

Testimony of Patrick Block, Portland OR
In Support of SB 409

April 7, 2015

Chair Prozanski and members of the committee, my name is Patrick Block. I'm a long-time member of the Oregon Trial Lawyers Association and I'm here to lend my support to Senate Bill 409.

Currently, if a drunk driver maims someone in an accident, the drunk is responsible for all of the harm caused. But if the drunk kills someone, there is an artificial cap on the value of that person's life to loved ones, spouses, children, and parents.

Prior to 1987, Oregon had no limit on the value of a person's life. That year a number of sweeping changes were passed limiting access to justice for Oregonians and taking away the power of juries to listen to all the facts and make a decision on a case-by-case, fact-by-fact basis. Instead, an arbitrary, one size fits all limitation was enacted, with the promise that rates would drop as a consequence. Well, everyone who buys insurance in Oregon knows that their rates have gone up not down. It's time to allow Oregon juries to decide what is fair compensation for a decedent's family, instead of protecting the profits of big insurance companies.

The cap has not changed for the last 28 years yet the value of the dollar has decreased and therefore, so too has the arbitrary value of one's life. It has also created some of the most negative stalling maneuvers imaginable. In 2006 one Multnomah County asbestos case with a terminally ill mesothelioma victim was about to go to trial, after a year of litigation. The victim was in bad shape, in hospice care and gravely ill. The day before his trial was to start, settlement talks deadlocked in another, much smaller case 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 understood how important 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. 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 morning of the trial, the major 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.

This cap makes it more difficult for legitimate cases to settle, especially when the victim is retired, a stay at home mom, or is not a high wage earner. Because there is not economic loss, we place a \$500,000 value on their lives. In these cases, the insurance company will always negotiate down from the cap knowing that taking the case to trial will substantially increase litigation costs and is the last thing most people who have just lost a loved one want to do.

In a wrongful death trial, juries are not told of the cap, they listen to the facts and award what they think is fair. Oregon juries have not awarded huge sums on wrongful death cases but have found individual cases where the losses to the family are more than the cap. But if the jury awards more than the cap based on the facts of the case, the judge must reduce that award to the arbitrary cap of \$500,000.

Oregonians trust the decisions of juries and believe in case-by-case justice. Twice in the last 14 years, voters have said NO to arbitrary caps. I urge you to do the same, pass SB 409.