



March 2, 2026

Chair Bartlett and distinguished members of the Committee,

Caps on damages are not justified. Damage caps actively cause harm—when consequences are capped, corporations have less incentive to prevent harm. Research studies have backed this up with evidence that caps lead to more harm, not less.

They also single out the most vulnerable, the most injured, and place an artificial, government imposed, price on life. Noneconomic caps fall particularly hard on children, the elderly, and caregivers whose work is irreplaceable, yet poorly valued in economic terms.

Maryland is an extreme outlier as one of nine states with a broad general cap on non-economic damage. Forty-one other states do not impose such across the board limitations. The trend is towards eliminating these caps—both Kansas and Oklahoma struck down broad general non-economic damages caps in the past few years.

The only argument offered for caps is that they are supposed to reduce insurance costs. **But this is not true.**

There is no data that shows states with caps have lower insurance costs for policyholders. Instead, insurer *profits* run 24% higher in capped states.

The insurance industry posted a record breaking \$89 billion in profit in 2023, only for that to be eclipsed by \$167 billion in 2024. Caps are rigged rules that protect corporate balance sheets, and hurt Maryland families.

The accompanying report details how the insurance industry manufactures crisis narratives to defend these rules. None withstand scrutiny. **Caps on damages are simply not justified and should be repealed.**

Sincerely,

Daniel Hinkle

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American Association for Justice

On behalf of the Maryland Association for Justice

Kafkaesque Insurance

By David Ratcliff

American Association for Justice

Franz Kafka captured the nightmare of endless, dehumanizing bureaucracy so profoundly that his name transcended literature to become an adjective—Kafkaesque—describing the horror of being trapped in systems that are simultaneously omnipotent yet absurd. His protagonists — Josef K. in *The Trial*, K. in *The Castle*, Gregor Samsa in *The Metamorphosis* — are ordinary individuals trapped in labyrinthine bureaucracies, judged by shifting standards, and, eventually, abandoned to cruel fates.

Franz Kafka also worked for an insurance company. Kafka, who spent the last 15 years of his life working as a lawyer for a workers' compensation insurance company, despised the job which brought him face to face with the brutal workplace accidents of the early 1900s. His writing distilled this experience: institutions cloak themselves in the promise of security while subjecting people to endless ritual, delay, and abandonment.

Yet Kafka also described insurance as "... like the religions of primitive peoples who believe they can ward off evil by all kinds of manipulations." Modern research supports this intuition: buying coverage doesn't change the underlying probability of harm, but it does make people perceive risks as lower, a kind of secular magic that trades logic for comfort.

These two dimensions—the Kafkaesque bureaucracy and the primitive ritual—converge in the modern insurance industry: a system cloaked in the language of actuarial science and data-driven precision, yet operating with the arbitrary logic of ancient augury. Behind the façade of algorithms lies a fundamentally irrational apparatus where claims are denied by processes designed for denial, exclusions multiply like sacred texts, and the company that promised protection becomes an adversary.

The ritual nature of insurance extends to the industry's own beliefs. Insurance executives cling to myths about tort reform, frivolous lawsuits, rampant fraud, and "social inflation" despite decades of evidence showing that these narratives are false, and that premium spikes track investment cycles rather than jury verdicts. The irony is stark: an industry built on calculating risk from empirical data operates on faith-based assumptions that no contrary evidence can shake.

The more you look past the actuarial façade, the more you see an industry built more on habit than evidence. This reliance on myth extends beyond claims of legal abuse and nuclear verdicts to the very way the industry prices risk, measures profit, and explains its

own cycles. For all its data, this is an industry built on conventional wisdom that rarely holds up to scrutiny.

The Sky Is Falling

Every year the insurance industry declares the sky is falling. The labels change—from “litigation explosion” to “jackpot justice” to “skyrocketing social inflation”—but the story is always the same: juries have gone wild, lawyers are out of control, and the system can’t possibly survive without higher premiums and new legal shields.

