

NORTH CAROLINA

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

Nominal, compensatory, and punitive damages are available in North Carolina.

Nominal damages are available “where some legal right has been invaded but no actual loss or substantial injury has been sustained.” *Title Ins. Co. of Minnesota v. Smith, Debnam, Hibbert and Pahl*, 119 N.C. App. 608, 611, 459 S.E.2d 801, 804 (1995). Such damages usually consist of “some trifling amount,” but are awarded in recognition of a lawful right and the technical injury resulting from its violation. *Potts v. Howser*, 274 N.C. 49, 61, 161 S.E.2d 737, 747 (1968). Nominal damages are sometimes described as a “peg” on which to hang costs or punitive damages. *See Potts v. Howser*, 274 N.C. 49, 161 S.E.2d 737 (1968); *Rogers v. T.J.X. Companies, Inc.*, 329 N.C. 226, 404 S.E.2d 664 (1991).

Compensatory damages includes both general and special damages. General damages include such matters as mental or physical pain and suffering, inconvenience, or loss of enjoyment “which cannot be definitively measured in monetary terms.” *Iadanza v. Harper*, 169 N.C. App 776, 779, 611 S.E.2d 217, 221 (2005). Special damages are usually synonymous with pecuniary loss. Medical and hospital expenses, as well as loss of earnings are regarded as special damages in tort cases. *See id.*

Punitive damages are governed by Chapter 1D of the North Carolina General Statutes. “Punitive damages may be awarded only if the claimant proves that the defendant is liable for compensatory damages and that one of the following aggravating factors was present and was related to the injury for which compensatory damages were awarded: (1) fraud; (2) malice; (3) willful or wanton conduct.” N.C. Gen. Stat. § 1D-15(a). These aggravating factors must be proved by “clear and convincing” evidence.” N.C. Gen. Stat. § 1D-15(b). Punitive damages may only be awarded against a corporation if the “officers, directors, or managers of the corporation participated in or condoned the conduct constitution the aggravating factor giving rise to punitive damages.” N.C. Gen. Stat. § 1D-15(c). Punitive damages may not be awarded against a person solely for breach of contract. N.C. Gen. Stat. § 1D-15(d).

Note that while section 1D-15(a) states punitive damages may only be recovered “if the claimant proves that the defendant is liable for compensatory damages,” North Carolina courts have held that an award of nominal damages satisfies this requirement. *See Mace v. Pyatt*, 203 N.C. App. 245, 255, 691 S.E.2d 81, 89 (2010).

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

Yes. North Carolina limits punitive damages to three times the amount of compensatory damages or \$250,000, whichever is greater. N.C. Gen. Stat. § 1D-25(b). Otherwise, compensatory damages may be limited where the plaintiff failed to mitigate. *See Biemann and Rowell Co. v. Donohoe Companies, Inc.*, 147 N.C. App. 239, 556 S.E.2d 1, 124 A.L.R.5th 763 (2001).

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

Sometimes. The general rule in North Carolina is that attorneys' fees are only recoverable when a statute specifically authorizes recovery. *Hicks v. Clegg’s Terminate and Pest Control, Inc.*, 132 N.C. App. 383, 385, 132 S.E.2d 85, 87 (1999).

N.C. Gen. Stat. § 6-21.1 allows for an award of attorneys’ fees as part of costs in certain cases. The statute provides in pertinent part:

In any personal injury or property damage suit, or suit against an insurance company under a policy issued by the defendant insurance company in which the insured or beneficiary is the plaintiff, instituted in a court of record, upon findings by the court (i) that there was an unwarranted refusal by the defendant to negotiate or pay the claim which constitutes the basis of such suit, (ii) that the amount of damages recovered is twenty-five thousand dollars (\$25,000) or less, and (iii) that the amount of damages recovered exceeded the highest offer made by the defendant no later than 90 days before the commencement of trial, the presiding judge may, in the judge's discretion, allow a reasonable attorneys' fees to the duly licensed attorneys representing the litigant obtaining a judgment for damages in said suit, said attorneys' fees to be taxed as a part of the court costs. The attorneys' fees so awarded shall not exceed ten thousand dollars (\$10,000).

N.C. Gen. Stat. § 6-21.1(a).

