
Damage Caps Across the United States

TEXANS FOR LAWSUIT REFORM FOUNDATION

2024

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INTRODUCTION

Since the days of Stephen F. Austin and pioneering empresarios, Texas has been a beacon of economic opportunity. The promise of fertile land and freedom enticed hundreds of families to follow Austin westward in the early nineteenth century. Today, the strength of the “Texas Miracle” continues to attract hundreds of thousands of residents and tens of thousands of businesses to the Lone Star State.¹ Texas currently boasts the eighth-largest economy in the world,² but it also holds a more unsavory distinction: it is the nation’s leader in “nuclear verdicts” since 2009.³ The recent explosion of nuclear verdicts—jury verdicts of \$10 million or more in injury or death cases involving one or a few plaintiffs—threatens to undermine what is often called the Texas economic miracle by diminishing confidence in the fairness of our litigation system.

Over the past eight years, Texas juries have handed down dozens of multimillion dollar verdicts in personal injury and wrongful death cases involving one or a few plaintiffs. The largest award—\$7.375 billion—was handed down by a Dallas County court in 2022 in a single-plaintiff wrongful death case. The twenty-fifth largest award in Texas is a 2024 verdict of \$71.95 million from a Dallas County court in a construction workplace injury case. Four verdicts have exceeded \$500 million, and twenty have exceeded \$100 million.⁴

In every case, noneconomic damages (damages for mental anguish and pain and suffering) constitute a meaningful percentage of the total award. They often exceed economic damages, sometimes by a large percentage. The largest noneconomic damage award—\$480 million—was handed down in a single-plaintiff wrongful death case tried in Titus County in 2021. Eleven of the top twenty-five verdicts since 2016 featured noneconomic damage awards of over \$100 million, and nineteen of the top twenty-five verdicts had noneconomic damage awards greater than \$50 million.⁵

Because nonpecuniary injuries such as physical pain and mental anguish are not subject to exact quantification, courts throughout the nation have struggled to create meaningful standards for juries to use in determining an appropriate amount to award for them. Consequently, Texas is not the only state seeing large awards in injury and death cases, nor the only state in which noneconomic damages constitute a meaningful percentage of the awards.⁶

The result of this struggle in Texas is inconsistency—and unfairness—across time and geography. What was considered a massive award ten years ago is a modest award today. And an injury that would yield a seven-figure award today in the Texas panhandle might yield a nine-figure award in a courtroom in one of Texas’s largest cities.

When faced with these kinds of disparities in the past, the Texas Legislature has changed standards for awarding damages and, in some instances, imposed caps on the amounts that may be recovered. For example, in 1969, Texas moved away from giving state and local governments absolute immunity in injury and death lawsuits, passing a Tort Claims Act that included damage caps.⁷ The Texas Legislature also placed caps on the recovery of exemplary (punitive) damages in 1987,⁸ adjusted those caps and changed other aspects of the procedure to recover exemplary damages in 1995,⁹ and increased the burden of proof and imposed a unanimous jury verdict requirement in 2003.¹⁰ Texas imposed limits on noneconomic damage awards in healthcare liability cases in 1977¹¹ (which were held to be unconstitutional in part¹²) and again in 2003 (which have been held to be constitutional).¹³ But the Texas Legislature, so far, has not imposed broadly applicable limits on the recovery of noneconomic damages or pro-

vided meaningful standards for determining the appropriate amount to award for these non-pecuniary losses.

Other states, too, have imposed limits on noneconomic damages.¹⁴ At least thirteen states cap noneconomic damages in personal injury and/or wrongful death cases, without regard to the subject matter.¹⁵ These caps typically are around \$250,000 to \$1 million, with higher amounts usually available only when there are aggravating circumstances. A majority of states impose caps on noneconomic damages in one or another kind of case—with caps in healthcare liability cases being the most common. The two most recent examples of states imposing limits on recoveries of noneconomic damages come from Iowa and West Virginia, both of which recently capped these damages in lawsuits involving commercial vehicles.

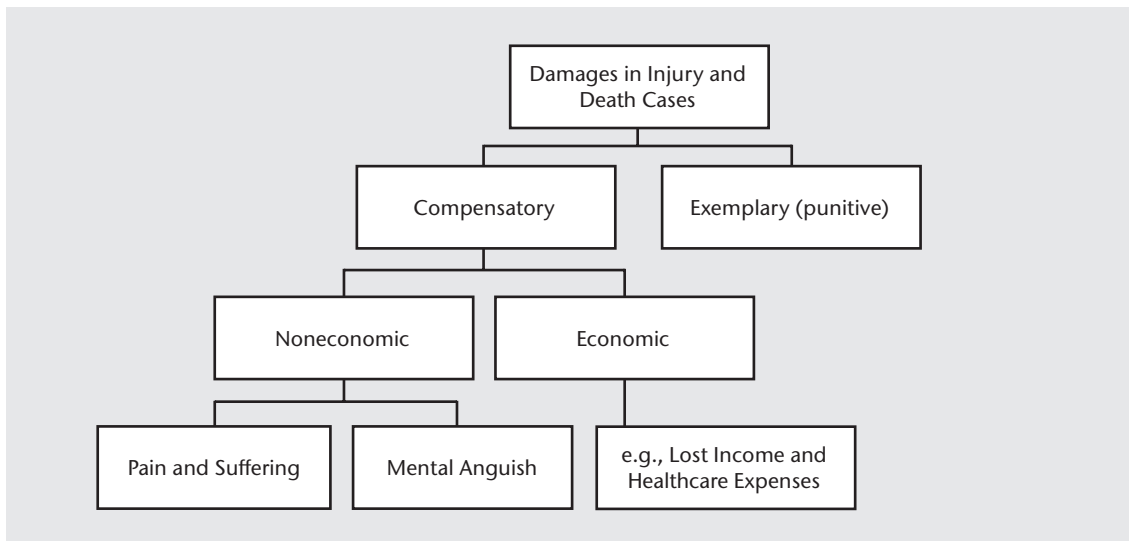
In 2003, the Texas Supreme Court handed down a plurality decision in *Gregory v. Chohan* in which all members agreed that “unsubstantiated anchoring” to establish mental anguish damages is impermissible.¹⁶ The plurality opinion also reaffirmed many of the Court’s previous standards for reviewing an award of mental anguish damages and created a new requirement that plaintiffs seeking to recover mental anguish damages must “demonstrate a rational connection, grounded in the evidence, between the injuries suffered and the dollar amount awarded” so as to “guard against arbitrary outcomes and to ensure that damages awards are genuinely compensatory.”¹⁷ In a concurring opinion, two judges expressed serious reservations about the practical applicability of this new standard and suggested legislative action may be warranted.¹⁸

Whether to establish caps on noneconomic damages or impose specific standards for awarding these damages are in the sound discretion of policymakers. This paper is intended as a resource for those policymakers in their consideration about whether and how to deal with the economic consequences that will flow from the proliferation of extraordinarily high jury awards being seen in Texas courts.

DAMAGES IN TEXAS INJURY AND DEATH CASES

Defining Compensatory and Exemplary Damages

In Texas personal injury and wrongful death cases, money damages are awarded as either compensatory (to make the plaintiff whole) or exemplary (to punish the defendant).¹⁹ Compensatory damages are divided into two subcategories: economic and noneconomic damages, each of which compensate for specific kinds of losses.²⁰



“Compensation is the chief purpose of damages awards in tort cases.”²¹ Compensatory damages always must be “[r]easonable and proper . . . [and] neither meager nor excessive, but must be sufficient to place the plaintiff in the position in which he would have been absent the defendant’s tortious act.”²² Both forms of compensatory damages—economic and non-economic—are “meant to compensate victims, not to punish or deter tortfeasors.”²³

Economic damages are a subcategory of compensatory damages. Economic damages are “compensatory damages intended to compensate a claimant for actual economic or pecuniary loss.”²⁴ Economic damages include, for example, injury-related medical expenses, lost wages, and property damage. The recovery of economic damages is not intended to generate a windfall for plaintiffs or their attorneys; economic damages “[such as] medical expenses, are ‘intended to make the plaintiff “whole” for any losses resulting from the defendant’s interference with the plaintiff’s rights.’”²⁵ These damages are quantifiable. No state caps the award of economic damages, but some states cap the total amount of compensatory damages (economic plus noneconomic) that may be awarded.²⁶

The other subcategory of compensatory damages is noneconomic damages, which are “awarded for the purpose of compensating a claimant for . . . nonpecuniary losses of any kind other than exemplary damages.”²⁷ Although some of the nonpecuniary losses enumerated in Texas law are subsets of others, Texas’s list of nonpecuniary losses currently includes physical pain and suffering, mental or emotional pain or anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, and injury to reputation.²⁸ Noneconomic damages are not subject to exact quantification, but, like economic damages, are intended to make the plaintiff whole, not punish the defendant. As shown in the chart provided in Appendix A and discussed in more detail in Section III.C.1, many states cap awards of noneconomic damages, either in particular kinds of a cases or in all injury and death cases.

Exemplary damages, sometimes called punitive damages, are meant to punish or penalize the defendant against whom a claimant seeks relief.²⁹ Exemplary damages are neither economic nor noneconomic.³⁰ Normally, a nominal award of compensatory damages—a small sum commemorating the fact the claimant prevailed—is not enough to sustain an award of punitive damages.³¹ As discussed in Section II.B.2, these defendant-focused damages have a high standard for recovery under Texas law and in other states. Awards of exemplary damages are capped in Texas³² and many other states.³³

Comparing Compensatory and Exemplary Damages

COMPENSATORY DAMAGES

Because compensatory damages—both economic and noneconomic damages—are intended to make plaintiffs whole for injuries caused by the defendant’s wrongful conduct, these damages focus on the plaintiff’s injury, not the defendant’s conduct. A jury must determine, for example:

How much money did the plaintiff fail to earn, or will the plaintiff fail to earn in the future, due to the injury she suffered?

How much money did the plaintiff pay or does the plaintiff owe for injury-related medical treatment provided in the past and how much money will be required to pay for plaintiff's future treatment?

How much physical pain and mental anguish did the plaintiff suffer as a result of the injury and how much pain and anguish will the plaintiff suffer in the future?

These plaintiff-focused damages are not related to the relative wrongfulness of the defendant's conduct. Whether the defendant willfully exposed society to a risk of substantial harm³⁴ or merely made a single mistake in a lifetime of cautious behavior does not change how much money the plaintiff paid to treat the injury he or she suffered, how much income the plaintiff lost by missing work, or how much pain and anguish the plaintiff feels. A broken arm costs however much it costs to repair, hurts however badly it hurts, and causes the plaintiff to miss however much work it causes the plaintiff to miss, without regard to the degree of wrongfulness of the defendant's conduct.

Ordinary negligence is the failure to exercise ordinary care in order to minimize the risk of harm to another.³⁵ To establish a negligence claim, a plaintiff must prove this failure to exercise ordinary care by a preponderance of the evidence.³⁶ Preponderance of the evidence is defined as establishing in the minds of jurors that a fact is more likely true than not.³⁷ Unanimity is not currently required under Texas law to succeed in an ordinary negligence case, with as few as ten of twelve jurors permitted to agree on a verdict finding negligence and the resulting damages (as few as five of six jurors in some cases).³⁸ The compensatory damages flowing from an ordinary negligence claim are not capped in Texas, except noneconomic damages are capped in healthcare liability and government-defendant cases.³⁹

EXEMPLARY DAMAGES

Texas allows a civil jury to consider the relative wrongfulness of a defendant's conduct and to impose punishment for conduct that is sufficiently antisocial. That is the role of exemplary damages. Exemplary damages are defendant-focused and intended to "send a message" to that defendant and others who engage in egregiously dangerous conduct.⁴⁰ But, given that the job of punishing citizens for their antisocial behaviors is a role historically reserved to the enforcement of criminal laws by state prosecutors, proving an entitlement to impose punishment on a defendant via a civil lawsuit is challenging for Texas plaintiffs, as it should be.

To recover exemplary damages, a plaintiff must prove either that the defendant's actions were grossly negligent, fraudulent, or malicious,⁴¹ with the most common allegation being that the defendant's actions were grossly negligent. "Gross negligence" is defined as an act or omission:

(A) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and

(B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.⁴²

The claimant must prove by clear and convincing evidence—a stricter standard than preponderance of the evidence—the elements of her exemplary damage claim.⁴³ The plaintiff’s burden of proof cannot be shifted to the defendant or satisfied by evidence of ordinary negligence or bad faith.⁴⁴ “Clear and convincing” means “the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.”⁴⁵

Furthermore, exemplary damages may be awarded only if the jury was unanimous in regard to finding liability for and the amount of exemplary damages.⁴⁶ In practice, the plaintiff must secure three unanimous findings by the jury to recover exemplary damages: (1) that the defendant’s negligence caused the plaintiff’s injury; (2) that the defendant’s actions were grossly negligent; and (3) the amount of exemplary damages.⁴⁷

Additionally, an exemplary damage award is capped in Texas. Exemplary damages assessed against a defendant may not exceed “an amount equal to the greater of: (1)(A) two times the amount of economic damages; plus (B) an amount equal to any noneconomic damages found by the jury, not to exceed \$750,000; or (2) \$200,000.”⁴⁸

Despite their numerous differences, noneconomic and exemplary damages share one important similarity—they both are inherently subjective in nature, making rational quantification difficult.⁴⁹

Common Law Standards Governing Noneconomic Damage Awards

GREGORY V. CHOCHAN

In June 2023, the Texas Supreme Court handed down a plurality decision in *Gregory v. Chohan*, holding in a wrongful death case that “unsubstantiated anchoring” to establish mental anguish damages is impermissible.⁵⁰

Gregory arises from a multi-vehicle collision occurring in November 2013 on Interstate 40 near Amarillo, Texas.⁵¹ Sarah Gregory was driving eastbound on the interstate when she lost control of her 18-wheeler.⁵² The truck “jackknifed,” rendering it immovable.⁵³ It was blocking the entire left lane and some of the right lane on the eastbound side of the highway.⁵⁴ Gregory did nothing to warn other drivers of the obstruction. A multi-vehicle pileup ensued, resulting in the death of four people, including Bhupinder Deol.⁵⁵

Deol’s wife and family brought a wrongful death action against Gregory and her employer, New Prime, Inc.⁵⁶ There were several other plaintiffs and defendants, as well.

During closing arguments, counsel for plaintiffs other than the Deols engaged in unsubstantiated anchoring—“a tactic whereby attorneys suggest damages amounts by reference to objects or values with no rational connection to the facts of the case”⁵⁷—in an attempt to persuade jurors to award significant damages for mental anguish and loss of companionship.

The lawyer connected the “value” of the lives lost in the collision to a \$71 million Boeing F-18 fighter jet and a \$186 million painting by Mark Rothko.⁵⁸ According to the plurality’s opinion:

Of course, the cost of a fighter jet, the auction price of a coveted painting, or any other expensive comparator are all equally flawed analogies. After learning that a particular aircraft or painting sells for many millions of dollars, jurors are no closer to gaining a sense of how to compensate the family for their injuries.

The self-evident purpose of these anchors . . . is to get jurors to think about the appropriate damages award on a magnitude similar to the numbers offered, despite the lack of any rational connection between reasonable compensation and the anchors suggested.⁵⁹

After referencing expensive paintings and military aircraft, the attorney told the jury: “[F]or four years I’ve been trying to give this company and their lawyers my two cents worth. . . . For four years I’ve been trying and they won’t listen to me.”⁶⁰ He then asked the jury to give New Prime their “two cents worth,” urging the jurors to award the plaintiffs two cents for every one of the 650 million miles New Prime’s trucks traveled during the year of the collision.⁶¹ The plurality determined:

The unmistakable purpose of this argument is to suggest that New Prime can afford a large award and that it should be punished for denying Chohan and her family justice for Deol’s death. But punitive damages are not at issue here; only compensatory damages are, and the “two cents a mile” argument has nothing to do with compensation.⁶²

At the conclusion of trial, the jury awarded all plaintiffs \$38.8 million in damages, nearly identical to the \$39 million yielded by the “two cents” argument.⁶³ About \$16.8 million of these damages were awarded to Deol’s family, with noneconomic damages (mental anguish and loss of companionship) accounting for just over \$15 million of that amount.⁶⁴

Although the justices were fractured on some aspects of the case, they all agreed that unsubstantiated anchoring is improper⁶⁵ because, according to the plurality opinion, they “have nothing to do with the emotional injuries suffered by the plaintiff and cannot rationally connect the extent of the injuries to the amount awarded.”⁶⁶ The Court reversed the judgment and remanded the case for a new trial.⁶⁷

In addition to prohibiting unsubstantiated anchoring, the justices reaffirmed prior holdings about awarding and reviewing mental anguish awards:

- Assigning a dollar value to non-financial, emotional injuries such as mental anguish or loss of companionship will never be a matter of mathematical precision.⁶⁸ Nonetheless, “[j]uries cannot simply pick a number and put it in the blank.”⁶⁹
- There must be evidence that the amount found is fair and reasonable compensation for the plaintiff’s injury.⁷⁰
- Mental anguish damages are neither punitive nor exemplary. They are compensatory.⁷¹
- There must be evidence of both the existence of compensable mental anguish and evidence to justify the amount awarded.⁷²
- The plaintiff must provide evidence of the nature, duration, and severity of mental anguish, thus establishing a substantial disruption in the plaintiff’s daily routine.⁷³
- The evidence must show a high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment or anger.⁷⁴

- Appellate courts have a duty to ensure that the damages awarded for a noneconomic injury are the result of a rational effort, grounded in the evidence, to compensate the plaintiff for the injury.⁷⁵
- Appellate courts do not fully discharge their duty merely by concluding that a verdict is not so excessive or unreasonable as to shock the judicial conscience.⁷⁶ “What shocks the conscience or manifests passion or prejudice in the jury are tests too elastic for practical use in the great majority of cases.”⁷⁷ Thus, courts reviewing the size of noneconomic damages awards must do more than consult their consciences.⁷⁸

The plurality also added a requirement meant to provide guidance about satisfying the need to present evidence to justify the amount awarded for mental anguish: “To guard against arbitrary outcomes and to ensure that damages awards are genuinely compensatory, the plaintiff in a wrongful death case should be required to demonstrate a rational connection, grounded in the evidence, between the injuries suffered and the dollar amount awarded.”⁷⁹

In the wake of *Gregory*, it is unclear what level of justification or evidence is needed to meet the rational basis requirement. However, the Court provides some illustrative examples, including evidence of: (i) the likely financial consequences resulting from the plaintiff’s severe emotional distress; (ii) that a certain sum of money would enable the plaintiff to better deal with their grief and restore their mental health; and (iii) evidence that a requested amount could provide access to the kinds of things that may help the plaintiff who is suffering mentally.⁸⁰ In his concurring opinion, Justice Devine points out that these amounts should be recovered, if at all, as economic damages, not noneconomic damages.⁸¹

POST-GREGORY

Although the *Gregory* decision arises from a wrongful death case, Texas appellate courts generally have applied its core holdings broadly to all kinds of injury cases, including those in which the plaintiff has recovered damages for physical pain and suffering.

For example, in a dog-attack case, *Garza v. Rodgers*, the First Court of Appeals cited the *Gregory* standard in deciding whether the evidence supported a recovery for physical pain.⁸² Other appellate cases have grouped physical pain and mental anguish together under the *Gregory* umbrella. In car-crash case *Wilson v. Murphy*, the Second Court of Appeals said reviewing courts “must consider and weigh all of the evidence to determine whether it is sufficient to support” both physical pain and mental anguish awards.⁸³ The *Wilson* court found the evidence supported a mental anguish award but did not support a physical pain award.⁸⁴ Another Second Court of Appeals injury case, *Stone v. Christiansen*, applied *Gregory* to physical pain, physical impairment, and mental anguish.⁸⁵

In a wrongful death case, *Team Industrial Services v. Most*, the First Court of Appeals asserted that “courts have a duty to ensure that the [noneconomic] damages awarded ‘are the result of a rational effort, grounded in the evidence to compensate the plaintiff for the injury.’”⁸⁶ The First Court of Appeals specifically included both “physical pain and suffering” and “mental or emotional pain or anguish” in its definition of noneconomic damages.⁸⁷

The Second Court of Appeals even applied *Gregory* to an employment discrimination case.⁸⁸ The court declared that a mental anguish award stemming from the defendant's alleged sex discrimination requires "evidence both of the 'existence of compensable mental anguish' and 'evidence to justify the amount awarded.'"⁸⁹

One appellate court, however, has sought to limit *Gregory*. In *Kelly Custom Homes v. Hooper*, the Fourteenth Court of Appeals deemed *Gregory* "a plurality opinion lacking precedential value."⁹⁰ But even the *Kelly* court acknowledged *Gregory's* "several applicable principles," including that the amount of mental anguish damages "cannot be based on mere passion, prejudice, or improper motives or measurements."⁹¹

Texas Practice for Determining and Awarding Noneconomic Damages

In a typical injury case in Texas, the trial judge gives the jury a "charge" that includes definitions for preponderance of the evidence, negligence, ordinary care, and proximate cause.⁹² Texas statutes define "compensatory damages," "economic damages," and "noneconomic damages,"⁹³ but these definitions typically are not included in the jury charge.⁹⁴ Texas statutes do not define "pain and suffering," "mental anguish," or other kinds of noneconomic injuries.⁹⁵ Therefore, jurors typically are given no guidance in the charge about these kinds of injuries.

A jury charge in a typical injury or death case tried in a Texas court will begin by asking jurors to determine whose negligence proximately caused the plaintiff's injury.⁹⁶ Anyone whom the evidence shows could have contributed to causing the injury—including all defendants, the plaintiff, and those designated as responsible third parties—is listed on the jury charge, thus allowing the jury to identify each responsible person.⁹⁷

After determining responsibility for the injury-causing event, the jury is asked to apportion fault among the responsible persons by allocating a percentage to each such responsible person.⁹⁸ This is followed by questions asking jurors to determine the amount of economic and noneconomic damages suffered by the plaintiff,⁹⁹ whether each defendant found to have caused the event was grossly negligent (if this submission is warranted by the evidence),¹⁰⁰ and the amount of punitive damages to be assessed against grossly negligent defendants.¹⁰¹ Although Texas law makes clear that compensatory damages are not to be used to punish, jury charges in Texas may or may not instruct jurors of that prohibition.¹⁰²

Pattern jury charges published by the State Bar of Texas are not mandatory but are typically used in Texas injury and death cases. Currently, the pattern jury charges suggest that both economic and noneconomic damages be awarded by category, with economic and noneconomic damages intermingled in the suggested charge, as follows:

1. Past physical pain and mental anguish (noneconomic).
2. Future physical pain and mental anguish (noneconomic).
3. Past loss of earning capacity (economic).¹⁰³
4. Future loss of earning capacity (economic).
5. Past disfigurement (noneconomic).
6. Future disfigurement (noneconomic).

7. Past physical impairment (noneconomic).
8. Future physical impairment (noneconomic).
9. Past medical expenses (economic).
10. Future medical expenses (economic).¹⁰⁴

In practice, this list is not particularly reflective of how a compensatory damage question is submitted to juries in Texas, except that they are granulated. For example:

In *Johnson v. Union Pacific*, an intoxicated person sat on a railroad track and was hit by a train, but survived. Noneconomic damages were broken into eight categories: past physical pain, future physical pain, past mental anguish, future mental anguish, past physical impairment, future physical impairment, past disfigurement, and future disfigurement. Thus, contrary to the Pattern Jury Charge, the amount to award for mental anguish and physical pain were separated into distinct questions for the jury to answer. The total awarded by the jury for noneconomic damages was \$47.5 million.¹⁰⁵

In *Ramsey v. Allred*, a wrongful death and survival action arising from a vehicular collision, the only noneconomic damages question asked in regard to the deceased person lumped physical pain and mental anguish together, as suggested in the Pattern Jury Charge; and the jury awarded \$80 million. In regard to the person's four survivors, each damage question asked the jury to fill in four blanks—past loss of companionship, future loss of companionship, past mental anguish, and future mental anguish. The jury entered “\$25 million” in each of the 16 blanks. The total amount awarded for noneconomic damages was \$480 million.¹⁰⁶

In *Blake v. Werner Enterprises*, a case in which the plaintiffs' vehicle crossed the median, entered incoming lanes, and collided with an 18-wheeler, physical pain and mental anguish were lumped together as suggested in the Pattern Jury Charge, but disfigurement and physical impairment were submitted separately. As to one plaintiff (Jennifer Blake), the jury awarded the same amount of money—\$2,301,000—for each of the following: past physical pain and mental anguish, past physical impairment, and future physical impairment. It awarded exactly twice that amount for future physical pain and mental anguish. For the other plaintiff (Nathan Blake), the jury awarded the same amount of money—\$1 million—for each of the following: past physical pain and mental anguish, future physical pain and mental anguish, past physical impairment, and future physical impairment. It awarded half that amount—\$500,000—for past disfigurement and another \$500,000 for future disfigurement.¹⁰⁷

These charges and the findings made by the juries demonstrate two things:

First, the fact that the jury's awards in *Ramsey* and *Blake* are identical for many categories of damages (e.g., \$25 million awarded sixteen times in *Ramsey*) sug-

gests the juries' decisions were not tied to specific items of evidence, as required by *Gregory* and prior Texas appellate court decisions.¹⁰⁸

Second, double or triple recoveries of noneconomic damages are inevitable given the way these issues are submitted to Texas juries. In *Ramsey*, for example, the jury awarded each survivor \$25 million for past mental anguish and another \$25 million for past loss of companionship. But loss of companionship is an emotional longing for the person who died, which is a component of mental anguish. Indeed, in *Gregory*, the Texas Supreme Court referred to these collectively as “emotional injuries.”¹⁰⁹

When a jury is asked to award damages for a category that is subsumed within another category of damages, a double recovery for the same condition is both inevitable and goes beyond reasonable compensation—which is the purpose for these damages.

