INTRODUCTION

Your company operates in multiple jurisdictions. Damages caps in each state can significantly impact the value of your claims and lawsuits. This USLAW NETWORK compendium provides a state-by-state analysis of the liability damages caps in place in each state so you can easily assess the different damages caps each state.

We hope you find the material useful.

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ABOUT USLAW NETWORK

Mega-firms...big, impersonal bastions of legal tradition, encumbered by bureaucracy and often slow to react. The need for an alternative was obvious. A vision of a network of smaller, regionally based, independent firms with the capability to respond quickly, efficiently and economically to client needs from Atlantic City to Pacific Grove was born. In its infancy, it was little more than a possibility, discussed around a small table and dreamed about by a handful of visionaries. But the idea proved too good to leave on the drawing board. Instead, with the support of some of the country's brightest legal minds, USLAW NETWORK became a reality.

Fast-forward to today.
The commitment remains the same as originally envisioned. To provide the highest quality legal representation and seamless cross-jurisdictional service to major corporations, insurance carriers, and to both large and small businesses alike, through a network of professional, innovative law firms dedicated to their client's legal success. Now as a diverse network with more than 6,000 attorneys from more than 60 independent, full practice firms with roots in civil litigation across the U.S., Canada, Latin America and Asia, and with affiliations with TELFA in Europe and ALN in Africa, USLAW NETWORK remains a responsive, agile legal alternative to the mega-firms.

Home Field Advantage.
USLAW NETWORK offers what it calls The Home Field Advantage which comes from knowing and understanding the venue in a way that allows a competitive advantage – a truism in both sports and business. Jurisdictional awareness is a key ingredient to successfully operating throughout the United States and abroad. Knowing the local rules, the judge, and the local business and legal environment provides our firms' clients this advantage. The strength and power of an international presence combined with the understanding of a respected local firm makes for a winning line-up.

A Legal Network for Purchasers of Legal Services.
USLAW NETWORK firms go way beyond providing quality legal services to their clients. Unlike other legal networks, USLAW is organized around client expectations, not around the member law firms. Clients receive ongoing educational opportunities, online resources including webinars, jurisdictional updates, and resource libraries. We also provide a semi-annual USLAW Magazine, USLAW DigiKnow, which features insights into today's trending legal topics, compendiums of law, as well as annual membership and practice group directories. To ensure our goals are the same as the clients our member firms serve, our Client Leadership Council and Practice Group Client Advisors are directly involved in the development of our programs and services. This communication pipeline is vital to our success and allows us to better monitor and meet client needs and expectations.

USLAW Abroad.
Just as legal issues seldom follow state borders, they often extend beyond U.S. boundaries as well. In 2007, USLAW established a relationship with the Trans-European Law Firms Alliance (TELFA), a network of more than 20 independent law firms representing more than 700 lawyers through Europe. Subsequently, in 2010 we entered a similar affiliation with the ALN (formerly the Africa Legal Network) to further our service and reach. Additionally, USLAW member firms are located throughout Canada, Latin America, and Asia.

How USLAW NETWORK Membership is Determined.
Firms are admitted to the NETWORK by invitation only and only after they are fully vetted through a rigorous review process. Many firms have been reviewed over the years, but only a small percentage were eventually invited to join. The search for quality member firms is a continuous and ongoing effort. Firms admitted must possess broad commercial legal capabilities and have substantial litigation and trial experience. In addition, USLAW NETWORK members must subscribe to a high level of service standards and are continuously evaluated to ensure these standards of quality and expertise are met.

USLAW in Review.
• All vetted firms with demonstrated, robust practices and specialties
• Efficient use of legal budgets, providing maximum return on legal services investments
• Seamless, cross-jurisdictional service
• Responsive and flexible
• Multitude of educational opportunities and online resources
• Team approach to legal services

The USLAW Success Story.
The reality of our success is simple: we succeed because our member firms’ clients succeed. Our member firms provide high-quality legal results through the efficient use of legal budgets. We provide cross-jurisdictional services eliminating the time and expense of securing adequate representation in different regions. We provide trusted and experienced specialists quickly.

When a difficult legal matter emerges – whether it’s in a single jurisdiction, nationwide or internationally – USLAW is there. Success.

For more information, please contact Roger M. Yaffe, USLAW CEO, at (800) 231-9110 or roger@uslaw.org
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**ALABAMA**

Alabama does not allow punitive damages in cases of breach of contract or simple negligence.¹ Punitive damages are not recoverable as a matter of right unless provided by the statute.²

In all civil actions where an entitlement to punitive damages shall have been established, no award of punitive damages shall exceed three times the compensatory damages of the party claiming punitive damages or five hundred thousand dollars ($500,000), whichever is greater.³ However, if entitled to punitive damages against a defendant who is a small business, no award of punitive damages shall exceed fifty thousand dollars ($50,000) or 10% of the business's net worth, whichever is greater.⁴ To qualify as a small business, the business must have a net worth of two million dollars ($2,000,000) or less at the time of the occurrence that is the basis of the suit.⁵ Other than actions for wrongful death or for intentional infliction of physical injury, all other civil actions for physical injury where punitive damages has been established, the award shall not exceed three times the compensatory damages of the party claiming punitive damages or one million five hundred thousand dollars ($1,500,000), whichever is greater.⁶

Where the damages assessed against a defendant by the trier of fact include an award of future damages, judgment shall be entered against the defendant for all past damages and punitive damages assessed against the defendant by the trier of fact.⁷ If the award of future damages is $150,000 or less, the trial court shall enter judgment against the defendant for the amount of such future damages.⁸ If the award of future damages is greater than $150,000, judgment shall be entered against the defendant for $150,000 of such future damage.⁹ If the plaintiff's contract with his attorney obligates the plaintiff to pay his attorney a portion of the award of future damages which exceeds $150,000, the Court shall determine what portion of the award of future damages in excess of $150,000 is owed to the attorney and shall enter judgment for the remainder of the award of future damages in excess of $150,000.¹⁰ The portion of the award of future damages in excess of $150,000 which is owed to the plaintiff's attorney shall be reduced to present value by the court and the defendant shall pay the reduced amount.¹¹ For the portion of a future damages award in excess of $150,000 and in excess of the attorney's fee, judgment shall be entered requiring the defendant to pay that portion of such future damages by periodic payments over a period of years.¹²

Alabama is the only State that allows only discretionary punitive damages in wrongful-death cases.¹³ Such damages cannot be tied to concrete compensatory items such as future earnings, medical fees, and funeral expenses.¹⁴ This results in very few wrongful-death damages being reduced to dollar figures as a formal part of the litigation except in final settlement or at trial, with the result being that Alabama's wrongful death suits are seldom removable to federal court.¹⁵ There is no ceiling on recovery for wrongful death claims.¹⁶

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¹ *Exxon Mobil Corp. v. Alabama Dep't of Conservation and Natural Res.*, 986 So. 2d 1093 (Ala. 2007).
³ Ala.Code § 6-11-21(a).
⁴ Ala.Code § 6-11-21(b).
⁵ Ala.Code § 6-11-21(c).
⁶ Ala.Code § 6-11-21(d) and (j).
⁷ Ala.Code § 6-11-3(1).
⁸ Ala.Code § 6-11-3(2).
⁹ Ala.Code § 6-11-3(3)(a).
¹⁰ Ala.Code § 6-11-3(3)(b).
¹¹ Ala.Code § 6-11-3(3)(c)(1).
¹² Ala.Code § 6-11-21(j).
¹⁵ Roe, 514 F.Supp.2d at 1000.
¹⁶ Ala.Code § 6-11-21(j).

