

COLORADO

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

Colorado recognizes economic damages for past and future medical expenses and past and future lost wages. Colorado also recognizes several categories of non-economic damages, including: pain and suffering, permanent disfigurement, permanent physical impairment, and loss of enjoyment of life. Punitive damages are available where “the injury complained of is attended by circumstances of fraud, malice, or willful and wanton conduct.” C.R.S. § 13-21-102(1)(a).

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

In Colorado, there are no caps on economic damages in general tort actions. Non-economic damages are capped at \$468,010, although a judge can allow the jury to exceed the cap and award up to \$936,030 upon clear and convincing evidence. C.R.S. § 13-21-102.5(3)(a). Exemplary damages generally “shall not exceed an amount which is equal to the amount of the actual damages awarded,” although they may be increased under certain circumstances. C.R.S. § 13-21-102(1)(a), 102(3). In any event, punitive damages may not be more than treble the actual damages. C.R.S. 13-21-102(3).

Different caps apply in medical malpractice actions. Colorado imposes a cap of \$300,000 for non-economic damages and \$1 million total. C.R.S. § 13-64-302(1)(b), (c). The \$1 million cap can be exceeded upon good cause shown. C.R.S. § 13-64-302(1)(b).

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

Absent a contractual provision, a statute, or a court rule, Colorado does not allow a prevailing party to recover attorney’s fees. *Smith v. Mehaffy*, 30 P.3d 727, 732 (Colo. App. 2000). A notable statutory exception allows a party to recover reasonable attorney’s fees against an attorney or party who brings or defends an action in a manner that lacks substantial justification. C.R.S. § 13-17-102(2). An action lacks substantial justification if it is “substantially frivolous, substantially groundless, or substantially

vexatious.” C.R.S. § 13-17-102(4). However, the prevailing party may recover reasonable costs. C.R.C.P. 54(d).

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

A plaintiff may always recover prejudgment interest in Colorado. C.R.S. 13-21-101(1). The statute provides it is 9% simple interest from the date of the incident to the date of filing, and from the date of filing to judgment, the interest is 9% compounded annually. *Id.*

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

A Colorado plaintiff must establish their right to recover by a preponderance of the evidence. There is no particular evidence required to meet the preponderance standard for different types of damages. However, a plaintiff generally submits the following evidence in support of his/her claim: medical records and bills (for medical expenses); employment, business, and tax records (for lost wages); and the plaintiff’s own testimony (all categories, but particularly for non-economic damages). In some cases, expert testimony may be required to establish the plaintiff is entitled to damages. For example, an economist may testify about loss of earning capacity. Medical malpractice actions also frequently involve life care planners to testify about future medical care.

Further, Colorado courts have frequently discussed the “billed vs. paid” issue. A plaintiff may recover damages for the full amount they incurred, rather than the amount paid by the insurance company. *Volunteers of America v. Gardenswartz*, 242 P.3d 1080, 1082 (Colo. 2010).

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

No.