

## UTAH

**Kyle R. Wilson**  
**Quinten J. Whiteside**  
**WRIGHT, LINDSEY & JENNINGS LLP**  
200 West Capitol Avenue, Suite 2300  
Little Rock, AR 72201  
Phone: (501) 371-0808  
Fax: (501) 376-9442  
[kwilson@wlj.com](mailto:kwilson@wlj.com)  
[qwhiteside@wlj.com](mailto:qwhiteside@wlj.com)  
[www.wlj.com](http://www.wlj.com)

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

Compensatory (e.g. pain and suffering, mental and physical, disfigurement, limited life enjoyment, etc.) and punitive damages.

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

There are no caps on recovery for general liability claims. But concerning healthcare, a person can only recover for noneconomic losses up to \$450,000.00. Utah Code Ann. §78B-3-410. An exception to that rule is in wrongful death malpractice cases. In those circumstances, the Supreme Court of Utah held the limits are unconstitutional because it violates the constitutional provision protecting the recovery of damages for wrongful death. *Smith v. U.S.*, 20125 UT 68, 356 P.3d 1249, 1257 (2015).

Furthermore, U.C.A. §63G-7-604 outlines limits for tort actions against governmental entities to \$233,600 for a single occurrence in a property damage claim, \$583,900 for a personal injury claim, and \$2,000,000 as the aggregate amount of individual awards that may be awarded in relation to a single occurrence.

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

Generally, attorney fees are not recoverable by a prevailing party unless authorized by statute or contract. *Gallegos v. Lloyd*, 2008 UT App. 40, 178 P.3d 922, 924 (2008). But while that is the general rule, there are exceptions. *Id.* These exceptions include the private attorney general doctrine, third-party tort rule, and in an instance of an employer's breach of contract of good faith and fair dealing. *Id.*

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

Yes. U.C.A. §78B-5-824 directly addresses this point by stating a plaintiff, counterclaim plaintiff, or crossclaim plaintiff, "seeking to recover damages for personal injury or wrongful death may claim prejudgment interest." To collect this interest, there must be a

written demand and the amount must not exceed 1-1/3 of the amount of the judgment eventually awarded at trial. The interest is computed as simple interest. U.C.A. §78B-5-824. The rate applied to all cases may not be lower than 5% or higher than 10%. U.C.A. §78B-5-824.

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

The proof necessary is two-fold. *Renegade Oil, Inc. v. Progressive Cas. Ins. Co.*, 2004 UT App 356, 101 P.3d 383, 386 (2004). First, the plaintiff must prove plaintiff suffered damages by a reasonable probability. *Id.* Second, plaintiff must prove the amount of damages but with a lesser level of persuasiveness and may be based on approximations. *Id.* This approximation must be a reasonable estimate of the amount of damages. Model Utah Jury Instruction CV2002 (2014).

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

Yes. In medical malpractice cases, non-economic damages are capped at \$450,000.00 unless it is a wrongful death case.