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**ALASKA**

In an action to recover noneconomic damages for personal injury or wrongful death, the damages awarded out of a single injury or death may not exceed $400,000 or the injured person's life expectancy in years multiplied by $8,000, whichever is greater.¹⁷ In an action for personal injury when the damages are awarded for severe permanent physical impairment or severe disfigurement, the award may not exceed $1,000,000 or the person's life expectancy in years multiplied by $25,000, whichever is greater.¹⁸

In Alaska, punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to the plaintiff in the action, or the sum of $500,000.¹⁹ However, if the fact finder determines the conduct proven was motivated by financial gain and the adverse consequence of the conduct was actually known by the defendant or the person responsible for making policy decisions on behalf of the defendant, it may award an
amount of punitive damages not to exceed the greatest of four times the amount of compensatory damages award to the plaintiff, four times the aggregate amount of financial gain that the defendant received as a result of defendant's misconduct, or the sum of $7,000,000.20

In an action against an employer to recover damages for an unlawful employment practice prohibited by Alaska Stat. Ann. § 18.80.220, the amount of punitive damages awarded by the court or jury may not exceed $200,000 if the employer has less than 100 employees in this state; $300,000 if the employer has 100 or more but less than 200 employees in this state; $400,000 if the employer has 200 or more but less than 500 employees in this state; and $500,000 if the employer has 500 or more employees in this state.21 If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state.22


ARIZONA

In Arizona, there is no caps on damages in a medical malpractice action.23 Article 2, Section 31 of the Arizona constitution prohibits the enactment of any law limiting the damages one may recover for personal injury or death. Arizona follows a “pure comparative negligence” rule. This means that if you are found to be part negligent with respect to your injury, illness, or medical condition, your award of damages is diminished in proportion to your fault. Tortfeasors are only severally liable for the amount of claimant's damages equal to their percentages of fault, unless they were in a principal-agent relationship, acting in concert, or pursuing a common plan or design to commit a tortious act and actively taking part in it.24 The damages may be reduced by the collateral source benefits received by the plaintiff.25


ARKANSAS

In Arkansas, the damages awarded may include compensation for actual economic losses suffered by the injured person by reason of medical injury, including the cost of reasonable and necessary medical services, rehabilitation services, custodial care, loss of services, and loss of earnings or earning capacity.26 The damages may also include compensation for pain and suffering and other noneconomic loss recognized by law.27

Under Arkansas law, “each defendant shall be liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault.”28 There is no limitation on the amount of punitive damages if the finder of fact determines by clear and convincing evidence that, at the time of the injury, the defendant intentionally pursued a course of conduct for the purpose of causing injury or damage; and the defendant’s conduct did harm the plaintiff.29 If the defendant’s conduct is not proven by clear and convincing evidence, a punitive damages award shall be no more than the greater of $250,000, or three times the amount of compensatory damages awarded in the action, not to exceed $1,000,000.30 If the award for future damages for the plaintiff exceeds $100,000, the court, at the request of either party, shall order the future damages to be paid in periodic payments as determined by the court.31

30 Ark. Code Ann. § 16-55-208(a)(1)-(2). 31 Id.
CALIFORNIA

In California, there is a $250,000 cap on non-economic damages such as pain, suffering, physical impairment, loss of enjoyment of life, and/or loss of consortium.\textsuperscript{32} If the award exceeds $50,000, the court shall, at the request of either party, enter a judgment allowing the award to be paid in periodic payments.\textsuperscript{33}

California follows a pure comparative negligence rule. This means that, if the claimant is found to be in part negligent with respect to his or her injury, the claimant’s award of damages is reduced in proportion to his or her fault.\textsuperscript{34} When more than one defendant is involved, the liability of each defendant for non-economic damages shall be several only and shall not be joint; meaning each defendant is liable only for the amount of non-economic damages allocated to that defendant in direct proportion to defendant’s percentage of fault.\textsuperscript{35}

COLORADO

In any civil action other than medical malpractice actions in which damages for noneconomic loss or injury may be awarded, the total of such damages shall not exceed the sum of $468,010, unless the court finds justification by clear and convincing evidence for an award exceeding that amount.\textsuperscript{36} In no case shall an amount of noneconomic loss or injury damages exceed $936,030.\textsuperscript{37} In a personal injury case, there is no limit on the recovery of compensatory damages for physical impairment or disfigurement, which are excluded from the statutory noneconomic damages cap.\textsuperscript{38}

In a medical malpractice action, damages for noneconomic loss or injury shall not exceed $1,000,000, including any claim for derivative noneconomic loss or injury, of which not more than $250,000, present value per-patient, including any derivative claim, shall be attributable to direct or derivative noneconomic loss or injury.\textsuperscript{39}

Colorado follows a modified comparative negligence rule. This means that defendants are liable only for the damages caused by their negligence and reduced to their proportion of fault, expressed as a whole-number percentage of total fault.\textsuperscript{40} If the jury finds the plaintiff’s fault equals or exceeds 50%, the plaintiff is not entitled to recover any damages.\textsuperscript{41} The jury may also assign a percentage of fault to nonparties, which can further reduce defendants’ liability.\textsuperscript{42}

CONNECTICUT

Connecticut has no caps or limits on the amount of damages that can be awarded to a plaintiff in a medical malpractice suit.\textsuperscript{43} In causes of action based on negligence, contributory negligence shall not bar recovery; the economic or noneconomic damages allowed shall be diminished in the proportion of the percentage of negligence attributable to the person recovering.\textsuperscript{44} Defendants are only liable for the damages reduced to the proportion of their fault.\textsuperscript{45}

In product liability actions, if the trier of fact determines that punitive damages should be awarded, the court shall determine the amount of such damages not exceed an amount equal to twice the damages awarded to the plaintiff.\textsuperscript{46}

DELAWARE

In any action for medical negligence, punitive damages may be awarded with no limitations. There are no statutory caps on any kinds of damages. Delaware follows a modified comparative negligence rule. This means that defendants are liable for the damages reduced to their proportion of fault. If the jury finds the plaintiff’s fault is equal to or greater than the defendant’s fault, the plaintiff is not entitled to recover any damages.

