



**OHIO
ASSOCIATION *for*
JUSTICE**
TRIAL LAWYERS HELPING PEOPLE

Proponent Testimony to H.B. 447

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Chair Thomas, Vice-Chair Swearingen, Ranking Member Synenberg, and members of the Ohio House Judiciary Committee, thank you for the opportunity to testify today in support of HB 447. My name is Lindsay Lawrence. I have been a trial lawyer for 15 years, and I currently serve as the President of the Ohio Association for Justice (OAJ).

Our state and national Constitutions are clear: a jury of our peers, not the legislature, is the best suited to resolve difficult legal disputes. Ohio’s founders emphasized the importance of it, as Section 1, Article 5 of Ohio Constitution says that the right to trial by jury is “inviolable”. No other right is described in this way. Our country’s founders, in the 7th Amendment, clearly required juries to decide questions “where the value in controversy shall exceed twenty dollars.” Certainly, the founders could have included a limit or cap, but they did not.

However, in 2004, the Ohio General Assembly passed a law capping the amount of damages that can be awarded to injured people. It is worth clarifying that after determining the liability that caused the injury, juries decide an amount to compensate plaintiffs for the financial harm (economic) and emotional impact (non-economic) of that injury. Regardless of how egregious the injury or the facts, if the amount for non-economic damages exceeds the limit set in law, a judge is required to reduce the jury's determination of damages to \$250,000, \$350,000, or \$500,000, which have not been revised since enactment 20 years ago. In other words, the constitutional responsibility of juries to decide questions and provide justice was replaced by an arbitrary number set in law.

There is great power in recognizing the non-economic damages in a civil case. It is one thing to suffer a financial harm, but it is a completely different thing to undergo such pain, suffering, trauma, anxiety, stress, depression, and a loss of enjoyment of life. Every individual has the absolute right to live a life they enjoy, yet damage caps limit the recovery of lost joy and set the price of trauma at \$250,000.

For example, I had the privilege to represent a young woman who was traveling for a business conference in Ohio when she was sexually assaulted in her hotel room. Even after uncovering the egregious facts and circumstances that led to her assault, and even after our client had to describe in detail how traumatic and life-altering this incident was during the deposition, she was forced to resolve her case for a sum below \$250,000, the arbitrarily set cap on her sexual assault and trauma. She had a choice to make, to relive, again, in front of a jury and the community, to be retraumatized in recounting what happened to her, knowing that no matter what the jury found in their verdict, the Judge would be forced to reduce it to the arbitrary cap of \$250,000, or settle within that cap. She should not have had to make that choice.

Although we believe the cap on trauma, pain, suffering and fear is not constitutional, the current proposal in HB447 incrementally addresses this injustice. The bill, as amended, makes only 2 changes:

1. Increases caps by inflation:
\$250,000 to \$415,000,
\$350,000 to \$580,000,
\$500,000 to \$830,000 respectively.
2. Creates a process for these caps to be annually adjusted for inflation.

In effect, this bill is a compromise. On one hand, the bill keeps caps in place. On the other, the bill resets the caps by inflation, which has averaged 2.55% per year since April of 2005.

In the simplest of economic terms, \$250,000 20 years ago is \$415,197.48 today. Injured Ohioans should be allowed to receive at least this amount of economic reality.

Before concluding, I must also be clear that As Amended HB 447 is flawed. The As Introduced version more thoroughly addressed the unconstitutionality of caps, and we respectfully disagree with the sponsor's amendment that revived the \$500,000 hard cap on medical malpractice claims. The "med mal hard cap" is clearly an unconstitutional limitation on Article I, Section 16's right to a remedy by due process of law, which is protected by the promise of the 'inviolable right to a jury trial' under Article I, Section 5. OAJ would prefer the legislature fix this arbitrary language in Sec. 2323.43(A)(3).

I will conclude on the same note as Representative Stewart; "Accounting for the effects of inflation is basic good governance." Applying inflation to caps on damages is the simplest step in the right direction for injured Ohioans.

Thank you, Mr. Chairman and members of the Committee. OAJ and I request your support for HB 447 and I look forward to your questions.