In *Johnson*, the jury was asked to award damages for physical pain, physical impairment, and disfigurement. Disfigurement may be accompanied by physical pain and/or it may cause ongoing emotional anguish respectively. As such, disfigurement is beneath the umbrella categories of physical pain and mental anguish. Similarly, physical impairment may be accompanied by physical pain (thus compensated in that category of noneconomic damages), may cause emotional anguish (thus compensated in that category of noneconomic damages), and could affect a person's earnings (thus compensated in that category of noneconomic damages). But allowing awards for disfigurement and physical impairment in addition to awards for pain and suffering, mental anguish, and loss of income allows a multiple recovery rather than a recovery that is truly compensatory.

Reasonably, a jury should not be asked to award damages for both the umbrella category of injury (mental anguish or physical pain) and for multiple subcategories of injuries beneath these umbrellas (such as loss of consortium, loss of companionship and society, inconvenience, loss of enjoyment of life, disfigurement, and physical impairment) because it results in exaggerated recoveries—yet it is common in Texas courts.

CAPS AND CALCULATION OF DAMAGES

Constitutional Considerations in Damage Caps

NONECONOMIC DAMAGES

The high courts of several states have considered whether noneconomic damage caps violate their state constitutions. Fourteen states have found the caps to be unconstitutional—Alabama, Florida, Georgia, Illinois, Kansas, Kentucky, New Hampshire, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wisconsin.¹¹⁰ These decisions typically find a due process or equal protection violation, or that the cap offends the states' open courts provisions. Sixteen states have declared noneconomic damage caps to be constitutionally valid under their states' constitutions—Alaska, Colorado, Idaho, Indiana, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Tennessee, and Virginia.¹¹¹

The Texas Supreme Court's 1988 decision in *Lucas v. United States* illustrates many high courts' antipathy toward noneconomic damage caps.¹¹² According to the Texas Supreme Court:

In the context of persons catastrophically injured by medical negligence, we believe it is unreasonable *and* arbitrary to limit their recovery in a speculative experiment to determine whether liability insurance rates will decrease. Texas Constitution article I, section 13, Texas's open courts provision, guarantees meaningful access to the courts whether or not liability rates are high. . . . [W]e hold it is unreasonable and arbitrary for the legislature to conclude that arbitrary damages caps, applicable to all claimants no matter how seriously injured, will help assure a rational relationship between actual damages and amounts awarded.¹¹³

A year later, the Texas Supreme Court narrowed *Lucas*, holding in *Rose v. Doctors Hospital* that the Texas Legislature could constitutionally limit noneconomic damage recoveries in wrongful death actions.¹¹⁴ The citizens of Texas then abrogated the holding in *Lucas* by amending the state's constitution in 2003 to specifically allow noneconomic damage caps if the bill imposing the caps passes both houses by a three-fifths vote.¹¹⁵

The United States Supreme Court has not considered whether noneconomic damages can be so excessive as to offend the United States Constitution, but, as discussed in the next section, it has with regard to exemplary (punitive) damages.

EXEMPLARY (PUNITIVE) DAMAGES¹¹⁶

In *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, the United States Supreme Court considered whether punitive damages awarded on a state law claim could violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.¹¹⁷ The Court held that the clause applies only to government actions, not punitive damage awards in civil cases between private parties.¹¹⁸ As to whether a punitive damage award could violate the Due Process Clause of the Fourteenth Amendment, the Court explained that the issue was not presented, but "a jury award may not be upheld if it was the product of bias or passion, or if it was reached in proceedings lacking the basic elements of fundamental fairness."¹¹⁹

Later the same year, in *Pacific Mutual Life Insurance Co. v. Haslip*, the Supreme Court considered whether a punitive damage award could be excessive to the point of violating the Due Process Clause of the Fourteenth Amendment.¹²⁰ According to the Court, "[o]ne must concede that unlimited jury discretion—or unlimited judicial discretion for that matter—in the fixing of punitive damages may invite extreme results that jar one's constitutional sensibilities."¹²¹ The Court said that it could not draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable, but "general concerns of reasonableness and adequate guidance from the court when the case is tried to a jury properly enter into the constitutional calculus."¹²²

Ultimately, the Court determined:

The instructions given to jurors enlightened the jury as to the punitive damages' nature and purpose, identified the damages as punishment for civil

wrongdoing of the kind involved, and explained that their imposition was not compulsory.

These instructions, we believe, reasonably accommodated [the defendant's] interest in rational decision-making and [the state's] interest in meaningful individualized assessment of appropriate deterrence and retribution. . . . As long as the discretion is exercised within reasonable constraints, due process is satisfied.¹²³

Additionally, the state court process for appellate review was sufficient to ensure that punitive damage awards would be reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition. The Court, in allowing the punitive damage award to stand, concluded:

The application of these standards . . . imposes a sufficiently definite and meaningful constraint on the discretion of [the] factfinders in awarding punitive damages. . . . [And] postverdict review ensures that punitive damages awards are not grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages.¹²⁴

In *BMW of North America v. Gore*, the Supreme Court made clear that an award of punitive damages will violate the Due Process Clause if it is “grossly excessive” in relation to the State’s legitimate interests.¹²⁵ It struck down a punitive damage award of \$2 million in a case where the plaintiff suffered only economic harm (the devaluation of a car due to it having been repainted) of \$4,000.

Finally, in *State Farm Mutual Automobile Insurance Co. v. Campbell*, the Supreme Court held that a single digit multiplier of compensatory damages (i.e., no more than a nine-to-one ratio) may be the outer limit for punitive damage awards under the Due Process Clause.¹²⁶ Considering judgments in similar cases, the judgment in *Campbell* was a “clear outlier,” according to the Court.

Thus, regarding punitive damages—which, like noneconomic damages, are not quantifiable and historically left to the discretion of the finders of facts—the Supreme Court has determined that there are constitutional limitations:

- They cannot be the product of bias or passion or the result of proceedings lacking in the basic elements of fundamental fairness.
- Unlimited jury discretion in the fixing of punitive damages may invite extreme results that offend constitutional sensibilities.
- General concerns of reasonableness and adequate guidance from the court when the case is tried to a jury properly enter into the constitutional calculus.
- Instructions to the jury must impose a sufficiently definite and meaningful constraint on its discretion in awarding punitive damages.
- Post-verdict review by the courts must be meaningful and ensure that punitive damage awards are not grossly out of proportion to the severity of the offense.

- An award of punitive damages violates the Constitution if arbitrary or grossly excessive in relation to the State’s legitimate interests.
- Judgments in similar cases may be considered to determine if the award in the case at issue is a “clear outlier.”
- A reasonable relationship between these nonpecuniary damages and compensatory damages is required.

Damage Caps in Texas

Texas limits damage awards in healthcare liability cases and for nonprofit hospitals and government entities. Texas also limits exemplary damage awards.

HEALTHCARE LIABILITY

To increase access to medical care in Texas, the Legislature implemented healthcare liability reforms in 2003, which included limits on noneconomic damages.¹²⁷ In a healthcare liability case pursued under Texas law, the limits of liability for noneconomic damages assessed against physicians, other healthcare providers, and healthcare institutions are:

- \$250,000 for each claimant from physicians and other healthcare providers, without regard to whether a single or multiple physicians and other healthcare providers are subject to the court’s judgment;
- \$250,000 for each claimant from each healthcare institution, subject to a total cap of \$500,000 from all healthcare institutions subject to the court’s judgment.¹²⁸

Thus, the absolute cap on noneconomic damages in healthcare liability cases pursued under Texas law is \$750,000 for each claimant. These caps are not indexed for inflation. The same 2003 law provides that for healthcare-related wrongful death or survival actions, the limit of liability for all damages, including exemplary damages, is \$500,000 per claimant regardless of the number of defendants.¹²⁹ This amount is adjusted for inflation according to the consumer price index¹³⁰ and is over \$2 million as of 2024.

Nonprofit hospitals in Texas enjoy even more liability protection.¹³¹ To enjoy protection, the nonprofit hospital must be certified by the Texas Health and Human Services Commission as one that provided charity care in an amount equal to at least eight percent of the hospital’s net patient revenue during its most recent fiscal year and at least forty percent of the charity care provided in the county in which the hospital is located.¹³² A certified nonprofit hospital’s liability for noneconomic damages is limited to \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death, and \$100,000 for each single occurrence for injury to or destruction of property.¹³³

TEXAS TORT CLAIMS ACT

The Texas Tort Claims Act provides for a partial waiver of immunity for civil wrongs committed by governmental entities and their employees, permitting Texans to file lawsuits only under specific circumstances outlined in the Act. A governmental unit is liable for property damage, personal injury, and death caused by the negligence of an employee acting within

the scope of employment if the damage arises from the operation of a motor-driven vehicle or motor-driven equipment.¹³⁴ It is liable for personal injury and death, but not property damage, caused by the negligence of an employee and arising from the condition or use of tangible personal or real property.¹³⁵

Damages for which the state government or a municipality engaged in governmental functions may be liable are capped at \$250,000 per person and \$500,000 per occurrence for bodily injury or death, and \$100,000 per occurrence for damaged property.¹³⁶ Liability for another unit of local government is capped at \$100,000 per person and \$300,000 per occurrence for bodily injury or death, and \$100,000 per occurrence for damaged property.¹³⁷ Exemplary damages may not be awarded against a governmental entity under the Act,¹³⁸ as is the case in the vast majority of states. These caps are not indexed to account for inflation.

PUNITIVE DAMAGES

While there are exceptions for certain kinds of criminal conduct resulting in injury or death,¹³⁹ exemplary damages in Texas may not exceed the greater of: (1) two times the amount of economic damages, plus an amount equal to any noneconomic damages found by the jury, not to exceed \$750,000; or (2) \$200,000.¹⁴⁰ Exemplary damages may only be awarded if damages other than nominal damages are awarded.¹⁴¹ As stated above, the jury must be unanimous in finding liability for and the amount of exemplary damages and the right to recovery exemplary damages must be established by clear and convincing evidence.¹⁴² These damages are not indexed to account for inflation.

Damage Caps in Other States

Each state awards damages differently. Some states cap only certain damages in certain cases, others cap only punitive damages, some states cap total damages rather than a specific type of damages, while others limit the total damages awardable in certain cases. A number of states have no limits of any kind on damages. The following is a short overview of how states other than Texas employ damage award caps. A compendium of damage caps in other states is provided in Appendix A.

NONECONOMIC DAMAGES

States Capping Damages in Injury and/or Death Cases without Regard to Subject

At least thirteen states cap noneconomic damages in personal injury and/or wrongful death cases, without regard to the subject matter: Alaska, California, Colorado, Hawaii, Idaho, Iowa, Maine, Maryland, Mississippi, New Hampshire, Ohio, Oregon, and Tennessee.¹⁴³ Six of these states—Alaska, Colorado, Idaho, Maryland, Mississippi, and Tennessee—impose noneconomic damage caps in both personal injury and wrongful death. In California, Maine, New Hampshire, and Oregon, the limitation is applicable only in wrongful death cases. Iowa and Ohio have caps that only apply in personal injury cases, and Hawaii's cap is applicable only to damages awarded for pain and suffering.

These caps typically are around \$250,000 to \$1 million, with higher amounts typically available only when there are aggravating circumstances. The lowest noneconomic damage cap for wrongful death is in New Hampshire, at \$150,000 for the decedent's spouse and

\$50,000 for the decedent's children and parents.¹⁴⁴ The lowest cap for personal injury is Idaho's, at \$250,000 (but adjusted for inflation to be around \$458,000 in 2023). The highest cap for wrongful death cases is in Colorado, at \$2.125 million (plus a biannual increase for inflation beginning in 2028).¹⁴⁵ Colorado also has the highest cap for personal injury cases, at \$1.5 million.

While most of these noneconomic caps are a stated dollar amount often adjusted for inflation,¹⁴⁶ Ohio calculates damages using a formula: the award is limited to the greater of \$250,000 or three times compensatory damages, with a maximum recovery of \$350,000 per plaintiff and \$500,000 per occurrence.¹⁴⁷ This type of formula is often used in states that cap punitive damages.¹⁴⁸

Often, aggravating circumstances can either increase or negate the cap. In Tennessee, the noneconomic damage cap is \$750,000 per plaintiff for all claims, even extending to family members; but the limit is \$1 million in the case of death or catastrophic injury or loss, and the cap is inapplicable for specific intent, intentional actions, actions involving the use of alcohol or drugs, or in the commission of a felony.¹⁴⁹ In Idaho, the cap does not apply for personal injury, death, or medical malpractice in cases of willful or reckless misconduct or actions arising from conduct proven beyond a reasonable doubt would constitute a felony under state or federal law.¹⁵⁰ In Ohio, there is no cap for wrongful death or in the case of permanent and substantial physical deformity, loss of use of a limb, loss of a bodily organ system, or permanent physical injury that prevents performance of independent care or life-sustaining activities.¹⁵¹ In Colorado, there is no cap in death cases if the wrongful act causing death constitutes a felonious killing.¹⁵²

As these short descriptions show, Tennessee, Idaho, and Colorado remove their noneconomic damage caps based on the relative wrongfulness of the defendant's conduct, a concept that is inherently flawed. Noneconomic damages are intended only to compensate the plaintiff for her injuries, not punish the defendant for antisocial conduct. Thus, Tennessee, Idaho, and Colorado are effectively allowing the defendant to be punished via the imposition of noneconomic damages.

Alaska is unique in that it caps damages for personal injury and death at the greater of \$400,000 or \$8,000 multiplied by the injured person's life expectancy; or, when damages are awarded for severe permanent physical impairment or disfigurement, the award cannot exceed the greater of \$1 million or the person's life expectancy multiplied by \$25,000.¹⁵³

California limits damages in wrongful death cases to the loss the decedent sustained prior to death, including any punitive damages the decedent would have been entitled to. California's cap for wrongful death cases does not include damages for pain, suffering, or disfigurement.¹⁵⁴

TABLE 1

State	Case Type	Cap
Alaska ¹⁵⁵	Noneconomic damages – personal injury and wrongful death	Greater of \$400,000 or \$8,000 multiplied by the injured person’s life expectancy in years. Greater of \$1 million or \$25,000 multiplied by life expectancy for severe physical impairment or disfigurement.
California ¹⁵⁶	Noneconomic damages – wrongful death	Damages are limited to what the decedent sustained before death, including any punitive damages that the decedent would have been entitled to recover had the decedent lived, and do not include damages for pain, suffering, or disfigurement.
Colorado ¹⁵⁷	Noneconomic damages – personal injury and wrongful death	\$1.5 million for personal injury, and \$2.125 million for wrongful death. Adjusted for inflation according to consumer price index every two years starting January 1, 2028.
Hawaii ¹⁵⁸	Noneconomic damages – pain and suffering only	\$375,000 for pain and suffering only.
Idaho ¹⁵⁹	Noneconomic damages – personal injury and wrongful death	\$250,000 (\$490,000 as of 2024, adjusted for inflation). Cap does not apply in cases of willful or reckless misconduct or actions arising from conduct proven beyond a reasonable doubt would constitute a felony under state or federal law.
Iowa ¹⁶⁰	Noneconomic damages – personal injury	Damages that may be recovered by a claimant for the reasonable and necessary cost or value of medical care rendered shall not exceed the sum of the amounts actually paid or incurred.
Maine ¹⁶¹	Noneconomic damages – wrongful death	\$1 million for loss of comfort, society, and companionship; emotional distress; and conscious suffering of decedent.
Maryland ¹⁶²	Noneconomic damages – personal injury and wrongful death	\$935,000. In a wrongful death action with two or more claimants, damages may not exceed 150% of the cap, regardless of the number of those who share in the award.
Mississippi ¹⁶³	Noneconomic damages – personal injury and wrongful death	\$1 million.
New Hampshire ¹⁶⁴	Noneconomic damages – wrongful death	\$150,000 for spouses and \$50,000 for children and parents.

Ohio ¹⁶⁵	Noneconomic damages – personal injury	Greater of \$250,000 or three times economic damages, with a maximum recovery of \$350,000 per plaintiff and \$500,000 per occurrence. No cap in case of permanent and substantial physical deformity, loss of use of a limb, loss of a bodily organ system, or permanent physical injury that prevents performance of independent care or life-sustaining activities.
Oregon ¹⁶⁶	Noneconomic damages – wrongful death	\$500,000.
Tennessee ¹⁶⁷	Noneconomic damages – personal injury and wrongful death	\$750,000 per plaintiff for all claims; cap extends to plaintiff’s family members. Cap is \$1 million in the case of death or catastrophic injury or loss. Cap inapplicable for specific intent, intentional actions, actions involving the use of alcohol or drugs, or in the commission of a felony.

States Capping Damages In Specific Types Of Cases

As discussed above, Texas limits noneconomic damage awards only in healthcare liability and government-defendant cases. Many states similarly limit noneconomic damages in specific kinds of cases.

Healthcare Liability. At least thirty-one states limit noneconomic damages in medical liability cases—Alaska, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin.¹⁶⁸

The lowest healthcare case noneconomic damage cap is in Montana, at \$250,000 for injury or death related to medical malpractice; the award is not adjusted for inflation. New Jersey also has a limit of \$250,000, which is a total cap on economic and noneconomic damages.

The highest caps are in Michigan, at \$569,000, or \$1.016 million if the injury involves severe impairment, and in Texas, which allows a maximum recovery of \$750,000 for noneconomic damages. The average cap in medical liability cases is around \$500,000. The limits are generally higher, averaging around \$1 million or greater, in cases of death or catastrophic injury, for example, as is done in Florida, Iowa, Michigan, Ohio, Tennessee, Texas, and West Virginia.

While most healthcare liability limits are a stated dollar amount, Ohio—as discussed above—limits awards to the greater of \$250,000 or three times compensatory damages, with a maximum recovery of \$350,000 per plaintiff and \$500,000 per occurrence.¹⁶⁹

Government Entities. At least ten states have a partial waiver of governmental immunity under a state-specific tort claims act—Florida, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Rhode Island, and Texas.¹⁷⁰ Generally, these caps apply to all compensatory damages (noneconomic plus economic), and punitive damages are almost

never available in these actions. Separate limitations sometimes exist for property damage, personal injury, and death. Caps may also be set on a per person or per occurrence basis.

The lowest cap is in Oklahoma, with damages for loss of property limited to \$25,000. The highest cap is in Nebraska, with a total damage cap of \$1 million per person and \$5 million for all claims arising out of a single occurrence. The average cap is around \$400,000.

Commercial Motor Vehicle Collisions. Iowa and West Virginia recently adopted damage limitations specific to actions involving a commercial motor vehicle (CMV) collision.

Effective May 12, 2023, Iowa has a limit applicable to noneconomic damages in CMV collision cases, except those involving the operation of a CMV serving as a common carrier of passengers, such as a school bus, passenger vehicle, or ride share.¹⁷¹ For these actions, damages are capped at \$5 million against the owner or operator of the CMV for all claims and theories of liability.¹⁷² The limitation is adjusted for inflation beginning January 1, 2028, and every even-numbered year thereafter.¹⁷³ However, the cap does not apply if the court finds by a preponderance of the evidence that the negligent act leading to the injury or death involved:

- (a) operating the CMV with a blood alcohol concentration of .04 or more or was under the influence of a drug;
- (b) refusing to submit to chemical testing;
- (c) a felony involving the use of a motor vehicle;
- (d) illegally using the CMV involving the manufacturing, distributing, or dispensing of a controlled substance;
- (e) knowingly operating the CMV without a proper driver's license or learner's permit, or was otherwise disqualified from operating the CMV;
- (f) operating the CMV in connection with human trafficking;
- (g) engaging in reckless driving or using an electronic communication device while driving;
- (h) speeding in excess of fifteen miles per hour or more over the speed limit; or
- (i) violating any law restricting the use of a telephone, computer, or tablet.¹⁷⁴

Effective July 1, 2024, West Virginia also has a special cap applicable only to CMV collisions resulting in injury or death.¹⁷⁵ Like Iowa, the new law limits noneconomic damages to \$5 million per occurrence.¹⁷⁶ The cap is adjusted annually, beginning January 1, 2026, pursuant to the consumer price index.¹⁷⁷ The cap is unavailable to an employer defendant that does not carry CMV insurance of at least \$3 million.¹⁷⁸ The cap also does not apply in these actions when a CMV operator or driver is found to have:

- (a) a blood alcohol concentration of .04 or more, or operated the CMV under the influence of any controlled substance, other drug, or inhalant substance at the time of the incident;

- (b) refused to submit to drug and alcohol testing following the incident;
- (c) operated the CMV in excess of the hours of operation established under state or federal regulations;
- (d) operated a commercial motor vehicle in willful or wanton disregard for the safety of persons or property at the time of the incident;
- (e) unlawfully operated the commercial motor vehicle loaded in excess of the maximum gross vehicle weight rating established under state or federal regulations at the time of the incident; or
- (f) operated a CMV while engaging in one or more of the acts that constitute distracted driving, as defined, at the time of the incident.¹⁷⁹

Again, the cap-busting exceptions found in Iowa’s and West Virginia’s new laws are related to the relative wrongfulness of the defendant’s conduct, which should only affect the availability and amount of exemplary damages, not the amount of noneconomic damages. These are inappropriate exceptions for a cap on compensatory damages, because all compensatory damages (economic and noneconomic) should be unaffected by the defendant’s conduct.

The Wisconsin Legislature passed a similar bill in 2024 that was vetoed by the governor.¹⁸⁰ That legislation would have limited noneconomic damages in CMV accident cases to \$1 million for injury or death arising from an act or omission of an employee acting within the scope of employment.¹⁸¹ The governor vetoed the bill because he believed the dollar amount was arbitrarily set. The governor explained that a “fundamental principle of our legal system is that everyone is entitled to remedies in the law for all injuries, and when it comes to remedy, the law should redress a party’s injury, not repress an injured party.”¹⁸²

Further, the governor stated the law likely would have violated article I, section 9 of the Wisconsin Constitution, which entitles claimants “to remedies in the law for all injuries,” as well as equal protection and due process rights under the United States Constitution and state constitution.¹⁸³ Lastly, the governor vetoed the bill because the legislation would have been inconsistent with current law. For example, “unlike current statutory caps, the bill does not define ‘noneconomic damages,’ does not address or contemplate multiple parties or occurrences, and does not cross reference wrongful death actions. Courts would almost certainly face challenges implementing the bill’s provisions as this incongruity welcomes continuous litigation.”¹⁸⁴

PUNITIVE (EXEMPLARY) DAMAGES

Punitive damage caps exist in at least thirty-one states. Generally, these caps are calculated by multiplying some number by the compensatory damages awarded or capping at a dollar amount. As an example, in Alabama, Alaska, Florida, Idaho, Indiana, North Carolina, and South Carolina, punitive damages are capped at the greater of three times compensatory damages or a specific dollar amount (like \$250,000 or \$500,000).

Some states use a sliding scale based on the defendant’s culpability or their income. There are also exceptions in certain cases, including child or elder abuse, or when specific aggravating factors are present, like intentional or malicious harm or the use of drugs or alcohol.

In some states, punitive damages are disallowed entirely, or they are only capped in certain cases, such as trade secret violations, products liability, wrongful death, or medical malpractice. Sometimes a court will review the punitive damage award before entering judgment or in a post-judgment motion, taking into account, for example, the defendant’s severity of conduct and net worth and the reasonableness of the reward.

TABLE 2		
State	Case Type	Cap
Alabama ¹⁸⁵	Punitive damages	Greater of three times actual damages or \$500,000. In cases of physical injury, greater of three times compensatory damages or \$1.5 million. Against small business, \$50,000 or 10% of net worth. Caps not applicable in wrongful death or intentional physical injury.
Alaska ¹⁸⁶	Punitive damages	Greater of three times compensatory damages or \$500,000. If proven motivation of financial gain, greater of four times compensatory, four times financial gain, or \$7 million. In unlawful employment practice, \$200,000-500,000 depending on size of company.
Colorado ¹⁸⁷	Punitive damages	Cannot exceed amount of actual damages; in the event of a defendant’s willful or wanton aggravation of the injurious behavior during pendency of the claim, then an amount not to exceed three times actual damages.
Connecticut ¹⁸⁸	Punitive damages – products liability	Statutory cap on punitive damages in products liability cases only. Limited to two times compensatory damages.
Delaware ¹⁸⁹	Punitive damages – trade secrets	Recovery limited for willful and malicious appropriation of trade secrets to two times amount of award.
Florida ¹⁹⁰	Punitive damages	Greater of three times compensatory or \$500,000. But in case of motive of financial gain and conduct known to be unreasonably dangerous, cap is the greater of four times compensatory or \$2 million. No cap in case of specific intent causing actual harm. Punitive damage caps not applicable to child, elder, or developmentally disabled abuse. Punitive damage caps not applicable to defendant who was under the influence of alcohol or drugs.
Georgia ¹⁹¹	Punitive damages	Allowed up to \$250,000 in tort only when willful misconduct, malice, fraud, wantonness, oppression, or conscious indifference; no cap for intentional harm or harm involving drugs or alcohol; no cap for products liability.
Idaho ¹⁹²	Punitive damages	Greater of three times compensatory or \$250,000.
Indiana ¹⁹³	Punitive damages	Greater of three times compensatory or \$50,000.