Meanwhile, the balance sheets tell a different story. In 2023, insurers made \$89 billion in profit—a record. In 2024, insurers broke that record, reaping \$167 billion in profits.¹ It’s no coincidence that during those two record-breaking years, insurers hiked rates dramatically. Since 2020, motor vehicle insurance premiums have climbed an average of 56% nationwide.² Over the same time period, homeowners insurance rates have risen 37%, with some states seeing increases over 50%.³ Commercial lines also cumulatively rose by double digits.⁴

What “crisis” are they talking about? The only thing out of control is the rhetoric. The industry’s favorite villains—runaway verdicts, greedy lawyers, reckless juries—are cover stories for normal business cycles and record-breaking profitability. Loss ratios, investment income, and capital levels all point the same way: **up**.

Yet the doomsday script keeps running. Whenever profits flatten or markets wobble, new jargon arrives to explain why consumers must pay more. “*Liability crisis*” becomes “*litigation explosion*,” then “*social inflation*,” used each time to justify restrictions on access to justice designed to hurt only the most vulnerable.

The Litigation Explosion is Now Nuclear

¹ Property & Casualty Insurance Industry – 2024 Full Year Results, National Association of Insurance Commissioners (NAIC), 2025, <https://content.naic.org/sites/default/files/2024-annual-property-casualty-and-title-insurance-industries-analysis-report.pdf>.

² Why Are Car Insurance Rates Going Up? U.S. News and World Report, September 25, 2025, <https://www.usnews.com/insurance/auto/why-are-car-insurance-rates-going-up#:~:text=Since%20January%202020%2C%20the%20cost,Media%20Relations%20at%20Triple%2DI>.

³ State of Home Insurance: 2025, Lendingtree, June 9, 2025, <https://www.lendingtree.com/insurance/state-of-home-insurance/>; Overburdened: The Dramatic Increase in Homeowners Insurance Premiums and its Impacts on American Homeowners, Consumer Federation of America, April 2025, <https://consumerfed.org/wp-content/uploads/2025/03/OverburdenedReport.pdf>.

⁴ 25 Straight Quarters of Premium Increases for Commercial Lines: CIAB Survey, Insurance Journal, March 4, 2024, <https://www.insurancejournal.com/news/national/2024/03/04/763305.htm#:~:text=Lines:%20CIAB%20Survey-,25%20Straight%20Quarters%20of%20Premium%20Increases%20for%20Commercial%20Lines:%20CIAB,for%20increases%20in%20commercial%20property>.

The term “litigation explosion” was popularized in the 1980s and became a buzzword for decades. The phrase eventually lost its punch as a rallying cry—it's hard to maintain urgency about an explosion that's been detonating continuously for three decades without actually blowing anything up. Today, it has been largely superseded by “social inflation” and “nuclear verdicts.”

Nuclear verdicts suggests verdicts so large they threaten to destroy everything in their blast radius. They are most commonly defined as verdicts over \$10 million. The U.S. Chamber of Commerce's Institute for Legal Reform warns of an "explosion" in nuclear verdicts. The American Property Casualty Insurance Association calls them a "growing crisis." Marathon Strategies, a consulting firm that advises insurers, publishes annual reports tracking nuclear verdicts and even coined the term “thermonuclear verdicts” for verdicts above \$100 million.

Marathon Strategies' 2024 report claimed just 40 verdicts were responsible for \$106 billion in damages. Scratch the surface, however, and the data doesn't match the rhetoric. Not one of the 40 cases is from 2024. Only five are from 2023. The rest date back as far as 2009.

Of the \$106 billion total, 9 verdicts were later overturned entirely, 11 more were reduced, and 8 settled for far less. Two verdicts totaling \$2 billion were deemed uncollectable. In total only \$24 billion of the \$106 billion ever survived appeal or settlement negotiations—78% less than the report implies.

