

Testimony of George S. Tolley III

SB 584 Civil Actions – Noneconomic Damages – Personal Injury and Wrongful Death

FAVORABLE

Dear Chairman Smith, Vice Chair Waldstreicher, and Distinguished Members of the Senate Judicial Proceedings Committee:

I write to urge a **FAVORABLE** report on SB 584, which repeals Maryland’s cap on non-economic damages in Md. Cts. & Jud. Procs. § 11-108.

First, *§ 11-108 does not apply to medical malpractice claims*. Accordingly, repealing § 11-108 will have no effect on medical malpractice claims, which are governed by a separate damages cap (found in Md. Cts. & Jud. Procs. § 3-2A-09). Medical malpractice has a different cap because the reasons for a cap in that area of the law are completely different.

There is no dispute as to this fact. In written testimony last year, Medical Mutual admitted that *“the physician groups joining in this letter would not be directly affected by []repeal”* of § 11-108. Further, the plaintiff’s bar is working with the Maryland Hospital Association on language to insulate hospitals in Maryland from any negative effects from repealing § 11-108. *See* SB 681 / HB 926.

Repealing § 11-108 will not change the cap in medical malpractice claims. However, repealing the *general* cap that applies to every other kind of personal injury and wrongful death action (§ 11-108) will correct an historical injustice.

Second, forty (40) states in this country have no cap statute like § 11-108. Over 85% of the U.S. population reside in those 40 states. If § 11-108 were a magical law that somehow stabilizes unsustainable insurance markets, all of those other states would have been suffering

When the opponents of SB 584 talk about why they believe § 11-108 should be preserved, they point to events that happened four decades ago. Those events are irrelevant because the market conditions that allowed insurers to cancel policies for no reason or justification no longer exist in Maryland or anywhere else. Moreover, the insurance industry is earning profits globally at a record pace – billions of dollars in profits per month. The global market for insurance coverage no longer requires Marylanders to sacrifice their right to fair compensation determined by citizen juries to keep it afloat.

Third, there is nothing mysterious about non-economic damages. As noted, almost every state has no law like § 11-108. Non-economic damages in those states are not difficult for juries to calculate. In courtrooms across the United States, juries reach unanimous verdicts every day, including with respect to the valuation of non-economic damages.

In a personal injury case, the plaintiff must present evidence to prove that the unreasonably unsafe (*i.e.*, “negligent”) conduct of the defendant caused the plaintiff’s injuries. At a fair and impartial trial, the jury decides from the evidence whether the defendant is legally responsible and, if so, how much money will fairly compensate the plaintiff.

Even when injuries are *catastrophic*, juries routinely deliberate and reach unanimous verdicts to compensate plaintiffs fairly for their non-economic damages.

The insurance industry claims that § 11-108 must be preserved or else.

Or else . . . inconsistent and unfair judgments will cause Maryland's insurance market to collapse. But most of the country has no cap like § 11-108, and their insurance markets manage to work well, with available and affordable liability insurance.

Or else . . . juries will struggle to calculate fair and rational awards. Of course, juries are not told about § 11-108 but they still return unanimous verdicts without much struggle.

Or else . . . personal injury lawsuits will be easier to resolve through negotiation and settlement. That's actually a good thing; more settlements would allow courts to do their work more efficiently and with less cost to taxpayers.

Or else . . . juries might return "nuclear verdicts" of more than a million dollars. Under Maryland law, if the jury's verdict indicates that it was based on passion or other inappropriate factors, the trial judge (who heard the same evidence the jury heard) has authority to reduce the verdict and require the plaintiff to accept the reduction or choose to try the case with a new jury (this is called *remittitur*). Even with a cap, nuclear verdicts are possible because the jury isn't told about § 11-108.

Or else . . . the sky will fall. *Balderdash*. With four decades of experience, we now can see clearly that § 11-108 provides no benefit to Maryland or its citizens. Our insurance is not measurably cheaper, our business environment is not measurably stronger, our economy is not measurably more prosperous, and businesses are not flocking to relocate to Maryland despite having enacted back in 1986 what the insurance industry and tort reform zealots claim is a virtually magical statute.

None of Maryland's neighboring states – not Pennsylvania, nor Delaware, nor the District of Columbia, nor Virginia, nor West Virginia – indeed, no other State on the East Coast – has a law like § 11-108 that limits recoverable non-economic damages in personal injury cases. Section 11-108 puts "equal justice" beyond the reach of catastrophically injured Marylanders.

Maryland law should provide equal justice for all. Please enact HB 83 and repeal § 11-108.

I respectfully ask for a **FAVORABLE** report on **Senate Bill 584**.