June 25, 2015

William C. Hubbard
President, American Bar Association
Partner, Nelson Mullins Riley & Scarborough LLP
Meridian, 17th Floor
1320 Main Street
Columbia, South Carolina 29201

RE: Opposition to ABA Proposed Resolution 105

Dear President Hubbard,

It has come to my attention that the American Bar Association's House of Delegates is being asked to consider a resolution from the ABA's Standing Committee on Medical Professional Liability which denounces limitations on punitive damages in FDA-approved products and devices cases. The current report on the resolution 105 indicates "No minority views or opposition have been identified at this time." So, I am writing to you to communicate such opposition.

The New Jersey Civil Justice Institute is an association of many of New Jersey's leading employers, as well as small businesses, individuals, and not-for-profit trade groups that are united in our commitment to a legal system that upholds the rule of law and treats all parties fairly. We are concerned that resolution 105 tramples on both of those principles.

Limiting punitive damages in cases where the defendant has complied with government regulations is good public policy. It reinforces the FDA's authority and responsibility for drug and device approvals, and ensures that companies have every incentive to be 100% compliant with the FDA's edicts. Allowing companies to be punished, which is what punitive damages are designed to do, for complying with Federal law cheapens the value of adhering to the rule of law.

Punitive damages also impose great costs on defendants. In the context of FDA-regulated companies, these costs would be imposed on top of compliance costs. It is foolish to think that consideration of these costs would not impede the development of new drugs and devices, or inspire a company to take beneficial products off the market.

In addition, if passed, resolution 105 would put the ABA in opposition to existing New Jersey law as well as the Federal proposals it purports to target. N.J. Stat. Ann. § 2A:58C-5c, which has been on the books since 1987, limits punitive damages in New Jersey-based products liability actions involving FDA-approved products and devices. None of the negative outcomes of such a policy that are predicted in the current report on resolution 105 have, as of yet, befallen New Jersey, "the

nation's medicine chest." This suggests that there must be some other goal in mind of the supporters of the resolution.

For these reasons, we urge you to speak up in opposition to this resolution now, and to vote against it if it is indeed considered at the ABA Annual Meeting.

Sincerely,

Marcus Rayner
President, New Jersey Civil Justice Institute

cc: New Jersey members of the ABA House of Delegates