Nearly half—18 of the 40 cases—were business-to-business disputes. Corporations suing other corporations over patents, trade secrets, contract breaches. These aren't individuals bankrupting companies; they're Fortune 500 companies fighting each other. Of the \$24 billion that survived reduction or reversal, nearly half—\$10 billion—went to businesses in these corporate disputes. Individual plaintiffs received \$13 billion, of which \$2 billion was considered uncollectable.

Now look at what these cases actually involved.

Case #5 on Marathon's list: Betty Thomas, an elderly woman murdered in her own home by a Charter Communications cable technician who had a lengthy criminal history the company failed to discover. The jury awarded \$7.8 billion. It was reduced to \$1.1 billion, then settled for \$262 million—all covered by Charter's insurance. Marathon lists this as evidence of a litigation crisis.⁵

⁵ Charter settles with family of murder victim, says insurance will cover it, Ars Technica, January 30, 2023, <https://arstechnica.com/tech-policy/2023/01/charter-settles-with-family-of-murder-victim-says-insurance-will-cover-it/>.

Case #26: Connor Dzion, an 18-year-old killed in a catastrophic crash caused by two truck drivers—one with a lengthy criminal history looking at his phone, another on his 25th consecutive hour of driving who plowed into stopped traffic at 70 mph with his cruise control on. The trucking company refused to settle, its attorneys withdrew, and the company became effectively a ghost entity. The verdict will likely never be collected. But it's on the list.⁶

Case #28: Hope Cheston, raped at age 14 by a security guard at her apartment complex. Jury awarded \$1 billion. Her attorneys said it was unlikely to ever be collected in full. The Washington Post quoted jurors telling her: "You're worth something." Marathon counts this as part of the litigation explosion.⁷

Case #31: Francis Amagasu, left quadriplegic when his Mitsubishi seat belt ripped apart during a crash. The jury awarded \$977 million after hearing evidence about the defect. This is what a nuclear verdict looks like in reality: a man who will need round-the-clock care for the rest of his life because a car company sold a seat belt it knew could fail.⁸

When you dig into the cases held up as examples of out-of-control juries, you find children killed by preventable defects, people murdered by employees who should never have been hired, catastrophic injuries caused by known hazards that companies chose to ignore. These aren't examples of jackpot justice. They're accountability—often the only accountability that will ever exist.

The American Transportation Research Institute, hardly a plaintiff-friendly organization, found that verdicts tend to increase when plaintiffs suffer spinal cord injuries or when children are injured or killed. That's not irrational. That's juries doing exactly what they're supposed to do.

The "nuclear" label obscures this calculation, treating all large verdicts as presumptively illegitimate, as if there's some natural ceiling on what harm should cost. A 30-year-old paralyzed for life will need decades of medical care. A family losing both parents in a preventable accident suffers incalculable loss. These aren't exaggerations—they're attempts to quantify the unquantifiable.

⁶ Billion-dollar lawyer speaks: Here's what happened in tragic Florida wreck, Freight Waves, August 28, 2021, <https://www.freightwaves.com/news/billion-dollar-lawyer-speaks-heres-what-happened-in-tragic-florida-wreck>.

⁷ A rape victim was just awarded \$1 billion. Jurors told her: 'You're worth something.', Washington Post, May 24, 2018, <https://www.washingtonpost.com/news/post-nation/wp/2018/05/24/a-rape-victim-was-just-awarded-1-billion-jurors-told-her-youre-worth-something/>

⁸ Mitsubishi Ordered to Pay PA Man \$977M for Injuries Caused by Defective Seatbelt, Autobody News, November 3, 2023, <https://www.autobodynews.com/news/mitsubishi-ordered-to-pay-pa-man-977m-for-injuries-caused-by-defective-seatbelt>

And here's what the insurance industry never mentions: the civil justice system already has mechanisms to address excessive verdicts. Judges can reduce awards through remittitur. Appellate courts review the evidence. Parties settle. Marathon's own data proves this works—78% of their headline-grabbing verdicts were reduced or eliminated through these very processes.

