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*Promoting justice. Providing solutions.*

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February 7, 2025

Chairman William C. Smith, Jr.  
Senate Judicial Proceedings Committee  
2 East Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: SB 584 - Civil Actions - Noneconomic Damages -  
Personal Injury and Wrongful Death - OPPOSE**

Dear Chairman Smith, Vice Chairman Waldstreicher, and Members of the Senate Judicial Proceedings Committee:

On behalf of the Maryland Defense Counsel, Inc. ("MDC") we oppose Senate Bill 584, which seeks to repeal the current cap on non-economic damages in Section 11-108 of the Courts and Judicial Proceedings Article.

Founded in 1962, MDC endeavors to attain equal justice for all, improve Maryland's courts and laws, and strengthen the defense of civil lawsuits through political activism, judicial candidate interviews, and educational conferences. With a focus on promoting the efficiency of the legal profession in dealing with common problems facing civil litigants, this statewide defense organization, among other things, funds a PAC and works with a lobbyist to promote defense interests in the state legislature on behalf of its members.

A noneconomic damages cap was first enacted in 1986. That legislation was enacted to address an insurance crisis in the State, which was studied in 1985 by a Governor's Task Force to Study Liability Insurance and a Joint Executive/Legislative Task Force on Medical Insurance. The Governor's Task Force findings included: (1) "[T]he civil justice system can no longer afford unlimited awards for pain and suffering[;]" and (2) "A cap on allowable pain and suffering awards will help reduce the incident of unrealistically high liability awards, yet at the same time protect the right of the injured party to recover the full amount of the economic loss, including all lost wages and medical expenses."<sup>1</sup> In 1994, the General Assembly increased the cap on noneconomic damages from \$350,000 to \$500,000, added an annual escalator increase to the cap of \$15,000, and applied the cap to wrongful death cases.

<sup>1</sup> *Franklin v. Mazda Motor Corp.*, 704 F. Supp. 1325, 1328 (D. Md. 1989) (quoting the Governor's Task Force report, issued Dec. 20, 1985)).

Maryland's highest court has repeatedly upheld the constitutionality of the noneconomic damages cap.<sup>2</sup>

As of October 1, 2024, the cap in personal injury actions is \$950,000. The maximum recovery for noneconomic damages in a wrongful death action is \$2,375,000. Maryland's current noneconomic damage limits are among the highest in the country. The noneconomic damage cap does not limit the recovery of damages for economic losses.

Senate Bill 584 seeks to repeal in its entirety the noneconomic damages set forth in 11-108. MDC opposes SB 584 for three primary reasons.

*First*, the General Assembly enacted the noneconomic damages cap based on an in-depth study. Repealing the cap in its entirety could thrust the State into the position that necessitated the General Assembly enacting the noneconomic damages cap in the first instance.

*Second*, nuclear verdicts – verdicts in excess of \$ \$10 million – are on the rise.<sup>3</sup> Noneconomic damages are often a driving factor behind such verdicts. Maintaining a noneconomic damages cap is, therefore, a guardrail to protect against an increasing number of such verdicts.

*Third*, eliminating the cap on noneconomic damages in the context of non-medical malpractice personal injury cases will undoubtedly result in calls for eliminating the cap in medical malpractice cases. The State's hospital systems are under significant stress as it is with a cap on noneconomic damages and no statutory limit on future economic damages, which makes hospitals prime targets of medical malpractice lawsuits, especially hospitals that delivery babies. In the absence of such a cap, the increased stress is unfathomable and will lead to more verdicts like *Byrom*, a medical malpractice case tried in Baltimore City in 2019 in which the plaintiff claimed future economic damages of **\$42,275,000**. The jury awarded, among other damages, \$200,000,000 in future economic damages and \$25,000,000 for non-economic damages.<sup>4</sup>

In conclusion, the General Assembly studied the issue and determined there was a need to enact a noneconomic damages cap. The need to retain such caps still exists. Further, the noneconomic damages cap strikes a balance by

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<sup>2</sup> See *DRD Pool Service v. Freed*, 416 Md. 46, 62 (2010); *Murphy v. Edmonds*, 325 Md. 342, 366 (1992).

<sup>3</sup> Amy Buttell, *Nuclear Verdicts Escalate*, Inside Medical Liability (April 2021).

<sup>4</sup> *Johns Hopkins Bayview Med. Ctr., Inc. v. Byrom*, No. 1585, 2021 WL 321745, at \*6 n.9 (App. Feb. 1, 2021).

controlling noneconomic damages -- those that cannot be reduced to a value in any systematic way -- and allowing for the full recovery of any economic loss.

For all these reasons, MDC urges an unfavorable report on SB 584.

Sincerely,

/s/ Christopher C. Jeffries  
(410) 347-7412  
cjeffries@kg-law.com  
on behalf of Maryland Defense  
Counsel, Inc.