

WEST VIRGINIA

Kent J. George
ROBINSON & MCELWEE PLLC
P.O. Box 1791
Charleston, WV 25326
Phone: (304) 344-5800
Fax: (304) 344-9566
kjg@ramlaw.com
www.ramlaw.com

E. Ryan Kennedy
ROBINSON & MCELWEE PLLC
P.O. Box 128
Clarksburg, WV 26302
Phone: (304) 622-5022
Fax: (304) 622-5065
erk@ramlaw.com
www.ramlaw.com

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

West Virginia allows both general and special damages. General, or non-economic, damages are those naturally presumed to flow from the breach alleged. *Gerver v. Benavides*, 530 S.E.2d 701, 708 (W. Va. 1999). Special, or economic, damages, include lost wages and income, medical expenses, damages to personal property and similar out-of-pocket expenditures. W. Va. Code § 56-6-31; *Buckhannon & N.R. Co. v. Great Scott Coal & Coke Co.*, 83 S.E.1031, 1031 (W. Va. 1914).

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

Yes. The rate of pre-judgment shall not exceed 11% per annum or be less than 7% per annum. The administrative office of the West Virginia Supreme Court of Appeals annually determines the interest rate to be paid upon judgments or decrees. The current rate is 7%.

Punitive damages are limited to acts of actual malice or a conscious, reckless and outrageous indifference to the health, safety and welfare of others, must be proven by clear and convincing evidence, and are capped at no more than four (4) times compensatory damages or Five Hundred Thousand Dollars (\$500,000.00); whichever is greater. W.Va. Code § 55-7-29.

Punitive damages are limited to acts of actual malice or a conscious, reckless and outrageous indifference to the health, safety and welfare of others, and are capped at no more than four times compensatory damages or \$500,000, whichever is greater. Additionally, in medical malpractice cases, non-economic damages are limited to \$250,000 or \$500,000, depending on the severity of the injuries.

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

West Virginia permits the recovery of attorneys' fees in tort actions in limited circumstances. In general, West Virginia follows the "American Rule" in which each party pays their own attorneys' fees. *Horkulic v. Galloway*, 665 S.E.2d 284, 297 (W. Va. 2008). However, attorneys' fees may be recovered (1) when permitted by a "fee-shifting" statute or (2) as a sanction for bad conduct by a party. *Id.*

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

West Virginia Code § 56-6-31 controls pre-judgment interest for torts. West Virginia Code § 56-6-31(a) provides that all judgments accrue post-judgment interest but that only certain types of judgments, those "for special damages . . . or for liquidated damages", accrue pre-judgment interest. The statute further defines "special damages" as "includ[ing] lost wages and income, medical expenses, damages to tangible personal property and similar out-of-pocket expenditures, as determined by the court."

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

West Virginia allows both general and special damages. General damages are those naturally presumed to flow from the breach alleged and require no specific proof as to amount. *Gerver v. Benavides*, 530 S.E.2d 701, 708 (W. Va. 1999). Special damages, including both economic and non-economic damages require proof to a reasonable certainty. W. Va. Code § 56-6-31; *Buckhannon & N.R. Co. v. Great Scott Coal & Coke Co.*, 83 S.E.1031, 1031 (W. Va. 1914).

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

West Virginia allows both general and special damages. General or non-economic damages are those naturally presumed to flow from the breach alleged and require no specific proof as to amount. *Gerver v. Benavides*, 530 S.E.2d 701, 708 (W. Va. 1999) Special, or economic, damages, including lost wages and income, medical expenses, damages to personal property and similar out-of-pocket expenditures require proof to a reasonable certainty. W. Va. Code § 56-6-31; *Buckhannon & N.R. Co. v. Great Scott Coal & Coke Co.*, 83 S.E.1031, 1031 (W. Va. 1914).

In medical malpractice cases, noneconomic damages are limited to \$250,000 or \$500,000, depending on the severity of the injuries. Further, pursuant to West Virginia Code Section 56-6-31, economic damages accrue pre-judgment interest from the date on which the right to sue arose.