The deeper you look, the more the nuclear verdict narrative mirrors the frivolous lawsuit narrative it replaced. Both cherry-pick anecdotes. Both ignore systemic data. Both treat any plaintiff victory as suspicious. Both rely on the public not reading past the headline.

Consider the actual trends. According to the National Center for State Courts, civil caseloads in state courts fell by 4.4% between 2019 and 2024. Tort cases account for only 6% of those civil caseloads. In contrast, contract cases—most of which are consumer debt collection, landlord tenant and mortgage foreclosure cases— make up 50% of civil cases. The number of those contract cases has increased 63% since 2020.⁹

The overwhelming majority of cases settle, get dismissed, or never make it past summary judgment. This is not a system overrun with jackpot-seeking plaintiffs and sympathetic juries. This is a system where plaintiffs face enormous barriers, where cases are heavily screened, and where victories are hard-won and often reduced on appeal.

Yet the insurance industry continues to cite "nuclear verdicts" to justify rate increases that bear no relationship to actual losses. In 2023, insurers made \$89 billion in profit—a record. In 2024, they made \$167 billion—breaking the previous year's all-time high by 88%.

If there really were a nuclear verdict crisis driving up costs, insurers could easily prove it. They have internal data showing exactly what they pay out in claims, jurisdiction by jurisdiction, year by year. They could demonstrate that in states with damage caps, their payouts and premiums both dropped. They could show that in cities where "nuclear verdicts" are supposedly common, their loss ratios are worse.

They haven't done this. As Kenneth Klein—a professor at California Western's School of Law and former defense attorney— puts it, "Where is that data? Where is that analysis? What does its absence stand for? If the obvious way to make a case is not the way that an entity who has the data makes the case, then is that a weakness in the case?"¹⁰

⁹ How Low Can They Go? State Civil, Tort, Med Mal, Products Caseloads and Jury Trials, Center for Justice and Democracy, November 17, 2025, <https://centerjd.org/content/how-low-can-they-go-state-civil-tort-med-mal-products-caseloads-and-jury-trials#:~:text=%C2%B7%20Over%20a%20five%20year%20period,previous%2012%20years.%5B16%5D>

¹⁰ Kenneth Klein, The First Thing We Do Is Kill All the Lawsuits, The Review of Litigation, March 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4731535

What the data does show is that "nuclear verdicts" function exactly like "frivolous lawsuits" before them: as rhetorical weapons in a campaign to restrict access to justice while maximizing profits. The labels change—litigation explosion, jackpot justice, social inflation, nuclear verdicts—but the pattern remains constant. Sensationalize cases, ignore context, cherry-pick statistics, demand reforms that protect corporate defendants and their insurers.

The difference is that this time, the victims in these supposedly outrageous cases have names and stories that are a matter of public record. Betty Thomas, murdered at 83. Connor Dzion, killed at 18. Hope Cheston, raped at 14. Francis Amagasu, paralyzed for life. When you say their cases represent a crisis, you're saying their harms don't merit redress, that juries who heard days or weeks of evidence got it wrong, that accountability itself has become excessive.

The sky isn't falling. But for the families in these cases, something did fall—a roof that crushed them, a safety system that failed them, a corporation that valued profit over their lives. The verdicts aren't nuclear. The negligence was.

Tort Reform Lowers Insurance Premiums

The favored solution to the perpetual crisis? Tort reform. For insurers, the attraction is obvious. Tort reform—in whatever form it takes, from caps on damages to changes to joint and several liability—reduces the viability of some claims, which cuts insurers costs. For policyholders and legislators, the attraction is the hope that insurance rates will come down, or at least increase less dramatically. This hope is why tort reform proposals get more attention when insurance rates climb. It's easy to see the attraction: capping damages, limiting attorney fees, forcing cases into arbitration, and so on must reduce insurance rates, right?

A wide range of independent studies finds no correlation between tort reform and insurance rates. In fact, the evidence suggests the opposite. Analysis by Americans for Insurance Reform found that states enacting new limits on medical malpractice suits saw average premium decreases of 23%, while states that enacted no reform saw a larger drop of 30%.¹¹ In other words, the supposed cure performed worse than doing nothing.

