

# DUGAN BABIJ TOLLEY & KOHLER LLC



Finding Answers.  
Demanding Justice.

February 16, 2026

**Henry E. Dugan, Jr.**

*Retired*

**Bruce J. Babij**\*++▲

bbabij@medicalneg.com

**George S. Tolley, III**\*+§

gtolley@medicalneg.com

**Alison D. Kohler**\*

akohler@medicalneg.com

\* Admitted in MD

+ Admitted in WV

‡ Admitted in DC

+ Admitted in PA

§ Admitted in NC

▲ Admitted in OH

The Hon. J. Sandy Bartlett  
Chair, House Judiciary Committee  
101 Taylor House Office Building  
6 Bladen Street  
Annapolis, Maryland 21401

## Re: **HB 906 – Civil Actions – Punitive Damage Awards – Surcharge**

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

Throughout history, a critical function of the civil justice system has been to deter unsafe practices by imposing financial liability on wrongdoers. In a civil action for money damages, a plaintiff may recover “compensatory damages,” which are intended to compensate the plaintiff for the injuries or damages that resulted from the defendant’s wrongful conduct.

Punitive damages are another effective tool of the civil justice system in many states. Where such a remedy is available, punitive damages are intended (a) to punish egregious conduct and (b) to deter others from engaging in such conduct in the future.

Generally, punitive damages protect the public at large by deterring conduct that is “grossly negligent,” *i.e.*, conduct that disregards the rights and safety of the public at large, or is characterized by malicious, oppressive, or fraudulent intent.

Prior to 1992, Maryland law allowed punitive damages if the jury found, by clear and convincing evidence, that the defendant acted with gross negligence (also referred to as “implied malice”), defined by a “wanton and reckless disregard for human life.” *Smith v. Gray Concrete Pipe Co.*, 267 Md. 149, 167 (1972). In 1992, however, a divided Supreme Court of Maryland decided that punitive damages no longer should be available to punish or deter defendants who would act with a “wanton and reckless disregard for human life” in Maryland. *Owens-Illinois v. Zenobia*, 325 Md. 420 (1992).

The Maryland General Assembly has never established standards governing punitive damages generally, although a 2017 House Workgroup Report on Punitive Damages identified more than 40 statutes in the Maryland Code that allow for punitive damages in certain specific cases. Plainly, punitive damages are not a disfavored tool for public policy in Maryland.

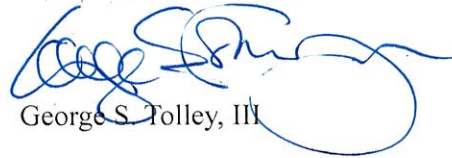
HB 906 would overturn the decision in *Zenobia* and bring Maryland back into the mainstream, by allowing punitive damages in actions (including wrongful death actions) based on negligence according to a standard drawn from case law followed by more than 30 states (AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, IA, ID, IN, KY, ME, MN, MO, MS, MT, ND, NJ, NM, NV, NY, OH, OK, PA, SC, TX, UT, VA, and WI).

In all of those states, punitive damages are available to punish and deter conduct that disregards the rights and safety of the public at large. *Marylanders deserve no less protection* than the residents of the rest of this country.

Because the recovery of punitive damages represents a public determination that conduct should be punished, HB 906 allocates some of every punitive damage award to the State of Maryland in the form of a surcharge to deter future conduct that is unreasonably dangerous to the Maryland public.

I respectfully ask for a **FAVORABLE** report on House Bill 906.

Sincerely,

A handwritten signature in blue ink, appearing to read "George S. Tolley, III", with a large, stylized flourish at the end.

George S. Tolley, III