Kansas ¹⁹⁴	Punitive damages	Lesser of the defendant's annual gross income or \$5 million; if that valuation is deemed too low by the court, limitation may be 1.5 times amount of profit defendant gained; or the limit shall be the lower of 50% of the defendant's net worth or \$5 million.
Maine ¹⁹⁵	Punitive damages – wrongful death	Punitive damages capped at \$500,000 only in wrongful death cases.
Mississippi ¹⁹⁶	Punitive damages	Calculated based on net worth of defendant; no limit in case of defendant under influence of drugs or alcohol or in the commission of a felony. Caps as high as \$20 million. Court reviews award before entering judgment, including the defendant's severity of conduct and net worth.
Missouri ¹⁹⁷	Punitive damages	Greater of five times damages or \$500,000. No cap if injury occurred in the commission of a felony.
Montana ¹⁹⁸	Punitive damages	Lesser of \$10 million or 3% of defendant's net worth.
Nebraska ¹⁹⁹	Punitive damages	No punitive damages may be awarded. Punitive damages are unconstitutional.
Nevada ²⁰⁰	Punitive damages	Shall not exceed three times compensatory damages, or \$300,000 if compensatory damages are less than \$100,000.
New Hampshire ²⁰¹	Punitive damages	No punitive damages shall be awarded in any action, unless otherwise provided by statute.
New Jersey ²⁰²	Punitive damages	Limited to the greater of five times compensatory damages or \$350,000, with specific exceptions.
North Carolina ²⁰³	Punitive damages	Greater of three times compensatory damages or \$250,000.
North Dakota ²⁰⁴	Punitive damages	Greater of two times compensatory damages or \$250,000.
Ohio ²⁰⁵	Punitive damages	Cap of two times compensatory damages. If defendant is a small business, the lesser of two times compensatory damages or 10% of net worth up to \$350,000.
Oklahoma ²⁰⁶	Punitive damages	Sliding scale based on defendant's culpability in the behavior, ranging from \$100,000 to \$500,000 to no cap.
Oregon ²⁰⁷	Punitive damages	Various limitations on awards of punitive damages based on statutes authorizing their recovery. E.g., punitive damages for misappropriation capped at two times actual damages.

South Carolina ²⁰⁸	Punitive damages	Greater of three times actual damages awarded to each claimant or \$500,000. But cap can increase to the greater of four times actual damages or \$2 million if: the conduct was motivated by financial gain, had a high likelihood of injury, was approved by agent, or could lead to a felony conviction. Also, cap can be removed if: there was intent to harm, actor pled guilty or was convicted of a felony for these actions, or was under the influence of alcohol or drugs.
Tennessee ²⁰⁹	Punitive damages	Greater of two times compensatory or \$500,000. Exceptions for specific intent, intentional actions, actions involving the use of alcohol or drugs, or in the commission of a felony.
Texas ²¹⁰	Punitive damages	Greater of two times economic plus noneconomic damages not to exceed \$750,000; or \$200,000. No damage cap in the case of intentional conduct, malice, or in the commission of a certain crimes.
Utah ^{*211}	Punitive damages	*Punitive damages are presumed excessive if they are more than three times compensatory damages.
Virginia ²¹²	Punitive damages – medical malpractice	Cap of \$350,000.
West Virginia ²¹³	Punitive damages	Greater of four times actual damages or \$500,000.
Wisconsin ²¹⁴	Punitive damages	Greater of two times compensatory damages or \$200,000. Cap does not apply to driving while intoxicated.
Wyoming ^{*215}	Punitive damages – trade secrets	Cap of two times award caused by misappropriation if willful and malicious. *Otherwise, no cap on punitive damages.

NO DAMAGE CAP

Several states do not cap damages, almost always because of a constitutional ban.²¹⁶ For example, in Arizona, Arkansas, Kentucky, New York, Oklahoma, Pennsylvania, and Wyoming, the state’s constitution specifically prohibits a cap on certain damages.²¹⁷ And in at least Alabama, Arkansas, Georgia, Illinois, Kansas, Kentucky, Oklahoma, Tennessee, Utah, and Washington, a damage cap has been found unconstitutional by the highest court of that state.²¹⁸

Sometimes, the legislature and judiciary go back and forth several times to fight for or against damage caps, such as in Florida medical malpractice actions resulting in personal injury or death. The Florida Supreme Court found the statutory cap on wrongful death noneconomic damages in medical malpractice actions to have violated the right to equal protection under Florida’s constitution.²¹⁹ Later, the court held a prior version of the statute for personal injury noneconomic damages unconstitutional for violating the equal protection clause.²²⁰ In 2020, the legislature re-passed a statutory cap on damages.²²¹ However, a Florida circuit court ruled in 2024 that the cap on personal injury noneconomic damages for Medicaid recipients is unconstitutional.²²² The constitutionality of that statute has yet to be determined.

ADJUSTING DAMAGE CAPS

To account for changes in the value of money over time due to inflation, many states increase their damage caps on a schedule. Several states—Alabama, Colorado, Iowa, Maine, Michigan, New Mexico, North Carolina, South Carolina, Texas,²²³ and West Virginia—adjust using the U.S. Bureau of Labor Statistics’ consumer price index (CPI), which measures a consumer’s day-to-day living expenses, or “the average change over time in the prices paid by consumers in a representative basket of goods and services.”²²⁴

California, Iowa, Maryland, Missouri, Nevada, and Virginia adjust their caps by a percentage or dollar amount.

Some states adjust the cap every year (California, Idaho, Iowa, Maryland, Michigan, Missouri, Nevada, New Mexico, South Carolina, Virginia, and West Virginia), while other states adjust every two or three years (Alabama, Colorado, Iowa, North Carolina, and Wisconsin).

Generally, the adjustment is only done to caps on noneconomic damages, not on punitive damage caps.

TABLE 3			
State	Case/Damage Type	Adjustment Schedule	Measure/Amount
Alabama ²²⁵	Punitive damages	Every three years starting on 01/01/03	Consumer price index
California ²²⁶	Medical malpractice	Every year starting on 01/01/23 for ten years not to exceed \$750,000 (as applied to \$350,000 cap)	\$40,000
		Every year starting on 01/01/23 for ten years not to exceed \$1,000,000 (as applied to \$500,000 cap)	\$50,000
		Every year starting on 01/01/34 (as applied to the \$750,000 and \$1,000,000 caps above)	2%
Colorado ²²⁷	Personal injury or death	Every two years starting on 01/01/28	Consumer price index
	Medical malpractice – injury or death	Increased incrementally over five years, and thereafter every two years	Consumer price index
Idaho ²²⁸	Personal injury or death	Every year starting on 07/01/04	Average annual state wage

Iowa ²²⁹	CMV injury or death	Every even year starting on 01/01/28	Consumer price index
	Medical malpractice	Every year starting on 01/01/28	2.1%
Maine ²³⁰	Wrongful death	Adjusted based on year of death	Consumer price index
Maryland ²³¹	Personal injury, wrongful death, medical malpractice	Every year	\$15,000
Michigan ²³²	Medical malpractice	Every year	Consumer price index
Missouri ²³³	Medical malpractice	Every year	1.7%
Nevada ²³⁴	Medical malpractice	Every year starting on 01/01/24 until cap reaches \$750,000 in 2028; then every year starting on 01/01/29	\$80,000 annually; then 2.1% annually
New Mexico ²³⁵	Medical malpractice	Every year starting on 01/01/23	Consumer price index
North Carolina ²³⁶	Medical malpractice	Every three years starting on 01/01/14	Consumer price index
South Carolina ²³⁷	Medical malpractice, punitive damages	Every year	Consumer price index
Texas ²³⁸	Wrongful death in medical malpractice	Adjusted at the time of final judgment	Consumer price index
Virginia ²³⁹	Medical malpractice	Every year until cap reaches \$3,000,000 in 2031	\$50,000
West Virginia ²⁴⁰	CMV injury or death	Every year starting on 01/01/26, but not to exceed 150% of the cap amount	Consumer price index
	Medical malpractice	Every year starting 01/01/04, but \$250,000 cap not to exceed \$375,000 and \$500,000 not to exceed \$750,000	Consumer price index

Wisconsin ²⁴¹	Noneconomic damages	Every odd year on 1/1	Board of governors submits a report to the legislature with recommended changes to cap
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MISCELLANEOUS ITEMS

Twelve states (Colorado, Idaho, Maryland, Michigan, Mississippi, Montana, New Mexico, North Carolina, North Dakota, Ohio, Oregon, and Tennessee) have statutes providing that their damage caps may not be made known to a jury.²⁴² Some states only have this prohibition as to punitive damage caps.²⁴³ And, at least in Alabama, informing a jury of the punitive damage cap is grounds for a mistrial.²⁴⁴ The reason for the prohibition against informing a jury of a cap is to avoid the jury using the cap as a starting point when awarding verdicts. Instead, the jury can focus on awarding an amount it thinks will fairly compensate the claimant.

Several states require the splitting of punitive damage awards between the plaintiff and other entities.

- For punitive damage awards in Montana, the entire amount is divided equally between the plaintiff and the state.²⁴⁵
- For punitive damage awards in Utah, the first \$50,000 goes to injured party, and the excess amount is split equally between the state and the injured party.²⁴⁶
- For punitive damage awards in Oregon, the award is divided among the plaintiff (30%), deposited into Criminal Injuries Compensation Account (60%), and deposited into State Court Facilities and Security Account (10%).²⁴⁷

RELATIONSHIP OF EXTRAORDINARY VERDICTS TO DAMAGE CAPS

Since the beginning of 2016, approximately 100 Texas injury or death cases involving one or a few plaintiffs have resulted in a verdict exceeding \$10 million. The twenty-five largest of these verdicts are listed in Appendix B. The largest—\$7.375 billion—was handed down by a Dallas County court in 2022 in a single-plaintiff wrongful death case.²⁴⁸ The twenty-fifth largest is a 2024 verdict of \$71.95 million from a Dallas County court in a construction workplace injury case.²⁴⁹ Four verdicts have exceeded \$500 million,²⁵⁰ and twenty have exceeded \$100 million.²⁵¹

In every case, noneconomic damages constitute a meaningful percentage of the total award. The largest noneconomic damage award, \$480 million, resulted from a 2021 single-plaintiff wrongful death case in a Titus County court.²⁵² Eleven of the top twenty-five verdicts since 2016 featured noneconomic damage awards of over \$100 million, and nineteen of the top twenty-five verdicts had noneconomic damage awards greater than \$50 million.²⁵³

In a number of these cases, the plaintiff sought only noneconomic damages.²⁵⁴ This was doubtless done because the use of unsubstantiated anchoring yielded awards that were significant in magnitude yet exempt from Texas’s exemplary damage cap. As discussed in Section II.B, a noneconomic damage claim can be established by a preponderance of the evidence

with the agreement of only ten jurors, while exemplary damage claims must be established through clear and convincing evidence with juror unanimity. Thus, if a lawyer can convince a jury to essentially punish a defendant by awarding noneconomic damages at the rate of two cents for every mile driven by a national freight-carrier's trucks, as was done in *Gregory v. Chohan*,²⁵⁵ or based on the price of constructing an apartment building, as was done in *Flores v. Bigge Crane & Rigging Co.*,²⁵⁶ the lawyer has secured a large judgment that resembles punitive damages but is not reduced by a statutory mandate and more easily sustained on appeal.

The proliferation of extraordinarily high noneconomic damage awards is occurring in other states as well as Texas, and the connection between noneconomic damage and extraordinary verdicts is well known.²⁵⁷ This connection has compelled two states to impose caps on noneconomic damages recently. Iowa capped noneconomic damages in commercial vehicle collision cases in 2023 and West Virginia did the same in 2024. The Wisconsin Legislature passed a similar cap in 2024 that was vetoed by the state's governor. And in Maryland, a bill filed in 2024 to almost double the state's generally applicable noneconomic damage cap failed to pass the Legislature after encountering stiff resistance.²⁵⁸

CALLS FOR LEGISLATIVE ACTION

Justice Devine's concurring opinion in *Gregory v. Chohan* asserts that the plurality's new "rational connection" requirement appears at odds with prior Texas Supreme Court decisions giving jurors substantial discretion in determining the amount to award for noneconomic damages. Justice Devine also criticized the plurality for "advocat[ing] a new evidentiary standard that is not only foreign to our jurisprudence but also incapable of being satisfied."²⁵⁹ In his concurring opinion, he suggests this is a matter best addressed by the legislative branch of government.

"[A]s the electorate's chief policymaker, the Legislature is much better equipped to balance any tension between the Constitutional command of just compensation and the plurality's concerns about the potential for arbitrariness" than is the Court, according to Justice Devine.²⁶⁰ "[I]f there is a compelling need for change, as the plurality suggests, policy choices like those implicated here are well within the Legislature's wheelhouse."²⁶¹

Historically, there has been legislative interest concerning noneconomic damages. In the face of a liability insurance crisis in the 1980s, the Texas Legislature created a joint Senate/House Select Committee in 1985 to search for solutions. The Committee reported to the Legislature in early 1987, and its report included this statement:

Noneconomic damages are, by definition, subjective and nonverifiable. In many cases, they exceed economic damages by a significant amount. Because they are subjective and inherently impossible to predict on a case-by-case basis, they represent a serious impediment to underwriting predictability. A limit on noneconomic damages would make them predictable to the extent that they could not exceed a particular amount. The joint committee believes that a limit of \$250,000 allows for the recovery of a substantial amount of money in the event of significant noneconomic injury while still providing for a reasonable degree of civil justice predictability.²⁶²

The committee recommended a \$250,000 cap on noneconomic damages.²⁶³

As discussed in Section III.B.1, Texas capped noneconomic damages in healthcare liability cases in 2003. That cap, coupled with other reforms, worked. Liability insurance premiums for medical doctors decreased immediately. Doctors began flowing back into Texas—increasing access to care for all Texans.²⁶⁴

George Christian, writing for the Texas Civil Justice League, asked in January 2022 whether it is time for Texas to revisit the standards for awarding mental anguish damages.²⁶⁵ He concludes with this: “While we are not necessarily advocating a legislative response at this time, we do believe that the rising incidence of nuclear verdicts and challenges to the existing cap warrant a policy response.”

CONCLUSION

As stated at the outset, Texas is seeing a proliferation of extraordinarily high jury verdicts in injury and death cases having one or a few plaintiffs. These nuclear verdicts are inconsistent and unfair, as defendants in Texas courts are treated unequally for reasons wholly unrelated to the merits of their cases. Nuclear verdicts also may impede economic growth in Texas and deter businesses from relocating, headquartering, and incorporating in Texas. The intent of this paper is to provide a resource for legislators as they decide whether the civil justice system in Texas needs legislative action to ensure that it is stable, predictable, and fair.

APPENDIX A

NONECONOMIC & PUNITIVE DAMAGE CAPS BY STATE

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Alabama	No	Medical malpractice, personal injury, wrongful death	Unconstitutional cap on noneconomic damages.		S.B. 293 (introduced 04/04/24, left pending) would have limited noneconomic damages to \$1 million and barred claims of negligent training and supervision if employer admitted employee acted within job scope.	Successfully challenged as unconstitutional in Moore and not re-passed. <i>Moore v. Mobile Infirmary Ass'n</i> , 592 So. 2d 156 (Ala. 1991).
	Yes	Punitive damages	Greater of three times actual damages or \$500,000. In cases of physical injury, greater of three times compensatory damages or \$1.5 million. Against small business, greater of \$50,000 or 10% of net worth. Caps not applicable in wrongful death or intentional physical injury. Ala. Code § 6-11-21 .	Clear and convincing evidence of deliberate action, malice, or wanton and reckless disregard. Ala. Code § 6-11-20 .	Jury may not be informed of caps. Grounds for mistrial. Ala. Code § 6-11-22 . Caps adjusted on January 1 every three years pursuant to consumer price index. Punitive damages are not available against a state entity. Ala. Code § 6-11-21 .	
Alaska	Yes	Personal injury, wrongful death	Greater of \$400,000 or \$8,000 multiplied by the injured person's life expectancy in years. Greater of \$1 million or \$25,000 multiplied by life expectancy for severe physical impairment or disfigurement. Alaska Stat. § 09.17.010 .		Noneconomic damages generally not recoverable in claims made by uninsured motorist. Alaska Stat. § 09.65.320 . Must itemize verdict: past economic loss; past noneconomic; future economic; future noneconomic; and punitive damages. Alaska Stat. § 09.17.040 .	Constitutionality of cap upheld. <i>C.J. v. State, Dep't of Corrs.</i> , 151 P.3d 373, 382 (Alaska 2006); <i>L.D.G., Inc. v. Brown</i> , 211 P.3d 1110, 1131 (Alaska 2009).
	Yes	Medical malpractice	\$250,000 for personal injury in medical malpractice. \$400,000 in cases of wrongful death or severe physical impairment greater than 70% disabling. Alaska Stat. § 9.55.549 .		Cap not applicable if act/omission was reckless or intentional. Alaska Stat. § 9.55.549 .	
	Yes	Punitive damages	Greater of three times compensatory damages or \$500,000. If proven motivation of financial gain, greater of four times compensatory, four times financial gain, or \$7 million. In unlawful employment practice, \$200,000-500,000 depending on size of company. Alaska Stat. § 9.17.020 .	Clear and convincing evidence. Alaska Stat. § 9.17.020 .	If employer vicariously liable, punitive damages may not be awarded against employer under certain situations. If punitive damages are found, a separate proceeding is conducted before the same fact finder to determine the amount. Alaska Stat. § 9.17.020 .	
Arizona	No	General tort including medical malpractice, personal injury, death				Constitutional prohibition. Ariz. Const. art. II, § 31 ; id. art. XVIII, § 6 .
	No	Punitive damages	Uncapped as per state constitution. But punitive damages are not allowed in products liability cases except for claims involving kickbacks, misrepresentations, and violations of FDA rules. Ariz. Rev. Stat. §§ 12-687, -689, -701 .	Clear and convincing evidence required for recovery of punitive damages.	Punitive damages not recoverable against the state. Ariz. Rev. Stat. § 12-820.04 .	Constitutional prohibition. <i>Linthicum v. Nationwide Life Ins. Co.</i> , 723 P.2d 675 (Ariz. 1986).

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Arkansas	No	Medical malpractice	Noneconomic damages are specifically allowed by statute. Ark. Code § 16-114-208(a)(2) .		Fact finder must separately state awards for past and future economic losses and past and future noneconomic losses. Ark. Code § 16-114-208(b) .	
	No	Punitive damages	Punitive cap is unconstitutional as it limits the amount of recovery outside the employment relationship. Ark. Code § 16-55-206 ; Ark. Const. art. V, § 32 .	Clear and convincing evidence. Ark. Code § 16-55-207 .	Punitive damages not recoverable against the state. Ark. Code § 21-9-203 .	Punitive cap is unconstitutional as it relates to claims outside employment relationship. Ark. Const. art. V, § 32 ; <i>Bayer CropScience LP v. Schafer</i> , 385 S.W.3d 822, 831 (Ark. 2011).
California	Yes	Medical malpractice	Noneconomic damages capped at \$390,000 (2024) against one or more healthcare providers; same for institutions. In cases of wrongful death, \$550,000 (2024) cap against providers; same for institutions. Cal. Civ. Code § 3333.2(b), (g) .		Adjusted \$40,000 every year starting on January 1, 2023, for ten years not to exceed \$750,000 (as applied to \$350,000 cap). Adjusted \$50,000 every year starting on January 1, 2023, for ten years not to exceed \$1 million (as applied to \$500,000 cap). Adjusted 2% starting on January 1, 2034 (as applied to the \$750,000 and \$1 million caps above). Cal. Civ. Code § 3333.2(g), (h) .	
	Yes	Wrongful death	Damages are limited to what the decedent sustained before death, including any punitive damages that the decedent would have been entitled to recover had the decedent lived, and do not include damages for pain, suffering, or disfigurement. Cal. Civ. Proc. Code § 377.34(a) .			
	No*	Punitive damages	Not a cap, but punitive recovery is not available against healthcare providers or religious corporations without a prior court order. Cal. Civ. Proc. Code §§ 425.13(a), 425.14 . Employer not liable for punitive damages based on employee's acts, unless employer knew employee was unfit and employed him or her with a conscious disregard of the rights or safety of others, authorized or ratified the wrongful conduct, or was personally guilty of oppression, fraud, or malice. Cal. Civ. Code § 3294(b) .	Clear and convincing evidence for recovery of punitive damages. Cal. Civ. Code § 3294(a) .	Comparative negligence state; several liability for noneconomic damages. Cal. Civ. Code § 1431.2(a) . Punitive damages not recoverable against the state. Cal. Gov't Code §§ 818, 825 .	

DAMAGE CAPS ACROSS THE UNITED STATES

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Colorado	Yes	General tort, personal injury	Limited to \$729,790, unless clear and convincing evidence justifying greater award up to \$1,459,600. Colo. Rev. Stat. § 13.21-102.5 ; STATE OF COLO. DEP'T OF STATE, ADJUSTED LIMITATION ON DAMAGES CERTIFICATE, 74th Gen. Assemb. (2024) . No cap in wrongful death cases if the wrongful act, neglect, or default causing death constitutes a felonious killing. Colo Rev. Stat. § 13-21-203(1)(a) .	Clear and convincing evidence to justify higher cap. Colo. Rev. Stat. § 13.21-102.5 . Otherwise, preponderance of the evidence. Colo. Rev. Stat. § 13-25-127(1) .	H.B. 24-1472 (effective 01/01/25). Increases noneconomic cap for injury to \$1.5 million and wrongful death cap to \$2.125 million. Adjusted for inflation according to consumer price index every two years starting January 1, 2028. Adds sibling who can bring a wrongful death action if no other living family members or heirs. Adjusted for inflation every two years; may not be disclosed to jury. Colo. Rev. Stat. § 13-21-102.5 .	Noneconomic damage cap does not violate equal protection, due process, or access to courts. <i>Scharrel v. Wal-Mart Stores, Inc.</i> , 949 P.2d 89 (Colo. App. 1997); <i>Stewart v. Rice</i> , 25 P.3d 1233 (Colo. App. 2000), <i>rev'd on other grounds</i> , 47 P.3d 316 (Colo. 2002).
	Yes	Medical malpractice	Total damage cap (economic and noneconomic) of \$1 million per plaintiff; including limit of \$300,000 derivative noneconomic loss. Colo. Rev. Stat. § 13-64-302 .	Preponderance of the evidence. Colo. Rev. Stat. § 13-25-127(1) .	H.B. 24-1472 (effective 01/01/25). Total damages (economic and noneconomic) capped at greater of \$1 million or 125% of noneconomic damage cap. \$415,000 noneconomic damage cap until January 1, 2026, which will incrementally increase over five years until it reaches \$875,000 in 2030. Wrongful death of a patient capped at \$555,000 until January 1, 2026, which will incrementally increase over five years until it reaches \$1.575 million in 2030. Thereafter adjusts every two years for inflation according to consumer price index. Caps may not be disclosed to jury. Colo. Rev. Stat. § 13-64-302(b) . Exemplary damages may not be included in any initial claim for relief. Colo. Rev. Stat. § 13-64-302.5(3) .	Constitutionality of previous cap upheld by <i>Garhart ex rel. Tinsman v. Columbia/HealthONE, L.L.C.</i> , 95 P.3d 571 (Colo. 2004).
	Yes	Punitive damages	Cannot exceed amount of actual damages; in the event of a defendant's willful or wanton aggravation of the injurious behavior during pendency of the claim, then an amount not to exceed three times actual damages. Colo. Rev. Stat. § 13-21-102 .	Proof beyond a reasonable doubt. Colo. Rev. Stat. § 13-25-127(2) .	No freestanding exemplary damage claim against employer when he admits <i>respondeat superior</i> liability. <i>Ferrer v. Okbamicael</i> , 390 P.3d 836 (Colo. 2017).	
Connecticut	Yes*	Medical malpractice	If noneconomic damage award exceeds \$1 million, court reviews to determine if amount is excessive. Conn. Gen. Stat. § 52-228c .	If amount "shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, prejudice, mistake or corruption," court orders remittitur. Conn. Gen. Stat. § 52-228c .		
	Yes	Punitive damages – products liability	Statutory cap on punitive damages in products liability cases only. Limited to two times compensatory damages. Conn. Gen. Stat. § 52-240b .			