Additionally, N.C. Gen. Stat. § 6-21.5 provides for an award of attorneys’ fees to the prevailing party “if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading.” In deciding a motion brought under N.C. Gen. Stat. § 6-21.5, the trial court is required to evaluate whether the losing party persisted in litigating the case after a point where he should reasonably have become award that the pleading he filed no longer contained a justiciable issue. Such an issue could be the running of the statute of limitations. *Sunamerica Fin. Corp. v. Bonham*, 328 N.C. 254, 257-58, 400 S.E.2d 435, 437-38 (1991).

Statutory tort actions also have statutory attorneys' fees provisions. The North Carolina Trade Secrets Protection Act allows the award of attorneys' fees to the prevailing party if a claim is "made in bad faith" or "if willful and malicious misappropriation exists." N.C. Gen. Stat. § 66-154(d). Additionally, the Court may award attorneys fees in an action for unfair or deceptive trade practices if "the party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit," or "he party instituting the action knew, or should have known, the action was frivolous and malicious." N.C. Gen. Stat. § 75-16.1

North Carolina's offer of judgment rule allows only for recovery of costs but not attorneys' fees. *See* N.C. Gen. Stat. § 1A-1, Rule 68.

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

Yes. In tort actions, "any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is commenced until the judgment is satisfied." N.C. Gen. Stat. § 24-5(b). However, any other portion of the judgment, such as punitive damages, only bears interest from the date of entry of the judgment. *See 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.?

For actions arising on or after October 1, 2011, amended N.C. Rule of Evidence 414 provides:

Evidence offered to prove past medical expenses shall be limited to evidence of the amounts actually paid to satisfy the bills that have been satisfied, regardless of the source of payment, and evidence of the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied. This rule does not impose upon any party an affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled.

N.C. Gen. Stat. § 8C-1, Rule 414. Under the plain language of Rule 414, a plaintiff can only submit evidence of the amounts actually paid or that will be necessary to pay in order to satisfy his or her medical bills. A plaintiff cannot submit evidence of the total amount of medical bills if that total amount was not paid or has been reduced.

In order to recover, a plaintiff must prove that medical services were reasonable or necessary. N.C. Gen. Stat. § 8-58.1 creates a scheme of presumptions that allow the injured party to carry that burden. Section 8-58.1 states:

(a) Whenever an issue of hospital, medical, dental, pharmaceutical, or funeral charges arises in any civil proceeding, the injured party or his guardian, administrator, or executor is competent to give evidence regarding the amount paid or required to be paid in full satisfaction of such charges, provided that records or copies of such charges showing the amount paid or required to be paid in full satisfaction of such charges accompany such testimony.

(b) The testimony of a person pursuant to subsection (a) of this section establishes a rebuttable presumption of the reasonableness of the amount paid or required to be paid in full satisfaction of the charges. However, in the event that the provider of hospital, medical, dental, pharmaceutical, or funeral services gives sworn testimony that the charge for that provider's service either was satisfied by payment of an amount less than the amount charged, or can be satisfied by payment of an amount less than the amount charged, then with respect to that provider's charge only, the presumption of the reasonableness of the amount charged is rebutted and a rebuttable presumption is established that the lesser satisfaction amount is the reasonable amount of the charges for the testifying provider's services. For the purposes of this subsection, the word "provider" shall include the agent or employee of a provider of hospital, medical, dental, pharmaceutical, or funeral services, or a person with responsibility to pay a provider of hospital, medical, dental, pharmaceutical, or funeral services on behalf of an injured party.

(c) The fact that a provider charged for services provided to the injured person establishes a permissive presumption that the services provided were reasonably necessary but no presumption is established that the services provided were necessary because of injuries caused by the acts or omissions of an alleged tortfeasor.

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

Yes. North Carolina applies the economic loss doctrine, which generally bars recovery in tort for damages arising out of a breach of contract. *See Rountree v. Chowan County*, ___ N.C. App. ___, ___, 796 S.E.2d 827, 830 (2017).

A tort action does not lie against a party to a contract who simply fails to properly perform the terms of the contract, even if that failure to perform was due to the negligent or intentional conduct of that party, when the injury resulting from the breach is damage to the subject matter of the contract. It is the law of contract and not the law of negligence which defines the obligations and remedies of the parties in such a situation.

Lord v. Customized Consulting Specialty, Inc., 182 N.C. App. 635, 639, 643 S.E.2d 28, 30–31 (2007) (alteration omitted) (citations omitted).