

ALABAMA

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1. In your state, what are the categories of damages that are available in tort?

According to Alabama Pattern Jury Instructions, a plaintiff bringing a cause of action for personal injuries may recover for various damages including but not limited to: (1) Past and future medical expenses; (2) Loss of earnings; (3) Impairment of ability to earn; (4) Physical pain and suffering and any accompanying mental distress; (5) Permanent injuries and disabilities; (6) loss of society/consortium; and (6) Disfigurement.

Under Alabama law, punitive damages may not be awarded in civil actions other than those for wrongful death or “a tort action where it is proven by clear and convincing evidence that the defendant consciously or deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.” ALA. CODE. 6-11-20(a) (2008).

2. Are there any limitations or caps on recovery in tort actions?

While there are statutory caps that limit the amount of recovery in certain cases, Alabama law does not provide for statutory caps for economic and noneconomic damages in all tort cases. For example, the jury has discretion to award any amount of punitive damages to a plaintiff prevailing on a wrongful death claim. ALA. CODE § 6-11-21 (2008). The Code of Alabama does, however, set specific limitations on verdicts in some cases.

A plaintiff may be awarded noneconomic damages in medical malpractice cases, but “[i]n no action shall the amount of recovery for noneconomic losses, including punitive damages, either to the injured plaintiff, the plaintiff’s spouse, or other lawful dependents or any of them together exceed the sum of \$400,000.” ALA. CODE § 6-5-544(b). Although awards granted in excess of this amount will be reduced by the trial court, the statute provides that the jury may not be instructed to limit their verdict based on this provision. Id.

3. Are attorneys' fees available in tort actions? If so, under what circumstances?

In general, the non-prevailing party is not required to pay the prevailing party's attorneys' fees, but there are exceptions to this rule. Classroomdirect.com v. Draphix, LLC, 992 So. 2d 692 (Ala. 2008). For instance, "attorney fees may be recovered if they are provided for by statute or by contract or if they are called for by special equity, such as in proceedings where the attorney's efforts created a 'common fund' out of which fees may be paid." City of Bessemer v. McClain, 957 So. 2d 1061, 1078 (Ala. 2006) (quoting Reynolds v. First Alabama Bank of Montgomery, N.A., 471 So. 2d 1238 (Ala. 1985)).

4. Are there any instances in tort actions when pre-judgment interest is available for recovery?

Pre-judgment interest may only be awarded against 'sums as are certain or are capable of being made certain.'" First Nat'l Bank, N.A. v. First State Ins. Co., 899 F.2d 1045 (11th Cir. 1990). See ALA. CODE § 8-8-8 (2008).

5. In your state what proof is necessary to establish a right of recovery for economic damages, i.e. lost wages, medical expenses, etc.?

While damages do not have to be proven with mathematical certainty, they must flow directly and naturally from the breach of contract or duty and cannot be speculative or contingent. See e.g., Hover v. Kirk, 56 Ala. App. 257, 321 So. 2d 214 (Civ. App. 1975); Lindy Mfg. Co. v. Twentieth Century Marketing, Inc., 706 So. 2d 1169, 1178 (Ala. 1997); Blue Star Ready Mix v. Cleveland By and Through Cleveland, 473 So. 2d 497 (Ala. 1985). The plaintiff has the burden of showing the amount of loss claimed in such a way that the jury may calculate the amount of loss from the data furnished and not be placed in the position of operating from guesswork. Johnson v. Harrison, 404 So. 2d 337 (Ala. 1981); Segars v. Reaves, 567 So. 2d 249 (Ala. 1990); Corson v. Universal Door Systems, Inc., 596 So. 2d 565, 1991-2 Trade Cas. (CCH) ¶ 69568 (Ala. 1991).

6. Is there any distinction in your state relative to recovery for economic versus non-economic damages?

Economic losses can generally be calculated with reference to bills, paychecks, statements, etc. while awards for noneconomic damages require a much more subjective approach. The burden of proof remains the same.