


DE-ESCALATING DAMAGES

**Ohio's Limitations on Damages
& How Plaintiffs Are Challenging Them**

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AGENDA

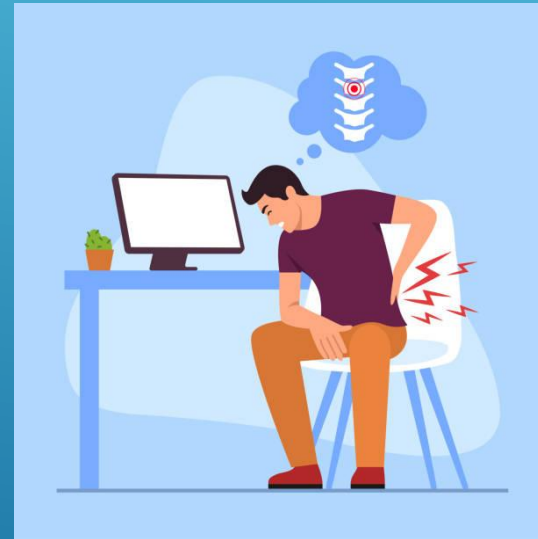
- ▶ **What are damages?**
 - ▶ **Ohio's damage caps**
 - ▶ **How damages are presented to juries**
 - ▶ **Challenges to conveying damages evidence to juries**
 - ▶ **How to address damages at trial**
 - ▶ **Pathways to de-escalating damages long-term**
- 

WHAT ARE DAMAGES?

▶ Economic Damages



▶ Non-Economic Damages



HOW ARE DAMAGES PRESENTED TO THE JURY?

▶ Past Medical Expenses

- ▶ Billings
- ▶ Liens
- ▶ Stipulations



HOW ARE DAMAGES PRESENTED TO THE JURY?

▶ **Future Medical Expenses**

- ▶ Life care planners
- ▶ Economists
- ▶ Number-crunchers



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**



OHIO'S DAMAGE CAPS

- ▶ **R.C. § 2323.43**

- ▶ **No cap on economic damages**

- ▶ **Non-economic cap of, the greater of:**

- ▶ **3 x economic damages, OR**

- ▶ **\$350,000/\$500,000**

- ▶ **\$500,000/\$1,000,000**

- ▶ **\$250,000**

OHIO'S DAMAGE CAPS

- ▶ **Challenges to Ohio's Statutory Damage Caps**
 - ▶ *Paganini v. Cataract Eye Center, et al.*
 - ▶ *Lyon v. Riverside Methodist Hospital, et al.*