Consumers, meanwhile, pay the same or more. Following tort reform in Oklahoma (2003), the largest medical malpractice insurer requested an 83% rate hike.¹² The third-largest

¹¹ Premium Deceit 2016, Americans for Insurance Reform, 2016, <https://centerjd.org/content/premium-deceit-2016-failure-tort-reform-cut-insurance-prices>.

¹² Medical Malpractice by the Numbers, Center for Justice and Democracy, January 2025, <https://centerjd.org/content/briefing-book-medical-malpractice-numbers>.

insurer raised premiums 105%.¹³ In Florida, after the governor’s office vowed sweeping reform would “reduce ever-increasing insurance premiums,” insurers promptly sought hikes of up to 45 percent.¹⁴ Other states saw the same pattern: insurers lobbied for damage caps claiming they would reduce premiums then increased rates as soon as caps were implemented.¹⁵

When reforms do arrive, the financial impact is unmistakable— but it flows upward, not outward. A 2022 study from the IZA Institute of Labor Economics found that damage caps causally predicted higher future profitability for insurers, noting that profitability began to rise *two years before* cap adoption, as companies adjusted pricing in anticipation. The profits accelerated after passage. States with caps now show med-mal insurer profits 24% higher than states without them.¹⁶

Beyond the false promise of affordability, tort reform appears to worsen outcomes. Studies find that caps on damages correlate with higher health care spending and more adverse patient safety events. According to the research, the frequency of adverse patient safety events increased following cap adoption because the deterrent effect of liability was reduced.¹⁷ In fact, health care costs increased approximately 3% when caps were put in place.¹⁸ Patients pay the price—literally and physically.

Tort reform caps accountability, not premiums, with benefits accruing precisely where they were meant to: on the balance sheets of those who asked for it.

Insurance Costs are Increased by Social Inflation

In the mid 1970s insurers coined the phrase “social inflation” to describe what they said was jurors’ increasing propensity to punish corporations. Ads at the time blamed it for higher prices, escalating taxes, and mushrooming medical costs.¹⁹ Warren Buffett highlighted the impact in his annual letter to shareholders (in 2023, Warren Buffett’s

¹³ Hike approved for premiums, *The Oklahoman*, April 8, 2004, <https://www.oklahoman.com/story/news/2004/04/08/hike-approved-for-premiums/61995090007/>.

¹⁴ Medical Malpractice by the Numbers, Center for Justice and Democracy, January 2025, <https://centerjd.org/content/briefing-book-medical-malpractice-numbers>.

¹⁵ Ronen Avraham and Ariel Povrat, *The Dark Side of Insurance*, *Review of Law & Economics*, February 2023, <https://www.degruyterbrill.com/document/doi/10.1515/rle-2022-0054/html>

¹⁶ Bernard Black, Jeffrey Traczynski, Victoria Udalova, *How Do Insurers Price Medical Malpractice Insurance?* IZA Institute of Labor Economics, June 2022, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4151271

¹⁷ Zenon Zabinski and Bernard Black, *The Deterrent Effect of Tort Law: Evidence from Medical Malpractice Reform*, *Northwestern Law & Economics Paper*, February 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2161362

¹⁸ Myunggho Paik, Bernard S. Black, David A. Hyman, *Damage Caps and Defensive Medicine, Revisited*, *Journal of Health Economics*, November 2016, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2110656

¹⁹ The free lunch was never free, *Travelers Advertisement*, 1977.

Berkshire Hathaway insurance group made more money than any other insurance company in history. The following year it did it again).

Then “social inflation” disappeared from the lexicon. For four decades, it effectively vanished.

Until 2019. The insurance company Travelers—the same company running full page ads about social inflation in the 1970s—mentioned it again. A few other companies started referring to it. Within a few years, social inflation had once again become a buzzword in insurance boardrooms and investor calls, followed by a plethora of white papers purporting to measure its effects.

