



2024 POSITION PAPER

HB83 / SB538

CIVIL ACTIONS - NONECONOMIC DAMAGES PERSONAL INJURY AND WRONGFUL DEATH FAVORABLE

The Impact of Maryland's Cap on Noneconomic Damages

Md. Cts. & Jud. Procs. Code § 11-108 limits the recovery of “noneconomic damages” (*i.e.*, every kind of loss other than wages/earnings or medical expenses) when unreasonably unsafe conduct causes personal injury or wrongful death.¹

For example, in a Maryland case, a tractor-trailer rear-ended a car driven by a 24-year-old female, who suffered shoulder injuries that required her to undergo disfiguring breast reduction surgery. The jury's total verdict of \$3,156,000 included \$2,367,000 in non-economic damages, reflecting the jury's understanding of the magnitude of the young woman's lifetime of pain and impaired self-esteem. Because of § 11-108, the verdict was cut by nearly two-thirds.²

In another example, a 25-year-old woman was kidnapped from her building's lobby by a felon who got a set of keys from the landlord, despite assurances to tenants that only carefully screened tenants could access common areas. Beaten and sexually assaulted, the young woman's traumatic experience did not stop her from working, so she had no significant wage loss. The jury's verdict was entirely non-economic, and was reduced to less than half by § 11-108.³

Decades of legal scholarship has shown that cap statutes like § 11-108 disproportionately limit the recoveries of women injured by negligence, due in part to disparities in wage-earning power, and also because the impact of harms more commonly experienced by women, such as sexual violence and reproductive impairment (such as pregnancy loss or infertility), commonly are compensated as non-economic loss damages: grief and emotional distress, altered sense of self, impaired relationships, *etc.*⁴

In similar fashion, § 11-108 impacts jury verdicts where unreasonably unsafe conduct injures or kills very young or very old Marylanders, because such cases have a very low lost wages/earning component. When a five-year old child drowned in a negligently managed pool at an Anne Arundel County country club, § 11-108 slashed the jury's verdict for his parents' grief and anguish by almost 75%.⁵

Enacted in 1986 as the first such “cap” statute in the nation, § 11-108 has limited the rights of all Maryland residents to obtain full and fair compensation in our own State Courts for close to four decades.

Meanwhile, ***none*** of Maryland's neighbors has enacted a similar cap on non-economic damages; indeed, Maryland is the only place on the U.S. Eastern Seaboard where the legislature has limited its own residents' rights to compensation in all personal injury and wrongful death actions.



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If any legitimate public policy reason existed for adopting a cap like § 11-108 – if such a law made Maryland’s economy more competitive (it does not), or made Maryland attractive to business (it does not), or reduced the cost of insurance (it does not), or improved life in Maryland in any way at all (it does not) – then more States would have followed Maryland’s lead. Instead, just nine other states have a law like § 11-108.

After almost forty years, we can see that § 11-108 has not boosted the State’s economy, or kept insurance costs low, or made life better. Of course, corporations and their insurers love § 11-108 because it makes unreasonably unsafe conduct affordable, and protects negligent actors from accountability to victims of unreasonably unsafe conduct, so they can cut corners on safety. The public policy of Maryland should not put corporate and insurance profits ahead of the safety of our residents and the people who visit here.

The § 11-108 cap on non-economic damages is bad public policy. The time has come to repeal § 11-108, and allow Marylanders once again to enjoy full access to civil justice and fair compensation when they are injured by unreasonably unsafe conduct.

The Maryland Association for Justice respectfully requests a FAVORABLE Report on HB 83 / SB 538.

¹ HB 83 would repeal this “general” noneconomic damages cap. HB 83 has no effect on caps applicable to health care providers, local or State government, boards of education, or the cap enacted last year pertaining to claims of sexual assault against a child.

² Wertz v. Wakefoose, Case No. 71695V (Cir. Ct. Montgomery County, Md. Dec. 2, 1993). Because the cap was \$350,000 in 1993, § 11-108 took away nearly two-thirds of the jury’s verdict.

³ Solder v. Queen-Anne Belvedere Assocs., Ltd., Case No. 24-L-90002826 (Cir. Ct. Baltimore County, Md. Jul 23, 1993).

⁴ See, e.g., Finley, “The Hidden Victims of Tort Reform: Women, Children, and the Elderly,” 53 Emory L.J. 1263, 1265 (2004) (“caps on noneconomic damages . . . have a significant adverse impact on women and the elderly”).

⁵ Freed v. DRD Pool Serv., Inc., 416 Md. 46, 5 A.3d 45 (2010). In this reported appellate decision, the Maryland Supreme Court refused to find § 11-108 unconstitutional. Accordingly, the only way Marylanders can get relief from § 11-108 is for the General Assembly to repeal it.

About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

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