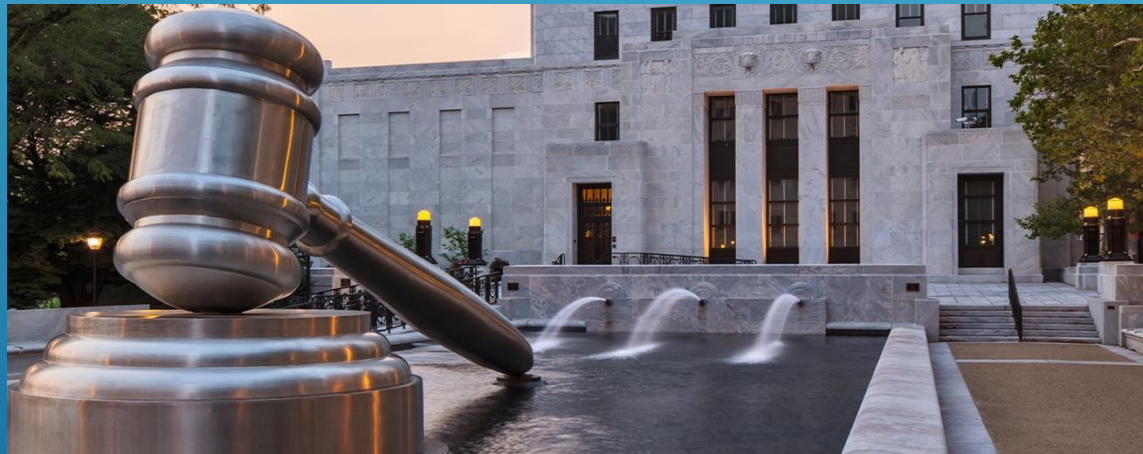
CHALLENGES OF PRESENTING DAMAGES TO THE JURY

▶ Collateral Source Rule



CHALLENGES OF PRESENTING DAMAGES TO THE JURY

► *Robinson v. Bates*




CHALLENGES OF PRESENTING DAMAGES TO THE JURY

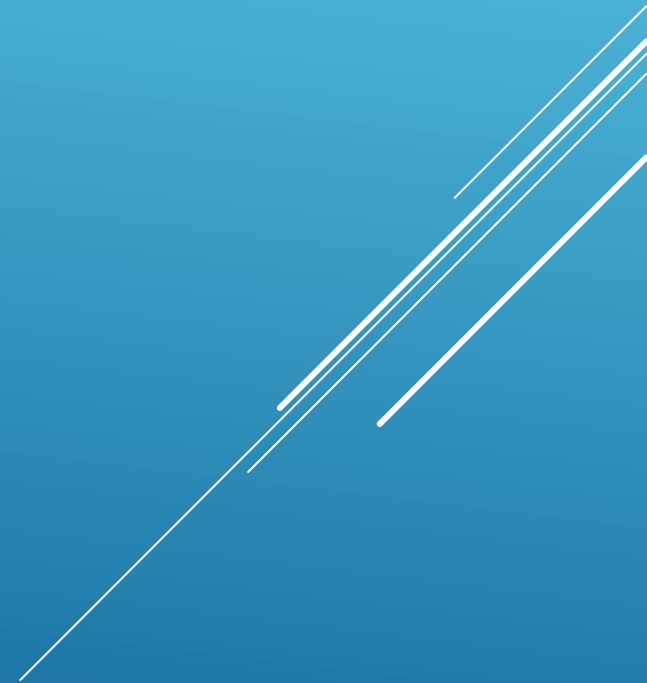
▶ **R.C. 2317.45(B)**

- ▶ “Any insurer’s reimbursement policies or reimbursement determination or regulations issued by the United States centers for Medicare and Medicaid services or the Ohio department of Medicaid regarding the health care services provided to the patient in any civil action based on a medical claim are not admissible as evidence for or against any party in the action and may not be used to establish a standard of care or breach of that standard of care in the action.”

CHALLENGES OF PRESENTING DAMAGES TO THE JURY

- ▶ **Combating R.C. 2317.45(B)**
 - ▶ **Stipulations**
 - ▶ **Motions to allow Charges & Payments**
 - ▶ **Joining the third party payor**
- 

NUCLEAR VERDICTS: WHAT'S DRIVING “LANDMARK” VERDICTS?



A “NUCLEAR VERDICT” – WHAT IS IT?

TYPICALLY REFERS TO A VERDICT IN A CIVIL LAWSUIT THAT AWARDS GREATER THAN \$10M IN DAMAGES

“SOCIAL INFLATION” – WHAT IS IT?

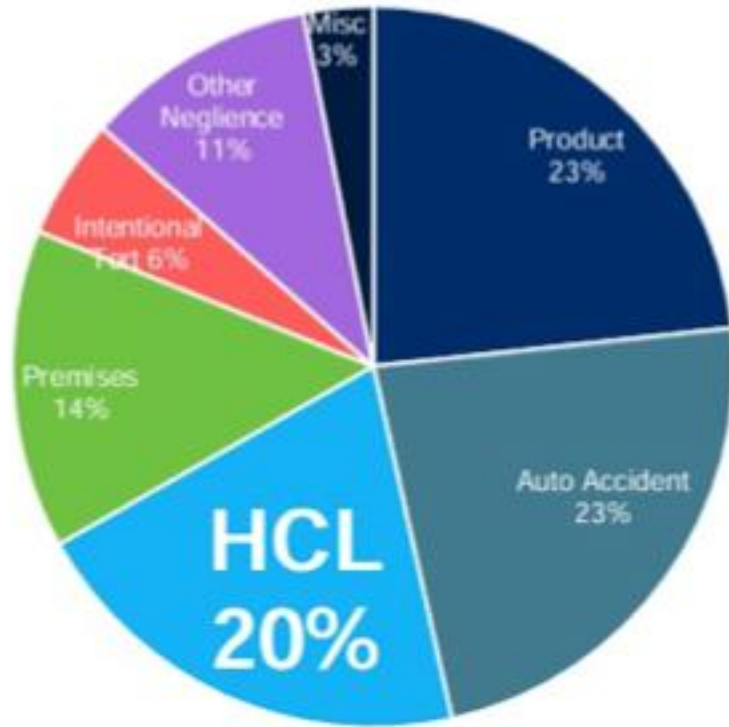
REFERS TO THE INCREASE IN INSURANCE CLAIM COSTS BEYOND WHAT WOULD BE EXPECTED DUE TO ECONOMIC FACTORS PRIMARILY DRIVEN BY INCREASED LITIGATION, LARGER JURY AWARDS, AND A BROADER INTERPRETATION OF CONTRACTUAL OBLIGATIONS

The image features a blue gradient background that transitions from a darker shade at the bottom to a lighter shade at the top. In the lower right quadrant, there is a cluster of several thin, white, parallel lines that extend diagonally towards the top right corner. These lines vary in length and are slightly offset from each other, creating a sense of movement and depth. The overall composition is minimalist and modern.

(Crittendon Medical Conference 2025)

...with social inflation rising, especially in HC

Many factors drive social inflation across distinct industries.
Healthcare liability cases comprise about 20% of nuclear verdicts.