Which raises an obvious question: if social inflation is significant enough to measure, why didn’t anyone measure it before? An industry famous for quantifying everything somehow “forgot” to track an alleged macroeconomic force for four decades—then rediscovered it just in time to justify double-digit premium increases.

When you look under the hood of these analyses, the empirical evidence is thin. Most take general inflation and assume anything above that must be social inflation. The reasons cited—anti-corporate sentiment among jurors, plaintiff advertising, jury manipulation tactics, litigation funding—can’t be quantified. (It’s worth noting that lawyer advertising is dwarfed by insurance industry advertising, which reached nearly \$13 billion in 2024).²⁰

Little empirical evidence exists to support the idea that jurors, advertising, plaintiff tactics, or litigation funding have *actually* had an impact on jury awards. And when those same charts are redrawn with consistent timeframes and regression methods, the supposed explosion in jury awards largely disappears.²¹

In short, social inflation is the same as it was in the 1970s—a blame-shifting marketing campaign.

Consumer Fraud Costs Billions

Ask any insurance executive and they will tell you fraud costs them hundreds of billions each year. Yet in reality, few things in insurance are as fraudulent as the industry’s own fraud statistics.

²⁰ Insurance Advertising Global Market Report 2025, The Business Research Company, January 2025, <https://www.thebusinessresearchcompany.com/report/insurance-advertising-global-market-report>

²¹ Kenneth Klein, The Case for Pausing Any Immediate Embrace of the Social Inflation Argument for Legal System Reforms, *Journal of Insurance Regulation*, 2023, <https://content.naic.org/sites/default/files/cipr-jir-2023-7.pdf>.

The APCA—the largest insurance industry trade association— claims insurance fraud costs \$40 billion a year. Their source is FBI data on “intentional and criminal acts perpetrated against an insurance company.”²² However, the FBI was studying fraud insurance adjusters, agents, and employees, including factors like skimming premiums, asset diversion, and fraudulent sales. In other words, it was not studying fraud against insurers, it was studying fraud by insurers.

The Coalition Against Insurance Fraud (CAIF) puts the cost of fraud at \$308 billion, of which \$45 billion is attributed to property casualty insurance. That estimate rests on a number of shaky foundations. First is the aforementioned FBI study. Second is a mysterious 1995 press release stating fraud cost \$80 billion a year. No one knows what was being measured or how but CAIF adjusted it for inflation (real, not imagined) and came up with \$145 billion in present day dollars. Third is a 1980 survey of claims adjusters conducted by the Insurance Information Institute that put the cost of fraud at 10% of all claims. Put them together somehow, and voilà, you get \$45 billion.

The industry's fraud narrative rests on a 30-year-old press release, a 45-year-old opinion survey, and a misreading of an FBI report. For a business allegedly built on data, the fraud statistics are remarkably data-free.

Conclusion

The insurance industry, a sector ostensibly built on actuarial science, is fundamentally driven by a set of self-serving myths. Once the data is examined, the crisis narrative collapses: the vast majority of headline verdicts shrink or disappear on appeal; so-called “jackpot justice” cases involve catastrophic and preventable harm; and tort reform reliably raises insurer profits without lowering premiums. The pattern never changes—sensationalize outlier cases, erase context, and use the resulting fear to justify limits on accountability.

Kafka saw it a century ago: sometimes the greatest threat isn't the risk itself, but the institution promising to protect you from it.

Biography

David Ratcliff is the Senior Researcher at the *American Association for Justice (AAJ)*. He has been with AAJ since 1999. During that time, he has worked predominantly with the State Affairs team but also was instrumental in launching AAJ's Research unit.

²² Kenneth Klein, The Case for Pausing Any Immediate Embrace of the Social Inflation Argument for Legal System Reforms, *Journal of Insurance Regulation*, 2023, <https://content.naic.org/sites/default/files/cipr-jir-2023-7.pdf>.