

## MONTANA

**Brian Taylor**  
**HALL & EVANS**

175 North 27<sup>th</sup> Street, Suite 1101  
Billings, MT 59106  
Phone: (406) 969-5231  
Cell: (406) 788-6542  
Fax: (406) 969-5233  
Email: [taylorb@hallevans.com](mailto:taylorb@hallevans.com)  
[www.hallevans.com](http://www.hallevans.com)

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

Montana recognizes two general categories of damages, general and special. Damages include pain and suffering, lost earning capacity, emotional distress, loss of future earning capacity, reasonable value of services, reasonable value of purchases, health care expenses, loss of established course of life and loss of consortium.

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

Generally, Montana does not have a limitation or cap on any recovery in Tort. There is one exception that is or may be applicable to this Compendium. Montana has a statutory codification of the “Dram Shop Act.” Mont. Code Ann. Sec. 27-1-710. This Act caps noneconomic damages at \$250,000.00 and punitive damages may not exceed \$250,000.00.

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

Generally, attorney fees are not allowed. Certain causes of action do permit the possibility of the recovery of attorney fees under a “may” standard. As applicable to this Compendium, the Montana Consumer Protection Act (MCPA) permits the Court to award the prevailing party with attorney fees for “unfair or deceptive acts or practices in the conduct of any trade or commerce.”

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

Generally, no. Montana allows the recovery of pre-judgment interest “on any claim for damages awarded that are capable of being made certain by calculation”. Mont. Code Ann. Sec. 278-1-210. However, this does not apply where the damages are “not capable of being made certain by calculation.” Id. The Statute explicitly states that damage for pain and suffering, mental anguish,

loss of consortium or established course of life. Simply stated damages related to personal injury are **not** subject to pre-judgment interest.

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

Preponderance of the Evidence (the greater weight of the evidence). However, Montana does recognize *Ridley* payments. *Ridley* requires an insurer to advance pay certain damages prior to settlement or judgment, subject to certain limitations. Specifically, where liability is reasonably clear the insurer has an obligation to pay a claimant for certain damages, including lost wages and medical expenses, if it is also reasonably clear that the expenses is casually related to the accident in question.

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

If this is referring to the burden of proof no.