DISTRICT OF COLUMBIA

In a civil action in Superior Court of the District of Columbia, the court may award actual damages, compensatory damages, punitive damages, and other appropriate relief. There is no cap on these damages. District of Columbia follows a contributory fault rule, which means that an injured person is barred from recovering damages if he or she is found to share any measure of fault for the accident, regardless of how small that percentage is.

FLORIDA

Florida’s medical malpractice damage caps only apply to plaintiff’s non-economic damages. For non-economic damages, there is a $500,000 cap for practitioners and a $750,000 cap for non-practitioners. If the negligence resulted in a permanent vegetative state or death, the total noneconomic damages recoverable from all practitioners, regardless of the number of claimants, shall not exceed $1 million. If the negligence resulted in a permanent vegetative state or death and the noneconomic damages are recoverable from a nonpractitioner, damages may not exceed $1.5 million. In a personal injury action, the Supreme Court of Florida has held that statutory caps on non-economic damages are unconstitutional. In a cause of action for personal injury or wrongful death arising from medical negligence of practitioners providing emergency services and care, noneconomic damages shall not exceed $150,000 per claimant.

For punitive damages, an award may not exceed the greater of three times the amount of compensatory damages awarded to each claimant or the sum of $500,000. Where the fact finder determines the wrongful conduct was motivated solely by unreasonable financial gain and determines the unreasonably dangerous conduct was actually known by the defendant, punitive damages may not exceed the greater of four times the amount of compensatory damages awarded to each claimant or the sum of $2,000,000. Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and that the defendant’s conduct did in fact harm the claim, there will be no cap on punitive damages. If negligence happens in the course of providing medical services and medical care to a Medicaid recipient, noneconomic damages against a practitioner may not exceed $300,000 per claimant, unless the claimant pleads and proves, by clear and convincing evidence, that the practitioner acted in a wrongful manner.

There is no limit on the amount of economic damages that can be recovered, which can include, but are not limited to: past and future medical care necessitated by the malpractice, lost income, lost future earning capacity and any other measurable economic losses attributable to the defendant's malpractice.

In a negligent action, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery. For co-defendants in a negligence action, the Court shall enter judgment against each party on the basis of such part's percentage of fault and not on the basis of the doctrine of joint and several liability.
GEORGIA

In 2010, the Georgia Supreme Court deemed the statutory cap on noneconomic damages as unconstitutional.62 There are also no cap on compensatory damages for medical malpractice. Punitive damages are allowed for tort claims only when it is proven by clear and convincing evidence that a defendant’s actions showed willful misconduct, malice, fraud, wantonness, oppression, or conscious indifference to consequences.63 Except in cases of intentional harm or those involving drugs or alcohol, punitive damages are limited to $250,000.64 In tort cases arising from product liability, there are no limitations to the award of punitive damages.65 However, 75% of the punitive damage award arising out of a product liability action shall be paid into the treasury of the state.66

Georgia courts apply the comparative fault rule in injury cases where both parties are found to share the fault by the proportion attributed by the fact finder of their fault in the injury.67 If the plaintiff is to some degree responsible for the injury or damages claimed, the trier of fact shall determine the percentage of fault of the plaintiff and the judge shall reduce the amount of damages otherwise awarded to the plaintiff in proportion to his or her percentage of fault.68

HAWAII

In Hawaii, there is no cap on economic damages. Therefore, there is no limit on an injured patient’s ability to get compensation for past and future medical treatment, lost income, diminished earning capacity, and any other calculable financial losses.69 For noneconomic damages, the cap is $375,000 for personal injury and medical malpractice claims with exceptions for specific situations.70 Hawaii has codified its abolishment of joint and several liability for co-defendants,71 however, the statute provides several exceptions to the abolition of joint and several liability including the recovery of economic damages against joint tortfeasors in actions involving injury or death to persons.72 The abolition of joint and several liability also does not apply to the recovery of economic and noneconomic damages against joint tortfeasors in actions involving intentional torts, torts relating to environment pollution, toxic and asbestos-related torts, torts relating to aircraft accidents, strict and products liability torts, or torts relating to motor vehicle accidents.73

IDAHO

In any action seeking damages for personal injury, including death, no judgment for noneconomic damages to be entered for a claimant shall exceed $250,000 (the cap shall increase or decrease in accordance with the percentage amount of increase or decrease by which the Idaho industrial commission adjusts the average annual wage.)74 The limitation of awards of noneconomic damages shall not apply to causes of action arising out of willful or reckless misconduct or causes of action arising out of an act or acts which the trier of fact finds beyond a reasonable doubt would constitute a felony under state or federal law.75 No judgment for punitive damages shall exceed the greater of $250,000 or an amount which is three times the compensatory damages contained in such judgment.76 There are no caps on economic damages for medical malpractice or personal injury cases. Idaho follows the modified comparative fault rule, where the trier of fact attributes the percentage of negligence or comparative responsibility to persons, and those persons are liable for the proportion of the percentage attributed to their negligence; however, where a plaintiff’s negligence is equal to or greater than any individual defendant’s negligence, the plaintiff cannot recover.77

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64 Ga. Code Ann. § 51-12-5.1(g).
69 Haw. Rev. Stat. § 663-8 through HRS § 663-8.3
74 Idaho Code Ann. § 6-1603(1).
75 Idaho Code Ann.§ 6-1603(4)(a)-(b).
76 Idaho Code Ann. § 6-1604(3).
77 Idaho Code Ann.§ 6-803.
ILLINOIS

The trial court may, in its discretion, determine whether a jury award for punitive damages is excessive, and if so, enter a remittitur and a conditional new trial. However, there is no statutory cap to punitive damages.78 In 2010, the Illinois Supreme Court held caps on noneconomic damages in medical malpractice actions were unconstitutional.79 There are no current caps on economic damages either.80 Illinois follows the comparative fault rule when more than one party is responsible for the damages.81

