



An Update on Ohio's Limitations on Damages

Chet Porembski, Esq.
Bobbie S. Sprader, Esq.
Zack Hoover, Esq.

Agenda

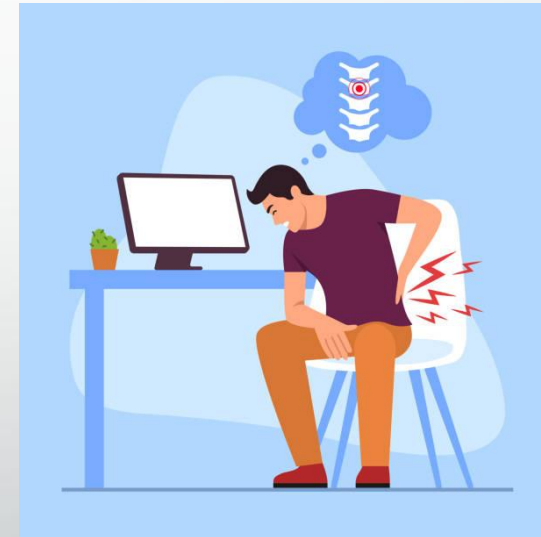
- **What are damages?**
- **Ohio's damage caps**
- **Legislative proposal on damage caps**
- **Guidance from other jurisdictions**
- **How to address damages at trial**

What are damages?

- **Economic Damages**



- **Non-economic Damages**



Ohio's damage caps

- **R.C. § 2323.43**
 - **No cap on economic damages**
 - **Non-economic cap, the greater of:**
 - **3 x economic damages, OR**
 - **\$350,000/\$500,000**
 - **\$500,000/\$1,000,000**
 - **\$250,000**



Ohio's damage caps

DO THEY STILL APPLY!?!?

Ohio's damage caps

- **Challenges to Ohio's Statutory Damage Caps**
 - *Paganini v. Cataract Eye Center, et al., Eighth Appellate District*
 - *Lyon v. Riverside Methodist Hospital, et al., Tenth Appellate District*
 - *McNalley v. Keiser, et al., Sixth Appellate District*



Legislative proposal on damage caps

- **House Bill 447**
 - **“To amend sections... 2323.43... of the Revised Code to increase the dollar caps on noneconomic damages and punitive or exemplary damages in civil actions and provide a procedure for the Dept. of Taxation to make annual adjustments of those caps based on the consumer price index.”**

Legislative proposal on damage caps

- **House Bill 447 → R.C. § 2323.43**
 - No cap on economic damages
 - Non-economic cap, the greater of:
 - 3 x economic damages, OR
 - \$500,000/\$830,000 (**\$350,000/\$500,000**)
 - \$415,000 (**\$250,000**)
 - No cap on non-economic damages for permanent and substantial physical deformity, loss of use of limb, or loss of bodily organ system; or permanent physical functional injury that permanent prevents the injured person from being able to independently care for self and perform life sustaining activities.
(**\$500,000/\$1M**)

Legislative proposal on damage caps

- **House Bill 447 → R.C. § 2323.43**
 - In January of each year, the Dept. of Taxation shall adjust each dollar amount limitation based on the percentage increase in the CPI as determined by the U.S. Bureau of Labor Statistics for the 12-month period ending on June 13 of the immediately preceding calendar year
 - If the CPI did not increase, no increase to the dollar amount limitations shall be made
 - On Feb. 15 of each year, the dollar amount adjustments set forth by the Dept. of Taxation shall replace the dollar amount limitations set forth in the statute

Legislative proposal on damage caps

- **Concerns?**
 - Annual adjustments to caps inject continual uncertainty into settlement valuations and verdict exposure. Contrary to predictability and uniformity provided under the current caps.
 - Uncertainty when applicable cap becomes fixed—date of loss, filing date, trial date, or judgment date
 - Elimination of non-economic damage cap for catastrophic injuries invites subjectivity and inconsistency in awards
 - Destabilizing exposure and increasing costs that can affect patient access to care and provider availability

