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February 17, 2025

Chairman Luke Clippinger
House Judiciary Committee
100 Taylor House Office Building
Annapolis, Maryland 21401

**RE: HB 113 - Civil Actions - Noneconomic Damages -
Personal Injury and Wrongful Death - OPPOSE**

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

On behalf of the Maryland Defense Counsel, Inc. ("MDC") we oppose House Bill 113, 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."¹ 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. Maryland's highest court has repeatedly upheld the constitutionality of the noneconomic damages cap.²

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

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



As of October 1, 2024, the cap in personal injury actions is \$950,000. The maximum potential recovery for noneconomic damages in a combined survival action and wrongful death action is \$2,375,000 (\$950,000 for the decedent's pain and suffering while they were alive, plus \$1,425,000 if there are two or more beneficiaries for their pain and suffering arising from the decedent's death). Maryland's current noneconomic damage limits are among the highest in the country. There is **no cap** for past or future **economic** losses, nor is there any cap on punitive damages.³

House Bill 113 seeks to repeal in its entirety the noneconomic damages set forth in 11-108. MDC opposes HB 113 for four 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. The capped amount is quite high – as it currently stands \$950,000 for personal injury actions, and \$2,375,000 for survival and wrongful death actions where there are two or more beneficiaries – and increases every year. In its wisdom the General Assembly has put a high upper bound on a number that has no meaningful measure. The cap represents the General Assembly, in a disciplined and measured fashion, reigning in the judicial system from awarding inordinate sums of money. Those who will testify in support of HB 113 have not explained what it is that is broken about the noneconomic damages cap, nor have they taken into consideration the negative downstream effects of eliminating the noneconomic damages cap.

Second, nuclear verdicts – verdicts in excess of \$10 million – are on the rise.⁴ 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 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 cap on future economic damages, which makes hospitals prime targets of medical malpractice lawsuits, especially hospitals that deliver babies. In the absence of such a cap, the increased stress is unfathomable and will lead to more verdicts like

³ An award of punitive damages requires proof of "actual malice," instead of mere negligence. *See Beall v. Holloway-Johnson*, 446 Md. 48, 72 (2016) ("negligence alone, no matter how gross, wanton, or outrageous, will not satisfy [the] standard [of actual malice]" to support recovery of punitive damages).

⁴ Amy Buttell, Nuclear Verdicts Escalate, Inside Medical Liability (April 2021).



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.⁵

Fourth, eliminating the noneconomic damages cap, first and foremost, will benefit plaintiff's attorneys. Plaintiff's attorneys typically charge a contingency fee of around one-third (33%) on any recovery at settlement or trial, and in more complex personal injury cases, they may charge up to 40%. Personal injury litigation already is "big business" in Maryland, which is evident just based on the number of billboards and bus signs of attorneys advertising their services throughout Baltimore City and other counties. Eliminating the noneconomic damages cap will provide a windfall to plaintiff's attorneys and, in turn, make Maryland an even more litigious State.

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 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 HB 113.

Sincerely,

/s/ Joseph S. Johnston

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on behalf of Maryland Defense
Counsel, Inc.

⁵ *Johns Hopkins Bayview Med. Ctr., Inc. v. Byrom*, No. 1585, 2021 WL 321745, at *6 n.9 (App. Feb. 1, 2021).