DAMAGE CAPS ACROSS THE UNITED STATES

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Delaware	No	Punitive damages –	No cap. Del. Code tit. 18, § 6855.	Malicious intent or result of willful or wanton misconduct. Del. Code tit. 18, § 6855.	May be awarded only if separately awarded by trier of fact in a separate finding from any finding of compensatory damages which separate finding shall also state the amounts being awarded for each such category of damages. Del. Code tit. 18, § 6855.	
	Yes*	Punitive damages – trade secrets	Recovery limited for willful and malicious appropriation of trade secrets to two times amount of award. Del. Code tit. 6, § 2003(b).			
D.C.	No					

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Florida	No*	Motor vehicle negligence	Any recovery in wrongful death or personal injury shall be, upon proper motion, reviewed by the court to determine whether the award is clearly excessive or inadequate based on defined criteria. If so, the court must order remittitur or additur. If the party adversely affected by remittitur or additur does not agree, the court must order a new trial in the issue of damages only. Fla. Stat. § 768.043(1)			
	Yes	Medical malpractice – personal injury, wrongful death	Noneconomic damage cap of \$500,000 per claimant. Each provider is limited to \$500,000 liability in aggregate of all claimants. Cap of \$1 million in case of death or permanent vegetative state. In cases that do not involve death or permanent vegetative state, plaintiff may still be eligible for increased noneconomic damages up to \$1 million for all practitioners if manifest injustice would occur for a catastrophic injury on a finding of special circumstances. Non-practitioner cap of \$750,000 per claimant. \$1.5 million all non-practitioners cap in case of death or permanent vegetative state. Upon finding of special circumstances not involving death or vegetative state, damages up to \$1.5 million aggregate all non-practitioner providers. Emergency care caps at \$150,000 and \$300,000, and non-practitioner \$750,000 and \$1.5 million. Limitations on Medicaid recipients \$200,000 and \$300,000. Fla. Stat. § 766.118.		CS/SB 248 (introduced 01/09/24, died in Fiscal Policy) would have revised the limits on noneconomic damages for personal injury or wrongful death arising from medical negligence.	Statutory cap on wrongful death noneconomic damages in medical malpractice actions violated right to equal protection under state constitution. <i>Estate of McCall v. United States</i> , 134 So. 3d 894 (Fla. 2014). Prior version of statute for personal injury noneconomic damages was held unconstitutional for violating equal protection clause. <i>N. Broward Hosp. Dist. v. Kalitan</i> , 219 So. 3d 49 (Fla. 2017). Successfully challenged as unconstitutional and re-passed in 2020. Circuit court ruled cap on personal injury noneconomic damages for Medicaid recipients is unconstitutional. <i>Coleman v. Gibbs</i> , No. 19-CA-006741, 2024 WL 3410527, at *1 (Fla. Cir. Ct. Jan. 29, 2024).
	No	Wrongful death	Specific entitlement to noneconomic damages in wrongful death actions. Fla. Stat. § 768.21.			
	Yes	Government entities	Recovery in tort actions against government entity is limited to \$200,000 per person or \$300,000 per incident, except upon legislative waiver. Fla. Stat. § 768.28(5)(a).		Punitive damages not recoverable against the state. Fla. Stat. § 768.28(5)(a).	
	Yes	Punitive damages	Greater of three times compensatory or \$500,000. But in case of motive of financial gain and conduct known to be unreasonably dangerous, cap is the greater of four times compensatory or \$2 million. No cap in case of specific intent causing actual harm. Fla. Stat. § 768.73	Clear and convincing evidence. Fla. Stat. § 768.725.	Jury may not be instructed or informed of the punitive damage caps. Fla. Stat. § 768.73(4). Punitive damage caps not applicable to child, elder, or developmentally disabled abuse. Fla. Stat. § 768.735. Punitive damage caps not applicable to defendant who was under the influence of alcohol or drugs. Fla. Stat. § 768.736.	

DAMAGE CAPS ACROSS THE UNITED STATES

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Georgia	No	Medical malpractice	Unconstitutional statutory cap on noneconomic damages (was previously \$350,000 per defendant, \$1.05 million max per claim).			Successfully challenged as unconstitutional and not re-passed. <i>Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt</i> , 691 S.E.2d 218 (Ga. 2010).
	Yes	Punitive damages	Allowed up to \$250,000 in tort only when willful misconduct, malice, fraud, wantonness, oppression, or conscious indifference; no cap for intentional harm or harm involving drugs or alcohol; no cap for products liability. Ga. Code § 51-12-5.1 .	Clear and convincing. Ga. Code § 51-12-5.1(b) .		
Hawaii	Yes	General tort, personal injury, medical malpractice	Noneconomic damages capped at \$375,000. Cap only for pain and suffering. Haw. Rev. Stat. § 663-8.7 .		Exception to damage cap for motor vehicle accidents. Haw. Rev. Stat. § 663-10.9(2)(F) .	
Idaho	Yes	Personal injury or death	Capped at \$250,000 (\$490,000 as of 2024, adjusted for inflation). Cap does not apply in cases of willful or reckless misconduct or actions arising from conduct proven beyond a reasonable doubt would constitute a felony under state or federal law. Idaho Code § 6-1603 .		Adjusted every July 1 according to percentage change in average annual state wage. Jury shall not be informed of cap. Idaho Code § 6-1603 .	Constitutionality of cap upheld by <i>Kirkland v. Blaine Cnty. Med. Ctr.</i> , 4 P.3d 1115 (Idaho 2000).
	Yes	Punitive damages	Capped at \$250,000 or three times compensatory, whichever is greater. Idaho Code § 6-1604(3) .	Clear and convincing evidence. Idaho Code § 6-1604(1) .	Jury shall not be informed of the cap. Idaho Code § 6-1604(3) .	
Illinois	No	Medical malpractice	Unconstitutional statutory cap on noneconomic damages (previously was \$500,000 per provider, \$1 million max per facility).		HJRCA0015 (introduced 05/17/23, died in committee) would have amended constitution to give legislature authority to cap noneconomic damages.	Successfully challenged as unconstitutional and not re-passed. <i>Lebron v. Gottlieb Mem'l Hosp.</i> , 930 N.E.2d 895 (Ill. 2010).
Indiana	Yes	Medical malpractice	Total damages (economic and noneconomic) capped at \$1.8 million. Cap of \$500,000 per provider. Ind. Code § 34-18-14-3 .		Any amount due in excess of providers' liability is paid from state's patient compensation fund. Ind. Code § 34-18-14-3(c) .	Constitutionality of cap upheld by <i>Johnson v. St. Vincent Hosp., Inc.</i> , 404 N.E.2d 585 (Ind. 1980).
	No	Wrongful death	\$300,000 cap only for loss of love and companionship damages in the case of wrongful death of unmarried adults without children, and married adults who do not have any dependents and whose deaths were caused by their spouses. Ind. Code § 34-23-1-2 .		Trier of fact must make a separate finding with respect to damages for loss of consortium. Ind. Code § 34-23-1-2(i) .	
	Yes	Punitive damages	Greater of three times compensatory or \$50,000. Ind. Code § 34-51-3-4 .		Punitive damages not recoverable against state. Ind. Code § 34-13-3-4(b) .	Punitive cap upheld by <i>State v. Doe</i> , 987 N.E.2d 1066 (Ind. 2013).

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Iowa	Yes	Commercial motor vehicles –injury or death	Cap on noneconomic damages is \$5 million per plaintiff for personal injury or death against owner or operator regardless of theory of recovery, provided, however, that the cap shall not apply in the event of a finding by preponderance of the evidence that defendant was (1) operating a CMV with a BAC of .04 or more or was under the influence of a drug; (2) refused to submit to chemical testing; (3) acting in a way that amounted to a felony involving use of a motor vehicle; (4) using the CMV for the illegal manufacture, distribution, or dispensing of a controlled substance; (5) knowingly operating the CMV without proper DL or learner’s permit or was otherwise disqualified from operating the CMV; (6) operating the CMV in connection with human trafficking; (7) engaged in reckless driving or was using an electronic communication device while driving; (8) speeding in excess of 15 mph or more over the speed limit; or (9) in violation of any law restricting the use of a telephone, computer, or tablet. Iowa Code § 668.15A(2), (3) .	Preponderance of the evidence. Iowa Code § 668.15A .	Cap not applicable to non-CMV cases, ride share, passenger vehicle, school bus, etc. Iowa Code § 668.15A(4) . Cap adjusted for inflation according to consumer price index starting 01/01/28 and every even year thereafter. Iowa Code § 668.15A(5) . Senate File 228 (effective 05/12/23) is the relevant legislation.	
	Yes	Personal injury	Damages that may be recovered by a claimant for the reasonable and necessary cost or value of medical care rendered shall not exceed the sum of the amounts actually paid or incurred. Iowa Code § 668.14A .			
	Yes	Medical malpractice	Noneconomic cap at \$250,000, unless jury finds substantial or permanent impairment, in which case the cap is \$1 million or \$2 million if action includes a hospital. If malice, cap is not applicable. Iowa Code § 147.136A(2), (3) .		Cap adjusted 2.1% for inflation starting 01/01/28 and every year thereafter. Iowa Code § 147.136A(4) .	
	No*	Punitive damages	Only willful hazardous waste claims (damages capped at three times cleanup cost, Iowa Code § 455B.392(b)) and bad faith retention of tenant deposit (capped at two times monthly rent, Iowa Code § 562A.12(7)).		Otherwise, no caps on punitive damages in Iowa. Iowa Code § 668A.1 .	
Kansas	No	General tort	Unconstitutional statutory cap on noneconomic damages (was previously \$325,000 for causes of action accruing on or after 07/01/2018, and before 07/01/2022; would have risen to \$350,000 for causes of action accruing on or after 07/01/2022).			Successfully challenged as unconstitutional violation of right to trial by jury as provided in Section 5 of the Kansas Constitution; not re-passed. <i>Hilburn v. Enerpipe Ltd.</i> , 442 P.3d 509 (Kan. 2019).
	Yes	Punitive damages	Lesser of the defendant’s annual gross income or \$5 million; if that valuation is deemed too low by the court, limitation may be 1.5 times amount of profit defendant gained; or the limit shall be the lower of 50% of the defendant’s net worth or \$5 million. Kan. Stat. §§ 60-3701, 60-3702(e) .	Clear and convincing evidence. Kan. Stat. § 60-3701(c) .	Separate proceeding for punitive damages amount. Kan. Stat. §§ 60-3701(a), 60-3702 .	

DAMAGE CAPS ACROSS THE UNITED STATES

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Kentucky	No					Constitutional prohibition. <i>Ky. Const. § 54</i> . Prior cap was struck down as unconstitutional. <i>Williams v. Wilson</i> , 972 S.W.2d 260 (Ky. 1997).
Louisiana	Yes	Medical malpractice	Total cap (economic and noneconomic) is \$500,000, plus cost of future medical expenses. Individual provider cap is \$100,000 if provider is covered by the state patient compensation fund. <i>La. Rev. Stat. § 40:1231.2</i> .			Constitutionality of cap upheld by <i>Butler v. Flint Goodrich Hosp. of Dillard Univ.</i> , 607 So. 2d 517 (La. 1992).
Maine	Yes	Wrongful death	Noneconomic damages capped at \$1 million for loss of comfort, society, or emotional distress, and conscious suffering of decedent. <i>Me. Rev. Stat. tit. 18-C, § 2-807(2)</i> .		Adjusted for inflation according to consumer price index. <i>Me. Rev. Stat. tit. 18-C, §§ 2-807(2), 1-108(2)</i> .	
	No	Personal injury	No cap in personal injury claims.			
	Yes	Government entities	Under Maine Tort Claims Act, government entity liable for damages arising from negligent acts relating to vehicles, construction, and pollutants; capped at \$400,000 against the entity, its employees, or both in aggregate for single occurrence. <i>Me. Rev. Stat. tit. 14, §§ 8104-A, 8105</i> .			
	Yes	Punitive damages – wrongful death	Punitive damages capped at \$500,000 only in wrongful death cases. <i>Me. Rev. Stat. tit. 18-C, § 2-807(2)</i> .			
Maryland	Yes	Personal injury, wrongful death	Noneconomic damage cap of \$935,000 (2023). In a wrongful death action with two or more claimants, damages may not exceed 150% of the cap, regardless of the number of those who share in the award. <i>Md. Code, Cts. & Jud. Proc. § 11-108(b)</i> .		Cap increase of \$15,000 per year starting on October 1, 1995. <i>Md. Code, Cts. & Jud. Proc. § 11-108(b)</i> . Jury shall not be informed of the cap. Any award in excess of the cap shall be conformed to the statutory caps post-verdict. <i>Md. Code, Cts. & Jud. Proc. § 11-108(d)(1)</i> .	Cap upheld by <i>Dixon v. Ford Motor Co.</i> , 70 A.3d 328 (Md. 2013).
	Yes	Medical malpractice, wrongful death	Noneconomic damage cap of \$890,000 (2024). In a wrongful death action with two or more claimants, damages may not exceed 125% of the cap, regardless of the number of those who share in the award. <i>Md. Code, Cts. & Jud. Proc. § 3-2A-09(b)</i> .		Cap increase of \$15,000 per year starting on January 1, 2009. <i>Md. Code, Cts. & Jud. Proc. § 3-2A-09(b)</i> . Jury shall not be informed of the cap. Any award in excess of the cap shall be conformed to the statutory caps post-verdict. <i>Md. Code, Cts. & Jud. Proc. § 3-2A-09(c)</i> .	
Massachusetts	Yes	Medical malpractice	Noneconomic damage cap of \$500,000, unless injury is substantial or permanent loss or impairment of a bodily function, substantial disfigurement, or other instances wherein the cap would produce an unjust result. <i>Mass. Gen. Laws ch. 231, § 60H</i> .			
	No*	Punitive damages – wrongful death	Minimum of \$5,000. <i>Mass. Gen. Laws ch. 229, § 2</i> .		Punitive damage recovery varies by statute.	

DAMAGE CAPS ACROSS THE UNITED STATES

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Michigan	Yes	Medical malpractice	Noneconomic cap of \$569,000 (2024) per claim. Cap of \$1.016 million (2024) if plaintiff is paralyzed, has total loss of function of a limb due to injury to brain or spinal cord, has severe permanent cognitive impairment, or has loss of reproductive organ resulting in sterility. Mich. Comp. Laws § 600.1483(1) .		Trier of fact shall itemize into economic loss and noneconomic loss. Mich. Comp. Laws § 600.1483(2) . Adjusted annually according to consumer price index. Mich. Comp. Laws § 600.1483(4) .	Validity of cap called into doubt by <i>Wiley v. Henry Ford Cottage Hosp.</i> , 668 N.W.2d 402 (Mich. Ct. App. 2003). Constitutionality of cap upheld by <i>Smith v. Botsford Gen. Hosp.</i> , 419 F.3d 513 (6th Cir. 2005).
	Yes	Products liability	Noneconomic cap of \$569,000 (2024). Cap of \$1.016 million (2024) if product defect caused death or permanent loss of a vital bodily function. Mich. Comp. Laws § 600.2946a(1) .	Damage cap for death or permanent loss of a vital bodily function does not apply if found, by a preponderance of the evidence, that defendant was grossly negligent. Mich. Comp. Laws § 600.2946a(3) .	Trier of fact shall itemize into economic loss and noneconomic loss. Jury shall not be informed of caps. Mich. Comp. Laws § 600.2946a(2) .	Constitutionality upheld by <i>Kenkel v. Stanley Works</i> , 665 N.W.2d 490 (Mich. Ct. App. 2003).
Minnesota	No					
Mississippi	Yes	General tort	Noneconomic damage cap of \$1 million. Miss. Code § 11-1-60(2)(b) .		Jury shall not be advised of the cap. Judge will reduce award if it exceeds cap. Miss. Code § 11-1-60(2)(c) .	Constitutionality of cap upheld by the Fifth Circuit in <i>Learmonth v. Sears, Roebuck & Co.</i> , 710 F.3d 249 (5th Cir. 2013).
	Yes	Medical malpractice	Noneconomic damage cap of \$500,000. Miss. Code § 11-1-60(2)(a) .		Jury shall not be advised of the cap. Judge will reduce award if it exceeds cap. Miss. Code § 11-1-60(2)(c) .	
	Yes	Government entities	Total damage cap of \$500,000. Miss. Code § 11-46-15(1)(c) .		Punitive damages not recoverable against the state. Miss. Code § 11-46-15(2) .	
	Yes	Punitive damages	Calculated based on net worth of defendant; no limit in case of defendant under influence of drugs or alcohol or in the commission of a felony. Caps as high as \$20 million. Miss. Code § 11-1-65(3)(a) . Court reviews award before entering judgment, including the defendant's severity of conduct and net worth. Miss. Code § 11-1-65(1)(f) .	Clear and convincing evidence. Miss. Code § 11-1-65(1)(a) .	Compensatory damages must be determined prior to addressing issues related to punitive damages. Miss. Code § 11-1-65(1)(b) . Jury may not be advised of the cap, but cap will be applied by the court. Miss. Code § 11-1-65(3)(c) .	
Missouri	Yes	Medical malpractice	Noneconomic damage cap of \$465,531 (2024), or \$814,679 (2024) for cases involving catastrophic injury or death. Mo. Rev. Stat. § 538.210(2) .		Increased annually by 1.7% on January 1. Mo. Rev. Stat. § 538.210(10) .	Constitutionality of caps upheld by <i>Ordinola v. Univ. Physician Assocs.</i> , 625 S.W.3d 445 (Mo. 2021). Prior version of statute was held unconstitutional as violating right to trial by jury. <i>Watts v. Lester E. Cox Med. Ctrs.</i> , 376 S.W.3d 633 (Mo. 2012).
	Yes	Punitive damages	Greater of five times damages or \$500,000. No cap if injury occurred in the commission of a felony. Mo. Rev. Stat. § 510.265 .	Clear and convincing evidence. Mo. Rev. Stat. § 510.261 .	Trial is bifurcated and tried to the same jury. In stage 1, jury determines liability for punitive damages. In stage 2, jury determines amount, and net worth is admissible. Mo. Rev. Stat. § 510.263 .	Prior version of statute was held unconstitutional as violating right to trial by jury. <i>Lewellen v. Franklin</i> , 441 S.W.3d 136 (Mo. 2014).

DAMAGE CAPS ACROSS THE UNITED STATES

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Montana	Yes	Medical malpractice	Noneconomic damage cap of \$250,000 for cases involving injury or death. Mont. Code § 25-9-411(1) .		Cap may not be disclosed to jury. Mont. Code § 25-9-411(4) .	
	Yes	Government entities	Damages (all) in tort capped at \$750,000 per claim and \$1.5 million per occurrence. Mont. Code § 2-9-108(1) .		Punitive damages not recoverable against the state. Mont. Code § 2-9-105 .	
	Yes	Punitive damages	Lesser of \$10 million or 3% of a defendant's net worth. Mont. Code § 27-1-220(3) .	Clear and convincing evidence. Mont. Code § 27-1-221(6) .	Amount of punitive damages determined in a separate proceeding. Damages over \$200,000 are divided between the plaintiff and state; this may not be disclosed to jury. Mont. Code § 27-1-221 .	
Nebraska	Yes	Medical malpractice	Total damage cap (economic and noneconomic) of \$2.25 million. Provider who qualifies under the Nebraska Hospital-Medical Liability Act not liable for more than \$800,000, whereby provider liability in excess of \$800,000 is paid from the state's excess liability fund. Neb. Rev. Stat. § 44-2825 (eff. 01/01/25).			Constitutionality of cap upheld by <i>Gourley v. Neb. Methodist Health Sys., Inc.</i> , 663 N.W.2d 43 (Neb. 2003).
	Yes	Government entities	For tort claims against state entities and political subdivisions, total damage cap of \$1 million per person and \$5 million for all claims arising out of single occurrence. Neb. Rev. Stat. § 13-926 .			
	Yes	Punitive damages	No punitive damages may be awarded.			Punitive damages are unconstitutional. <i>Miller v. Kingsley</i> , 230 N.W.2d 472 (Neb. 1975).
Nevada	Yes	Medical malpractice	Noneconomic damage cap of \$350,000 (\$430,000 in 2024) for cases involving injury or death. Nev. Rev. Stat. § 41A.035 .		Increased by \$80,000 annually beginning 01/01/24, until cap of \$750,000 is reached in 2028, then will increase by 2.1% annually thereafter. Nev. Rev. Stat. § 41A.035 .	Constitutionality of cap upheld by <i>Tam v. Eighth Jud. Dist. Court</i> , 358 P.3d 234 (Nev. 2015).
	Yes	Government entities	Total damage cap of \$200,000 per claimant. Nev. Rev. Stat. § 41.035 .		Punitive damages not recoverable against the state. Nev. Rev. Stat. §§ 41.035, 42.005 .	
	Yes	Punitive damages	Shall not exceed three times compensatory damages, or \$300,000 if compensatory damages are less than \$100,000. Nev. Rev. Stat. § 42.005 .	Clear and convincing evidence. Nev. Rev. Stat. § 42.005 .	Several exceptions where cap does not apply. Trial is bifurcated to same jury regarding amount of punitive damages in second phase. Nev. Rev. Stat. § 42.005(3)-(4) .	
New Hampshire	No	Personal injury				Statutory cap of \$875,000 for noneconomic loss in personal injury action violated state equal protection clause. <i>Brannigan v. Usitalo</i> , 587 A.2d 1232 (N.H. 1991).
	Yes	Wrongful death	Noneconomic damage cap of \$150,000 for spouses and \$50,000 for children and parents. N.H. Rev. Stat. § 556:12 .		S.B. 462 (effective 01/01/25) increases noneconomic damage caps to \$500,000 for spouses and \$300,000 for children and parents.	
	Yes	Punitive damages	No punitive damages shall be awarded in any action, unless otherwise provided by statute. N.H. Rev. Stat. § 507:16 .			

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
New Jersey	Yes	Medical malpractice	Total cap (economic and noneconomic) of \$250,000 on liability to beneficiary only in negligence claims by patients against non-profit hospitals and their agents. N.J. Rev. Stat. § 2A:53A-8.			
	Yes	Punitive damages	Limited to the greater of five times compensatory damages or \$350,000, with specific exceptions. N.J. Rev. Stat. § 2A:15-5.14(b).	Clear and convincing evidence. N.J. Rev. Stat. § 2A:15-5.12.	Trial is bifurcated, with determination of liability and amount of punitive damages in second phase. N.J. Rev. Stat. § 2A:15-5.13.	
New Mexico	Yes	Medical malpractice	Total damage cap (economic and noneconomic, except past and future medical care) of \$750,000 per occurrence for patient's injury or death against independent providers. Cap is \$1 million for claims against an independent outpatient facility. \$5 million (2024) for claims against a hospital. \$250,000 cap on provider personal liability and \$500,000 cap on independent outpatient healthcare facility's personal liability, with any amount in excess paid out of the state compensation fund. N.M. Stat. § 41-5-6.		Adjusted annually according to consumer price index. Jury may not be informed of cap. No cap on punitive damages. N.M. Stat. § 41-5-6.	Constitutionality of cap upheld by <i>Siebert v. Okun</i> , 485 P.3d 1265 (N.M. 2021).
	Yes	Government entities	Under N.M. Tort Claims Act, state entities and actors have liability cap of \$200,000 for property damage, \$300,000 for past and future medical expenses, \$400,000 under other claims. Total liability may not exceed \$750,000. Damage caps are for total (economic and noneconomic). N.M. Stat. § 41-4-19.		Punitive damages not recoverable against the state. N.M. Stat. § 41-4-19(D).	
New York	No	Wrongful death	Constitutional prohibition of wrongful death damage cap.			"The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation." N.Y. Const. art. I, § 16.
North Carolina	Yes	Medical malpractice	Noneconomic damage cap of \$656,730 (2023) for all defendants. No cap in cases of disfigurement or permanent injury arising from recklessness, malice, intent, or gross negligence. N.C. Gen. Stat. § 90-21.19.		Adjusted for inflation according to consumer price index every three years starting January 1, 2014. Jury may not be informed of the cap. N.C. Gen. Stat. § 90-21.19.	
	Yes	Punitive damages	Greater of \$250,000 or three times compensatory damages. N.C. Gen. Stat. § 1D-25.		Jury may not be informed of the cap. Punitive damage award is a separate finding from all other damages. N.C. Gen. Stat. § 1D-25.	
North Dakota	Yes	Medical malpractice	Noneconomic damage cap of \$500,000. N.D. Cent. Code § 32-42-02.		Jury may not be informed of the cap. Court will reduce to fit confines of cap. N.D. Cent. Code § 32-42-02.	Constitutionality of cap upheld by <i>Condon v. St. Alexis Med. Ctr.</i> , 926 N.W.2d 136 (N.D. 2019).
	Yes	Punitive damages	Greater of \$250,000 or two times compensatory damages. N.D. Cent. Code § 32-03.2-11(4).	Clear and convincing evidence. N.D. Cent. Code § 32-03.2-11(5).	Jury may not be informed of the cap. Rules specific to motor vehicle accidents. N.D. Cent. Code § 32-03.2-11(4), (9).	

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Ohio	Yes	Personal injury	Cap is greater of \$250,000 or three times economic damages, with a maximum recovery of \$350,000 per plaintiff and \$500,000 per occurrence. No cap in case of permanent and substantial physical deformity, loss of use of a limb, loss of a bodily organ system, or permanent physical injury that prevents performance of independent care or life-sustaining activities. Not applicable to wrongful death brought under Ch. 2125. Ohio Rev. Code § 2315.18 .	In post-judgment motion, if defendant challenges noneconomic award as excessive, the court will review several factors: inflamed the passion or prejudice of jury, improper consideration of defendant's wealth or misconduct as to punish defendant, any extraordinary circumstances to account for the award, and verdict was in excess of similar injuries and plaintiffs. Ohio Rev. Code § 2315.19 .	Evidence of defendant's guilt, wealth, or evidence offered for the purpose of punishing the defendant may not be considered for determining noneconomic loss. Answers in verdict must specify (1) total compensatory; (2) economic loss; and (3) noneconomic loss. Jury may not be instructed on damage cap. Ohio Rev. Code § 2315.18(C)-(D), (F)(2) .	Constitutionality of cap upheld by <i>Arbino v. Johnson & Johnson</i> , 880 N.E.2d 420 (Ohio 2007). However, successfully challenged as unconstitutional under due course of law provision, as applied to sex offense of child victim. <i>Brandt v. Pompa</i> , 220 N.E.3d 703 (Ohio 2022).
	Yes	Medical malpractice – injury or death	Cap is greater of \$250,000 or three times economic damages, with a maximum recovery of \$350,000 per plaintiff and \$500,000 per occurrence. Cap is \$500,000 per plaintiff or \$1 million per occurrence in case of permanent and substantial physical deformity, loss of use of a limb, loss of a bodily organ system, or permanent physical injury that prevents performance of independent care or life-sustaining activities. Not applicable to wrongful death brought under Ch. 2125. Ohio Rev. Code § 2323.43 .		Answers in verdict must specify same as above. Jury may not be instructed on damage cap. Ohio Rev. Code § 2323.43 .	
	Yes	Punitive damages	Cap of two times compensatory damages. If defendant is a small business, the lesser of two times compensatory damages or 10% of net worth up to \$350,000. Ohio Rev. Code § 2315.21 .	Clear and convincing evidence. Ohio Rev. Code § 2315.21(D)(4) .	Bifurcated trial. In phase 1, no evidence regarding punitive damages. If jury finds compensatory damages, evidence of punitive damages may be presented in phase 2. Ohio Rev. Code § 2315.21(B) .	

