

April 17, 2017

Oregon State Legislature
House Committee on Judiciary

sent via email to:
hjud.exhibits@oregonlegislature.gov

RE: HB 2129, Noneconomic Damages Cap for Wrongful Death -NAMIC's written testimony in OPPOSITION

Dear Representative Jeff Barker, Chair; Representative Andy Olson, Vice-Chair; House Democratic Leader Jennifer Williamson, Vice-Chair; and honorable members of the House Committee on Judiciary:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the House Committee on Judiciary for the public hearing on HB 2129.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 153 members who write property/casualty in the State of Oregon, which represents 44% of the insurance market.

HB 2129 would increase the amount of noneconomic damages that may be awarded in a wrongful death cause of action from \$500,000 to \$1 million. The proposed legislation would apply to legal claims that occurred prior to the enactment date of the bill. HB 2129 would also, beginning in 2018, require the State Court Administrator to adjust the noneconomic damages cap imposed by the bill by multiplying the limitation amount applicable to the year in which the adjustment is made by the percentage amount determined based upon changes to the cost of living index for the previous calendar year, as set by the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor.

On behalf of NAMIC's members, we respectfully *oppose* the proposed legislation for the following reasons:

1) There is no evidence to support the contention that the current cap on noneconomic damages does not adequately address the legal needs and proven damages of litigants -

Unlike economic damages (lost wages, medical expense, property damages, etc.), which are influenced by inflationary changes in the economy, noneconomic damages (like pain and suffering, emotional damages, hedonic damages, etc.) are not financially impacted by vacillations in the economy. There is no scientific data to support the belief that emotional, psychological, or physical pain today has a greater economic value than it did last year or three years ago. Consequently, there is no clear economic justification for *doubling* the noneconomic damages cap for wrongful death claims.

2) The proposed legislation will create an unnecessary insurance rate cost-driver, that could adversely impact the cost of insurance to the consumer –

It is an inevitable and unavoidable fact that when statutory civil damages caps are raised, plaintiff attorneys raise their settlement demands to match the increased damages caps, because lawyers are duty bound to their client to try and recover as much in damages as possible. This is acutely so in wrongful death cases, because basic human-nature leads one to be extra-sensitive and compassionate in cases where there has been a loss of life, so trial attorneys will use the increased damages cap to justify asking juries for the maximum amount of noneconomic damages allowed by law. Further, with a higher noneconomic damages cap, plaintiffs will be encouraged to “build up” their economic damages, so as to support an award from the trier of fact for their higher noneconomic damages claim.

As the amount of settlement demands increase, so to do the legal defense costs associated with litigating disputed claims and the amount of money paid to litigants in inflated damages settlements. These increased claims costs act as an insurance-rate cost driver that could adversely impact affordability of insurance for consumers.

3) HB 2129 could expose insurance policyholders to greater *out of pocket* financial liability exposure -

The proposed legislation would increase the noneconomic damages cap by \$500,000 dollars, which means that liability insurance coverage limits are more likely to be exhausted quicker; thereby, exposing policyholders to greater out of pocket financial liability exposure. Most consumers do not purchase \$1million in liability coverage, so the proposed legislation will have a significant economic impact on insurance consumers, who will have to either purchase dramatically higher insurance liability coverage limits or expose themselves to greater out of pocket financial liability. This could have an acutely detrimental impact upon small businesses that may have high liability deductibles and/or low coverage limits, and consumers unable to afford higher liability insurance coverage limits.

4) The proposed legislation will lead to more litigation, which will burden trial court dockets with cases that should have been settled –

Since HB 2129 will *double* the noneconomic damages caps on subjective damages (damages not easily subject to quantification, like medical damages or lost wages, plaintiff’s will be incentivized to inflate their damages claims and “roll the dice” at trial hoping that the sympathies of a wrongful death case leads to higher noneconomic damages awards. Additionally, by increasing the damages cap *two-fold*, many defendants will have no choice but to legally contest these extremely high plaintiff settlement demands, especially since noneconomic damages

claims, by their very nature, are difficult to prove and quantify, and easily manipulated by rapacious litigants. Consequently, there will be more law suits going to trial, which will congest court trial dockets and delay the adjudication of meritorious legal claims.

NAMIC is also concerned about the provision in the bill that requires the State Court Administrator to annually adjust the cap limit on the noneconomic damages to take into consideration cost of living adjustments. In today's world, most employees don't see an annual cost of living adjustment to their wages and salaries (a true economic variable), so why should there be an annual cost of living increase on the damages cap for pain and suffering (a noneconomic variable)?

Additionally, there is no specific public policy rationale for requiring that the bill become effective upon passage. Increasing noneconomic damages cap for pain and suffering and emotional damages claims for wrongful death cases does not trigger a public policy emergency. Why is an immediate effective date necessary to promote the "preservation of the public peace, and health and safety" of the citizens of the state?

NAMIC is also concerned with the legislative proposal that the increased damages cap be *retroactively* applied to causes of action that arose before the effective date of the legislation. Both plaintiffs and defendants made litigation decisions and created/implemented trial strategies based upon the damages cap law in existence at the time of the filing of the lawsuit. Applying a new damages cap to pending litigation is patently unfair and is likely to have a detrimental impact upon the timely adjudication of cases before the court.

For the aforementioned reasons, NAMIC respectfully requests that you **VOTE NO on HB 2129**, because the foreseeable adverse societal consequences that will likely result from the proposed legislation far exceed any possible benefits the bill will provide to litigants and their attorneys, who want to inflate the amount of their noneconomic damages settlement demands.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,



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