

WYOMING

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

Wyoming law allows for recovery of seven categories of damages in a tort action: (1) past and future pain, suffering and emotional distress; (2) disability and/or disfigurement; (3) loss of enjoyment of life and any loss of enjoyment of life reasonable probable to be experienced in the future; (4) loss of earnings and earning capacity; (5) loss of consortium; (6) reasonable expenses for necessary medical care, treatment and services rendered to date and any medical expense reasonably probable to be incurred in the future; and (7) reasonable caretaking expenses. WYO. CIV. PATTERN JURY INSTR., INSTR. NO. 4.01. Measure of Damages—Personal Injury; *see also* Wyo. Stat. Ann. § 1-1-109 (Lexis 2017)

Punitive damages are available “in circumstances involving outrageous conduct, such as intentional torts, torts involving malice and torts involving willful and wanton misconduct.” *Cramer v. Powder River Coal, LLC*, 204 P.3d 974, 979 (Wyo. 2009) (citation omitted). Willful and wanton misconduct is defined in Wyoming as:

the intentional doing of an act, or an intentional failure to do an act, in reckless disregard of the consequences, and under such circumstances and conditions that a reasonable person would know, or have reason to know, that such conduct would, with a high degree of probability, result in harm to another.

Id. at 979; WYOMING CIV. PATTERN JURY INSTR., INSTR. NO. 4.06.

In a wrongful death suit, Wyoming’s wrongful death statute provides that “fair and just” damages may be awarded. Wyo. Stat. Ann. § 1-38-102(c)(Lexis 2017). Fair and just damages have been recognized as loss of probable future companionship, society and comfort, but excludes mental suffering. *Id.*; *Knowles v. Corkill*, 51 P.3d 859, 864-865 (2002).

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

No. The Wyoming Constitution provides that “[n]o law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person.” Wyo. Const. art. 10 § 4.

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

Wyoming law abides by the American rule, providing that each party is responsible for his or her own attorney fees. *Thorkildsen v. Belden*, 269 P.3d 421, 424 (Wyo. 2012). Attorney fees are recoverable under the American Rule only where a contractual or statutory provision authorizes such recovery, or as a form of punitive damages when such damages can properly be awarded. *Hatch v. Walton*, 343 P.3d 390, 398 (Wyo. 2015)(citing *Alexander v. Meduna*, 47 P.3d 206, 220-221(Wyo. 2002).

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

Not at this time. There is no statute that addresses prejudgment interest and the Wyoming Supreme Court has neither recognized the availability in a personal injury case nor the occasion to address the question.

However, in *Stocki v. Nunn*, the Wyoming Supreme Court recognized an openness to reviewing the question of expanding the common law to include prejudgment interest on liquidated damages in personal injury cases if the proper case arises. 351 P.3d 911, 936 n.3 (Wyo. 2015). For an element of damage to qualify for prejudgment interest in Wyoming: 1) the claim must be liquidated, i.e., readily computable with simple mathematics; and 2) the debtor must have notice of the amount due before the interest begins to accumulate. *Id.* at 936 (citing *KM Upstream, LLC v. Elkhorn Constr., Inc.*, 278 P.3d 711, 727 (Wyo. 2012).

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

Plaintiff must demonstrate by a preponderance of the evidence that there is a causal connection between the breach of duty and the economic injury claimed. The breach of duty does not have to be the sole cause of the economic injury; plaintiff must demonstrate that the actions of the defendant was a substantial cause of the resulting injury.

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

No.