlimited noneconomic damages awards could lead to a significant rise in settlement demands, prolonged and expensive litigation, and higher liability insurance rates for Maryland citizens.

¹ See Md. Code, Cts. & Jud. Proc. § 11-109.

² See Md. Code, Cts. & Jud. Proc. § 11-108(a)(2).

³ See *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 460, 469 (1992).

In 1986, the General Assembly enacted a \$350,000 cap on noneconomic damages for personal injury actions.⁴ Since then, the cap has steadily increased to \$935,000 for causes of action arising on or after October 1, 2023.⁵ This amount increases to \$1,402,500 (150% of the individual cap) in wrongful death actions involving two or more claimants or beneficiaries.⁶ And the cap in a combined survival and wrongful death action can be as high as \$2,337,500.⁷ These limits will automatically increase on October 1, 2024, and on October 1 of each subsequent year.⁸

Nearly 40 years ago, the General Assembly enacted a reasonable limit on noneconomic damages. This measured response to disproportionate jury awards continues to provide predictability and stability in Maryland's civil justice system today. The noneconomic damages cap also preserves "the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injuries to members of the public."⁹ Eliminating the noneconomic damages cap would upend these legitimate legislative objectives and disturb the careful balance that the General Assembly struck when enacting the cap.

For these reasons, Medical Mutual respectfully requests an *UNFAVORABLE* report on *House Bill 83*.

For more information contact:

Lauren C. Graziano / lgraziano@weinsuredocs.com
(443) 689-0221

⁴ See Laws of Md., 1986, Ch. 639.

⁵ See Md. Code, Cts. & Jud. Proc. § 11-108(b)(2).

⁶ See Md. Code, Cts. & Jud. Proc. § 11-108(b)(3)(ii).

⁷ See Md. Code, Cts. & Jud. Proc. § 11-108(b)(3).

⁸ See Md. Code, Cts. & Jud. Proc. § 11-108(b)(2)(ii).

⁹ *Murphy v. Edmonds*, 325 Md. 342, 369 (1992).

HB83 - Maryland Motor Truck Association - Oppose.p

Uploaded by: Louis Campion

Position: UNF



Maryland Motor Truck Association

9256 Bendix Road, Suite 203, Columbia, MD 21045

Phone: 410-644-4600 Fax: 410-644-2537



HEARING DATE: February 7, 2024

BILL NO/TITLE: House Bill 83: Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death

COMMITTEE: Judiciary

POSITION: **Oppose**

Maryland Motor Truck Association (MMTA) is extremely concerned about efforts to eliminate Maryland's noneconomic damages cap given the rise in nuclear verdicts and staged truck accidents that have plagued the trucking industry in recent years.

The American Transportation Research Institute completed a study in 2020 to better understand the impact of rising verdicts on trucking. The research evaluated 600 cases between 2006 and 2019. In the first five years of data, there were 26 cases over \$1 million involving heavy-duty trucks. In the last five years, there were nearly 300 cases. The number of verdicts over \$10 million nearly doubled in that time. The impacts on motor carriers have included bankruptcy filings, businesses closing, and unsustainable higher insurance premiums as fewer insurance companies are willing to provide insurance to the trucking industry. Over the past few years numerous carriers exited trucking completely.

Another outcome of these large awards is the target that has been branded on the industry in the form of staged fraudulent accidents. In these cases, cars intentionally collide with trucks or buses in the hopes of a large jury award or insurance settlement. In Louisiana at least 47 individuals have been charged federally going back to 2020, with at least 30 guilty pleas. Those individuals caused at least 77 wrecks involving commercial trucks. In January 2022, a federal indictment charged 23 defendants in Washington, California, Michigan, Nevada, and British Columbia, Canada with participating in a staged automobile accident scheme.

Accident data shows that in about 75% of serious injury or fatal crashes involving a car and a truck, the fault of the accident was with the car driver. Many trucking companies have now resorted to the added cost of installing dashboard cameras to their fleets to protect their drivers and businesses. In the case of non-fraudulent accidents, dash cam footage can help exonerate a commercial driver. As for staged accidents, video evidence can expose the criminal activity.

Maryland statute already allows for the noneconomic damages cap to increase annually. On October 1, 2005, it was \$665,000. Today it is \$935,000. Removing the cap entirely will make Maryland a laboratory for similarly staged accidents and expose the trucking industry to unlimited liability. For the reasons noted above MMTA respectfully requests an unfavorable report on HB83.

About Maryland Motor Truck Association: Maryland Motor Truck Association is a non-profit trade association representing the trucking industry since 1935. In service to its 1,000 members, MMTA is committed to support, advocate and educate for a safe, efficient and profitable trucking industry in Maryland.