INDIANA

Indiana damage cap applies to the total amount of compensation that an injured patient can recover – not just to certain categories of damages. For medical malpractice that occurred after December 31, 1989 and before July 1, 1999, there is a $750,000 cap on damages available to the plaintiff. For medical malpractice that occurred after June 30, 1999, and before July 1, 2017, there is a $1,250,000 cap on damages available to the plaintiff. For medical malpractice that occurs after June 30, 2017, and before July 1, 2019, there is a $1,650,000 cap on damages available to the plaintiff.82 An individual health care provider cannot be held liable for more than $250,000 in damages for an act of malpractice that occurred after June 30, 1999, and before July 1, 2017, and an individual health care provider cannot be held liable for more than $400,000 in damages after June 30, 2017 and before July 1, 2019, and any damages in excess of those numbers will be paid by the state of Indiana’s Patient Compensation Fund.83 A punitive damage award may not be more than the greater of three times the amount of compensatory damages awarded in the action or $50,000.84 Indiana follows the comparative fault rule, meaning a party is only liable for their percent of the fault for the accident.85 If the fact finder determines the claimant’s contributory fault is greater than the fault of all persons whose fault proximately contributed to the claimant’s damages, the claimant’s action is barred.86

IOWA

Iowa does not cap either economic or noneconomic damages in any type of injury case.87 There is also no cap on punitive damages.88 The rule of joint and several liability does not apply to defendants who are found to bear less than 50% of the total fault assigned to all parties.89 However, a defendant found to bear 50% or more of fault shall only be jointly and severally liable for economic damages and not for any noneconomic damage awards.90

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KANSAS

Kansas has a $250,000 limit on non-economic damages for each plaintiff in a medical malpractice lawsuit accruing after July 1, 1988, and before July 1 2014, regardless of how many defendants there are.\(^\text{91}\) This cap increases to $300,000 for actions accruing after July 1, 2014 and before July 1, 2018; $325,000 for actions accruing after July 1, 2018, and before July 1, 2022; and is capped at $350,000 for actions accruing on or after July 1, 2022.\(^\text{92}\) For punitive damages, an award shall not exceed the lesser of the annual gross income earned by the defendant or $5,000,000.\(^\text{93}\) However, if the court finds that the profitability of the defendant’s misconduct exceeds or is expected to exceed $5,000,000 or defendant’s annual gross income, the limitation on the amount of exemplary or punitive damages the court may award shall be equal to 1.5 times the amount of profit which the defendant gained.\(^\text{94}\) Kansas uses the comparative fault rule to reduce or eliminate damages when an injured person is found to share the fault for the accident or incident that led to their injury.\(^\text{95}\) When comparative negligence of multiple defendants is an issue, each party is liable for that portion of the total dollar amount awarded as damages to a claimant in the proportion that the amount of that party’s causal negligence bears to the amount of causal negligence attributed to all parties against whom recovery is permitted.\(^\text{96}\)


KENTUCKY

Kentucky has no cap on economic and noneconomic damages in any type of injury case. There are also no caps on punitive damages.\(^\text{97}\) Kentucky follows the comparative fault rule, meaning parties are only liable for its respective percentages of fault.\(^\text{98}\)


LOUISIANA

Louisiana law caps all damages in medical malpractice cases at $500,000 plus the cost of future medical expenses (which are not subject to a cap).\(^\text{99}\) Providers found liable for medical malpractice only have to pay $100,000 if they are covered by the state’s Patient Compensation Fund.\(^\text{100}\) Louisiana uses a comparative fault rule that reduces an injured person’s damages by an amount equal to the share of fault assigned to that person.\(^\text{101}\)


MAINE

Maine’s damages cap for noneconomic damages in wrongful death cases is $500,000.\(^\text{102}\) In a wrongful death case, the jury may also give punitive damages not exceeding $250,000.\(^\text{103}\) This cap does not apply to other kinds of Maine injury cases, and it does not affect economic damages, like medical bill and lost wages. There is also no cap for damages in a medical malpractice case. In any claim or cause of action against either a governmental entity or its employees, or both, may not exceed $400,000 for any and all claims arising out of a single occurrence.\(^\text{104}\) Under Maine’s comparative fault rule, an injured person’s damages are reduced by the percentage of fault assigned to him or her, as long as that percentage is under 50%.\(^\text{105}\) If the injured person’s fault is 50% or higher, their claim is effectively barred, and they cannot collect anything from any other at-fault party.\(^\text{106}\)

MARYLAND

Maryland’s cap on noneconomic damages increases $15,000 per year on October 1 of each year.\(^{107}\) On October 1, 2017 the cap on non-economic damages for medical malpractice claims will be $785,000. In a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation established (In 2017: $785,000). Maryland has no cap on economic damages.\(^{108}\) In Maryland, when it is determined that an injured person shares any amount of fault for the incident that led to their injuries, courts apply a contributory negligence rule that prevents the injured person from collecting damages from any other at-fault party.\(^{109}\) In a case involving multiparty defendants, each defendant is jointly and severally liable to the plaintiff for the full amount of the plaintiff’s damages.\(^{110}\) However, any defendant has the right through the use of special interrogatories to request of the jury the percentage of fault contributed by each defendant.\(^{111}\)

MASSACHUSETTS

Massachusetts sets a cap of $500,000 on noneconomic damages in medical malpractice cases only, unless an injured person can show that he or she suffered any of the following: a substantial or permanent loss or impairment of a bodily function, substantial disfigurement, or other special circumstances in the case that indicate applying the cap would deprive the injured person of a just result.\(^{112}\) There is no cap on economic damages.\(^{113}\) Massachusetts’s version of the comparative fault rule reduces damages if an injured person shares less than 50% of the fault, and prevents recovery by an injured person who shares 50% or more of the fault.\(^{114}\)

In wrongful death actions, the defendant can be liable for punitive damages in an amount of not less than $5,000 in cases where the decedent’s death was caused by malicious, willful, wanton or reckless conduct of the defendant or by the gross negligence of the defendant.\(^{115}\)

MICHIGAN

In a single medical malpractice claim, there is a $280,000 cap on noneconomic damages.\(^ {116}\) This cap can be increased to $500,000 if the plaintiff is rendered hemiplegic, paraplegic, or quadriplegic because of the malpractice, and has suffered a total permanent functional loss of a limb because of injury to the brain or spinal cord, or if the malpractice has left the plaintiff with a permanently impaired cognitive capacity and rendered him or her incapable of making independent, responsible life decisions, and permanently incapable of independently performing the activities of normal daily life, or if the malpractice has caused permanent loss of or damage to a reproductive organ resulting in the plaintiff’s inability to procreate.\(^{117}\) The cap on noneconomic damages is adjusted according to the consumer price index at the end of every calendar year.\(^{118}\) As of 2015, the $280,000 cap had increased to $444,900 and the $500,000 cap had increased to $794,500. Michigan places no cap on economic damages for a medical malpractice plaintiff.\(^{119}\)

In Michigan, damages are reduced if the injured person is found to share any amount of the fault, and an injured person is barred from recovery if the injured person is found to be 50% or more at fault.\(^ {120}\) Otherwise, the injured person’s percent fault is applied proportionally to the award and reduced to proportion of defendant’s fault.\(^{121}\) Joint tortfeasors shall not be compelled to make contribution beyond his own pro rate share of the entire liability.\(^{122}\)

