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

There are generally two types of damages available in Michigan tort claims: economic and non-economic. Economic claims consist of lost wages, medical expenses, and loss of earning capacity. M Civ JI 50.05 - 50.06. Non-economic damages include compensation for physical pain and suffering, mental anguish, fright and shock, denial of social pleasure and enjoyments, and embarrassment, humiliation or mortification. M Civ JI 50.02.

Punitive damages have never been permitted in Michigan. Kewin v. Massachusetts Mut Life Ins. Co., 295 N.W.2d 50 (Mich. 1980). Exemplary damages are, however, awardable where the defendant commits a voluntary act which inspires feelings of humiliation, outrage, and indignity. The conduct must be malicious or so wilful and wanton as to demonstrate a reckless disregard of the plaintiff’s rights.” Jackson Printing Co v. Mitan, 425 N.W.2d 791 (Mich. App. 1988). Because exemplary damages are only available as compensation for injury arising from conduct that is either malicious or willful and wanton, they are not available for negligence.

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

Although recovery is not typically limited in tort actions, statutory caps exist in certain actions. The first is in medical malpractice claims where noneconomic damages are capped at $812,500 for death or loss of bodily function. MCL 600.1483. However, the caps do not apply to death actions when the qualifying injury occurred before death. Young v. Nandi, 740 N.W.2d 508 (Mich. App. 2007).

The same caps apply in product liability actions resulting in bodily injury and death. Similarly, the caps do not apply in product liability actions if the defendant was grossly negligent or willfully disregarded a known defect that was substantially likely to cause an injury. MCL 600.2946a(3); 600.2949a.

Damages awarded against an entity leasing motor vehicles under the Owners Liability Act are capped at $20,000 for bodily injury to or death of one person in one accident, and
$40,000 for bodily injury to or death of two or more persons in any one accident. MCL 257.401(3).

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

Attorneys’ fees are not generally available in Michigan unless expressly authorized. *Nemeth v. Abondmarche Dev. Inc.*, 576 N.W.2d 641 (Mich. 1998). When assessing whether attorneys’ fees are recoverable three main issues are considered: (1) whether the authority relied upon is contract, statute, or court rule; (2) whether the award is mandatory or discretionary; and (3) whether the fees are actual or reasonable fees.

An express authorization to recover attorneys’ fees must be both expressly worded and not ambiguous. For example, the phrase “such expenses . . . as the court deems proper” is not sufficient. *Kenneth v. Watha*, 323 N.W.2d 8 (Mich. App. 1982).

The Michigan No-Fault Act, MCL 500.3101 et seq., permits an attorney to recover reasonable fees in auto related cases when pursing an action for overdue personal or property protection insurance benefits. MCL 500.3148(1). Benefits are overdue if not paid within 30 days after reasonable proof has been supplied to the insurer. MCL 500.3142(2). If the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment, the court may charge the insurer for the attorneys’ fee as well as the benefits recovered.

Certain Michigan Court rules also permit limited means of recovery for attorneys’ fees. See, e.g., MCR 1.109(E)(6) (as amended with original effective date of January 1, 2018, deferred until further order of the court) (pleading signed in bad faith); MCR 2.403(O)(1) (case evaluation sanctions); MCR 2.405(D)(1) (offers of judgment); MCR 2.625(A) (filing frivolous action or defense).

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

Statutory interest is governed by MCL 600.6013 (MCL 600.6455 in court of claims cases, a court of limited jurisdiction governing claims brought against the state). This form of interest is mandatory and must be applied to the amount of the verdict from the time the complaint was filed until satisfaction of the judgment. *Hadfield v. Oakland County Drain Comm’r*, 554 NW2d 43 (Mich. App. 1996). On a claim raised for the first time in an amended complaint, prejudgment interest is assessed from the date of filing the original complaint, unless that defendant was added as a new party in the amended complaint. *Phinney v. Verbrugge*, 564 NW2d 532 (Mich. App. 1997).

In personal injury cases, prejudgment interest may not be assessed on future damages. MCL 600.6013(1). However, prejudgment interest may be awarded for future damages where the action does not result from personal bodily injury. *Phinney*, 564 N.W.2d at 549 (citing *Paulitch v. Detroit Edison Co*, 528 NW2d 200 (Mich. App. 1995)). Prejudgment interest is not available to a decedent’s survivors for their future loss of the decedent’s society and
companionship. Those damages fall within the definition of personal injury contained in MCL 600.6301(b) because they involve “emotional harm resulting from bodily harm.” *Rickwalt v. Richfield Lakes Corp.*, 633 N.W.2d 418 (Mich. App. 2001).

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 lost wages in Michigan, juries are instructed to award damages resulting from a personal injury not for actual lost wages, but for lost earning capacity. M Civ JI 50.06 The two categories of damages are often equivalent. In such a case, lost earning capacity or impaired earning capacity is proved by preinjury paycheck stubs, payroll sheets, W-2s, and the like.

The rule is modified for no-fault actions, both first party and third party. Under MCL 500.3107, recovery is limited to work loss during the first three years after the date of the accident and is based on gross income reduced by 15 percent. Temporarily unemployed persons are entitled to work-loss benefits based on earned income for the last month they were employed full time preceding the accident. MCL 500.3107a. The no-fault insurer is not obligated to pay anything for lost or impaired earning capacity. *Ouellette v. Kenealy*, 378 NW2d 470 (Mich. 1985). Thus, in no-fault cases, unlike other personal injury cases, the recovery is limited to the amount plaintiff would have earned but for the injury, instead of what the plaintiff could have earned. *Swartout v State Farm Mut. Auto Ins. Co.*, 401 N.W.2d 364 (Mich. App. 1986).

All reasonable expenses of necessary medical care, treatment, and services are fully recoverable as damages. M Civ JI 50.05. To make such recovery, the plaintiff must show that the medical care was necessary and that the expenses incurred for the medical care were reasonable. The reasonableness of expenses is usually not a matter of dispute, but where a dispute exists, it is usually sufficient for the plaintiff to submit medical bills to show that the sums were actually paid or are to be paid.

In a personal injury action in which the plaintiff seeks to recover for the expense of medical care, rehabilitation services, loss of earnings, loss of earning capacity, or other economic loss, evidence is required to establish that the expense or loss was paid or is payable, in whole or in part. Additionally, if the court determines that all or part of the plaintiff’s expense or loss has been paid or is payable by a collateral source, then the court shall reduce that portion of the judgment which represents damages paid or payable by a collateral source. MCL 600.6303.

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

Yes, Michigan is a “modified comparative negligence” state, which means that notwithstanding certain statutory exceptions, liability is several for each person’s fault which may include non-parties. This principle, which is codified in MCL 600.6304, precludes parties from recovering non-economic damages for personal injury if his or her fault is ultimately determined to be greater than the aggregate fault of other persons also deemed to be at fault.