DAMAGE CAPS ACROSS THE UNITED STATES

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Oklahoma	No	Personal injury				Successfully challenged as unconstitutional. <i>Beason v. I. E. Miller Servs., Inc.</i> , 441 P.3d 1107 (Okla. 2019).
	No	Wrongful death				Constitutional prohibition. Okla. Const. art. XXIII, § 7.
	Yes	Government entities	Total damages (economic and noneconomic) under Governmental Tort Claims Act are capped at \$25,000 for loss of property. Cap of \$125,000 for any other loss unless the population of the city or county is greater than \$300,000, in which case the cap is \$175,000. Cap of \$200,000 for state hospital liability. Cap of \$1 million for any number of claims arising out of a single occurrence or accident. Okla. Stat. tit. 51, § 154.		Punitive damages not recoverable against the state. Okla. Stat. tit. 51, § 154(C).	
	Yes	Punitive damages	Sliding scale based on defendant's culpability in the behavior, ranging from \$100,000 to \$500,000 to no cap. Okla. Stat. tit. 23, § 9.1.	Clear and convincing evidence. Okla. Stat. tit. 23, § 9.1.	Separate proceeding conducted after jury has found and awarded actual damages and liability for punitive damages. Okla. Stat. tit. 23, § 9.1.	
Oregon	Yes	Wrongful death	Noneconomic damage cap of \$500,000. Or. Rev. Stat. § 31.710(1).		Jury may not be instructed on cap. Or. Rev. Stat. § 31.710(3). Plaintiff may not recover noneconomic damages if they were an uninsured motorist or under the influence. Or. Rev. Stat. § 31.715. Verdict must set forth economic and noneconomic damages separately. Or. Rev. Stat. § 31.705.	Successfully challenged as unconstitutional and re-passed in 2021. <i>Busch v. McInnis Waste Sys., Inc.</i> , 468 P.3d 419 (Or. 2020).
	Yes	Punitive damages	Various limitations on awards of punitive damages based on statutes authorizing their recovery. E.g., punitive damages for misappropriation capped at two times actual damages. Or. Rev. Stat. § 646.465.	Clear and convincing evidence. Award of punitive damages is subject to judicial review for reasonableness. Or. Rev. Stat. § 31.730.	Punitive damages are not available against the state. Or. Rev. Stat. § 30.269(1). Award divided among plaintiff (30%), deposit into Criminal Injuries Compensation Account (60%), and deposit into State Court Facilities and Security Account (10%). Or. Rev. Stat. § 31.735.	
Pennsylvania	No	General tort, injury, death				Constitutional prohibition. Pa. Const. art. III, § 18.
Rhode Island	Yes	Government entities	All damages capped at \$100,000 in tort claims against the state, city, town, or fire district or agents acting in scope of duty. R.I. Gen. Laws § 9-31-2.			

DAMAGE CAPS ACROSS THE UNITED STATES

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
South Carolina	Yes	Medical malpractice	Noneconomic damage cap of \$350,000 (\$547,000 in 2023) per claimant against a single provider or institution, or \$1.05 million (\$1.6 million in 2023) if there is more than one defendant. But if defendant's actions are grossly negligent, willful, wanton, reckless, fraud, or misrepresentation, or altered or destroyed medical records with the purpose of avoiding liability, then there is no cap. S.C. Code § 15-32-220 .		Adjusted annually based on consumer price index. S.C. Code § 15-32-220(F) .	
	Yes	Punitive damages	Greater of three times actual damages awarded to each claimant or \$500,000. But cap can increase to the greater of four times actual damages or \$2 million if the conduct was motivated by financial gain, had a high likelihood of injury, was approved by agent, or could lead to a felony conviction. Also, cap can be removed if there was intent to harm, actor pled guilty or was convicted of a felony for these actions, or was under the influence of alcohol or drugs. S.C. Code § 15-32-530 .	Clear and convincing evidence. S.C. Code § 15-32-520 .	Bifurcated trial before the same jury. Stage 1, no evidence relevant to punitive damages. Stage 2, liability for and amount of punitive damages. S.C. Code § 15-32-520 . Jury may not be made aware of cap. Adjusted annually based on consumer price index. S.C. Code § 15-32-530(B) .	
South Dakota	No*	General tort	"Damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered." S.D. Codified Laws § 21-1-3 .			
	Yes	Medical malpractice	Noneconomic damage cap of \$500,000. S.D. Codified Laws § 21-3-11 .		Trier of fact must make separate findings for each claimant specifying amount of past damages, future medical, other future economic, and future noneconomic. S.D. Codified Laws § 21-3A-3 .	Challenged; revised cap ruled unconstitutional as violative of due process rights; prior version remains law. <i>Knowles v. United States</i> , 544 N.W.2d 183 (S.D. 1996).
	No	Wrongful death	Jury may give such damages as they may think proportionate to the pecuniary injury resulting from such death to the persons respectively for whose benefit such action shall be brought. S.D. Codified Laws § 21-5-7 .			
Tennessee	Yes	Personal injury, death, medical malpractice	Noneconomic damage cap of \$750,000 per plaintiff for all claims; cap extends to plaintiff's family members. Cap is \$1 million in the case of death or catastrophic injury or loss. Cap inapplicable for specific intent, intentional actions, actions involving the use of alcohol or drugs, or in the commission of a felony. Tenn. Code § 29-39-102 .	Defendant's liability for noneconomic damages whose liability is alleged to be vicarious shall be determined separately from that of any alleged agent, employee, or representative. Tenn. Code § 29-39-102(j) .	Cap cannot be disclosed to jury. Tenn. Code § 29-39-102(g) . Trier of fact must make separate findings for each claimant specifying amount of: past medical, economic, noneconomic; and future medical, economic, noneconomic. Tenn. Code § 29-39-103 .	Statutory limitation is a total \$750,000 cap on noneconomic damages that includes those awarded to the primary injured spouse as well as those awarded to the other spouse for a derivative loss of consortium claim. <i>Yebuah v. Ctr. for Urological Treatment, PLC</i> , 624 S.W.3d 481 (Tenn. 2021).
	Yes*	Punitive damages	Greater of two times compensatory or \$500,000. Exceptions for specific intent, intentional actions, actions involving the use of alcohol or drugs, or in the commission of a felony. Tenn. Code § 29-39-104 .	Clear and convincing evidence. Tenn. Code § 29-39-104(a)(1) .	Bifurcated trial. If jury finds malicious, intentional, fraudulent, etc. conduct in phase 1, then phase 2 determines amount of punitive damages. Tenn. Code § 29-39-104 .	*Cap found unconstitutional as violating right to trial by jury. <i>Lindenberg v. Jackson Nat'l Life Ins. Co.</i> , 912 F.3d 348 (6th Cir. 2018).

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
Texas	Yes	Medical malpractice	Noneconomic damage cap of \$250,000 per claimant for judgments against physicians and healthcare providers; additional \$250,000 cap for judgment against first healthcare institution; additional \$250,000 cap on subsequent healthcare institution, up to \$500,000. Tex. Civ. Prac. & Rem. Code § 74.301.		Section 74.302 is effective if section 74.301 is invalidated. Tex. Civ. Prac. & Rem. Code § 74.302.	
	Yes	Medical malpractice – wrongful death	All damages (except past and future medical) capped at \$500,000 (now around \$2 million, as adjusted) per claimant for all claims. Tex. Civ. Prac. & Rem. Code § 74.303(a).		Adjusted per award according to consumer price index at time of final judgment. Specific jury instructions must be given. Tex. Civ. Prac. & Rem. Code § 74.303(a)–(b).	Upheld as constitutional by <i>Rose v. Doctors Hosp.</i> , 801 S.W.2d 841, 842 (Tex. 1990).
	Yes	Nonprofit hospitals	Noneconomic damage cap of \$100,000 per person; \$300,000 for each single occurrence for bodily injury or death; \$100,000 for each single occurrence for injury to or destruction of property. Tex. Health & Safety Code § 311.0456(f) ; Tex. Civ. Prac. & Rem. Code § 101.023(b).		To obtain limited liability, nonprofit hospital must be certified by the Texas Health and Human Services Commission as one that provided charity care to at least eight percent of the hospital’s net patient revenue during its most recent fiscal year, and at least forty percent of the charity care provided in the county in which the hospital is located. Tex. Health & Safety Code § 311.0456(b)–(d).	
	Yes	Government entities	Texas Tort Claims Act caps recovery of all damages as follows: for state government and municipalities, liability is limited to \$250,000 per person and \$500,000 per occurrence for bodily injury or death, and \$100,000 per occurrence for property damage or destruction; for a unit of local government, except cities, the cap is \$100,000 per person and \$300,000 per occurrence for bodily injury or death, and \$100,000 per occurrence for property damage or destruction. Tex. Civ. Prac. & Rem. Code § 101.023.		Punitive damages not authorized. Tex. Civ. Prac. & Rem. Code § 101.024. Act provides a limited waiver of sovereign immunity. Tex. Civ. Prac. & Rem. Code § 101.025.	
	Yes	Punitive damages	Greater of two times economic plus noneconomic damages not to exceed \$750,000; or \$200,000. No damage cap in the case of intentional conduct, malice, or in the commission of certain crimes. Tex. Civ. Prac. & Rem. Code § 41.008.	Clear and convincing evidence that the injury resulted from fraud, malice, or gross negligence. Requires unanimous verdict of jury and instruction. Tex. Civ. Prac. & Rem. Code § 41.003.	Cap cannot be disclosed to jury. Tex. Civ. Prac. & Rem. Code § 41.008(e). Bifurcated trial if requested by defendant. If liability for punitive damages is found in phase 1, the amount is determined in phase 2. Tex. Civ. Prac. & Rem. Code § 41.009. (A different bifurcated trial statute applies to commercial vehicle cases. Tex. Civ. Prac. & Rem. Code § 72.052.)	

DAMAGE CAPS ACROSS THE UNITED STATES

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Utah	Yes	Medical malpractice	Noneconomic damage cap of \$450,000 for injury. Utah Code § 78B-3-410 (1)(d) .			
	No	Medical malpractice – wrongful death				Noneconomic damage cap in Health Care Malpractice Act unconstitutional as applied to wrongful death cases. <i>Smith v. United States</i> , 356 P.3d 1249 (Utah 2015).
	Yes*	Punitive damages	Punitive damages are presumed excessive if they are more than three times compensatory damages. <i>Hall v. Wal-Mart Stores, Inc.</i> , 959 P.2d 109 (Utah 1998). First \$50,000 goes to injured party, and excess amount is split equally between state and injured party. Utah Code § 78B-8-201(3)(a) .	Clear and convincing evidence. Utah Code § 78B-8-201(1)(a) .	Punitive damages not recoverable against the state. Utah Code § 63G-7-603 .	
Vermont	No	General tort				
	No*	Punitive damages	Punitive damages may be specifically capped by statute depending on the type of claim. Other statutes specify that treble damages may be awarded. <i>See, e.g.</i> , Vt. Stat. tit. 9, § 2461 (consumer protection); tit. 12, § 4920 (forcible entry and detainer).		No express prohibition for recovery of punitive damages against the state.	
Virginia	Yes	Medical malpractice – injury or death	Total damage cap (economic and noneconomic) of \$2.65 million (2024). Va. Code § 8.01-581.15 .		Increased by \$50,000 per year, up to max cap of \$3 million in 2031. Va. Code § 8.01-581.15 .	Challenged and upheld. <i>Etheridge v. Med. Ctr. Hosps.</i> , 376 S.E.2d 525 (Va. 1989).
	Yes	Medical malpractice – punitive damages	Cap of \$350,000. Va. Code § 8.01-38.1 .		Jury may not be informed of cap. Va. Code § 8.01-38.1 .	
Washington	No	Personal injury, wrongful death	Unconstitutional cap.			Sliding cap on noneconomic damages was successfully challenged as unconstitutional as violating right to trial by jury; not re-passed. <i>Sofie v. Fibreboard Corp.</i> , 771 P.2d 711 (Wash. 1989).
	No*	Punitive damages	Punitive damages are not capped but are generally unavailable as contrary to public policy. <i>Dailey v. N. Coast Life Ins. Co.</i> , 919 P.2d 589 (Wash. 1996).			

STATE	CAP Y/N	CASE TYPE	AMOUNT/CALCULATION	STANDARD OF RECOVERY	NOTES OF INTEREST	CONSTITUTIONALITY
West Virginia	Yes	Commercial motor vehicles – injury or death	Noneconomic damage cap at \$5 million per occurrence. Cap unavailable to employer that lacks CMV insurance of at least \$3 million. Cap does not apply if driver had BAC of .04 or more, was under the influence of drugs, exceeded hours of operation, operated the CMV in willful or wanton disregard for the safety of others, exceeded maximum gross vehicle weight, or was distracted as defined by statute. W. Va. Code § 55-7-32 .		Adjusted annually for inflation according to consumer price index starting January 1, 2004, but shall not exceed 150% of the cap amount. W. Va. Code § 55-7-32(e) . S.B. 583 (effective 07/01/24) is the relevant legislation.	
	Yes	Medical malpractice	Noneconomic damage cap of \$250,000 per occurrence. \$500,000 per occurrence in cases of wrongful death; permanent and substantial physical deformity, or loss of use of a limb bodily organ; or permanent physical or mental injury that permanently prevents performance of independent care or life-sustaining activities. Cap excludes defendants who fail to maintain \$1 million in medical malpractice insurance. W. Va. Code § 55-7B-8 .		Adjusted annually for inflation according to consumer price index. But \$250,000 cap shall not exceed \$375,000, and \$500,000 cap shall not exceed \$750,000. W. Va. Code § 55-7B-8 .	
	Yes	Punitive damages	Greater of four times actual damages or \$500,000. W. Va. Code § 55-7-29(c) .	Clear and convincing evidence. W. Va. Code § 55-7-29(a) .	If defendant requests bifurcation, jury decides culpability for and amount of punitive damages in phase 2 if court finds sufficient evidence to proceed to phase 2. W. Va. Code § 55-7-29(b) .	
Wisconsin	Yes	Medical malpractice	Noneconomic damage cap of \$750,000 per occurrence. Wis. Stat. § 893.55(4)(d)1 .		The board of governors shall submit a report to the legislature by January 1 of every odd year of any recommended changes to the limits on noneconomic damages. Wis. Stat. § 893.55(4)(d)2 . Assembly Bill 872 (introduced 01/02/24, failed) would have increased noneconomic damage cap to \$3M.	Cap was found unconstitutional but later reversed. <i>Mayo v. Wis. Injured Patients & Fams. Comp. Fund</i> , 914 N.W.2d 678 (Wis. 2018).
	No	Commercial motor vehicles			S.B. 613 (introduced 11/07/23, vetoed) would have limited noneconomic damage cap in CMV accident cases to \$1 million.	
	Yes	Punitive damages	Greater of two times compensatory damages or \$200,000. Cap does not apply to driving while intoxicated. Wis. Stat. § 895.043(6) .			
Wyoming	No	General tort				Constitutional prohibition. Wyo. Const. art. X, § 4 .
	Yes	Punitive damages – Uniform Trade Secrets Act	Cap of two times award caused by misappropriation if willful and malicious. Wyo. Stat. § 40-24-103(b) .			

McHaffie “Admission” “Preemption” Rule: A slight majority of states hold that an employer’s admission of vicarious liability for an employee’s negligence bars a plaintiff’s direct negligence claims against the employer. These states might exclude evidence of negligent entrustment unless the theory imposes additional liability, such as punitive damages. The minority of states hold that an employer’s stipulation of vicarious liability does *not* eliminate a plaintiff’s negligent hiring, training, supervising, entrustment, etc. claims against the employer. Although numerous states have not discussed this issue or it has not yet arisen, the following states—either in the highest court, appellate courts, or related federal jurisdictions applying state law—have embraced the majority or minority view.

Adopted McHaffie (19 States)

- **Arkansas.** *Elrod v. G & R Constr. Co.*, 628 S.W.2d 17, 19 (Ark. 1982).
- **California.** *Diaz v. Carcamo*, 253 P.3d 535, 543–44 (Cal. 2011).
- **Connecticut.** *Prosser v. Richman*, 50 A.2d 85, 87 (Conn. 1946).
- **D.C.** *Greene v. Grams*, 384 F. Supp. 3d 100, 102–03 (D.D.C. 2019).
- **Florida.** *Clooney v. Geeting*, 352 So. 2d 1216, 1220 (Fla. Dist. Ct. App. 1977).
- **Georgia.** *Bartja v. Nat’l Union Fire Ins. Co.*, 463 S.E.2d 358, 361 (Ga. Ct. App. 1995).
- **Idaho.** *Wise v. Fiberglass Sys., Inc.*, 718 P.2d 1178, 1181 (Idaho 1986).
- **Indiana.** *Sedam v. 2JR Pizza Enters., LLC*, 84 N.E.3d 1174, 1179 (Ind. 2017).
- **Maryland.** *Houlihan v. McCall*, 78 A.2d 661, 665 (Md. 1951).
- **Mississippi.** *Dinger v. Am. Zurich Ins. Co.*, No. 3:13-CV-46-MPM-SAA, 2014 WL 580889, at *2–3 (N.D. Miss. Feb. 13, 2014); *see also Nehi Bottling Co. v. Jefferson*, 84 So. 2d 684, 686 (Miss. 1956) (holding it was error to admit testimony relevant to plaintiff’s negligent entrustment claim because defendants had admitted the employee had been within the scope of his employment at the time of accident).
- **Missouri.** *McHaffie v. Bunch*, 891 S.W.2d 822, 826 (Mo. 1995) (en banc).
- **New York.** *Lee v. J.B. Hunt Transp., Inc.*, 308 F. Supp. 2d 310, 315 (S.D.N.Y. 2004).
- **North Carolina.** *Heath v. Kirkman*, 82 S.E.2d 104, 107–08 (N.C. 1954).
- **Oklahoma.** *Jordan v. Cates*, 935 P.2d 289, 293–94 (Okla. 1997).
- **Pennsylvania.** *Dragone v. Pew*, 621 F. Supp. 3d 561, 566 (E.D. Pa. 2022); *Sterner v. Titus Transp., LP*, No. 3:CV-10-2027, 2013 WL 6506591, at *3–4 (M.D. Pa. Dec. 12, 2013); *Fortunato v. May*, No. 04-1140, 2009 WL 703393, at *5 (W.D. Pa. Mar. 16, 2009). Pennsylvania federal district courts recognize the exception to the majority rule when punitive damages are claimed against employer. *But see Villagran v. Freightbull, Inc.*, 698 F. Supp. 3d 807, 812 (E.D. Pa. 2023) (“I am not convinced, however, that there should be a blanket rule that direct liability claims must always be dismissed unless the plaintiff can meet the onerous standard for punitive damages.”).
- **Texas.** Appellate courts are split. *E.g., Simmons v. Bisland*, No. 03-08-00141-CV, 2009 WL 961522, at *4 (Tex. App.—Austin Apr. 9, 2009, pet. denied) (mem. op.); *Patterson v. E. Tex. Motor Freight Lines*, 349 S.W.2d 634, 636 (Tex. Civ. App.—Beaumont 1961, writ ref’d n.r.e.). *But see Werner Enters., Inc. v. Blake*, 672 S.W.3d 554, 586–88 (Tex. App.—Houston [14th Dist.] 2023, pet. pending) (en banc) (refusing to adopt majority view when plaintiff has claimed gross negligence).
- **Washington.** *LaPlant v. Snohomish Cnty.*, 271 P.3d 254, 257 (Wash. App. 2011).
- **Wisconsin.** *Tischauser v. Donnelly Transp. Inc.*, Nos. 20-C-1291, 20-C-1917, 21-C-220, 21-C-965, 2022 WL 623994, at *2 (E.D. Wis. Mar. 3, 2022).
- **Wyoming.** *Bogdanski v. Budzik*, 408 P.3d 1156, 1162 (Wyo. 2018).

Rejected McHaffie (17 States)

- **Alabama.** *Poplin v. Bestway Express*, 286 F. Supp. 2d 1316, 1320 (M.D. Ala. 2003) (mem. op.).
- **Arizona.** *Quinonez v. Andersen*, 696 P.2d 1342, 1346 (Ariz. Ct. App. 1984).
- **Colorado.** Adopted in *Ferrer v. Okbamicael*, 390 P.3d 836, 844 (Colo. 2017), but superseded by statute, Colo. Rev. Stat. § 13-21-111.5(1.5).
- **Illinois.** *McQueen v. Green*, 202 N.E.3d 268, 279 (Ill. 2022). *But see Gant v. L.U. Transp., Inc.*, 770 N.E.2d 1155, 1160 (Ill. App. Ct. 2002) (adopting majority view).
- **Kansas.** *Marquis v. State Farm Fire & Cas. Co.*, 961 P.2d 1213, 1225 (Kan. 1998).
- **Kentucky.** *MV Transp., Inc. v. Allgeier*, 433 S.W.3d 324, 337 (Ky. 2014). *But see Martin v. Browning*, 198 F. Supp. 3d 783, 785 (E.D. Ky. 2016) (mem. op.) (“This Court certainly does not hold that the principles enunciated in *Allgeier* are erroneous when applied in the state courts. . . However, this Court does hold that the *Allgeier* rule would violate the Federal Rules of Evidence if followed in federal court.”).
- **Louisiana.** *Martin v. Thomas*, 346 So. 3d 238, 247–48 (La. 2022).
- **Michigan.** *Perin v. Peuler*, 130 N.W.2d 4, 8 (Mich. 1964), overruled in part on other grounds, *McDougall v. Schanz*, 597 N.W.2d 148 (Mich. 1999).
- **Minnesota.** *Lim v. Interstate Sys. Steel Div., Inc.*, 435 N.W.2d 830, 833 (Minn. Ct. App. 1989).
- **Montana.** *Parrick v. FedEx Grounds Package Sys., Inc.*, No. CV 09-95-M-DWM-JCL, 2010 WL 1981451, at *3–4 (D. Mont. Apr. 21, 2010) (while other cases in this court have held that the Montana Supreme Court would follow the majority view, the court followed the exception to the rule that exists in cases where the plaintiff has asserted a valid claim for punitive damages).
- **New Hampshire.** *Zibolis-Sekella v. Ruehrwein*, No. 12-cv-228-JD, 2013 WL 3208573, at *3 (D.N.H. June 24, 2013).
- **Ohio.** *Clark v. Stewart*, 185 N.E. 71, 73 (Ohio 1933).
- **Tennessee.** *Binns v. Trader Joe’s E., Inc.*, 690 S.W.3d 241, 253 (Tenn. 2024) (rejecting several Tennessee federal court opinions that adopted the majority view).
- **South Carolina.** *James v. Kelly Trucking Co.*, 661 S.E.2d 329, 332 (S.C. 2008).
- **South Dakota.** *Finkle v. Regency CSP Ventures Ltd. P’ship*, 27 F. Supp. 3d 996, 1000 (D.S.D. 2014) (citing *Kirlin v. Halverson*, 758 N.W.2d 436 (S.D. 2008), allowing a case to proceed both on *respondeat superior* and negligent retention and supervision claims).
- **Utah.** *Ramon v. Nebo Sch. Dist.*, 493 P.3d 613, 620–21 (Utah 2021).
- **Virginia.** *Fairshter v. Am. Nat’l Red Cross*, 322 F. Supp. 2d 646, 654 (E.D. Va. 2004).

Unclear (2 States)

- **Nebraska.** *Kozlov v. Associated Wholesale Grocers, Inc.*, Nos. 4:10CV3211, 4:10CV3212, 8:10CV3191, 2014 WL 1572440, at *5–6 (D. Neb. Apr. 18, 2014) (“The Court is not persuaded that the Nebraska Supreme Court would prohibit a plaintiff from pursuing independent claims for negligent hiring, training, supervision, or entrustment, once an employer’s responsibility under *respondeat superior* has been established. The Court declines to expand the law in Nebraska in ways not foreshadowed by state precedent by applying *McHaffie*.”).
- **Nevada.** *Terrell v. Cent. Wash. Asphalt, Inc.*, 168 F. Supp. 3d 1302, 1312–13 (D. Nev. 2016) (predicting Nevada Supreme Court would side with minority in cases where punitive damages are sought); *Wright v. Watkins & Shepard Trucking, Inc.*, 972 F. Supp. 2d 1218, 1220–21 (D. Nev. 2013) (predicting Nevada Supreme Court would side with minority). *But see Alvares v. McMullin*, No. 2:13-cv-02256-GMN-CWH, 2015 WL 3558673, at *3 (D. Nev. June 4, 2015) (predicting Nevada Supreme Court would side with majority); *Belavilas v. KKW Trucking, Inc./Furniture Transp. Sys., Inc.*, No. 2:07-cv-01161-LDG (RJJ), 2008 U.S. Dist. LEXIS 143794, at *2 (D. Nev. Aug. 26, 2008) (predicting Nevada Supreme Court would side with majority).

APPENDIX B

APPENDIX B

The following table displays the twenty-five largest personal injury or wrongful death Texas verdicts in cases having one or a few plaintiffs, from January 1, 2016, to November 15, 2024. The table does not include patent, commercial, mass-plaintiff, or class-action cases. The table lists jury verdicts—as opposed to settlements—because verdicts are consistently available to the public, while settlements are hidden from public view.

To make the data more accessible to readers, amounts of money stated in the table are rounded.

In many of the cases included in the table, the facts are tragic and the defendant’s conduct was wrong, if not reprehensible. The inclusion of a case in the table does not diminish the fact that a person was injured or mortally wounded. Any person who suffers an injury at the hands of a wrongdoer is entitled to compensation for the injuries done to him or her in a fair and efficient judicial proceeding—a fact that is unchanged by the inclusion of cases in this table.