\(^{107}\) Md. Code, Courts and Judicial Proceedings § 3-2A-09(b)(2).
\(^{109}\) Id.
\(^{110}\) Id.
\(^{111}\) Id.
\(^{112}\) Mass. Gen. Laws Ann. 231 § 60H.
\(^{120}\) Mich. Comp. Laws Ann. § 600.2925b.
\(^{121}\) Id.
\(^{122}\) Mich. Comp. Laws Ann. § 600.2925a(2).
MINNESOTA

In Minnesota, there are no caps on damages. Minnesota uses the comparative fault rule, meaning the percentage of fault assigned to the claimant is reduced proportionally from the total amount of damages awarded. 123 However, if a claimant is found to be more than 50% at fault, the claimant is barred from recovery. 124 When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each. 125 The exceptions to contributory fault where a person can be held jointly and severally liable include when the person’s fault is greater than 50%, two or more people act in a common scheme or plan that results in an injury or a person commits an intentional tort. 126

123 Minn. Stat. Ann. § 604.02. 124 Id. 125 Id. 126 Id.

MISSISSIPPI

In Mississippi, noneconomic damages are subject to a statutory cap of $1,000,000 in all actions except for medical malpractice suits, where noneconomic damages are capped at $500,000. 127 There is no cap on a plaintiff’s recovery of economic damages.

Mississippi law also provides limitations on awards of punitive damages. In any civil action where an entitlement to punitive damages has been established, no award of punitive damages shall exceed $20,000,000 for a defendant with a net worth of more than $1,000,000,000; $15,000,000 for a defendant with a net worth of more than $750,000,000; $5,000,000 for a defendant with a net worth of more than $500,000,000; $3,750,000 for a defendant with a net worth of more than $50,000,000,000; $2,500,000 for a defendant with a net worth of more than $50,000,000; 2% of defendant’s net worth for a defendant with a net worth of $50,000,000 or less. 128 These limits on punitive damages are not applied if the defendant was convicted of a felony which caused the damages or injury, or if the defendant was under the influence of alcohol or drugs which caused the damages or injury. 129

Mississippi is a pure comparative negligence state. 130 Each party is responsible for its respective degree of negligence. For example, if a jury finds that a plaintiff is 80% liable for causing an accident and awards $100,000 in damages, then the damages award is reduced by 80% and the plaintiff receives $20,000 in damages.

Liability for damages caused by two or more persons shall be several only, and not joint and several, and a joint tort-feasor shall be liable only for the amount of damages allocated to him in direct proportion to his percentage of fault. 131 Joint and several liability is imposed on tort-feasors if they consciously and deliberately pursued a common plan or design to commit a tortious act. 132

MISSOURI

Missouri currently has no caps in place on damages in personal injury cases, however, medical malpractice damages in wrongful death actions may be limited by statutory limitations [Watts v. Lester E. Cox Medical Centers, 376 S.W.3d 633 (Mo. 2012)]. The Missouri Supreme Court deemed the statute capping medical malpractice damages as unconstitutional in 2012. In 2014, the Supreme Court of Missouri also deemed a punitive damages cap unconstitutional. Missouri uses a comparative fault rule, which reduces the compensation an injured person can receive by an amount that is equal to that person's percentage of fault. In all tort actions for damages, if a defendant is found to bear 51% or more of fault, then such defendant shall be jointly and severally liable for the amount of the judgment rendered against the defendants. If a defendant is found to bear less than 51% of fault, then the defendant shall only be responsible for the percentage of the judgment for which the defendant is determined to be responsible by the trier of fact. The defendants shall only be severally liable for the percentage of punitive damages for which fault is attributed to such defendant by the trier of fact.

MONTANA

Montana caps noneconomic damages in medical malpractice cases at $250,000. The cap is applied per-patient. Montana does not have a cap on economic damages in medical malpractice actions. In addition to compensatory damages, punitive damages may be awarded for the purpose of punishing a defendant. An award of punitive damages may not exceed $10 million or 3% of a defendant's net worth, whichever is less. Punitive damages will not be awarded in any action arising from contract or breach of contract. Montana's modified comparative fault rule reduces the amount of damages a claimant can receive so long as the claimant is less than 50% at fault. A party whose negligence is determined to be 50% or less of the combined negligence is severally liable only and is responsible for the percentage of negligence attributable to that party. The remaining parties are jointly and severally liable for the total less the percentage attributable to the claimant and to any person with whom the claimant has settled or whom the plaintiff has released from liability. A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

NEBRASKA

Nebraska has a $2,250,000 total cap on all damages in medical malpractice actions for any occurrence after December 31, 2014. Health care providers who qualify under the state's Hospital-Medical Liability Act won't pay more than $500,000 in total damages, and any amount above that $500,000 is paid out from the state's Excess Liability Fund. When fault is shared between two or more parties, the damages are reduced depending on the amount of fault assigned to the injured person. If a claimant's fault percent is more than 50%, the claimant is barred from recovery. In an action involving more than one defendant when two or more defendant as part of a common enterprise or plan act in concert and cause harm, the liability of each such defendant for economic and
noneconomic damages shall be joint and several. In any other action involving more than one defendant, the liability of each defendant for economic damages shall be joint and several and the liability of each defendant for noneconomic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic damages allocated to that defendant in direct proportion to that defendant’s percentage of negligence.

NEVADA

Nevada’s cap on noneconomic damages in medical malpractice cases is set at $350,000, regardless of the number of plaintiffs, defendants or theories upon which liability may be based. This cap does not apply to economic damages. In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant. An award of punitive damages may not exceed three times the amount of compensatory damages awarded to the plaintiff if the amount of compensatory damages is $100,000 or more; or $300,000 if the amount of compensatory damages awarded to the plaintiff is less than $100,000. These limitations do not apply if an action is brought against a manufacturer or seller of a defective product; an insurer who acts in bad faith regarding its obligation to provide insurance coverage; a person for violating state or federal law prohibiting discriminatory housing practices; a person for damages or an injury caused by the emission, disposal or spilling of a toxic, radioactive or hazardous material or waste; or a person for defamation.

An award of tort damages against a present or former officer or employee of the State of Nevada, or any political subdivision, immune contractor or State Legislature arising out of an act or omission within the scope of the person’s public duties or employment is limited to $100,000, exclusive of post-judgment interest, for each claimant. Punitive damages are precluded altogether. This limit also applies to tort damage claims arising from any recreational activity or use of land or water brought against any public or quasi-municipal Nevada corporation, any person with respect to any land or water leased or otherwise made available by that person to any public agency, and any Indian tribe, band or community, whether or not a fee is charged for such activity or use.