For further information, contact: Louis Campion, (c) 443-623-4223

MD 2024 NAMIC letter HB 83 Economic Damages.pdf

Uploaded by: Matt Overturf

Position: UNF

HOUSE JUDICIARY COMMITTEE

HB 83: Civil Actions – Noneconomic Damages – Personal Injury or Wrongful Death

UNFAVORABLE | February 7, 2024

Chairman Clippinger and Members of the House Judiciary Committee:

On behalf of the National Association of Mutual Insurance Companies¹ (NAMIC) thank you for the opportunity to submit this statement to express our opposition to House Bill 83 and request an unfavorable report.

NAMIC consists of nearly 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

House Bill 83 repeals the existing limitations on noneconomic damages in civil actions for personal injury or wrongful death which have been in places for over 25 years. Damages caps provide for a more stable insurance marketplace where damages and insurance costs can be modeled and predictable. Removal of the damage caps will create inconsistent and unfair judgements that become outlier verdicts and create one of the highest cost drivers for the Maryland insurance market because of the difficulty to model for losses without limits.

Inconsistent, uncapped noneconomic damages are detached from the economic realities of a potential loss and make it difficult for juries to assign damage amounts with little direction and an open-ended scope—maintaining noneconomic damages caps alleviate that burden and ultimately provide for better price stability of insurance rates for all involved.

For these reasons, NAMIC is opposed to House Bill 83 and respectfully requests an unfavorable report of the bill.

Sincerely,



Matt Overturf, NAMIC Regional Vice President
Ohio Valley/Mid-Atlantic Region

¹ NAMIC member companies write \$357 billion in annual premiums and represent 69 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance markets. Through its advocacy programs NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

HB 83 APCIA Opposes 02072024 FINAL_ (002).pdf

Uploaded by: Nancy Egan

Position: UNF



Testimony of

American Property Casualty Insurance Association (APCIA)

House Judiciary Committee

House Bill 83 Civil Actions - Noneconomic Damages - Personal Injury or Wrongful Death

February 7, 2024

Unfavorable

The American Property Casualty Insurance Association (APCIA) is the primary national trade organization representing nearly 67.1 percent of the Maryland property casualty insurance market. House Bill 83 would be a significant policy shift that would have a detrimental impact on Maryland civil defendants, residents, businesses and insurers due to increased claims, litigation jury verdicts and settlements. APCIA appreciates the opportunity to provide written comments in opposition to House Bill 83.

Repealing the non-economic damages caps for personal injury cases, which currently exceeds \$935,000 and increases by \$15,000 every year, will also significantly complicate the ability to settle lawsuits, since plaintiffs' lawyers will demand significantly higher amounts for immeasurable harm. The current law strikes a reasonable balance between unlimited subjective awards and the consistency and predictability that contribute to a stable civil justice system in Maryland. The escalating non-economic personal injury damage caps should be retained. The practical effect of this repeal is to provide yet another avenue for plaintiffs to seek uncapped and subjective non-economic damage awards, placing businesses, consumers and insurers at greater risk for nuclear verdicts, since non-economic damages have been shown to be the key drivers of nuclear verdicts.¹

Non-economic damages may far exceed the amount of economic damage awards because of intangible factors such as subjective values, beliefs, emotional sensitivities and differing perspectives, and courts and juries often struggle to calculate fair and rational non-economic damage award. The repeal of the non-economic damages cap only provides incentives for plaintiff's attorneys to file litigation, which will significantly increase the number of lawsuits going forward and increase Maryland's already high tort tax of \$3,186 per household.²

The broad discretion given juries in awarding damages for noneconomic loss is the single greatest contributor to the inequities and inefficiencies of the tort liability system. It is a difficult issue to address objectively because of the emotions involved in cases of serious injury and because of the financial interests of plaintiffs' lawyers.

Pain and suffering awards are typically subject to imprecise and ineffective standards of review, such as whether the amount is so high that it "shocks the conscience." Increasing the available damages in this manner will almost certainly result in an increase in claims and lawsuit filings, and will drive up the costs of defense, settlement and

¹ *US Chamber of Commerce Institute for Legal Reform Nuclear Verdicts Report, September 2022*

Non-economic damages may far exceed the amount of economic damage awards because of intangible factors such as subjective values, beliefs, emotional sensitivities and differing perspectives, and courts and juries often struggle to calculate fair and rational non-economic damage award.

