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Senator Anne Carney
Representative Matthew Moonen
Committee on Judiciary
100 State House Station, Room 438
Augusta, ME 04333

RE: LD 934 – An Act to Amend the Laws Governing Damages Awarded for Wrongful Death

Senator Carney, Representative Moonen, and Honorable Members of the Committee on Judiciary:

My name is Chris Boots. I live in South Portland. I practice law at Berman & Simmons, a state-wide firm that represents victims in personal injury and medical malpractice cases. I am also a co-chair of the Legislative Committee of the Maine Trial Lawyers Association (“MTLA”). I am here to speak today on behalf of the MTLA, which strongly supports this bill.

Current Maine law provides that in a wrongful death case, the damages that may be awarded for the loss of the comfort, society, and companionship of a victim – so-called “non-economic damages” – are capped at \$750,000.

The law also allows for economic damages, medical expenses, and damages for conscious pain and suffering. But the stark reality is that in many cases, such as those involving an instant death when a victim was not employed, non-economic damages are the only damages available to compensate a victim’s beneficiaries for the loss of their loved one due to the fault of another.

LD 934 would increase the “non-economic” or “loss” damages cap in wrongful death cases from \$750,000 to \$1,500,000. It would also raise the cap on punitive damages in these cases from \$250,000 to \$1,000,000. Finally, it would extend the statute of limitations period for commencing a wrongful death claim from two to three years. Each of these changes would better allow our civil justice system to fully and fairly compensate victims, deter misconduct, and keep our communities safe.

1. Increasing the Wrongful Death Cap to \$1,500,000

A cornerstone of our civil justice system, grounded in the Constitutional right to trial by jury, is that it places trust in juries to determine the amount of damages to allow in a given case.

The standard instruction that Maine juries hear in a civil case is that they “must award an amount of damages that will justify and fairly compensate for the losses resulting from the injuries sustained.” *See Alexander, Maine Jury Instruction Manual* § 7-101 (2023 ed.). This is true not only for categories of damages that may be easily calculable, like lost wages or medical expenses, but also for categories of damages like pain and suffering, which are not easily determined. Dozens if not hundreds of times a year, Maine juries use their own good judgment to assign value to pain and suffering claims brought by living persons, and they do this without major controversy. Juries are best situated to assign a fair amount to a loss as they

are able to listen to the evidence and make their own determinations about the case.

The current wrongful death cap is a dramatic departure from this tradition of trust in the jury system.

Arguments in favor of low non-economic damages caps are often framed around a stated fear of “runaway juries” – an idea that juries want to ignore their instructions to base a verdict on the evidence, and instead award enormous verdicts because they are inflamed by passion or prejudice. This argument insults Maine juries by assuming they will fail to follow a judge’s clear instructions to base their decisions on the facts in evidence. It ignores the reality here in Maine that multi-million-dollar verdicts are few and far between, and that the massive, headline-grabbing verdicts used as examples in favor of caps are simply unheard of, here. And it ignores that Maine judges already have a tool at their disposal, called remittitur, that allows them to reduce any verdict that includes “unlawful excess.” *See Nyzio v. Vaillancourt*, 382 A.2d 856, 861 (Me. 1978).

Ironically, juries today are not told about the existing cap and are still asked to assign a value to the non-economic loss of a wrongful death victim. If the verdict exceeds the cap, the Court reduces it. Because of this arrangement, we can see in practice that juries do a fair job evaluating loss damages.

As an example, attorneys at our firm recently tried a tragic medical malpractice case to verdict. The case involved the death of a young man who was by all accounts a wonderful person, and dearly missed by his parents and siblings. The jury, finding the defendant at fault for his death, allowed \$3 million for this young man’s loss. Because of the cap, this was reduced to \$500,000, the limit in place when he passed away.

We can see in this how fears about runaway verdicts are unfounded, and how juries can be relied upon to carefully deliberate a fair and considered result.

Low caps on non-economic damages do not just abrogate our Constitutional tradition of putting faith in jury discretion. They are also discriminatory. With a low cap in place, verdicts and settlement values are often driven by the uncapped economic damages portion of a wrongful death claim. This means that the claims of high-earning victims are often worth orders of magnitude more than the claims of low-earners, or of non-earning victims such as children, the elderly, stay-at-home parents, and the disabled. Today you will hear from, or read the testimony of, families of those who passed away due to the misconduct of others, describing the insult they felt on learning that our current system considers the life of their loved ones less valuable. We should correct this insult and address this unjust disparity.