When fault is shared between two or more parties, the damages are reduced depending on the amount of fault assigned to the injured person. If a claimant’s fault percent is more than 50%, the claimant is barred from recovery. Where recovery is allowed against more than one defendant, in cases where comparative negligence is asserted as a defense, each defendant is severally liable to the plaintiff only for that portion of the judgment which represents the percentage of negligence attributable to that defendant.

NEW HAMPSHIRE

In 2012, the New Hampshire Supreme Court deemed caps on damages unconstitutional. Currently, there is no cap on damages in any kind of personal injury action. When fault is shared between two or more parties, the damages are reduced depending on the amount of fault attributable to each defendant. However, if a defendant is found to be 50% or more at fault, the defendant will be held jointly and severally liable.


NEW JERSEY

In medical malpractice cases, there are currently no caps on economic or noneconomic damages. In any injury cases, punitive damages are limited to $350,000 or five times the amount of compensatory damages, whichever is greater.\(^{168}\) In any action in which there are two or more defendants, an award of punitive damages must be specific as to a defendant, and each defendant is liable only for the amount of the award made against the defendant.\(^{169}\)

New Jersey law imposes a cap of $250,000 on damage awards in negligence claims against non-profit hospitals by beneficiaries (patients) of the entity.\(^{170}\) If the claimant is found to be more than 50% at fault, the claimant is barred from recovery.\(^{171}\)

\(^{170}\) See N.J.S.A. 2A:53A-8. ("any non-profit corporation, society or organization organized exclusively for hospital purposes shall be liable to respond in damages to such beneficiary who shall suffer damage from the negligence of such corporation, society or association or of its agents or servants in an amount not exceeding $250,000, together with interest and costs of such suit".)

NEW MEXICO

New Mexico has an overall cap of $600,000 on all categories of damages available to a medical malpractice plaintiff.\(^{172}\) The cap specifically excludes compensation for past and future medical care.\(^{173}\) The cap also does not apply to punitive damages.\(^{174}\) New Mexico also caps each individual health care provider’s personal liability at $200,000 and any amount above that limit will be paid to the plaintiff out of a state compensation fund.\(^{175}\) When fault is shared between two or more parties, the damages are reduced depending on the amount of fault assigned to the injured person or other wrongdoers.\(^{176}\)

\(^{173}\) Id.
\(^{174}\) Id.
\(^{175}\) N.M. Stat. Ann. § 41-5-6(D).

NEW YORK

In New York, there are no caps to economic, noneconomic, or punitive damages.\(^{177}\) When fault is shared between two or more parties, the damages against a party, so long as it is found that the party is 50% or less liable for the injury, are reduced depending on the amount of fault assigned to the injured person or other wrongdoers.\(^{178}\)

\(^{177}\) N.Y. Est. Powers & Trusts § 5-4.3.
\(^{178}\) N.Y. C.P.L.R. § 1601.

NORTH CAROLINA

North Carolina caps non-economic damages at $500,000 in medical malpractice cases.\(^{179}\) Beginning in 2014, North Carolina’s cap will be adjusted upward for inflation every three years.\(^{180}\) This cap does not apply if the injured patient suffered certain kinds of disfiguring or permanent injury and the defendant’s malpractice arose from recklessness, malice, an intentional act, or gross negligence.\(^{181}\) If this criteria is met in a medical malpractice case, all damages are uncapped. In all injury cases, punitive damages cannot exceed the greater of three times the amount of compensatory damages or $250,000.\(^{182}\) There is no cap on economic damages in a medical malpractice case.

In North Carolina, a claimant’s contributory negligence bars recovery completely.\(^{183}\) North Carolina imposes joint and several liability on joint tortfeasors.\(^{184}\) Thus, any joint tortfeasor against whom judgment is entered is liable to the claimant for the entire amount of the judgment, regardless of the tortfeasor’s share of fault.

\(^{180}\) Id.
NORTH DAKOTA

In North Dakota, there is a $500,000 cap on non-economic damages in medical malpractice cases.\textsuperscript{185} There is no statutory limit to economic damages, but any award over $250,000 may be challenged by the defendant and reviewed for reasonableness by the court.\textsuperscript{186} There are no caps in place for injury cases that are not medical malpractice cases.

North Dakota follows a modified comparative fault rule, where damages are reduced to percent responsible if you are less than 50% at fault.\textsuperscript{187} If a claimant is found to be 50% or more at fault, the claimant is barred from recovery.\textsuperscript{188} When two or more parties are found to have contributed to the injury, the liability of each party is several only, and is not joint, and each party is liable only for the amount of damages attributable to the percentage of fault of that party, except that any persons who act in concert in committing a tortious act or aid or encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages attributable to their combined percentage of fault.\textsuperscript{189}

Ohio

In Ohio, noneconomic damages in any tort action cannot exceed the greater of $250,000 or three times the plaintiff’s economic damages – with an overall maximum of $350,000 per plaintiff or $500,000 for each case if there is more than one plaintiff.\textsuperscript{190} The cap will be bumped up to $500,000 per plaintiff or $1,000,000 per case if the malpractice caused permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system; permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life-sustaining activities.\textsuperscript{191} Punitive damages may not exceed twice the amount of economic damages.\textsuperscript{192} There is no cap on economic damages.\textsuperscript{193}

In any tort action in which the trier of fact determines that two or more persons proximately caused the same injury or loss to person or property or the same wrongful death and in which the trier of fact determines that more than 50% of the tortious conduct is attributable to one defendant, that defendant shall be jointly and severally liable in tort for all compensatory damages that represent economic loss.\textsuperscript{194} If a defendant is found to be 50% or less responsible for the injury, the defendant is only liable to the plaintiff for that defendant’s proportionate share of the compensatory damages that represent economic loss.\textsuperscript{195} If any defendant who is found less than 50% responsible, but whom an intentional tort claim has been alleged and established, then that defendant shall be jointly and severally liable in tort for all compensatory damages that represent economic loss.\textsuperscript{196}

Oklahoma

Oklahoma has a $350,000 cap on noneconomic damages.\textsuperscript{197} There shall be no limit on the amount of noneconomic damages which the trier of fact may award the plaintiff in a civil action if the fact finder finds, by clear and convincing evidence, that the defendant’s acts or failures to act were in reckless disregard for the rights of others, grossly negligent, fraudulent, or intentional or with malice.\textsuperscript{198} There is no cap on economic damages.\textsuperscript{199}

Where the jury finds by clear and convincing evidence that the defendant has been guilty of reckless disregard for the rights of others or an insurer has recklessly disregarded its duty to deal fairly and act in good faith with its insured, the jury may award punitive damages in an amount not to exceed the greater of $100,000 or the amount of the actual damages awarded.\textsuperscript{200} Where the jury finds by clear and convincing evidence that the defendant has acted intentionally with malice towards others or an insurer has intentionally and with malice breached its duty to deal

fairly and act in good faith with its insured, the jury may award punitive damages in an amount not to exceed the
greatest of $500,000, twice the amount of actual damages awarded, or the increased financial benefit derived by the
defendant or insurer as a direct result of the conduct causing the injury to the plaintiff and other persons or
entities. And where the jury finds by clear and convincing evidence that the defendant has acted intentionally
and with malice towards others, or an insurer has intentionally and with malice breached its duty to deal fairly and
act in good faith with its insured; and the court finds, on the record and out of the presence of the jury, that there is
evidence beyond a reasonable doubt that the defendant or insurer acted intentionally and with malice and engaged
in conduct life-threatening to humans, the jury may award punitive damages in any amount the jury deems
appropriate without regard to the aforementioned damage caps.