25 LARGEST TEXAS VERDICTS IN INJURY & DEATH CASES—2016 TO PRESENT							
	Case and Cause No.	Trial Court	Verdict Year	Total Verdict Amount	Noneconomic Damages	Economic Damages	Exemplary Damages
B-1	<i>Goff v. Charter Commc’ns</i> , No. CC-20-01579-E	County Court at Law No. 5, Dallas County, Texas	2022	\$7.4 billion	\$300 million	\$75 million	\$7 billion
B-2	<i>Flores v. Bigge Crane and Rigging, Co.</i> , No. CC-19-04006-B	County Court at Law No. 2, Dallas County, Texas	2023	\$860 million	\$360 million	\$0	\$500 million
B-3	<i>Ramsey v. Landstar Ranger, Inc.</i> , No. 40068	276th District Court, Titus County, Texas	2021	\$730 million	\$480 million	\$0	\$250 million
B-4	<i>Johnson v. Union Pac. R.R. Co.</i> , No. 2016-80991	129th District Court, Harris County, Texas	2023	\$557.1 million	\$47.5 million	\$9.6 million	\$500 million
B-5	<i>Cruz v. Allied Aviation Fueling</i> , No. 2019-81830	127th District Court, Harris County, Texas	2021	\$352.8 million	\$317.8 million	\$35 million	\$0

25 LARGEST TEXAS VERDICTS IN INJURY & DEATH CASES—2016 TO PRESENT							
B-6	<i>Kou v. Kou</i> , No. 2018-CI-08789	285th District Court, Bexar County, Texas	2023	\$325 million	\$125 million	\$0	\$200 million
B-7	<i>McPherson v. Jefferson Trucking</i> , No. 16-00247	115th District Court, Upshur County	2018	\$260 million	\$260 million	\$0	\$0
B-8	<i>Reavis v. Toyota</i> , No. DC-16-15296	134th District Court, Dallas County, Texas	2018	\$242.1 million	\$52 million	\$46.1 million	\$144 million
B-9	<i>Most v. Team Industrial Servs.</i> , No. 18-DCV-256883	268th District Court, Fort Bend County, Texas	2021	\$222 million	\$222 million	\$0	\$0
B-10	<i>Ferron v. McDonald</i> , No. 2022CI12922	288th District Court, Bexar County, Texas	2024	\$210 million	\$100 million	\$10 million	\$100 million
B-11	<i>Schneider v. Terra Energy Partners</i> , No. 2019-81861	281st District Court, Harris County, Texas	2023	\$209.3 million	\$93.5 million	\$10.1 million	\$105.7 million
B-12	<i>Crews v. Kelly</i> , No. CC-16-00441-C	County Court at Law No. 3, Dallas County, Texas	2022	\$206 million	\$161 million	\$0	\$45 million
B-13	<i>Fox v. Buckland</i> , No. 141-277896-15	141st District Court, Tarrant County, Texas	2018	\$166.4 million	\$80 million	\$0	\$86.4 million

25 LARGEST TEXAS VERDICTS IN INJURY & DEATH CASES—2016 TO PRESENT

B-14	<i>Lytle v. Hat Ballou</i> , No. DC-14-13004	68th District Court, Dallas County, Texas	2016	\$142 million	\$142 million	\$0	\$0
B-15	<i>Rivera v. Volkswagen</i> , No. 2013-CI-00118	408th District Court, Bexar County	2016	\$124.5 million	\$105.5 million	\$19 million	\$0
B-16	<i>Sanchez v. Helmerich & Payne Int'l Drilling Co.</i> , No. CV02551	112th District Court, Reagan County, Texas	2022	\$120 million	\$120 million	\$0	\$0
B-17	<i>Costello v. Mutual of Omaha Life Ins.</i> , No. B-173189	60th District Court, Jefferson County, Texas	2021	\$113.3 million	\$10 million	\$3.3 million	\$100 million
B-18	<i>Guerra v. Rodriguez</i> , No. DC-19-129	381st District Court, Starr County	2022	\$110 million	\$90 million	\$0	\$20 million
B-19	<i>Lopez v. All Points 360, LLC</i> , No. CC-18-07197-A	County Court at Law No. 1, Dallas County, Texas	2023	\$105 million	\$36 million	\$6 million	\$63 million
B-20	<i>Patterson v. FTS Int'l Servs.</i> , No. 365-15	115th District Court, Upshur County, Texas	2018	\$101 million	\$24 million	\$2 million	\$75 million
B-21	<i>Clark v. ProCare RX</i> , No. 2017-42116	269th District Court, Harris County, Texas	2022	\$95.5 million	\$65 million	\$30.5 million	\$0

25 LARGEST TEXAS VERDICTS IN INJURY & DEATH CASES—2016 TO PRESENT							
B-22	<i>Blake v. Werner Enters.</i> , No. 2015-36666	127th District Court, Harris County, Texas	2018	\$89.7 million	\$46.5 million	\$43.2 million	\$0
B-23	<i>McCowan v. Jones</i> , 2020-CI02447	408th District Court, Bexar County, Texas	2024	\$81.7 million	\$66 million	\$2.6 million	\$13.1 million
B-24	<i>Lozano v. JNM Express</i> , No. C-0571-17-B	93rd District Court, Hidalgo County, Texas	2019	\$80 million	\$3.9 million	\$1.1 million	\$75 million
B-25	<i>Lopez v. Walker Engineering, Co.</i> , No. DC-19-16959	44th District Court, Dallas County, Texas	2024	\$72 million	\$72 million	\$0	\$0

APPENDIX C1

 ORIGINAL

CAUSE NO. 2016-80991

P11

MARY JOHNSON,
PLAINTIFF,

§
§
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§
§

IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

UNION PACIFIC,
DEFENDANT.

129TH JUDICIAL DISTRICT

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision. It is important that you pay close attention to the evidence and to your reactions to the evidence. Biases can sometimes impact how you remember what you see and hear and how you make decisions. By closely monitoring your feelings and reactions, and questioning where those feelings and reactions come from, you may become aware of biases and can stop yourself from making decisions based upon those biases. Our system of justice depends on each of us rendering a fair decision based on the evidence and law, not on biases.

FILED
Marilyn Burgess
District Clerk

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging.

MAR 03 2023

Time: _____
Harris County, Texas
By: 
Deputy

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "YES" or "NO" to all questions unless you are told otherwise. A "YES" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "YES" or "NO," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "YES" answer, then answer "NO." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

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QUESTION NO. 1

Did the negligence, if any, of those named below proximately cause the injury in question?

“Negligence” means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

If a person is confronted by an “emergency” arising suddenly and unexpectedly, which was not proximately caused by any negligence on his part and which, to a reasonable person, requires immediate action without time for deliberation, his conduct in such an emergency is not negligence or failure to use ordinary care if, after such emergency arises, he acts as a person of ordinary prudence would have acted under the same or similar circumstances.

“Proximate cause” means a cause that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury.

Answer “YES” or “NO” for the following:

- a. Union Pacific yes
- b. Mary Johnson yes

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Office of Missouri Public Defender

If you answered "YES" to **QUESTION NO. 1** for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the occurrence. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

QUESTION NO. 2

For each person you found caused or contributed to cause the occurrence, find the percentage of responsibility attributable to each:

a.	Union Pacific	<u>80</u>	%
b.	Mary Johnson	<u>20</u>	%
	Total	<u>100</u>	%

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Answer **QUESTION NO. 3** only if you answered "YES" for Union Pacific in **QUESTION NO. 1** and answered:

1. "NO" for Mary Johnson in **QUESTION NO. 1**, or
2. 50 percent or less for Mary Johnson to **QUESTION NO. 2**.

Otherwise, do not answer the following question.

QUESTION NO. 3

What sum of money, if paid now in cash, would fairly and reasonably compensate Mary Johnson for her injuries, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Mary Johnson. Any recovery will be determined by the Court when it applies the law to your answers at the time of judgment.

1. Medical care expenses incurred in the past.

Answer: \$ ~~1.9M~~ 1,900,000.00

2. Medical care expenses that, in reasonable probability, Mary Johnson will incur in the future.

Answer: \$ ~~7.6M~~ 7,600,000.00

3. Physical pain sustained in the past.

Answer: \$ ~~4.0M~~ 4,000,000.00

4. Physical pain that, in reasonable probability, Mary Johnson will sustain in the future.

Answer: \$ ~~7.0M~~ 7,000,000.00

5. Mental anguish sustained in the past.

Mental anguish must be of a nature, duration and severity that causes a substantial disruption in the plaintiff's daily routine or a high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger.

Answer: \$ ~~3.0 M~~ 3,000,000.00

6. Mental anguish that, in reasonable probability, Mary Johnson will sustain in the future.

Answer: \$ ~~6.0 M~~ 6,000,000.00

7. Physical impairment sustained in the past.

Answer: \$ ~~7.5 M~~ 7,500,000.00

8. Physical impairment that, in reasonable probability, Mary Johnson will sustain in the future.

Answer: \$ ~~8.0 M~~ 8,000,000.00

9. Disfigurement sustained in the past.

Answer: \$ ~~5.0 M~~ 5,000,000.00

10. Disfigurement that, in reasonable probability, Mary Johnson will sustain in the future.

Answer: \$ ~~7.0 M~~ 7,000,000.00

11. Loss of earning capacity sustained in the past.

Answer: \$ ~~106k~~ 106,000.00

12. Loss of earning capacity that, in reasonable probability, Mary Johnson will sustain in the future.

Answer: \$ 0.00

Answer the following question only if you unanimously answered “YES” to **QUESTION NO. 1** regarding Union Pacific and you have answered **QUESTION NO. 3**. Otherwise, do not answer the following question.

To answer “YES” to the following question, your answer must be unanimous. You may answer “NO” to the following question only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

QUESTION NO. 4

Do you find by clear and convincing evidence that the harm to Mary Johnson resulted from gross negligence attributable to Union Pacific?

“Clear and convincing evidence” means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

“Gross negligence” means an act or omission by Union Pacific,

1. which when viewed objectively from the standpoint of Union Pacific at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
2. of which Union Pacific has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

You are further instructed that Union Pacific may be grossly negligent because of an act of Pius Croffie and Michael Berry if, but only if Union Pacific authorized the doing and the manner of the act.

You are further instructed that Union Pacific may be grossly negligent because of an act of a vice-principal or an employee in a managerial capacity and who was acting in the scope of employment.

A person is a “vice-principal” if—

1. that person is a corporate officer; or
2. that person has authority to employ, direct, and discharge an employee of Union Pacific; or
3. that person is engaged in the performance of nondelegable or absolute duties of Union Pacific; or
4. Union Pacific has confided to that person the management of the whole or a department or division of the business of Union Pacific.

A person is a manager or is employed in a managerial capacity if—

1. that person has authority to employ, direct, and discharge an employee of Union Pacific; or
2. Union Pacific has confided to that person the management of the whole or a department or division of the business of Union Pacific.

Answer “YES” or “NO.”

Answer: yes

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Presiding Juror:

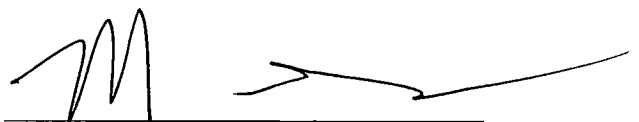
1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.
3. If 11 jurors agree on every answer, those 11 jurors sign the verdict.
4. If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
5. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 or 11 who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.



HON. MICHAEL GOMEZ
JUDGE, 129th DISTRICT COURT

CERTIFICATE

We, the jury, have answered the foregoing questions as indicated and return our answers into court as our verdict.

I certify that the jury was unanimous in answer to the following questions:

Answer "All" or list question, including subparts: # 1, ^{ALL} # 4

Bobby Guillory
Juror Presiding

Bobby Guillory
Printed Name of Juror Presiding

If the answers to some questions were not unanimous, the jurors who agreed to those answers must certify as follows:

We agree to the answers to the following questions:

List questions, including subparts: # 2, # 3 ALL

	SIGNATURE	NAME PRINTED
1.	<u>[Signature]</u>	<u>PAULA H. SMITH</u>
2.	<u>Desrae Torres</u>	<u>Desrae Torres</u>
3.	<u>Sylvia Torres</u>	<u>Sylvia Torres</u>
4.	<u>Richard Wilson</u>	<u>RICHARD WILSON</u>
5.	<u>RAJESH KUMAR</u>	<u>RAJESH KUMAR</u>
6.	<u>Debbie Nguyen</u>	<u>Debbie Nguyen</u>
7.	<u>Tony Rodriguez</u>	<u>Tony Rodriguez</u>
8.	<u>Jerson Garcia Peredo</u>	<u>JERSON GARCIA PEREDO</u>
9.	<u>[Signature]</u>	<u>Chad H. Rupperecht</u>
10.	<u>Bobby Guillory</u>	<u>Bobby Guillory</u>
11.	<u>_____</u>	<u>_____</u>

APPENDIX C2

released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer “yes” or “no” to all questions unless you are told otherwise. A “yes” answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term “**preponderance of the evidence**” means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who

will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.
9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.
10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."
11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS AND INSTRUCTIONS

1. A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.
2. In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.
3. **"Negligence"** means failure to use ordinary care, that is, failing to do that which a person or company of ordinary prudence would have done under the same or similar circumstances or doing that which a person or company of ordinary prudence would not have done under the same or similar circumstances.
4. **"Ordinary care"** means that degree of care that would be used by a person or company of ordinary prudence under the same or similar circumstances.
5. **"Proximate cause"** means a cause that was a substantial factor in bringing about a death and without which cause such death would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person or company using ordinary care would have foreseen that the death, or some similar injury, might reasonably result therefrom.

A defendant's act or omission need not be the sole cause of a death, as long as it is a substantial factor in bringing about the death. There may be more than one proximate cause of a death.

QUESTION 1

Did the negligence, if any, of those named below proximately cause the injury in question?

Answer "Yes" or "No" for each of the following:

- | | | |
|----|---|------------|
| 1. | Carla Anne Allred,
Individually and d/b/a 2 A Pilot Cars | <u>Yes</u> |
| 2. | Douglas Wade Allred | <u>Yes</u> |
| 3. | Landstar Ranger, Inc. | <u>Yes</u> |
| 4. | Toni Combest | <u>NO</u> |

If you answered "Yes" to Question No. 1 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

QUESTION 2

For each person you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each:

1.	Carla Anne Allred, Individually and d/b/a 2 A Pilot Cars	<u>50</u> %
2.	Douglas Wade Allred	<u>30</u> %
3.	Landstar Ranger, Inc.	<u>20</u> %
4.	Toni Combest	<u>0</u> %
	Total	<u>100%</u>

Answer Questions 3 – 8 if you answered “Yes” for any of those named in Question 1 **and** answered:

1. “No” for Toni Combest to Question 1, or
2. 50% percent or less for Toni Combest to Question 2.

Otherwise, do not answer Questions 3 – 8.

QUESTION 3

What sum of money would have fairly and reasonably compensated Toni Combest for—

Pain and mental anguish.

“**Pain and mental anguish**” means the conscious physical pain and emotional pain, torment, and suffering experienced by Toni Combest before her death as a result of the occurrence in question.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Toni Combest. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Answer: \$ 80 million

QUESTION 4

What sum of money, if paid now in cash, would fairly and reasonably compensate Amber Ramsey for her damages, if any, resulting from the death of her mother, Toni Combest?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Toni Combest. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

1. Loss of companionship and society sustained in the past.

“**Loss of companionship and society**” means the loss of the positive benefits flowing from the love, comfort, companionship, and society that Amber Ramsey in reasonable probability, would have received from Toni Combest had she lived.

Answer: \$ 25 million

2. Loss of companionship and society that, in reasonable probability, Amber Ramsey will sustain in the future.

Answer: \$ 25 million

3. Mental anguish sustained in the past.

“**Mental anguish**” means the emotional pain, torment, and suffering experienced by Amber Ramsey because of the death of Toni Combest.

Answer: \$ 25 million

4. Mental anguish that, in reasonable probability, Amber Ramsey will sustain in the future.

Answer: \$ 25 million

In determining damages for elements 1 – 4, you may consider the relationship between Amber Ramsey and Toni Combest, their living arrangements,

any extended absences from one another, the harmony of their family relations, and their common interests and activities.

QUESTION 5

What sum of money, if paid now in cash, would fairly and reasonably compensate Clint Combest for his damages, if any, resulting from the death of his mother, Toni Combest?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Toni Combest. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

1. Loss of companionship and society sustained in the past.

“Loss of companionship and society” means the loss of the positive benefits flowing from the love, comfort, companionship, and society that Clint Combest in reasonable probability, would have received from Toni Combest had she lived.

Answer: \$ 25 million

2. Loss of companionship and society that, in reasonable probability, Clint Combest will sustain in the future.

Answer: \$ 25 million

3. Mental anguish sustained in the past.

“Mental anguish” means the emotional pain, torment, and suffering experienced by Clint Combest because of the death of Toni Combest.

Answer: \$ 25 million

4. Mental anguish that, in reasonable probability, Clint Combest will sustain in the future.

Answer: \$ 25 million

In determining damages for elements 1 – 4, you may consider the relationship between Clint Combest and Toni Combest, their living arrangements,

any extended absences from one another, the harmony of their family relations, and their common interests and activities.

QUESTION 6

What sum of money, if paid now in cash, would fairly and reasonably compensate Melanie Combest for her damages, if any, resulting from the death of her mother, Toni Combest?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Toni Combest. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

1. Loss of companionship and society sustained in the past.

“Loss of companionship and society” means the loss of the positive benefits flowing from the love, comfort, companionship, and society that Melanie Combest in reasonable probability, would have received from Toni Combest had she lived.

Answer: \$ 25 million

2. Loss of companionship and society that, in reasonable probability, Melanie Combest will sustain in the future.

Answer: \$ 25 million

3. Mental anguish sustained in the past.

“Mental anguish” means the emotional pain, torment, and suffering experienced by Melanie Combest because of the death of Toni Combest.

Answer: \$ 25 million

4. Mental anguish that, in reasonable probability, Melanie Combest will sustain in the future.

Answer: \$ 25 million

In determining damages for elements 1 – 4, you may consider the relationship between Melanie Combest and Toni Combest, their living

arrangements, any extended absences from one another, the harmony of their family relations, and their common interests and activities.

QUESTION 7

What sum of money, if paid now in cash, would fairly and reasonably compensate Stacey Stansbury for her damages, if any, resulting from the death of her mother, Toni Combest?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Toni Combest. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

1. Loss of companionship and society sustained in the past.

“Loss of companionship and society” means the loss of the positive benefits flowing from the love, comfort, companionship, and society that Stacey Stansbury in reasonable probability, would have received from Toni Combest had she lived.

Answer: \$ 25 million

2. Loss of companionship and society that, in reasonable probability, Stacey Stansbury will sustain in the future.

Answer: \$ 25 million

3. Mental anguish sustained in the past.

“Mental anguish” means the emotional pain, torment, and suffering experienced by Stacey Stansbury because of the death of Toni Combest.

Answer: \$ 25 million

4. Mental anguish that, in reasonable probability, Stacey Stansbury will sustain in the future.

Answer: \$ 25 million

In determining damages for elements 1 – 4, you may consider the relationship between Stacey Stansbury and Toni Combest, their living

arrangements, any extended absences from one another, the harmony of their family relations, and their common interests and activities.

Answer the following question regarding Carla Anne Allred, Individually and d/b/a 2 A Pilot Cars only if you unanimously answered "Yes" to Question No. 1 regarding Carla Anne Allred, Individually and d/b/a 2 A Pilot Cars. Otherwise, do not answer the following question regarding Carla Anne Allred, Individually and d/b/a 2 A Pilot Cars.

To answer "Yes" to the following question, your answer must be unanimous. You may answer "No" to the following question only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

QUESTION 8

Do you find by clear and convincing evidence that the harm to Toni Combest resulted from gross negligence of Carla Anne Allred, Individually and d/b/a 2 A Pilot Cars?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Gross negligence" means an act or omission by Carla Anne Allred, Individually and d/b/a 2 A Pilot Cars.

1. which when viewed objectively from the standpoint of Carla Anne Allred, Individually and d/b/a 2 A Pilot Cars, at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
2. of which Carla Anne Allred, Individually and d/b/a 2 A Pilot Cars, has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No."

Answer: Yes

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate

1. Unless otherwise instructed, you may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict.

If eleven jurors agree on every answer, those eleven jurors sign the verdict.

If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

4. There are some special instructions before Questions No. 8-13 explaining how to answer those questions. Please follow the instructions. If all twelve of you answer those questions, you will need to complete a second verdict certificate for those questions.

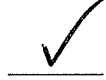
Do you understand these instructions? If you do not, please tell me now.



JUDGE PRESIDING

Verdict Certificate

Check one:



Our verdict is unanimous. All twelve of us have agreed to each and every answer.

The presiding juror has signed the certificate for all twelve of us.


Signature of Presiding Juror

Jeremy Ramsey
Printed Name of Presiding Juror

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

_____ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

- | | | |
|-----|-------|-------|
| 1. | _____ | _____ |
| 2. | _____ | _____ |
| 3. | _____ | _____ |
| 4. | _____ | _____ |
| 5. | _____ | _____ |
| 6. | _____ | _____ |
| 7. | _____ | _____ |
| 8. | _____ | _____ |
| 9. | _____ | _____ |
| 10. | _____ | _____ |
| 11. | _____ | _____ |

Additional Certificate

I certify that the jury was unanimous in answering the following questions. All twelve of us agreed to each of the answers. The presiding juror has signed the certificate for all twelve of us.

Answer "Yes" or "No" for each of the following:

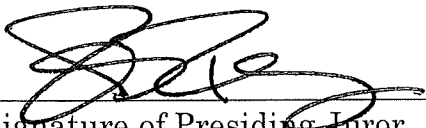
Question No. 1:

Carla Anne Allred, Individually
and d/b/a 2 A Pilot Cars

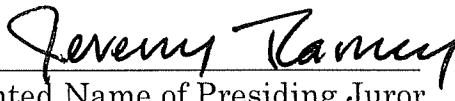
Yes

Question No. 8


Yes



Signature of Presiding Juror



Printed Name of Presiding Juror

FILED AT 7:36 O'CLOCK AM PM
MARCUS CARLOCK, CLERK DISTRICT COURT
NOV 19 2021
TITUS COUNTY TEXAS
 DEPUTY

APPENDIX C3

ORIGINAL

P25

CAUSE NO 2015-36666

JENNIFER BLAKE, Individually and
as Next Friend for NATHAN BLAKE and
as Heir of the Estate of ZACKERY
BLAKE, Deceased, and ELDRIDGE
MOAK, in his Capacity as Guardian of
the Estate of BRIANNA BLAKE

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IN THE 127TH JUDICIAL

DISTRICT COURT OF

VS

SHIRAZ A ALI and
WERNER ENTERPRISES, INC

HARRIS COUNTY, TEXAS

Charge of the Court

MEMBERS OF THE JURY

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room

Remember my previous instructions. Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

FILED

Chris Daniel
District Clerk

MAY 21 2018

Time

4:42a

Harris County, Texas

Rv

llor

- 1 Do not let bias, prejudice, or sympathy play any part in your decision
- 2 Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions Do not consider or discuss any evidence that was not admitted in the courtroom
- 3 You are to make up your own minds about the facts You are the sole judges of the credibility of the witnesses and the weight to give their testimony But on matters of law, you must follow all of my instructions
- 4 If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition
- 5 All the questions and answers are important No one should say that any question or answer is not important
- 6 Answer “yes” or “no” to all questions unless you are told otherwise A “yes” answer must be based on a preponderance of the evidence unless you are told otherwise Whenever a question requires an answer other than “yes” or “no,” your answer must be based on a preponderance of the evidence unless you are told otherwise

The term “preponderance of the evidence” means the greater weight of credible evidence presented in this case If you do not find that a preponderance of the evidence supports a “yes” answer, then answer “no ” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true
- 7 Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision Answer each question carefully without considering who will win Do not discuss or consider the effect your answers will have
- 8 Do not answer questions by drawing straws or by any method of chance
- 9 Some questions might ask you for a dollar amount Do not agree in advance to decide on a dollar amount by adding up each juror’s amount and then figuring the average
- 10 Do not trade your answers For example, do not say, “I will answer

this question your way if you answer another question my way ”

11 Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS

1 “The Plaintiffs” are Jennifer Blake, Brianna Blake, and Nathan Blake.

2 “Werner” means defendant Werner Enterprises, Inc. You are instructed that Werner is a company, which can act only through its employees. Thus, when the term “Werner” is used in this Charge, it means Werner, acting by and through its employees.

3 “The occurrence in question” is the collision that occurred on December 30, 2014 between the Werner truck and the vehicle operated by Zaragoza “Trey” Salinas.

INSTRUCTIONS

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

The rules of evidence provide that where testimony and opinions on certain issues might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify and state his or her opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based on sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

Deposition testimony consists of the sworn testimony of witnesses taken by a court reporter in the presence of attorneys for the parties. Deposition testimony read into evidence during the trial or presented by videotape is to be considered by you in the same manner as though the witness had personally appeared before you and testified from the witness stand.

An occurrence may be an “unavoidable accident,” that is, an event not proximately caused by the negligence of any party to the occurrence.

Unofficial Copy Office of Marilyn Burgess District Clerk

Question 1

Was the negligence, if any, of Werner acting through its employees other than Shiraz Ali a proximate cause of the injuries in question?