The Legislature has heard much this session about the backlog of pending cases in our judicial system. Low caps on non-economic damages contribute to this. The uncertainty and risk surrounding what will happen at a trial motivates the settlement of many cases. In a case where only non-economic damages are available, those defending these cases have their risk dramatically reduced by knowing that their “worst case” is statutorily limited. As a result, cases remain pending for longer and more cases go to trial.

Low caps on non-economic damages also decrease access to justice, by making certain claims difficult or impossible to pursue. Consider medical malpractice cases, which routinely involve litigation costs of \$100,000 to \$200,000 to reach a jury trial. If only damages for a victim’s loss are available, and those damages are subject to a low cap, the costs and risks of litigation mean that even meritorious wrongful death claims may be infeasible for lawyers to take on, complicating the efforts of survivors to find an attorney to pursue their claim.

The wrongful death cap was last increased in 2019. An unjust law remains an unjust law, no matter how recently revised. But increasing the cap on non-economic damages also helps to keep pace with high inflation. The proposed increase in the cap is not in perfect lockstep with inflation, yet it bears mention that a \$750,000 verdict in 2019 would be worth approximately \$900,000 in today’s dollars.

2. Increasing the Punitive Damages Cap to \$1,000,000

The cap on punitive damages in wrongful death cases is, like the non-economic damages cap, a departure from other Maine law.

Outside of judicial discretion to reduce punitive damages claims – itself a safeguard that obviates the need for low caps in this area – punitive damages in a typical case, if proven, are not subject to statutory caps.

This leads to absurd results. Consider the case of a pharmaceutical company that sells a hygiene product to

women that they know causes ovarian cancer. If the plaintiff in such a suit has died, the jury would be limited to allowing \$250,000 in punitive damages. But if the patient survived, the jury could potentially allow a much larger sum. Whether or not the victim has died should have no bearing on whether punitive damages are an appropriate tool for deterring the conduct.

As with increasing the non-economic damages cap, there is no practical reason to believe that increased punitive damages would be abused by juries. The standard for awarding punitive damages – a finding that a defendant acted with actual or implied malice – is exceedingly high, meaning that few claims for punitive damages ever appear before Maine juries. Moreover, many of these claims are triggered by intentional torts, like sexual abuse, that are often outside the scope of insurance coverage – eliminating any kind of concern that an increase in punitive damages caps would impact that industry.

Finally, it deserves mention that the express purpose of punitive damages under our existing law is to show “society’s disapproval of intolerable conduct and [to] deter[] such conduct where no other remedy would suffice.” See *Tuttle v. Raymond*, 494 A.2d 1353, 1355 (Me. 1992). In some contexts, \$250,000 may be sufficient to express society’s disapproval and to deter misconduct. But in other circumstances – for example, where the defendant is a large corporation engaging in willful wrongdoing – \$250,000 may be woefully inadequate, and defeats the purpose of the remedy.

3. Increasing the Statute of Limitations to Three Years

This bill would increase the time allowed to file a wrongful death claim from two to three years after a death.

We are all acquainted with tragedy among those close to us, and know the grief and burdens associated with the loss of a loved one. It is not surprising in this context that consulting a lawyer may not be on survivors’ minds immediately after a death in the family.

Wrongful death cases can also be complex, involving significant investigation and consultation with experts to determine whether a claim has merit.

Between the time that it may take the survivors of a wrongful death to find an attorney, the time it may take an attorney to investigate a claim, and the time it may take parties to discuss pre-suit resolution of a claim, two years is brief.

The current wrongful death statute of limitations is also uniquely short amongst similar Maine laws. In contrast, Maine’s negligence statute of limitations is six years, and Maine’s medical malpractice statute of limitations is three years. Extending the statute of limitations would reflect the realities of the time necessary to allow these claims to develop and bring the wrongful death law closer in line with similar Maine tort law.

We hope this Committee will support these important changes that will increase access to justice for Mainers. Thank you for your consideration.

Sincerely,



Christopher C. Boots
Co-Chair
MTLA Legislative Committee