² *US Chamber of Commerce Institute for Legal Reform Tort Costs in America Empirical Analysis, November 2022*. For purposes of the study, tort costs are defined as the aggregate amount of judgments, settlements, and legal and administrative costs to adjudicate private claims and enforcement actions.

claims administration, including due to the increased need for experts to now necessary to testify about pain and suffering on both sides given that caps would be eliminated.

- Studies have shown that caps on non-economic damages caps lead to a significant reduction in the number of court cases filed.³
- Caps on non-economic damages have also been found to be especially effective in controlling tort liability costs.⁴
- Studies document that non-economic damages caps are linked to lower insurance premiums. For example, using state-specific data, the National Association of Insurance Commissioners (NAIC) found that premium rates were lower in states that regulated the amount of non-economic damages.⁵

There is no need to repeal Maryland's noneconomic damage caps. When Maryland enacted its statutory limit in 1986, it was the first state to adopt a limit generally applicable to personal injury cases. Now, nearly two thirds of states have statutory limits on noneconomic damages that apply to all personal injury cases, medical malpractice cases, or both.⁶ Eighteen states cap or disallow wrongful death non-economic damages. Maryland's current limits on personal injury noneconomic damages are among the highest amounts in the country.⁷

Maryland's current limits on noneconomic damages in personal injury and wrongful death cases contribute to a predictable and stable business and healthcare environment in Maryland. They are within the mainstream of how other states have treated non-economic damages and should not be altered. Repeal of the caps would disturb this careful balance that the legislature has set by exposing Maryland residents and businesses to unpredictable and potentially extraordinary liability. Eliminating the statutory limit on subjective non-economic damages will result in unpredictability and will place upwards pressure on insurance rates for Maryland consumers, businesses, and insurers as the amount of insured losses skyrockets.

The legislature's foresight in enacting a reasonable limit on noneconomic damages is an important, rational measure that continues to control outlier awards and provide predictability in Maryland's civil justice system today. A statutory limit only facilitates reasonable settlements and keeps insurance rates stable if its application is predictable and consistent. If non-economic damage caps for personal injury cases are repealed, plaintiffs will increasingly utilize such tactics as summation 'jury anchoring,' arguing for an excessive pain and suffering award,

³ https://www.cbo.gov/sites/default/files/108th-congress-2003-2004/reports/report_2.pdf

⁴ https://www.insurance-research.org/sites/default/files/news_releases/IRCsocinfFINAL..pdf

⁵ NAIC, *Profitability by Line by State, various reports*

⁶ See e.g., Alaska Stat. § 09.55.549; Cal. Civ. Code § 3333.2; Colo. Rev. Stat. § 13-64-302; Ind. Code § 34-18-14-3; La. Rev. Stat. Ann. § 40:1299.42; Md. Cts. & Jud. Proc. Code § 3-2A-09; Mass. Gen. Laws ch. 231 § 60H; Mich. Comp. Laws Ann. § 600.1483; Miss. Code Ann. § 11-1-60(2)(a); Mont. Code Ann. § 25-9-411; Neb. Rev. Stat. § 44-2825; Nev. Rev. Stat. § 41A.035; N.M. Rev. Stat. § 41-5-6; N.C. Gen. Stat. § 90-21.19; N.D. Cent. Code § 32-42-02; Ohio Rev. Code Ann. § 2323.43; S.C. Code Ann. § 15-32-220; S.D. Codified Laws §21-3-11; Tex. Civ. Prac. & Rem. Code Ann. § 74.301; Utah Code § 78B-3-410; Va. Code Ann. § 8.01-581.15; W. Va. Code § 55-7B-8.

⁷ A few states limit noneconomic damages to \$250,000. Most states with caps have limits in \$350,000 to \$600,000 range. Maryland is one of only seven states that automatically adjust the limit on noneconomic damages on a regular basis to account for inflation. While some states adjust or lift the cap for catastrophic injuries or wrongful death, many are still at levels that are lower than Maryland's limit.

which will cause Maryland to become a nuclear verdict state, with all of the associated adverse consequences. Empirical evidence confirms that anchoring “dramatically increases” noneconomic damage awards.⁸

Finally, when an injury or death is caused by malicious conduct, a plaintiff can also recover punitive damages in Maryland. About half of the states limit punitive damages to an amount set by statute or a multiple of compensatory damages. A half dozen other states generally do not authorize punitive damage awards. In Maryland, punitive damages are available and uncapped.

For all these reasons, APCIA respectfully requests an unfavorable report on House Bill 83.

Nancy J. Egan,

State Government Relations Counsel, DC, DE, MD, VA, WV

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⁸ John Campbell et al., Time Is Money: An Empirical Assessment of Non-Economic Damages Arguments, 95 WASH. U. L. REV. 1, 28 (2017).