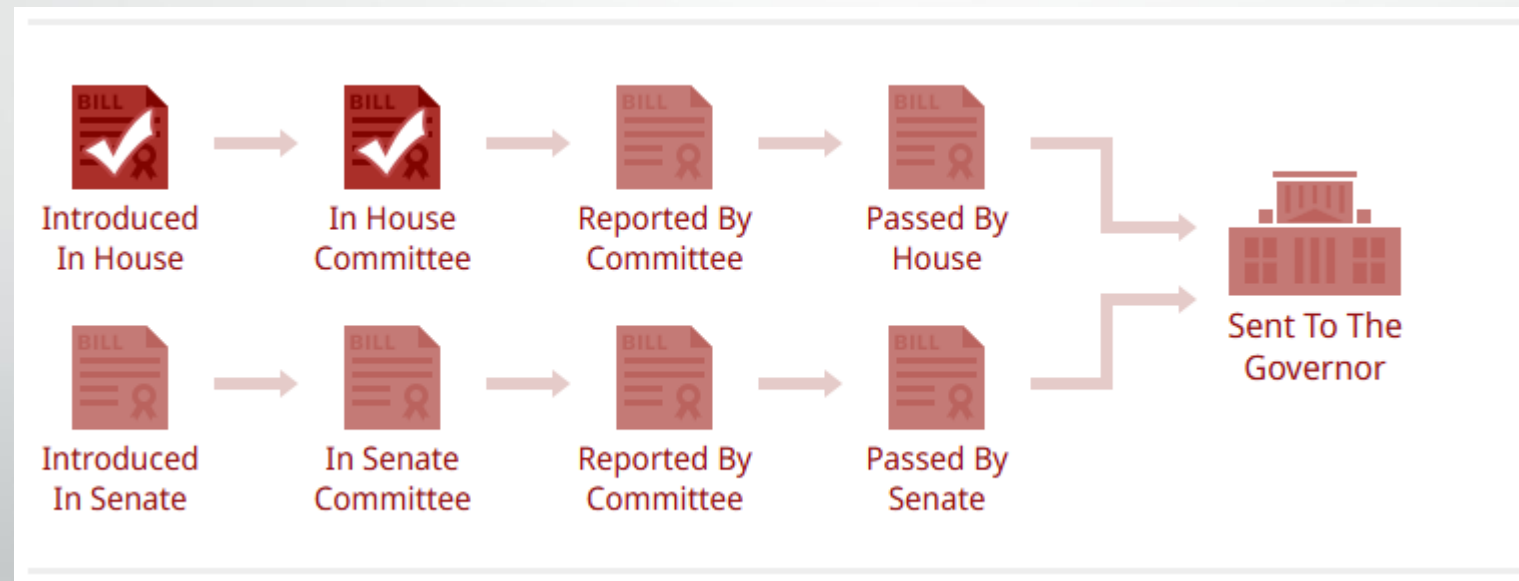
OHIO VERDICTS

2022-2023

\$5.3 Million Fuel Spill (brain injury) December 2022 Lucas	\$6 Million House Fire (death 85/M) April 2022 Washington	\$7.6 Million Med Mal (paralyzed) June 2023 Cuyahoga
\$4.4 Million Civil Rights (death 23/M) November 2022 Cuyahoga	\$6.5 Million Med Mal (death 52/F) April 2022 Lorain	\$26 Million Med Mal (death 69/M) May 2023 Trumbull
\$17 Million Road Const. (death 54/M) October 2022 Cuyahoga	\$6.19 Million Med Mal (brain injury) September 2023 Erie	\$7 Million Truck Crash (hip surgery) May 2023 Clark
\$4.25 Million Med Mal (death 43/F) September 2022 Stark	\$2.6 Million Employment Discrimination August 2023 Franklin	\$25 Million Med Mal (neuro injury) April 2023 Franklin
\$4.4 Million Toxic Exposure (lung damage) August 2022 Warren	\$7 Million Med Mal (death 53/M) October 2023 Mahoning	\$6.7 Million Tire Explosion (brain injury) February 2023 Franklin
\$5 Million Nursing Home (death 84/M) June 2022 Knox	\$5 Million Nursing Home (death 70/M) August 2023 Cuyahoga	\$6 Million Med Mal (death 68/F) February 2023 Cuyahoga
\$5.8 Million Auto Crash (death 54/M) May 2022 Allen	\$2.6 Million Med Mal (nerve damage) August 2023 Richland	\$2.15 Million Med Mal (death 77/M) January 2023 Hamilton