In any civil action based on fault and not arising out of contract, the liability for damages caused by two or more
persons shall be several only and a joint tortfeasor shall be liable only for the amount of damages allocated to that
tortfeasor.

OREGON

The only damage cap in Oregon is $500,000 for noneconomic damages in wrongful death claims arising from
medical malpractice. Oregon has no cap on economic damages in medical malpractice cases, whether they
involve wrongful death or not. Upon the entry of a verdict including an award of punitive damages, the punitive
damage portion of an award is allocated with 30% going to the prevailing party, 60% to the Attorney General for
deposit in the Criminal Injuries Compensation Account of the Department of Justice Crime Victims’ Assistance
Section, and 10% to the Attorney General for deposit in the State Court Facilities and Security Account.
Contributory negligence shall not bar recovery in an action by any person to recover damages for death or injury
if the fault attributable to the claimant was not greater than the combined fault of all other persons, but any
damages allowed shall be diminished in the proportion to the percentage of fault attributable to the claimant.
Where two or more persons become jointly or severally liable in tort for the same injury to person or for the same
wrongful death, there is a right of contribution among them even though judgment has not been recovered against
all or any of them. No tortfeasor is compelled to make contribution beyond the proportional share of the
tortfeasor to the entire liability.

PENNSYLVANIA

In Pennsylvania, the State’s constitution specifically prohibits the limitation of damages in cases involving injury
and death. In all actions brought to recover damages for negligence resulting in death or injury to person, the fact
that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff where
such negligence was not greater than the causal negligence of the defendant or defendants against whom recover is
sought. Any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence
attributed to the plaintiff. A defendant’s liability shall be several and not joint, unless the defendant made an
intentional misrepresentation, committed an intentional tort, or has been held liable for less than 60% of the total
liability apportioned to all parties.
RHODE ISLAND

Rhode Island does not cap damages in personal injury or medical malpractice cases. However, plaintiffs in wrongful death cases may not recover punitive damages.\(^{212}\) Other than wrongful death cases, punitive damages may be awarded based on reckless conduct.\(^{213}\) In all actions brought for personal injuries, or where personal injury resulted in death, the fact that the person injured may not have been in the exercise of due care shall not bar a recovery, but damages shall be diminished by the finder of fact in proportion to the amount of negligence attributable to the person injured.\(^{214}\)


SOUTH CAROLINA

In South Carolina, there is a $350,000 cap on non-economic damages in any medical malpractice case against a single care provider or institution.\(^ {215}\) For a judgment against more than one defendant, total noneconomic damages cannot exceed $1.05 million, and a single care provider or institution cannot be on the hook for more than $350,000 in noneconomic compensation.\(^{216}\) The limitations for noneconomic damages rendered against any health care provider do not apply if the fact finder determines that the defendant was grossly negligent, willful, wanton, or reckless, and such conduct was the proximate cause of the claimant’s noneconomic damages, or if the defendant has engaged in fraud or misrepresentation related to the claim, or if the defendant altered or destroyed medical records with the purpose of avoiding a claim or liability to the claimant.\(^{217}\)

In South Carolina, punitive damages in injury cases are limited to the greater of three times the actual damages or $500,000.\(^ {218}\) In an action with multiple defendants, a punitive damages award must be specific to each defendant, and each defendant is liable only for the amount of the award made against that defendant.\(^{219}\) There shall be no cap on punitive damages if at the time of injury the defendant had an intent to harm, if the defendant has pled guilty or been convicted of a felony arising out of the same act or course of conduct that was proximate cause of plaintiff’s damages, or if the defendant acted or failed to act while under the influence of alcohol or drugs.\(^ {220}\) Joint and several liability does not apply to any defendant whose conduct is determined to be less than 50% of the total fault for the indivisible damages as compared with the total of the fault of all the defendants and the fault, if any, of plaintiff. A defendant whose conduct is determined to be less than 50% of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.\(^ {221}\)


SOUTH DAKOTA

In South Dakota, noneconomic damages in medical malpractice cases are capped at $500,000. South Dakota does not cap economic damages or punitive damages in medical malpractice cases.\(^ {222}\) If the court enters judgment against any party liable on the basis of joint and several liability, any party who allocated less than 50% of the total fault allocated to all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party.\(^ {223}\)

\(^{222}\) S.D. Codified Laws § 21-3-11. \(^ {223}\) S.D. Codified Laws § 15-8-15.1.
TENNESSEE

In Tennessee, noneconomic damages in medical malpractice cases are capped at $750,000 per claim, and that limit also captures related claims made by the injured patient’s family members. The cap will increase to $1,000,000 for noneconomic damages where the defendant’s medical malpractice causes catastrophic injury, such as paralysis, amputation of multiple limbs, and certain instances of wrongful death. Tennessee does not cap economic damages in medical malpractice cases. Punitive damages may only be awarded if claimant proves by clear and convincing evidence that the defendant against whom punitive damages are sought acted maliciously, intentionally, fraudulently or recklessly. Punitive damages shall not exceed an amount equal to the greater of two times the total amount of compensatory damages or $500,000. If multiple defendants are found liable under the principle of comparative fault, the amount of all noneconomic damages shall be apportioned among the defendants based upon the percentage of fault for each defendant, so long as the plaintiff’s comparative fault (or in a wrongful death action, the fault of the decedent) is not equal to or greater than 50%, in which case recovery for any damages is barred.226