In answering this question, do not consider Werner's negligence, if any, in training or supervising Shiraz Ali

"Negligence," when used with respect to the conduct of Werner, means failure to use ordinary care, that is, failing to do that which a trucking company of ordinary prudence would have done under the same or similar circumstances or doing that which a trucking company of ordinary prudence would not have done under the same or similar circumstances

"Ordinary care," when used with respect to the conduct of Werner, means that degree of care that would be used by a trucking company of ordinary prudence under the same or similar circumstances

"Proximate cause," when used with respect to the conduct of Werner, means a cause that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a trucking company using ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury

Answer "yes" or "no"

Answer yes

Certificate of Unanimity for Question 1

If you unanimously answered "Yes" to Question 1, please certify that below

Presiding Juror's Printed Name

Signature of Presiding Juror

Question 2

Was the negligence, if any, of Werner acting through its employees other than Shiraz Ali in the manner stated below a proximate cause of the injuries in question?

Consider Werner's negligence, if any, in the following

- A supervising Shiraz Ali, but only if you find that Shiraz Ali was incompetent or unfit, and Werner knew, or through the exercise of ordinary care should have known, that Shiraz Ali was incompetent or unfit, thereby posing an unreasonable risk of harm to others, and
- B training Shiraz Ali

"Negligence," when used with respect to the conduct of Werner, means failure to use ordinary care, that is, failing to do that which a trucking company of ordinary prudence would have done under the same or similar circumstances or doing that which a trucking company of ordinary prudence would not have done under the same or similar circumstances

"Ordinary care," when used with respect to the conduct of Werner, means that degree of care that would be used by a trucking company of ordinary prudence under the same or similar circumstances

"Proximate cause," when used with respect to the conduct of Werner, means a cause that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a trucking company using ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury

Answer "yes" or "no"

Answer yes

Certificate of Unanimity for Question 2

If you unanimously answered “Yes” to Question 2, please certify that below

Presiding Juror’s Printed Name

Signature of Presiding Juror

Unofficial Copy Office of Marilyn Burgess District Clerk

Question 3

Was the negligence, if any, of Shiraz Ali in the operation of the Werner truck on December 30, 2014, a proximate cause of the injuries in question?

“Negligence,” when used with respect to the conduct of Shiraz Ali, means failure to use ordinary care, that is, failing to do that which a commercial truck driver of ordinary prudence would have done under the same or similar circumstances or doing that which a commercial truck driver of ordinary prudence would not have done under the same or similar circumstances

“Ordinary care,” when used with respect to the conduct of Shiraz Ali, means that degree of care that would be used by a commercial truck driver of ordinary prudence under the same or similar circumstances

“Proximate cause,” when used with respect to the conduct of Shiraz Ali, means a cause that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a commercial truck driver using ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury

Answer “Yes” or “No”

Answer yes

Certificate of Unanimity for Question 3

If you unanimously answered “Yes” to Question 3, please certify that below

Presiding Juror’s Printed Name

Signature of Presiding Juror

Question 4

Was the negligence, if any, of Zaragoza “Trey” Salinas a proximate cause of the injuries in question?

“Negligence,” when used with respect to the conduct of Zaragoza “Trey” Salinas, means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances

“Ordinary care,” when used with respect to the conduct of Zaragoza “Trey” Salinas, means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances

“Proximate cause,” when used with respect to the conduct of Zaragoza “Trey” Salinas, means a cause that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury

Answer “Yes” or “No”

Answer yes

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If you answered “Yes” in Questions 1, 2, 3 or 4 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injuries. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

Question 5

For each person you found caused or contributed to cause the injuries, find the percentage of responsibility attributable to each.

1	Werner, acting through its employees other than Shiraz Ali	<u>70</u>	%
2	Shiraz Ali	<u>14</u>	%
3	Zaragoza “Trey” Salinas	<u>16</u>	%
	Total	<u>100</u>	%

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If you answered “Yes” in Questions 1, 3 or 4 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injuries. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

In answering this Question, do not consider the negligence, if any, that you found in response to Question No. 2.

Question 6

For each person you found caused or contributed to cause the injuries, find the percentage of responsibility attributable to each.

1	Werner, acting through its employees other than Shiraz Ali	<u>30</u>	%
2	Shiraz Ali	<u>32</u>	%
3	Zaragoza “Trey” Salinas	<u>38</u>	%
	Total	<u>100</u>	%

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If you answered “Yes” in Questions 3 or 4 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the injuries. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

Question 7

For each person you found caused or contributed to cause the injuries, find the percentage of responsibility attributable to each.

1	Shiraz Ali	<u>45</u>	%
2	Zaragoza “Trey” Salinas	<u>55</u>	%
	Total	<u>100</u>	%

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Answer Question 8 if you answered "Yes" to Question 1, Question 2, or Question 3. Otherwise, do not answer Question 8.

Question 8

What sum of money, if paid now in cash, would fairly and reasonably compensate Jennifer Blake for her injuries, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Do not include any amount for any condition existing before the occurrence in question, except to the extent, if any, that such other condition was aggravated by any injuries that resulted from the occurrence in question.

In answering this Question, do not include any amount for the mental anguish, if any, that Jennifer Blake sustained as a result of (1) the death of Zackery Blake or (2) her sensory and contemporaneous observance of the crash and the injuries her children sustained during the crash.

Answer separately, in dollars and cents, for damages, if any:

1 Physical pain and mental anguish sustained in the past

Answer 2,310,000.00

2 Physical pain and mental anguish that, in reasonable probability, she will sustain in the future

Answer 4,620,000.00

3 Physical impairment sustained in the past

Answer 2,310,000.00

4 Physical impairment that, in reasonable probability, she will sustain in the future

Answer 2,310,000.00

Answer Question 9 if you answered "Yes" to Question 1, Question 2, or Question 3. Otherwise, do not answer Question 9.

Question 9

What sum of money, if paid now in cash, would fairly and reasonably compensate Nathan Blake for his injuries, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any:

1 Physical pain and mental anguish sustained in the past

Answer 1,000,000.00

2 Physical pain and mental anguish that, in reasonable probability, Nathan Blake will sustain in the future

Answer 1,000,000.00

3 Physical impairment sustained in the past

Answer 1,000,000.00

4 Physical impairment that, in reasonable probability, Nathan Blake will sustain in the future

Answer 1,000,000.00

5 Disfigurement sustained in the past

Answer 500,000.00

6 Disfigurement that, in reasonable probability, Nathan Blake will sustain in the future

Answer 500,000.00

Answer Question 10 if you answered "Yes" to Question 1, Question 2, or Question 3. Otherwise, do not answer Question 10.

Question 10

What sum of money, if paid now in cash, would provide fair and reasonable compensation for Brianna Blake's injuries, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any:

1 Physical pain and mental anguish sustained in the past

Answer 3,750,000.00

2 Physical pain and mental anguish that, in reasonable probability, Brianna Blake will sustain in the future

Answer 7,500,000.00

3 Physical impairment sustained in the past

Answer 3,750,000.00

4 Physical impairment that, in reasonable probability, Brianna Blake will sustain in the future

Answer 7,500,000.00

5 Disfigurement sustained in the past

Answer 1,250,000.00

6 Disfigurement that, in reasonable probability, Brianna Blake will sustain in the future

Answer 1,250,000.00

7 Medical care expenses that, in reasonable probability, Brianna Blake will incur in the future

Answer 43,187,994.00

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Answer Question 11 if you answered “Yes” to Question 1, Question 2, or Question 3
Otherwise, do not answer Question 11

Question 11

What sum of money, if paid now in cash, would fairly and reasonably compensate Jennifer Blake for her damages, if any, resulting from the death of Zackery Blake?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any

1 Mental anguish and loss of companionship and society sustained in the past

Answer 1,650,000.00

2 Mental anguish and loss of companionship and society that, in reasonable probability, she will sustain in the future

Answer 1,650,000.00

“Loss of companionship and society” means the loss of the positive benefits flowing from the love, comfort, companionship, and society that Jennifer Blake, in reasonable probability, would have received from Zackery Blake had he lived.

As used in this Question, “mental anguish” means the emotional pain, torment, and suffering experienced by Jennifer Blake because of the death of Zackery Blake.

In determining damages for elements 1 and 2, you may consider the relationship between Zackery Blake and Jennifer Blake, their living arrangements, any extended absences from one another, the harmony of their family relations, and their common interests and activities.

Answer Question 12 if you answered "Yes" to Question 1, Question 2, or Question 3 Otherwise, do not answer Question 12

Question 12

What sum of money, if paid now in cash, would fairly and reasonably compensate Jennifer Blake for her mental anguish, if any, that resulted from her sensory and contemporaneous observance of the crash and the injuries her children sustained during the crash?

Consider the elements of damages listed below and none other Consider each element separately Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss That is, do not compensate twice for the same loss, if any Do not include interest on any amount of damages you find

Answer separately, in dollars and cents, for damages, if any

1 Mental anguish sustained in the past

Answer 825,000 00

2 Mental anguish that, in reasonable probability, she will sustain in the future

Answer 825,000 00

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Answer Question 13 regarding Werner only if you unanimously answered "Yes" to at least one of the following questions Question 1, Question 2 or Question 3 Otherwise, do not answer Question 13

To answer "Yes" to Question 13, your answer must be unanimous You may answer "No" to Question 13 only upon a vote of ten or more jurors Otherwise, you must not answer Question 13

Question 13

Do you find by clear and convincing evidence that the harm to the Plaintiffs resulted from gross negligence attributable to Werner?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established

"Gross negligence" means an act or omission by Werner,

- 1 which when viewed objectively from the standpoint of Werner at the time of its occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and
- 2 of which Werner had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others

Answer "Yes" or "No "

Answer _____

Certificate of Unanimity for Question 13

If you unanimously answered "Yes" to Question 13, please certify that below

Presiding Juror's Printed Name

Signature of Presiding Juror

Answer the following question regarding Werner only if you unanimously answered “Yes” to Question 13 regarding Werner. Otherwise, do not answer the following question regarding Werner.

Question 14

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

What sum of money, if any, should be assessed against Werner and awarded to the Plaintiffs as exemplary damages for the conduct found in response to Question 13?

“Exemplary damages” means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages include punitive damages.

Factors to consider in awarding exemplary damages, if any, are—

- 1 The nature of the wrong
- 2 The character of the conduct involved
- 3 The degree of culpability of the wrongdoer
- 4 The situation and sensibilities of the parties concerned
- 5 The extent to which such conduct offends a public sense of justice and propriety
- 6 The net worth of Werner

Answer in dollars and cents, if any.

Answer _____

Certificate of Unanimity for Question 14

If you unanimously answered “Yes” to Question 14, please certify that below

Presiding Juror’s Printed Name

Signature of Presiding Juror

If, in your answer to Question 14, you entered any amount of exemplary damages, then answer Question 15 Otherwise, do not answer Question 15

Question 15

How do you apportion the exemplary damages among the Plaintiffs?

Answer by stating a percentage for each person named below The percentages you find must total 100 percent

1	Jennifer Blake	_____	%
2	Brianna Blake	_____	%
3	Nathan Blake	_____	%
Total		100	%

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Presiding Juror

- 1 When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror
- 2 The presiding juror has these duties
 - a have the complete charge read aloud if it will be helpful to your deliberations,
 - b preside over your deliberations, meaning manage the discussions, and see that you follow these instructions,
 - c give written questions or comments to the bailiff who will give them to the judge,
 - d write down the answers you agree on,
 - e get the signatures for the verdict certificate, and
 - f notify the bailiff that you have reached a verdict

Do you understand the duties of the presiding juror? If you do not, please tell me now

Instructions for Signing the Verdict Certificate

- 1 Unless otherwise instructed, you may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.
- 2 If ten jurors agree on every answer, those ten jurors sign the verdict.
If eleven jurors agree on every answer, those eleven jurors sign the verdict.
If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
- 3 All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

4 There are some special instructions before Questions 13 and 14 explaining how to answer those questions Please follow the instructions If all twelve of you answer one or more of questions 13 and 14, you will need to complete a second verdict certificate regarding certain Questions

Do you understand these instructions? If you do not, please tell me now



JUDGE PRESIDING

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Verdict Certificate

Check one

 Our verdict is unanimous All twelve of us have agreed to each and every answer
The presiding juror has signed the certificate for all twelve of us

Signature of Presiding Juror

Printed Name of Presiding Juror

 Our verdict is not unanimous Eleven of us have agreed to each and every answer
and have signed the certificate below

Our verdict is not unanimous Ten of us have agreed to each and every answer and
have signed the certificate below

Signature

Name Printed

1 Jeffrey Tucker

JEFFREY TUCKER

2 Alejandro Alpizar

Alejandro Alpizar

3 Joseph P. Finlay

Joseph P. Finlay

4 Lindsay Lefas

Lindsay Lefas

5 Gabriela Mendoza

Gabriela Mendoza

6 Arielle Frazier

Arielle Frazier

7 Kelly D. Curtis

Kelly D. Curtis

8 Eloy Garza

Eloy Garza

9 Jerry Claybon

Jerry Claybon

10 Samuel Joel Alexander

Samuel Joel Alexander

11 _____

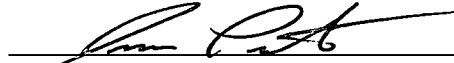
If you have answered one or more of Questions 13 and 14, then you must sign this
certificate also

Additional Certificate

I certify that the jury was unanimous in answering those questions listed below that have been marked "unanimous" All twelve of us agreed to each of the answers The presiding juror has signed the certificate for all twelve of us

Indicate whether the jury's answer to each question listed below was unanimous or not unanimous by placing a check mark (✓) in the appropriate space

- | | | | |
|-------------|-----------------|---------------------|---|
| Question 1 | unanimous _____ | not unanimous _____ | ✓ |
| Question 2 | unanimous _____ | not unanimous _____ | ✓ |
| Question 3 | unanimous _____ | not unanimous _____ | ✓ |
| Question 13 | unanimous _____ | not unanimous _____ | ✓ |
| Question 14 | unanimous _____ | not unanimous _____ | ✓ |



Signature of Presiding Juror

James Proctor

Printed Name of Presiding Juror

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ENDNOTES

- 1 See Ikram Mohamed, *Texas Attracted More Relocating Businesses than Any Other State, Report Finds*, THE TEX. TRIB. (Feb. 2, 2024), <https://www.texastribune.org/2024/02/02/texas-relocating-businesses-jobs/>; see also Geraldine Orentas, *Texas Moving Statistics for 2024*, FORBES (Aug. 1, 2024), <https://www.forbes.com/home-improvement/moving-services/texas-moving-statistics/>.
- 2 See *Texas Economic Snapshot*, TEX. ECON. DEV. & TOURISM, OFF. TEX. GOVERNOR, <https://gov.texas.gov/business/page/texas-economic-snapshot> (last visited Nov. 13, 2024).
- 3 See Ezra Amacher, *Nuclear Verdicts Surge to \$14.5 Billion in 2023 – Report*, INS. J. (May 10, 2024), <https://www.insurancejournal.com/news/national/2024/05/10/773721.htm>.
- 4 See *infra* Section VI; Appendix B.
- 5 See Appendix B.
- 6 See CARY SILVERMAN & CHRISTOPHER E. APPEL, U.S. CHAMBER OF COM., NUCLEAR VERDICTS: TRENDS, CAUSES, AND SOLUTIONS 34 (2022), https://institutelegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf (“It is no accident that many nuclear verdicts are comprised primarily of an award of noneconomic damages such as pain and suffering.”).
- 7 See Act of May 14, 1969, H.B. 456, 61st Leg., R.S., ch. 292, § 3, 1969 Tex. Gen. Laws 874, 875 (repealed 1985) (current version at TEX. CIV. PRAC. & REM. CODE § 101.023).
- 8 See Act of June 3, 1987, S.B. 5, 70th Leg., 1st C.S., ch. 2, § 2.12, sec. 41.007, 1987 Tex. Gen. Laws 37, 44 (amended 1995) (current version at TEX. CIV. PRAC. & REM. CODE § 41.008(b)).
- 9 See Act of Apr. 11, 1995, S.B. 25, 74th Leg., R.S., ch. 19, § 1, 1995 Tex. Gen. Laws 108, 108 (amended 2003) (current version at TEX. CIV. PRAC. & REM. CODE §§ 41.001, .003–.011, .013).
- 10 See Act of June 1, 2003, H.B. 4, 78th Leg., R.S., ch. 204, § 13.04, 2003 Tex. Gen. Laws 847, 888 (codified at TEX. CIV. PRAC. & REM. CODE § 41.003).
- 11 See Medical Liability Insurance and Improvement Act, H.B. 1048, 65th Leg., R.S., ch. 817, § 11.02, 1977 Tex. Gen. Laws 2039, 2052 (repealed 2003) (current version at TEX. CIV. PRAC. & REM. CODE § 74.301).
- 12 See *Lucas v. United States*, 757 S.W.2d 687, 691–92 (Tex. 1988).
- 13 See Act of June 1, 2003, H.B. 4, 78th Leg., R.S., ch. 204, § 10.01, sec. 74.301, 2003 Tex. Gen. Laws 847, 873 (codified at TEX. CIV. PRAC. & REM. CODE § 74.301). The citizens of Texas passed a constitutional amendment making the 2003 caps constitutional. See *Tex. H.R.J. Res. 3*, 78th Leg., R.S., 2003 Tex. Gen. Laws 6228.
- 14 See Appendix A (fifty-state survey of damage caps).
- 15 See ALASKA STAT. § 09.17.010; CAL. CIV. PROC. CODE § 377.34; COLO. REV. STAT. § 13-21-102.5; HAW. REV. STAT. § 663-8.7; IDAHO CODE § 6-1603; IOWA CODE § 668.14A; ME. REV. STAT. tit. 18-C, § 2-807(2); MD. CODE, CTS. & JUD. PROC. § 11-108(b); MISS. CODE § 11-1-60(2)(b); N.H. REV. STAT. § 556:12; OHIO REV. CODE § 2315.18; OR. REV. STAT. § 31.710; TENN. CODE § 29-39-102.
- 16 *Gregory v. Chohan*, 670 S.W.3d 546, 558 (Tex. 2023) (plurality opinion) (“Unsubstantiated anchors introduced as a way to assist a jury in ‘valuing a human life’ are not the type of information a jury can rightfully rely on when crafting a verdict.”).
- 17 *Id.* at 551 (plurality opinion).
- 18 See *id.* at 574 (Devine, J., concurring).
- 19 See TEX. CIV. PRAC. & REM. CODE § 41.001(5), (8). Texas statutes use “exemplary” rather than “punitive” to describe damages awarded for the purpose of punishment or to set an example. See *id.* § 41.001(5). Therefore, in describing Texas law regarding these kinds of damages, this paper will use “exemplary.” Otherwise, this paper will use “punitive” to describe these kinds of damages, because it is the more commonly used term.
- 20 *Id.* § 41.001(4), (8), (12).
- 21 *J&D Towing, LLC v. Am. Alt. Ins. Corp.*, 478 S.W.3d 649, 655 (Tex. 2016).
- 22 *Id.*; see also *Gregory*, 670 S.W.3d at 556 (plurality opinion).
- 23 *Gregory*, 670 S.W.3d at 556 (plurality opinion).
- 24 TEX. CIV. PRAC. & REM. CODE § 41.001(4).
- 25 See *Haygood v. De Escabedo*, 356 S.W.3d 390, 395–97 (Tex. 2011); *id.* at 390, 394 (quoting *Transp. Ins. Co. v. Moriel*, 879 S.W.2d 10, 16 (Tex. 1994)).
- 26 See Appendix A (states capping compensatory damages are Colorado, Indiana, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, Oklahoma, Rhode Island, Texas, and Virginia).
- 27 TEX. CIV. PRAC. & REM. CODE § 41.001(12).
- 28 See *id.*; see also *Gregory*, 670 S.W.3d at 550–51, 553–55 (plurality opinion) (referring to mental anguish and loss of companionship as “emotional injuries” and repeatedly referring only to mental anguish when describing the standards for awarding damages, thus indicating that loss of companionship is a wholly encompassed subset of mental anguish).
- 29 TEX. CIV. PRAC. & REM. CODE § 41.001(5).
- 30 *Id.*
- 31 See, e.g., *id.* § 41.004(a). But see S.C. CODE § 15-32-520(C) (punitive damages may be considered if compensatory or nominal damages have been awarded in the first phase).
- 32 TEX. CIV. PRAC. & REM. CODE § 41.008.
- 33 See Appendix A (states capping punitive damages are Alabama, Alaska, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Maine, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina,

- North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming).
- 34 TEX. CIV. PRAC. & REM. CODE § 41.001(11) (gross negligence includes an act or omission that involves an extreme degree of risk, but the actor may be liable for that act or omission only if the actor has actual awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others).
- 35 See *VIA Metro. Transit v. Meck*, 620 S.W.3d 356, 369 (Tex. 2020); *Southcross Energy Partners GP, LLC v. Gonzalez*, 625 S.W.3d 869, 879–80 (Tex. App.—San Antonio 2021, no pet.).
- 36 See *Mun. Paving Co. v. Donovan Co.*, 142 S.W. 644, 648 (Tex. Civ. App.—Dallas 1911, no writ).
- 37 See *In re Lipsky*, 460 S.W.3d 579, 589 (Tex. 2015).
- 38 TEX. R. CIV. P. 292(a).
- 39 See TEX. CIV. PRAC. & REM. CODE §§ 41.008, 74.301–.302, 101.023.
- 40 *Id.* § 41.001(5) (exemplary damages are awarded as a penalty or by way of punishment).
- 41 See *id.* § 41.003.
- 42 *Id.* § 41.001(11).
- 43 *Id.* § 41.003(a), (b).
- 44 *Id.* § 41.003(b).
- 45 *Id.* § 41.001(2).
- 46 *Id.* § 41.003(d).
- 47 See *id.*; TEX. R. CIV. P. 226(a); COMM. ON PATTERN JURY CHARGES, STATE BAR OF TEX., TEXAS PATTERN JURY CHARGES—GENERAL NEGLIGENCE, INTENTIONAL PERSONAL TORTS & WORKERS’ COMPENSATION PJC 4.1, 4.2C (2018) [hereinafter PJC].
- 48 TEX. CIV. PRAC. & REM. CODE § 41.008(b).
- 49 See *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 442 (Tex. 1995) (mental anguish damages are “inherently subjective,” creating a “potential for false claims,” and difficulty in rationally monetizing emotional injuries); *State Farm Fire & Cas. Co. v. Simmons*, 857 S.W.2d 126, 140 (Tex. App.—Beaumont 1993, writ granted) (explaining that courts “have no clearly defined line for determining whether exemplary damages are excessive” and “no set formula, rule or ratio to precisely show a required relationship between actual damages and exemplary damages”).
- 50 *Gregory v. Chohan*, 670 S.W.3d 546, 558 (Tex. 2023) (plurality opinion) (“Unsubstantiated anchors introduced as a way to assist a jury in ‘valuing a human life’ are not the type of information a jury can rightfully rely on when crafting a verdict.”).
- 51 *Id.* at 550 (plurality opinion).
- 52 *Id.* at 552 (plurality opinion).
- 53 *Id.* (plurality opinion).
- 54 *Id.* (plurality opinion).
- 55 See *id.* (plurality opinion).
- 56 See *id.* (plurality opinion).
- 57 *Id.* at 557 (plurality opinion).
- 58 *Id.* (plurality opinion).
- 59 *Id.* (plurality opinion).
- 60 *Id.* at 558 (plurality opinion).
- 61 *Id.* (plurality opinion).
- 62 *Id.* (plurality opinion).
- 63 *Id.* (plurality opinion).
- 64 *Id.* at 550 (plurality opinion).
- 65 See *id.* at 558 (plurality opinion); see also *Alonzo v. John*, 689 S.W.3d 911, 915 n.1 (Tex. 2024).
- 66 *Gregory*, 670 S.W.3d at 558 (plurality opinion).
- 67 *Id.* at 568 (plurality opinion).
- 68 *Id.* at 550 (plurality opinion).
- 69 *Id.* at 551 (plurality opinion) (quoting *Saenz v. Fid. & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996)). As one of the concurring decisions in *Gregory* points out, prior decisions from the Texas Supreme Court seem to vest more discretion in jurors. See *Gregory*, 670 S.W.3d at 575 n.23 (Devine, J., concurring) (citing *Anderson v. Durant*, 550 S.W.3d 605, 618 (Tex. 2018)) (holding that because noneconomic damages “are not amenable to calculation with ‘precise mathematical precision,’” the jury “has latitude in determining the award” so long as the jury awards “an amount that a reasonable person could possibly estimate as fair compensation” (first quoting *Brady v. Klentzman*, 515 S.W.3d 878, 887 (Tex. 2017); then quoting *Waste Mgmt. of Tex., Inc. v. Tex. Disposal Sys. Landfill, Inc.*, 434 S.W.3d 142, 153 (Tex. 2014))); *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 772 (Tex. 2003) (“[W]hether to award damages and how much is uniquely within the factfinder’s discretion.”); *Lucas v. United States*, 757 S.W.2d 687, 720 n.21 (Tex. 1988) (Phillips, C.J., dissenting) (“As to non-economic damages, on the other hand, there is no formula or even definition which has proved useful in their assessment. The appropriate amount is instead left to the discretion, experience and common sense of the finder of fact.”).
- 70 *Gregory*, 670 S.W.3d at 550–51 (plurality opinion) (citing *Saenz*, 925 S.W.2d at 614).
- 71 *Gregory*, 670 S.W.3d at 551 (plurality opinion).
- 72 *Id.* at 551 (plurality opinion) (citing *Saenz*, 925 S.W.2d at 614).