Legislative proposal on damage caps

- **House Bill 447**



Guidance from other jurisdictions

- **Georgia**

- *To reduce insurance costs and "level the playing field"*
- Medical damages now reflect *actual* costs, not inflated "phantom damages"
- Limits on how attorneys argue pain-and-suffering damages
- New trial structure: fault first, damages second
- Stricter rules on dismissals and procedural timing
- Regulation of third-party litigation funding (SB 69)

Addressing damages at trial

- **Focus Groups**



Addressing damages at trial

- **Audio-visual aids**
- **Calling damages witnesses to testify**
- **Including the third party payor as a party**

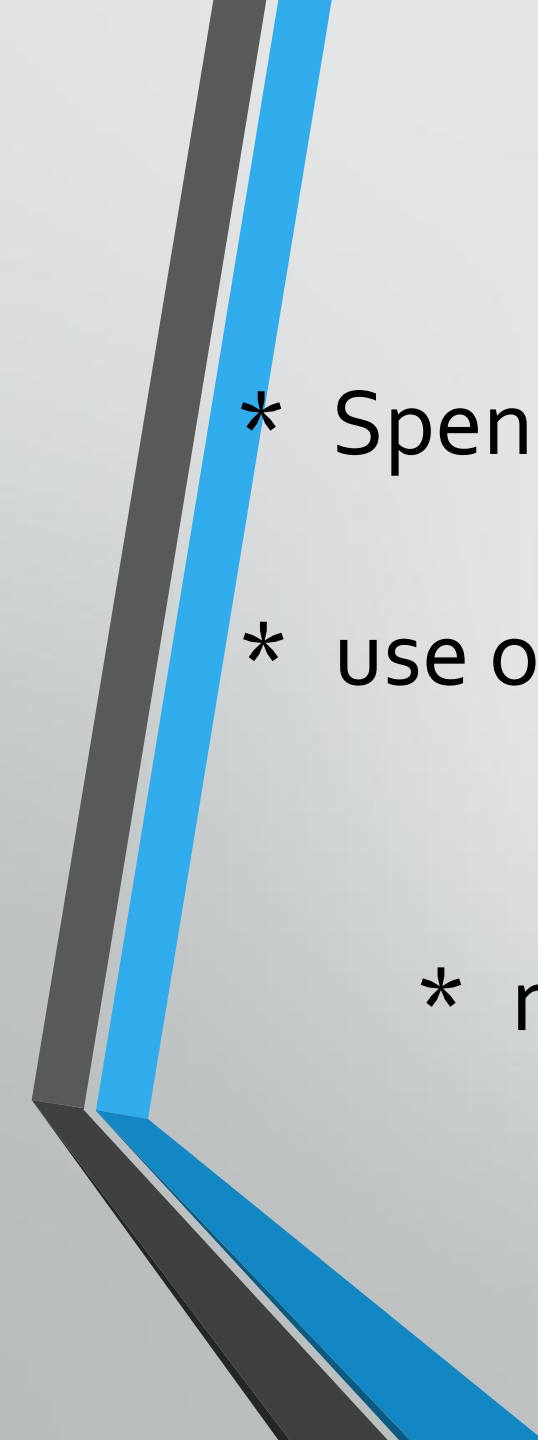


Addressing damages at trial

- Anchoring
- Ways to Respond
 - Ignore
 - Identify
 - Counter
 - Identify and Counter



WHAT CAN YOU DO?

- 
- * Increase Risk management efforts
 - * Spend money up front to investigate major claims
 - * use of tools to understand your claim and perhaps refine your strategy
 - * mediate early if possible and appropriate



Questions?