Top 50 Largest Verdicts 2016-2023

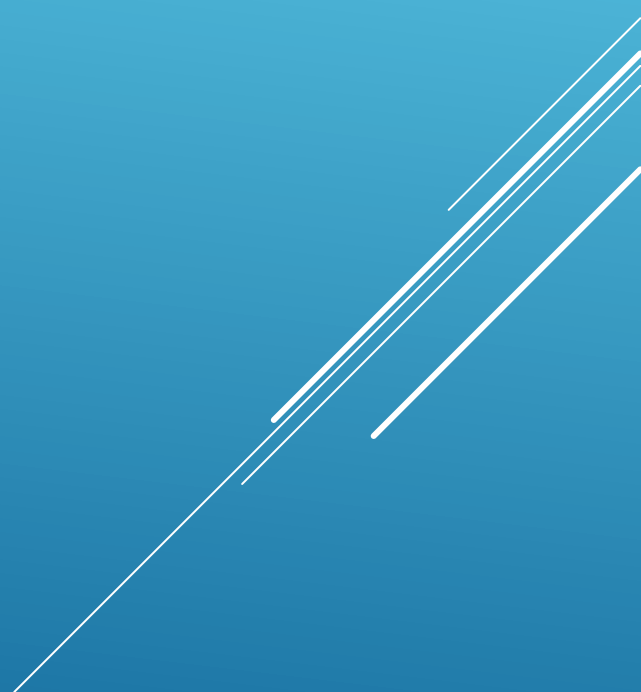
2019	MD	Obstetrics, Hospital	<u>\$229.6</u>	2016	NY	Obstetrics, Hospital	<u>\$50.0</u>
2018	MI	Pediatric Orthopedic Surgery, Hospital	<u>\$136.7</u>	2021	CA	Paramedic, Ambulance	<u>\$49.8</u>
2018	MI	Nuclear Medicine Technicians, Hospital	<u>\$130.5</u>	2022	IL	Radiology, Hospital	<u>\$49.0</u>
2022	GA	Caregivers, Personal Care Home	<u>\$118.0</u>	2019	NV	Hospital	<u>\$48.6</u>
2022	MN	Orthopedic Surgery, Hospital	<u>\$111.3</u>	2018	NY	Obstetrics, Hospital	<u>\$48.1</u>
2019	NY	Hospital	<u>\$110.6</u>	2017	IL	Pediatrics	<u>\$48.0</u>
2018	FL	Gynecology, Hospital	<u>\$109.0</u>	2018	IL	Hospital	<u>\$47.5</u>
2018	CA	Naturopathic Practitioner	<u>\$105.0</u>	2017	IL	Pediatrics	<u>\$47.5</u>
2019	IL	Obstetrics, Nursing, Hospital	<u>\$100.7</u>	2018	PA	Neonatology, Hospital	<u>\$47.0</u>
2022	IA	Obstetrics, Hospital	<u>\$97.4</u>	2023	NV	Internal Medicine, Hospital	<u>\$47.0</u>
2022	TX	Dentist, None	<u>\$95.5</u>	2017	AR	Pediatrics, Hospital	<u>\$46.5</u>
2018	NY	Obstetrics, Hospital	<u>\$83.7</u>	2017	GA	Obstetrics, Hospital	<u>\$45.8</u>
2023	OK	Nurse, Correctional Health	<u>\$82.0</u>	2022	IL	Emergency Medicine, Hospital	<u>\$45.3</u>
2022	NY	Obstetrics, Hospital	<u>\$80.0</u>	2017	NJ	Emergency Medicine, Hospital	<u>\$45.0</u>
2018	NY	Obstetrics, Hospital	<u>\$78.7</u>	2016	MD	Obstetrics, Hospital	<u>\$44.1</u>
2022	GA	Unknown, Addiction Treatment Center	<u>\$77.0</u>	2016	PA	Hospital	<u>\$44.1</u>
2022	GA	Emergency Medicine, Radiology, Hospital	<u>\$75.0</u>	2018	OH	Family Medicine, Hospital	<u>\$44.0</u>
2018	NM	Obstetrics, Hospital	<u>\$73.2</u>	2023	PA	Orthopedic Surgery	<u>\$43.5</u>
2022	FL	Critical Care Medicine, Hospital	<u>\$68.6</u>	2018	TX	Gastroenterology, Hospital	<u>\$43.3</u>
2018	CA	Cardiovascular Surgery, Hospital	<u>\$68.0</u>	2019	CA	Senior Care	<u>\$42.5</u>
2017	RI	Hospital	<u>\$62.0</u>	2022	IL	Neurosurgery, Pain Medicine, Hospital	<u>\$42.4</u>
2019	NY	Neurosurgery, Hospital	<u>\$55.9</u>	2017	PA	Obstetrics	<u>\$41.5</u>
2016	IL	Obstetrics, Hospital	<u>\$52.0</u>	2019	NY	Unknown, Hospital	<u>\$41.0</u>
2018	IL	Obstetrics, Hospital	<u>\$50.3</u>	2018	FL	Obstetrics	<u>\$41.0</u>
2016	IL	Hospital	<u>\$50.0</u>	2018	PA	Obstetrics, Hospital	<u>\$40.3</u>


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

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
- 

PATHWAYS TO DE-ESCALATING DAMAGES LONG-TERM

- ▶ **Statutory modifications**
- ▶ **Common law changes at Ohio Supreme Court level**



QUESTIONS?