TEXAS

Texas has a per-claimant $250,000 cap on noneconomic damages in medical malpractice cases against a physician or health care provider. For medical malpractice cases against a single health care institution, there is a per-claimant cap of $250,000 for noneconomic damages. For cases against multiple health care institutions, there is an overall cap of $500,000 per claimant for noneconomic damages, and no single institution can be on the hook for more than $250,000 in noneconomic damages, per-claimant. Texas does not cap economic damages. For medical malpractice cases involving wrongful death in Texas, there is a cap that is indexed for inflation. The cap started out at $500,000 back in 1977, but with the inflation adjustment it is now over $1.9 million. In an action in which a claimant seeks recovery of damages, punitive damages awarded against a defendant may not exceed an amount equal to the greater of two times the amount of economic damage plus an amount equal to any noneconomic damages found by the jury, not to exceed $750,000 or not to exceed $200,000. A claimant may not recover damages if his percentage of responsibility is greater than 50%. If claimant is found less than 50% responsible, the court shall reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to the claimant’s percentage of responsibility. A liable defendant is liable to a claimant only for the percentage of the damages found by the trier of fact to equal defendant’s percentage of responsibility with respect to the personal injury, death, or other harm for which the damages are allowed. If the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than 50%, the defendant can be held jointly and severally liable for the damages. A defendant can also be jointly and severally liable for claimant’s damages if the fact finder determines the defendant, with the specific intent to do harm to others, acted in concert with another person to engage in the conduct that proximately caused the damages legally recoverable by the claimant.

UTAH

Utah has a $450,000 cap on noneconomic damages for any medical malpractice case arising after May 15, 2010. The statutory cap does not apply if the medical malpractice resulted in death. Utah does not cap economic damages. In any case where punitive damages are awarded, the court shall enter judgment for the first $50,000 in favor of the injured party and any amount in excess of $50,000 shall be divided equally between the state and the injured party. The fault of a person seeking recovery may not alone bar recovery by that person. A person seeking recovery may recover from defendants whose fault, combined with the fault of persons immune from suit and nonparties to whom fault is allocated, exceeds the fault of the person seeking recovery. No defendant is liable to any person seeking recovery for any amount in excess of the proportion of fault attributed to that defendant.

VERMONT

Vermont has no cap on any kinds of damages. Contributory negligence shall not bar recovery in an action by any plaintiff if the negligence was not greater than the causal total negligence of the defendants, but the damage shall be diminished by general verdict in proportion to the amount of negligence attributed to the plaintiff. Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendant against whom a recovery is allowed.

VIRGINIA

Virginia’s damages cap applies to all varieties of damages in a medical malpractice case. For cases arising from July 1, 2013, through June 30, 2014: $2,100,000; for cases arising from July 1, 2014, through June 30, 2015: $2,150,000; for cases arising from July 1, 2015, through June 30, 2016: $2,200,000; for cases arising from July 1, 2016 through June 30, 2017: $2,250,000. The cap is currently set to stop increasing in 2031, when the limit will be $3,000,000. In any action accruing on or after July 1, 1988, including an action for medical malpractice, the total amount awarded for punitive damages against all defendants found to be liable shall not exceed $350,000.

WASHINGTON

The Supreme Court of Washington has deemed any statutory caps to any damages unconstitutional. In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damage. Judgment shall be entered against the defendant in an amount that represents each defendant's proportionate share. If the claimant is found to be partially responsible, the total award will be reduced proportionately by the percent at fault the fact finder determines the claimant was.

Footnotes:

239 Utah Code Ann. § 78B-3-410(1)(d).
241 Utah Code Ann. § 78B-8-201(3)(a).
242 Utah Code Ann. § 78B-5-818(1).
243 Utah Code Ann. § 78B-5-818(2).
244 Utah Code Ann. § 78B-5-818(3).
252 Id.
WEST VIRGINIA

West Virginia puts a $250,000 per-occurrence cap on noneconomic damages in medical malpractice cases. This cap bumps up to $500,000 for noneconomic damages if the medical malpractice resulted in certain catastrophic damages including wrongful death, permanent and serious disfigurement, or an injury that permanently prevents the plaintiff from being able to care for him/herself and perform life-sustaining activities. Both noneconomic damages caps have been adjusted with inflation since 2004. Currently, in 2017, the caps total approximately $335,000 and $675,000, respectfully.

West Virginia does not cap economic damages in ordinary medical malpractice cases. However, in trauma cases, there is a $500,000 global cap, which has been adjusted with inflation since 2016. A trauma patient with economic damages in excess of $500,000 may recover up to an additional $1 million. In order for this cap – often referred to as the “trauma cap” – to apply, the treatment must have been rendered in good faith and necessitated by an emergency condition for which the patient enters a health care facility, designated as a trauma center by the West Virginia Office of Emergency Medical Services.

If a plaintiff in any civil case establishes by clear and convincing evidence that damages were suffered as a result of conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others, an award of punitive damages may occur.

In West Virginia, the liability of each defendant for compensatory damages is several only and not joint. Furthermore, each defendant shall be liable only for the amount of compensatory damages allocated to that defendant in direct proportion to that defendant’s percentage of fault, and a separate judgment shall be rendered against each defendant for his or her share of that amount. However, when two or more defendants have consciously conspired and deliberately pursued a common plan/design to commit a tortious act/omission, joint liability may be imposed. When joint liability is imposed, a defendant has a right to contribution from other defendants that acted in concert. In regard to comparative fault, any fault attributed to the plaintiff does not totally bar recovery unless the plaintiff’s fault is greater than the combined fault of all other persons responsible for the total amount of damages. When the plaintiff’s fault is less than the combined fault of all other persons, the plaintiff’s recovery is reduced in proportion to the plaintiff’s degree of fault.

Wisconsin has a $750,000 per-occurrence cap on non-economic damages in medical malpractice cases. Wisconsin does not cap economic damages in medical malpractice cases. In all injury cases, punitive damages are limited to the greater of $200,000 or two times the award of compensatory damages. Contributory negligence does not bar recovery in an action by any person to recover damages for negligence resulting in death or in injury to person or property, if that negligence was not greater than the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributed to the person recovering. The negligence of the plaintiff shall be measured separately against the negligence of each person found to be causally negligent. The liability of each person found to be causally negligent whose percentage of causal negligence is less than 51% is limited to the percentage of the total causal negligence attributed to that person. A person found to be causally negligent whose percentage of causal negligence is 51% or more shall be jointly and severally liable for the damages allowed.
Wyoming has no statutory caps on any kind of damages. If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award caused by the misappropriation.\(^\text{272}\) Contributory fault shall not bar a recovery in an action by any claimant or the claimant’s legal representative to recover damages for wrongful death or injury to person or property, if the contributory fault of the claimant is not more 50% of the total fault of all actors.\(^\text{273}\) Any damages allowed shall be diminished in proportion to the amount of fault attributed to the claimant.\(^\text{274}\) The court shall reduce the amount of damages determined in proportion to the percentage of fault attributed to the claimant.\(^\text{275}\) Each defendant is liable only to the extent of that defendant’s proportion of the total fault determined by the fact finder.\(^\text{276}\)

\(^{274}\) Id.  