

## **Repeal Wrongful Death Caps – Senate Bill 409**

Oregonians trust juries and believe in case-by-case justice. Voters have said NO to arbitrary caps.

In 1987, the Oregon Legislature put a limit on the value of human life: \$500,000. No matter how egregious the behavior that led to the death, the details of what happened, or to whom, the extent of the negligence or unlawful behavior, killing someone = \$500,000 in non-economic damages: one size fits all justice. Twenty seven years have passed since this arbitrary monetary value was placed on someone's life, and yet the value of their wrongful death remains the same. Inflation calculations show that a cap of \$500,000 in 1987 equals \$1,039,397 in 2014 dollars. The wrongful death cap should be repealed.

LC 1236 would allow an Oregon jury to hear the facts and determine case-by-case justice. In the last fifteen years, Oregon voters have twice rejected ballot measures that would put one-size fits all caps on justice. Since 1987, the legislature has not reconsidered or adjusted the wrongful death cap.

Sadly, with caps in place, negotiations often result in settlements far less than \$500,000 because the wrongdoer knows \$500,000 is the maximum penalty. Caps decrease the incentive of defendants to settle, increasing egregious stalling tactics by those literally banking on an injured parties' death.

### **Examples under current law:**

- A Multnomah County asbestos case with a terminally ill mesothelioma victim was about to go to trial after a year of litigation. The victim was gravely ill and in hospice care. The day before his trial, settlement talks deadlocked in another, much smaller case against the same defendant, scheduled before the same judge on the same day as the mesothelioma trial. Because it appeared that the mesothelioma trial could be delayed for as many as 2-3 weeks if the other case did not settle and knowing that the victim might die in the meantime, the major defendant was unwilling to settle the smaller case.

It literally was "banking" on the victim's death so the wrongful death cap would kick in. The family of the mesothelioma victim knew how critical it was to get to trial immediately, so they volunteered to pay the difference between the two "final offers" of the parties in the smaller case to clear the docket for the asbestos trial to begin while the victim was still alive. Understanding the maneuvers the defendant was utilizing to keep the case off the docket, a local judge mediated an agreement overnight, it was approved by the trial judge, the smaller case settled, and the mesothelioma case was scheduled to begin the following morning. The defendant realized that it would start the trial with a living victim with no caps on the case so they settled for an amount over the wrongful death cap. Four hours later the asbestos victim died in hospice.

- After a Lane County jury spent three weeks learning how PeaceHealth doctors misdiagnosed an 18 year old University of Oregon freshman and failed to give her life-saving antibiotics, the jury awarded her grief-stricken parents \$1 million for the doctors negligence and the loss of their only daughter. Because of the cap, the judge was required by law to overrule the jury and reduce the amount to \$500,000. If there was no wrongful death cap, the jury verdict would have stood.