HB0083_UNF_MedChi, MDACEP, MDACOG_Civil Actions -

Uploaded by: Steve Wise

Position: UNF



The Maryland State Medical Society

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TO: The Honorable Luke Clippinger, Chair
Members, House Judiciary Committee
The Honorable Natalie Ziegler

FROM: J. Steven Wise
Pamela Metz Kasemeyer
Danna L. Kauffman
Andrew G. Vetter
Christine K. Krone

DATE: February 7, 2024

RE: **OPPOSE** – House Bill 83 – *Civil Actions – Noneconomic Damages – Personal Injury and Wrongful Death*

On behalf of The Maryland State Medical Society, the Maryland Chapter of the American College of Emergency Physicians, and the Maryland Section of The American College of Obstetricians and Gynecologists, we submit this letter of **opposition** for House Bill 83.

House Bill 83 would repeal the State’s cap on non-economic damages that applies to cases other than health care claims. While the physician groups joining in this letter would not be directly affected by its repeal, they know that the next effort by the plaintiff’s bar after this one will be to seek a similar repeal of the cap which applies to health care claims. For this reason, these groups oppose House Bill 83.

Non-economic damages are the damages awarded to plaintiffs for pain and suffering. One of the reasons for a cap on non-economic damages is that pain and suffering and emotional distress are inherently subjective and there is no method to accurately calculate or measure how much money to pay someone for these items. These damage awards are the most likely to be disproportionate because by their very nature they are based on emotion. On the other hand, loss of income from employment or the cost of nursing and custodial care for a seriously injured person, and actual medical bills from hospitals, nursing homes and the like, can be calculated and determined with reasonable accuracy. These “economic damages” have always been fully compensable under Maryland law; they are not capped.

Recognizing that our insurance market could not withstand repeatedly large non-economic damage awards, the General Assembly intervened in the 1980s and implemented a cap on them, as have many other states. Even with that cap in place, in 2004, a Special Session of the Legislature was called because of a medical liability insurance crisis, driven by excessive verdicts, which was forcing OB-GYNs to leave

obstetrics practice and causing some doctors to leave Maryland or to retire early. The Legislature again stepped in and enacted a separate cap on non-economic damages for actions in medical malpractice.

Today, Maryland has one of the highest non-economic damage caps in the country for medical malpractice cases at nearly \$900,000. For wrongful death medical malpractice actions involving two or more claimants or beneficiaries, the total amount awarded is limited to 125% of the cap, or over \$1.1 million. These amounts automatically increase each year by \$15,000.

Passage of House Bill 83 will undoubtedly be followed by legislation calling for a repeal of the medical malpractice cap, or by litigation seeking the same. The General Assembly should heed the lessons of past Legislatures which recognized the need for these damage caps, and not accept this invitation from the plaintiff's bar to once again inject instability into the State's insurance market and to make even worse our current healthcare workforce shortages. We respectfully request that you oppose House Bill 83.

For more information call:

J. Steven Wise
Pamela Metz Kasemeyer
Danna L. Kauffman
Andrew G. Vetter
Christine K. Krone
410-244-7000

HB0083 - MTA - Noneconomic Damages - LOI_FINAL.pdf

Uploaded by: Pilar Helm

Position: INFO

February 7, 2024

The Honorable Luke Clippinger
Chair, House Judiciary Committee
101 House Office Building
Annapolis MD 21401

***RE: Letter of Information – House Bill 83 – Civil Actions - Noneconomic Damages -
Personal Injury and Wrongful Death***

Dear Chair Clippinger and Committee Members:

The Maryland Department of Transportation (MDOT) offers the following information for the Committee's consideration on House Bill 83.

House Bill 83 removes the cap on noneconomic damages in civil actions for personal injury and wrongful death.

Unlike other State agencies, the Maryland Transit Administration's (MTA) tort liability is governed by the Transportation Article, not the Maryland Tort Claims Act; the Transportation Article does not include a limit on liability. Current law provides a cap on noneconomic damages, which provides plaintiffs with significant levels of recovery and protects MTA from unlimited exposure to noneconomic damages.

Removal of the noneconomic damages cap will likely lead to significantly greater awards and settlements against MTA and could result in a lack of predictability in litigating and settling MTA cases. House Bill 83 may also affect MTA's access to excess insurance or deductible amounts.

The Maryland Department of Transportation respectfully requests the Committee consider this information when deliberating House Bill 83.

Respectfully submitted,

Melissa Einhorn
Director of Governmental Affairs
Maryland Transit Administration
410-767-0820

Pilar Helm
Director of Government Affairs
Maryland Department of Transportation
410-865-1090