

PENNSYLVANIA

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

Pennsylvania allows the full range of compensatory damages, including property damages, medical and incidental expenses, lost earnings, lost future earnings, disfigurement, loss of consortium, pain and suffering and emotional distress. Punitive damages are also available and are capped at twice the amount of compensatory damages.

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

Generally, no. Such caps are unconstitutional under the Pennsylvania Constitution. Pa. Const. Art. III, § 18. There are limited statutory exceptions for claims against the Commonwealth and local government agencies. Under 42 Pa.C.S. § 8528, Claims against the Commonwealth are capped at \$250,000.00 per plaintiff with an aggregate cap of \$1,000,000.00. Claims against local parties are capped at \$500,000.00 per plaintiff and \$500,000.00 in the aggregate by 42 Pa.C.S. § 8553.

Punitive damages are capped at 200% of compensatory damages.

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

Yes, as a penalty for "dilatory, obdurate or vexatious conduct during the pendency of a matter, or for "conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith." 42 Pa.C.S. § 2503.

Pennsylvania also has a statutory cause of action for "wrongful use of civil proceedings." 42 Pa.C.S. 8351, *et seq.* Known as the "Dragonetti Act," the law allows a victorious party to sue his or her opponent, including the opposing attorney where:

- (1) he acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that

of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and

(2) the proceedings have terminated in favor of the person against whom they are brought. 42 Pa.C.S. 8351.

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

Yes, as delay damages only. Pre-judgment interest is available in suits for bodily injury, death and property damage at the prime rate +1%. Interest for delay begins to accrue one year after the first service of process. If the defendant makes a written settlement offer that remains open for at least 90 days, or to the start of trial, and the plaintiff recovers at least 125% of the offer, the period when the offer was open is excluded from the calculation. Delays due to the plaintiff's conduct are also excluded. Pa. R.C.P. 238.

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

Other than carrying one's burden of proof by a preponderance of the evidence, no special proof is required.

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

No, other than the cap on punitive damages being 200% of the actual damages.