- 73 *Gregory*, 670 S.W.3d at 554 (plurality opinion) (first citing *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 444 (Tex. 1995); then citing *Serv. Corp. Int'l v. Guerra*, 348 S.W.3d 221, 231 (Tex. 2011)).
- 74 *Gregory*, 670 S.W.3d at 555 (plurality opinion) (citing *Parkway*, 901 S.W.2d at 444).
- 75 *Gregory*, 670 S.W.3d at 550 (plurality opinion).
- 76 *Id.* (plurality opinion) (citing *Bentley v. Bunton*, 94 S.W.3d 561, 606 (Tex. 2002)).
- 77 *Gregory*, 670 S.W.3d at 550 (plurality opinion) (citing *Gulf, C. & S. F. R. Co. v. Dorsey*, 18 S.W. 444, 445 (Tex. 1886)).
- 78 *Gregory*, 670 S.W.3d at 550 (plurality opinion).
- 79 *Id.* at 551 (plurality opinion).
- 80 *Id.* at 560 (plurality opinion).
- 81 *Id.* at 571 (Devine, J., concurring) (“The plurality implies that a claimant’s financial costs of treating or dealing with pain and anguish could conceivably provide some basis for deciding an appropriate amount of compensation, but those costs represent economic losses.”).
- 82 *See Garza v. Rodgers*, No. 01-22-00563-CV, 2024 WL 3571549, at *10 (Tex. App.—Houston [1st Dist.] July 30, 2024, no pet.) (when reviewing the sufficiency of pain and suffering award, court must defer to the jury’s determinations “so long as they are supported by the evidence.”).
- 83 *Wilson v. Murphy*, No. 02-23-00207-CV, 2024 WL 1561468, at *14 (Tex. App.—Fort Worth Apr. 11, 2024, no pet.) (citing *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003)).
- 84 *Wilson*, 2024 WL 1561468, at *16.
- 85 *See Stone v. Christiansen*, No. 02-22-002450-CV, 2023 WL 5766076, at *4–5 (Tex. App.—Fort Worth Sept. 7, 2023, no pet.) (mem. op.).
- 86 *Team Indus. Servs. v. Most*, No. 01-22-00313-CV, 2024 Tex. App. LEXIS 3389, at *43 (Tex. App.—Houston [1st Dist.] May 16, 2024, no pet. h.) (quoting *Gregory v. Chohan*, 670 S.W.3d 546, 550 (Tex. 2023) (plurality opinion)).
- 87 *See Team Indus. Servs.*, 2024 Tex. App. LEXIS 3389, at *43.
- 88 *See Boxer Prop. Mgmt. Corp. v. Dehnel*, No. 02-22-00336-CV, 2024 WL 3282541, at *2 (Tex. App.—Fort Worth Apr. 11, 2024, pet. filed).
- 89 *Id.* at *78.
- 90 *Kelly Custom Homes, LLC v. Hopper*, No. 14-23-00793-CV, 2024 WL 3765393, at *21 (Tex. App.—Houston [14th Dist.] Aug. 13, 2024, pet. filed).
- 91 *Id.*
- 92 “Preponderance of the evidence” is defined as “the greater weight of credible evidence presented in this case. . . . For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.” PJC, *supra* note 47, at 1.3A. “Negligence” is defined as the “failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.” *Id.* at 2.1; *see also* *20801, Inc. v. Parker*, 249 S.W.3d 392, 398 (Tex. 2008). Ordinary care means “that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.” PJC, *supra* note 47, at 2.1. Proximate cause is defined as “a cause that was a substantial factor in bringing about an [injury] [occurrence], and without which cause such [injury] [occurrence] would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the [injury] [occurrence], or some similar [injury] [occurrence], might reasonably result therefrom. There may be more than one proximate cause of an [injury] [occurrence].” *Id.* at 2.4.
- 93 *See supra* notes 19–20, 24, 27–32 and accompanying text.
- 94 *See generally* Appendix C (jury charges in personal injury cases tried in Texas courts).
- 95 *See generally* TEX. CIV. PRAC. & REM. CODE § 41.001 (providing definitions).
- 96 *See* PJC, *supra* note 47, at 4.1; *see also* Appendix C.
- 97 PJC, *supra* note 47, at 4.1; *see also* TEX. CIV. PRAC. & REM. CODE § 33.003(a) (trier of fact to determine fault). *But see id.* § 33.003(b) (a person’s name is not submitted to the jury unless there is “sufficient evidence to support the submission”).
- 98 *See* TEX. CIV. PRAC. & REM. CODE § 33.003(a); PJC, *supra* note 47, at 4.3.
- 99 *See* PJC, *supra* note 47, at 28.3.
- 100 *See id.* at 85.1.
- 101 *See id.* at 85.3. In cases involving a commercial motor vehicle, questions asking the jury to determine if the defendant was grossly negligent and, if so, to state the amount of punitive damages to be assessed against the defendant may be asked in the second half of a bifurcated trial. *See* TEX. CIV. PRAC. & REM. CODE § 72.052. In other injury and death cases, only a question asking the jury to determine the amount of punitive damages is asked in the second half of a bifurcated trial. *See id.* § 41.009.
- 102 *See generally* Appendix C (jury charges in personal injury cases tried in Texas courts).
- 103 *See* PJC, *supra* note 47, at 28.3.
- 104 *See id.*
- 105 *See* Appendix C-1.
- 106 *See* Appendix C-2.
- 107 *See* Appendix C-3.
- 108 *See supra* Section II.C.
- 109 *Gregory v. Chohan*, 670 S.W.3d 546, 550 (Tex. 2023) (plurality opinion) (“Assigning a dollar value to non-financial, emotional injuries such as mental anguish or loss of companionship will never be a matter of mathematical precision.”).

- 110 See Appendix A.
- 111 See *id.*
- 112 *Lucas v. United States*, 757 S.W.2d 687 (Tex. 1988).
- 113 *Id.* at 691; see also TEX. CONST. art. I, § 13 (providing that “[a]ll courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law”).
- 114 See *Rose v. Doctors Hosp.*, 801 S.W.2d 841, 842, 846 (Tex. 1990) (“The Roses’ remedy [under the wrongful death statute] was conferred by statute, not by the common law. Because the Roses do not seek a common law remedy, the open courts provision does not apply to their wrongful death claim. Accordingly, we hold that the open courts provision may not bar the application of the damages provisions of the Medical Liability Act in wrongful death cases.”)
- 115 See TEX. CONST. art. III, § 66(e).
- 116 The United States Supreme Court typically uses “punitive” rather than “exemplary” in its opinions. This section, therefore, will do the same.
- 117 492 U.S. 257, 259 (1989).
- 118 See *id.* at 272.
- 119 *Id.* at 276.
- 120 See 499 U.S. 1, 12 (1991).
- 121 *Id.* at 18 (citing *Waters-Pierce Oil Co. v. Texas* (No. 1), 212 U.S. 88, 111 (1909)).
- 122 *Pac. Mut. Life Ins. Co.*, 499 U.S. at 18.
- 123 *Id.* at 19–20 (first citing *Schall v. Martin*, 467 U.S. 253, 279 (1984); then citing *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 16 (1977); and then citing *McGautha v. California*, 402 U.S. 183, 207 (1971)).
- 124 *Pac. Mut. Life Ins. Co.*, 499 U.S. at 22.
- 125 517 U.S. 559, 562 (1996).
- 126 538 U.S. 408, 425 (2003).
- 127 See Tex. H.B. 4, 78th Leg., R.S. (2003).
- 128 See TEX. CIV. PRAC. & REM. CODE § 74.301.
- 129 See *id.* § 74.303(a).
- 130 See *id.* § 74.303(b); see also *infra* Section IV.
- 131 Subject to exceptions, a “nonprofit hospital” is defined as a hospital that is eligible for tax-exempt bond financing or exempt from state franchise, sales, ad valorem, or other state or local taxes and organized as a nonprofit corporation or a charitable trust under the laws of this state or any other state or country. TEX. HEALTH & SAFETY CODE §§ 311.042(9), 311.0456(a); see also *id.* § 311.042(9)(b) (exceptions).
- 132 *Id.* § 311.0456(b)–(d).
- 133 *Id.* § 311.0456(f); TEX. CIV. PRAC. & REM. CODE § 101.023(b).
- 134 TEX. CIV. PRAC. & REM. CODE § 101.021.
- 135 *Id.*
- 136 *Id.* § 101.023(a), (c). A municipality does not enjoy the protections of the Tort Claims Act when engaged in proprietary functions. *Id.* § 101.0215(b). A non-exclusive list of governmental functions is provided by the statute. See *id.* § 101.0215(a).
- 137 *Id.* § 101.023(b).
- 138 *Id.* § 101.024.
- 139 The cap does not apply, for example, if the defendant knowingly or intentionally committed murder, sexual assault, forgery, or trafficking, to name a few. *Id.* § 41.008(c).
- 140 *Id.* § 41.008(b).
- 141 *Id.* § 41.004(a).
- 142 *Id.* § 41.003(a), (d).
- 143 See ALASKA STAT. § 09.17.010; CAL. CIV. PROC. CODE § 377.34; COLO. REV. STAT. § 13-21-102.5; HAW. REV. STAT. § 663-8.7; IDAHO CODE § 6-1603; IOWA CODE § 668.14A; ME. REV. STAT. tit. 18-C, § 2-807(2); MD. CODE, CTS. & JUD. PROC. § 11-108(b); MISS. CODE § 11-1-60(2)(b); N.H. REV. STAT. § 556:12; OHIO REV. CODE § 2315.18; OR. REV. STAT. § 31.710; TENN. CODE § 29-39-102.
- 144 See N.H. REV. STAT. § 556:12.
- 145 See COLO. REV. STAT. § 13-21-203(1)(a).
- 146 See *infra* Section IV.
- 147 See OHIO REV. CODE § 2323.43. There are also several caveats to this limitation.
- 148 See *infra* Section III.C.2.
- 149 See TENN. CODE § 29-39-102.
- 150 See IDAHO CODE § 6-1603.
- 151 See OHIO REV. CODE § 2323.43.
- 152 See COLO. REV. STAT. § 13-21-203(1)(a).
- 153 See ALASKA STAT. § 09.17.010(b), (c).
- 154 See CAL. CIV. PROC. CODE § 377.34.
- 155 See ALASKA STAT. § 09.17.010.
- 156 See CAL. CIV. PROC. CODE § 377.34(a).
- 157 See COLO. REV. STAT. § 13-21-102.

- 158 See HAW. REV. STAT. § 663-8.7
- 159 See IDAHO CODE § 6-1603.
- 160 See IOWA CODE § 668.14A.
- 161 See ME. REV. STAT. tit. 18-C, § 2-807(2).
- 162 See MD. CODE, CTS. & JUD. PROC. § 11-108(b).
- 163 See MISS. CODE § 11-1-60(2)(b).
- 164 See N.H. REV. STAT. § 556:12.
- 165 See OHIO REV. CODE § 2315.18.
- 166 See OR. REV. STAT. § 31.710(1).
- 167 See TENN. CODE § 29-39-102.
- 168 See ALASKA STAT. § 9.55.549; CAL. CIV. CODE § 3333.2; COLO. REV. STAT. § 13-64-302; CONN. GEN. STAT. § 52-228c; FLA. STAT. § 766.118; HAW. REV. STAT. § 663-8.7; IDAHO CODE § 6-1603; IND. CODE § 34-18-14-3; IOWA CODE § 147.136A; LA. REV. STAT. § 40:1231.2; MD. CODE, CTS. & JUD. PROC. § 3-2A-09(b); MASS. GEN. LAWS ch. 231, § 60H; MICH. COMP. LAWS § 600.1483(1); MISS. CODE § 11-1-60(2)(a); MO. REV. STAT. § 538.210(2); MONT. CODE § 25-9-411(1); NEB. REV. STAT. § 44-2825 (effective January 1, 2025); NEV. REV. STAT. § 41A.035; N.J. REV. STAT. § 2A:53A-8; N.M. STAT. § 41-5-6; N.C. GEN. STAT. § 90-21.19; N.D. CENT. CODE § 32-42-02; OHIO REV. CODE § 2323.43; S.C. CODE § 15-32-220; S.D. CODIFIED LAWS § 21-3-11; TENN. CODE § 29-39-102; TEX. CIV. PRAC. & REM. CODE §§ 74.301, 74.303; UTAH CODE § 78B-3-410 (1)(d); VA. CODE § 8.01-581.15; W. VA. CODE § 55-7B-8; WIS. STAT. § 893.55.
- 169 See OHIO REV. CODE § 2323.43. There are also several caveats to this limitation.
- 170 See FLA. STAT. § 768.28; ME. REV. STAT. tit. 14, §§ 8104-A, 8105; MISS. CODE § 11-46-15(1)(c); MONT. CODE § 2-9-108; NEB. REV. STAT. § 13-926; NEV. REV. STAT. § 41.035; N.M. STAT. § 41-4-19; OKLA. STAT. tit. 51, § 154; R.I. GEN. LAWS § 9-31-2; TEX. CIV. PRAC. & REM. CODE § 101.023.
- 171 Sen. File 228, 90th Gen. Assemb. (Iowa 2023); see IOWA CODE § 668.15A(4). As noted above, Iowa is one of the states having damage caps applicable to personal injury cases in general, and caps applicable to healthcare liability cases. See IOWA CODE § 668.14A (damages in personal injury are limited to the amount of medical bills actually paid or incurred); *id.* § 147.136A (damages in medical malpractice are limited to \$250,000, unless jury finds substantial or permanent impairment, in which case the cap is \$1 million or \$2 million if the action includes a hospital, and if malice, cap is not applicable).
- 172 See *id.* § 668.15A(2).
- 173 See *id.* § 668.15A(5).
- 174 See *id.* § 668.15A(2).
- 175 See S.B. 583, 2024 Leg., Reg. Sess. (Iowa 2024). West Virginia also has caps for medical malpractice and punitive damages. See W. VA. CODE §§ 55-7B-8, 55-7-29. For medical malpractice, the noneconomic damage cap is \$250,000 per occurrence and \$500,000 per occurrence in cases of wrongful death, permanent and substantial physical deformity, loss of use of a limb or bodily organ, or permanent physical or mental injury that permanently prevents performance of independent care or life-sustaining activities. See *id.* § 55-7B-8. The cap excludes defendants who fail to maintain \$1 million in medical malpractice insurance. See *id.* The caps are adjusted annually for inflation according to the consumer price index starting January 1, 2004, but the \$250,000 cap may not exceed \$375,000, and the \$500,000 cap may not exceed \$750,000. See *id.* West Virginia's punitive damage cap is the greater of four times compensatory damages or \$500,000. See *id.* § 55-7-29.
- 176 See *id.* § 55-7-32(b).
- 177 See *id.* § 55-7-32(e).
- 178 See *id.* § 55-7-32(c).
- 179 See *id.* § 55-7-32(d).
- 180 S.B. 613, 160th Leg., Reg. Sess. (Wis. 2023).
- 181 *Id.*
- 182 Letter from Tony Evers, Wis. Governor, to Wis. Senate (Mar. 29, 2024), https://docs.legis.wisconsin.gov/2023/related/veto_messages/sb613.pdf.
- 183 *Id.*
- 184 *Id.*
- 185 See ALA. CODE § 6-11-21.
- 186 See ALASKA STAT. § 9.17.020.
- 187 See COLO. REV. STAT. § 13-21-102.
- 188 See CONN. GEN. STAT. § 52-240b.
- 189 See DEL. CODE tit. 6, § 2003(b).
- 190 See FLA. STAT. §§ 768.73, 768.735, 768.736.
- 191 See GA. CODE § 51-12-5.1.
- 192 See IDAHO CODE § 6-1604(3).
- 193 See IND. CODE § 34-51-3-4.
- 194 See KAN. STAT. §§ 60-3701, 60-3702.
- 195 See ME. REV. STAT. tit. 18-C, § 2-807(2).
- 196 See MISS. CODE § 11-1-65.
- 197 See MO. REV. STAT. § 510.265.

- 198 See MONT. CODE § 27-1-220.
- 199 See *Miller v. Kingsley*, 230 N.W.2d 472 (Neb. 1975).
- 200 See NEV. REV. STAT. § 42.005.
- 201 See N.H. REV. STAT. § 507:16.
- 202 See N.J. REV. STAT. § 2A:15-5.14.
- 203 See N.C. GEN. STAT. § 1D-25.
- 204 See N.D. CENT. CODE § 32-03.2-11(4).
- 205 See OHIO REV. CODE § 2315.21.
- 206 See OKLA. STAT. tit. 23, § 9.1.
- 207 See OR. REV. STAT. § 646.465.
- 208 See S.C. CODE § 15-32-530.
- 209 See TENN. CODE § 29-39-104. The Sixth Circuit Court found the statute unconstitutional as violating the right to a trial by jury. See *Lindenberg v. Jackson Nat'l Life Ins. Co.*, 912 F.3d 348 (6th Cir. 2018).
- 210 See TEX. CIV. PRAC. & REM. CODE § 41.008.
- 211 See *Hall v. Wal-Mart Stores, Inc.*, 959 P.2d 109 (Utah 1998).
- 212 See VA. CODE § 8.01-38.1.
- 213 See W. VA. CODE § 55-7-29.
- 214 See WIS. STAT. § 895.043(6).
- 215 See WYO. STAT. § 40-24-103(b).
- 216 The District of Columbia and Minnesota do not appear to have any existing damage caps.
- 217 See ARIZ. CONST. art. II, § 31 (prohibiting a cap on any damages); ARIZ. CONST. art. XVIII, § 6 (same); ARK. CONST. art. V, § 32 (prohibiting a cap on punitive damages as it relates to claims outside employment relationship); Ky. CONST. § 54 (prohibiting legislature from placing limitations on any damages); N.Y. CONST. art. I, § 16 (prohibiting a statutory cap on damages in wrongful death actions); OKLA. CONST. art. XXIII, § 7 (same); PA. CONST. art. III, § 18 (prohibiting a cap on any damages); WYO. CONST. art. X, § 4 (same); see also ARK. CODE § 16-114-208 (statute specifically allowing noneconomic damages in medical malpractice actions).
- 218 See *Moore v. Mobile Infirmary Ass'n*, 592 So. 2d 156 (Ala. 1991) (cap in medical malpractice, personal injury, and wrongful death actions found unconstitutional); *Bayer CropScience LP v. Schafer*, 385 S.W.3d 822, 831 (Ark. 2011) (punitive damage cap found unconstitutional as it relates to claims outside employment relationship); *Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt*, 691 S.E.2d 218 (Ga. 2010) (cap on damages in medical malpractice actions found unconstitutional); *Lebron v. Gottlieb Mem'l Hosp.*, 930 N.E.2d 895 (Ill. 2010) (statutory cap on noneconomic damages—\$500,000 per provider and \$1 million per facility—found unconstitutional); *Hilburn v. Enerpipe Ltd.*, 442 P.3d 509 (Kan. 2019) (cap on damages found unconstitutional for violating the right to a trial by jury); *Williams v. Wilson*, 972 S.W.2d 260 (Ky. 1997) (prior cap struck down as unconstitutional); *Beason v. I. E. Miller Servs., Inc.*, 441 P.3d 1107 (Okla. 2019) (damage cap in personal injury actions found unconstitutional); *Smith v. United States*, 356 P.3d 1249 (Utah 2015) (noneconomic damage cap in Health Care Malpractice Act unconstitutional as applied to wrongful death cases); *Sofie v. Fibreboard Corp.*, 771 P.2d 711 (Wash. 1989) (sliding cap on noneconomic damages for personal injury and wrongful death found unconstitutional for violating the right to a trial by jury); see also *Lindenberg v. Jackson Nat'l Life Ins. Co.*, 912 F.3d 348 (6th Cir. 2018) (circuit court in Tennessee found punitive damage cap unconstitutional as violating the right to a trial by jury).
- 219 See *Est. of McCall v. United States*, 134 So. 3d 894 (Fla. 2014).
- 220 See *N. Broward Hosp. Dist. v. Kalitan*, 219 So. 3d 49 (Fla. 2017).
- 221 See FLA. STAT. § 766.118.
- 222 See *Coleman v. Gibbs*, No. 19-CA-006741, 2024 WL 3410527, at *1 (Fla. Cir. Ct. Jan. 29, 2024).
- 223 The only damage cap in Texas that adjusts for inflation is the one applicable to healthcare-related wrongful death or survival actions. See TEX. CIV. PRAC. & REM. CODE § 74.303(b).
- 224 *Consumer Price Index*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/cpi/questions-and-answers.htm> (last updated Sept. 9, 2024).
- 225 See ALA. CODE § 6-11-21(f).
- 226 See CAL. CIV. CODE § 3333.2(g), (h).
- 227 See COLO. REV. STAT. §§ 13-21-102.5, 13-21-203, 13-64-302.
- 228 See IDAHO CODE § 6-1603(1).
- 229 See IOWA CODE §§ 668.15A(5), 147.136A(4).
- 230 See ME. REV. STAT. tit. 18-C, §§ 2-807(2), 1-108(2).
- 231 See MD. CODE, CTS. & JUD. PROC. §§ 11-108(b), 3-2A-09(b).
- 232 See MICH. COMP. LAWS § 600.1483(4).
- 233 See Mo. REV. STAT. § 538.210(10).
- 234 See NEV. REV. STAT. § 41A.035(2), (3).
- 235 See N.M. STAT. § 41-5-6(B).
- 236 See N.C. GEN. STAT. § 90-21.19(a).
- 237 See S.C. CODE §§ 15-32-220(F), 15-32-530(D).
- 238 See TEX. CIV. PRAC. & REM. CODE § 74.303(a)–(b).

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- 239 See VA. CODE § 8.01-581.15.
- 240 See W. VA. CODE §§ 55-7-32(e), 55-7B-8(c).
- 241 See WIS. STAT. § 893.55.
- 242 See, e.g., COLO. REV. STAT. §§ 13-21-102.5(4), 13-64-302(b); IDAHO CODE § 6-1604(3); MD. CODE, CTS. & JUD. PROC. § 11-108(d); MICH. COMP. LAWS § 600.2946a(2) (product liability); MISS. CODE §§ 11-1-60(2)(c), 11-1-65(3)(c); MONT. CODE §§ 25-9-411(4), 27-1-221; N.M. STAT. § 41-5-6; N.C. GEN. STAT. § 90-21.19; N.D. CENT. CODE § 32-42-02; OHIO REV. CODE §§ 2315.18, 2323.43; OR. REV. STAT. § 31.710 (wrongful death); TENN. CODE § 29-39-102.
- 243 See, e.g., FLA. STAT. § 768.73; S.C. CODE § 15-32-530; TEX. CIV. PRAC. & REM. CODE § 41.008(e); VA. CODE § 8.01-38.1.
- 244 See ALA. CODE § 6-11-22.
- 245 See MONT. CODE § 27-1-221.
- 246 See UTAH CODE § 78B-8-201(3)(a).
- 247 OR. REV. STAT. § 31.735.
- 248 See Appendix B-1.
- 249 See Appendix B-25.
- 250 See Appendix B-1–B-4.
- 251 See Appendix B-1–B-20.
- 252 See Appendix B-3.
- 253 See Appendix B.
- 254 See Appendix B-7, B-9, B-14, B-16, and B-25.
- 255 See *Gregory v. Chohan*, 670 S.W.3d 546, 558–59 (Tex. 2023) (plurality opinion).
- 256 See Appendix B-2.
- 257 See SILVERMAN & APPEL, *supra* note 6, at 3 (“Many reported nuclear verdicts did not include a complete breakdown of each damages component, but where that information was available it showed that nuclear verdicts consist primarily of awards of noneconomic damages, such as pain and suffering, or punitive damages.”); see also CARY SILVERMAN & CHRISTOPHER E. APPEL, U.S. CHAMBER OF COM., NUCLEAR VERDICTS: AN UPDATE ON TRENDS, CAUSES, AND SOLUTIONS (2024), <https://instituteforlegaleform.com/wp-content/uploads/2024/05/ILR-May-2024-Nuclear-Verdicts-Study.pdf>.
- 258 See S.B. 538, 2024 Leg., 446th Sess. (Md. 2024), https://mgaleg.maryland.gov/2024RS/fnotes/bil_0008/sb0538.pdf; see also Mary D. Kane, *Caps on Lawsuit Damages Threatens Jobs, Raises Costs for Residents*, MD. CHAMBER OF COM. (Mar. 27, 2024), <https://www.mdchamber.org/2024/03/27/noneconomic-caps-on-personal-injury-lawsuits/>. California and Colorado, on the other hand, recently opted to increase their existing caps rather than repeal them. See Tanya Albert Henry, *California’s MICRA Law Modernized After Nearly 50 Years*, AM. MED. ASS’N (June 7, 2022), <https://www.ama-assn.org/practice-management/sustainability/california-s-micra-law-modernized-after-nearly-50-years>; Kim L. Koehler, *Colorado Increases Damages Caps in Personal Injury and Wrongful Death Actions*, WILSON ELSE (June 12, 2024), <https://www.wilsonelser.com/publications/colorado-increases-damages-caps-in-personal-injury-and-wrongful-death-actions>.
- 259 *Gregory*, 670 S.W.3d at 569.
- 260 *Id.* at 574.
- 261 *Id.*
- 262 HOUSE/SENATE JOINT COMM. ON LIAB. INS. & TORT LAW & PROCEDURE, THE JOINT COMMITTEE REPORT TO THE 70TH LEGISLATURE OF THE STATE OF TEXAS, 69th Leg., R.S., 188–89 (1987), <https://lrl.texas.gov/scanned/interim/69/1613.pdf>.
- 263 *Id.*
- 264 See Rick Perry, *Tort Reform Has Had Just the Impact We Desired*, AUSTIN AM. STATESMAN (July 17, 2012), <https://www.tapa.info/texas-alliance-for-patient-access-reforms-impact.html>.
- 265 See George Christian, *Time to Revisit the Standards for Awarding Mental Anguish Damages?*, TEX. CIV. JUST. LEAGUE (Jan. 12, 2022), <https://tcjl.com/time-to-revisit-the-standards-for-awarding-mental-anguish-damages/>.