CONNECTICUT HOSPITAL ASSOCIATION

TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
SUBMITTED TO THE
JUDICIARY COMMITTEE
Friday, March 4, 2022

HB 5235, An Act Concerning The Calculation Of Prejudgment Interest On A Plaintiff's Offer Of Compromise

The Connecticut Hospital Association (CHA) appreciates this opportunity to submit testimony concerning **HB 5235, An Act Concerning The Calculation Of Prejudgment Interest On A Plaintiff's Offer Of Compromise.** CHA opposes the bill.

Since early 2020, hospitals and health systems have been at the center of Connecticut's response to the COVID-19 public health emergency, acting as a vital partner with the state and our communities. Hospitals expanded critical care capacity, procured essential equipment and supplies, and stood up countless community COVID-19 testing locations. Hospitals have been an essential component of the statewide vaccine distribution plan including efforts to reach and serve historically under-resourced communities disproportionately affected by the virus. Through it all, hospitals and health systems have continued to provide high-quality care for everyone, regardless of ability to pay. This tireless commitment to the COVID-19 response confirms the value of strong hospitals in Connecticut's public health infrastructure and the well-being of our communities and reinforces the need for a strong partnership between the state and hospitals.

HB 5235 is an effort to subvert the purpose of Connecticut's offer of compromise law and convert it to a *de facto* punitive damage.

Current law, section 52-192a, contains a provision that is intended to encourage pretrial settlements in civil matters based on contract or where money damages are sought. "Offer of compromise" is the nomenclature assigned to the filing made by a plaintiff stating the amount of money that the plaintiff is willing to accept to settle a matter. If a defendant fails to pay the stated amount, and later the plaintiff both prevails at trial and is awarded an amount equal to or greater than the offer of compromise, the judge in the matter must add interest to the amount of the award, at an eight percent (8%) annual rate.

The calculation of the added interest varies under current law and is specific to when the offer of compromise is filed. If the offer of compromise is filed in the first eighteen months of the case, the annual interest is calculated from the time the complaint was filed. If the offer of compromise is filed more than 18 months after the case is filed in the court, then the interest is calculated from the time the offer is filed. The existing statute is unquestionably, and significantly, slanted in favor of plaintiffs. HB 5235 seeks to remove the 18-month threshold and have interest calculated from the "cause of action" that likely means from the date of loss or breach of contract that is the subject of the suit, which can be as long as six years before the lawsuit is brought. That is an unconscionable change to a law that already works to the advantage of plaintiffs.

There is no corresponding interest available to a defendant that prevails in a matter. A defendant may recover only limited costs and a nominal amount of $350. The current system stretches the limits of fundamental fairness, and this bill seeks to further disadvantage defendants.

The Connecticut Supreme Court has repeatedly stated that the purpose of the offer of compromise statute is to "encourage pretrial settlements and, consequently, to conserve judicial resources." *Stiffler v. Continental Insurance Co*., 288 Conn. 38, 43 (2008) citing *Blakeslee Arpaia Chapman, Inc. v. EI Constructors, Inc*., 239 Conn. 708, 742, 687 A.2d 506 (1997). The underlying theory is that, if a case ends before trial, and particularly if it ends fairly early in the litigation process, then all parties, and the Judicial Branch, are saved costs. The proposed changes set forth in HB 5235 do not align with that purpose. The bill would instead create a pointedly punitive system, in an unreasonable manner, with consequences that would add significantly to the cost of all litigation and drive up the costs for liability insurance in Connecticut. That change would negatively affect all Connecticut businesses, motorists, homeowners, and renters with insurance.

Further, the offer of compromise interest rate of eight percent (8%) is outmoded. That rate was set at a time when there was a rational basis between the interest a plaintiff might have been able to obtain if money was already paid. For comparison, the eight percent rate was enacted seventeen years ago when the interest rates in the United States were much higher than they are now. By today's standards, eight percent is an extraordinary rate.

We strongly believe that if the General Assembly is going to consider making changes to <u>one</u> provision of the state's tort law, it should look at the <u>whole system</u> and consider proposals such as indexing interest rates and other measures that would ensure access to the courts, operational efficiency, cost controls, and fairness to litigants across the system.

Thank you for your consideration of our position. For additional information, contact CHA Government Relations at (203) 294-7310.