



2019

50-STATE ANALYSIS
OF LIABILITY
DAMAGES CAPS

Compendium of Law

USLAW
NETWORK, INC.

50-STATE ANALYSIS OF LIABILITY DAMAGES CAPS | 2019

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.

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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

¹ Exxon Mobil Corp. v. Alabama Dep't of Conservation and Natural Res., 986 So. 2d 1093 (Ala. 2007).

² Alabama Power Co. v. Rembert, 208 So. 2d 205 (Ala. 1968).

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).

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 reduce 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

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)(b).

¹² Ala.Code § 6-11-3(3)(c)(1).

¹³ *Roe v. Michelin North America, Inc.*, 637 F.Supp.2d 995, 999 (M.D. Ala. 2009).

¹⁴ *Gilbert v. St. Louis—San Francisco R. Co.*, 514 F.2d 1277, 1278 (5th Cir. 1975).

¹⁵ *Roe*, 514 F.Supp.2d at 1000.

¹⁶ Ala.Code § 6-11-21(j).

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 With respect to medical malpractice claims, the noneconomic damages cap is \$250,000, or \$400,000 in cases wrongful death or severe physical impairment.¹⁹

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 \$500,000.²⁰ 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 \$7,000,000.²¹

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

¹⁷ Alaska Stat. Ann. § 9.17.010(b).

¹⁸ Alaska Stat. Ann. § 9.17.010(c).

¹⁹ Alaska Stat. Ann. § 9.55.549(d), (e).

²⁰ Alaska Stat. Ann. § 9.17.020(f).

²¹ Alaska Stat. Ann. § 9.17.020(g).

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.²² 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.²³

Arizona

In Arizona, there is no caps on damages in a medical malpractice action.²⁴ 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.²⁵ The damages may be reduced by the collateral source benefits received by the plaintiff.²⁶

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

²² Alaska Stat. Ann. § 9.17.020(h).

²³ Alaska Stat. Ann. § 9.17.020(j).

²⁴ Article II, Section 31 of Arizona Constitution.

²⁵ Ariz. Rev. Stat. Ann. § 12-2506.

²⁶ See ARS § 12-565

earnings or earning capacity.²⁷ The damages may also include compensation for pain and suffering and other noneconomic loss recognized by law.²⁸

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."²⁹ 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.³⁰ 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 \$1,000,000.³¹ 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.³²

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.³³ 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.³⁴

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

²⁷ Ark. Code Ann. § 16-114-208(a)(1)(A).

²⁸ Ark. Code Ann. § 16-114-208(a)(2).

²⁹ Ark. Code Ann. § 16-55-201(b)(1).

³⁰ Ark. Code Ann. § 16-55-208(b)(1)-(2).

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

³² Id.

³³ Cal. Civ. Code § 3333.2(b).

³⁴ Cal. Civ. Code § 667.7(a).

reduced in proportion to his or her fault.³⁵ 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.³⁶

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.³⁷ In no case shall an amount of noneconomic loss or injury damages exceed \$936,030.³⁸ 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.³⁹

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 \$300,000, present value per-patient, including any derivative claim, shall be attributable to direct or derivative noneconomic loss or injury.⁴⁰

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,

³⁵ Cal. Civ. Code § 1431.2(a).

³⁶ Cal. Civ. Code § 1431.2(a).

³⁷ Colo. Rev. Stat. Ann. § 13-21-102.5(3)(a). The \$468,010 number will be adjusted for inflation by January 1, 2020 and every subsequent two years. Colo. S.B. 19-109.

³⁸ Id. The \$936,030 number will be adjusted for inflation by January 1, 2020 and every subsequent two years. Colo. S.B. 19-109.

³⁹ Colo. Rev. Stat. Ann. § 13-21-102.5(5).

⁴⁰ Colo. Rev. Stat. Ann. § 13-64-302(1)(b)-(c).

expressed as a whole-number percentage of total fault.⁴¹ If the jury finds the plaintiff's fault equals or exceeds 50%, the plaintiff is not entitled to recover any damages.⁴² The jury may also assign a percentage of fault to nonparties, which can further reduce defendants' liability.⁴³

Connecticut

Connecticut has no caps or limits on the amount of damages that can be awarded to a plaintiff in a medical malpractice suit.⁴⁴ 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.⁴⁵ Defendants are only liable for the damages reduced to the proportion of their fault.⁴⁶

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.⁴⁷

Delaware

In any action for medical negligence, punitive damages may be awarded with no limitations.⁴⁸ There are no statutory caps on any kind of damages, apart from a handful of narrow circumstances.⁴⁹ Delaware follows a modified comparative negligence rule. This means that

⁴¹ Colo. Rev. Stat. Ann. § 13-21-111.5(1).

⁴² Colo. Rev. Stat. Ann. § 13-21-111(3).

⁴³ Colo. Rev. Stat. Ann. § 13-21-111.5(2), (3)(b).

⁴⁴ Conn. Gen. Stat. Ann. § 52-572h.

⁴⁵ Conn. Gen. Stat. Ann. § 52-572h(a).

⁴⁶ Conn. Gen. Stat. Ann. § 52-572h.

⁴⁷ Conn. Gen. Stat. Ann. § 52-240b.

⁴⁸ Del. Code Ann. 18 § 6855

⁴⁹ 2 Del. Code Ann. 6 § 2003(b) (limiting recovery for willful and malicious appropriation of trade secrets to twice the amount of award under subsection (a)); Del. Code Ann. 19 § 715(c) (limiting damages for employment discrimination in conformance with 42 U.S.C. § 2000e et seq.); Del. Code Ann. 10 § 4013(a)

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.⁵⁰ There is no cap on these damages.⁵¹ 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.⁵²

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.⁵³ 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.⁵⁴ In cases that do not involve death or permanent vegetative state, the patient injured by medical negligence may recover noneconomic damages not to exceed \$1 million if: 1) the trial court determines that a manifest injustice would occur unless increased noneconomic damages are awarded, based on a finding that because of the special circumstances of the cases, the noneconomic harm sustained by the injured patient was particularly severe; and 2) the trier of fact determines that the defendant's negligence caused a

(limiting municipal liability for tort claims to \$300,000 if uninsured, otherwise the policy limit); Del. Code Ann. 10 § 3922 (limiting municipal recovery from parents for minor's destruction of property to \$10,000).

⁵⁰ D.C. Code § 22-1840(a).

⁵¹ Id.

⁵² D.C. Code § 22-1840.

⁵³ Fla. Stat. Ann. § 766.118(2)(a) and Fla. Stat. Ann. § 766.118(3)(a).

⁵⁴ Fla. Stat. Ann. § 766.118(2)(b).

catastrophic injury to the patient.⁵⁵ 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.⁵⁶ In a personal injury action, the Supreme Court of Florida has held that statutory caps on non-economic damages are unconstitutional.⁵⁷ However, it is anticipated that Florida Supreme Court, given its current members, will readdress the issue and recede from its prior holding. 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.⁵⁸

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 \$500,000.⁵⁹ 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 \$2,000,000.⁶⁰ 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 claimant, there will be no cap on punitive damages.⁶¹ 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

⁵⁵ Fla. Stat. Ann. § 766.118(2)(b)(1)-(2).

⁵⁶ Fla. Stat. Ann. § 766.118(3)(b).

⁵⁷ North Broward Hosp. Dist. v. Kalitan, 219 So. 3d 49 (Fla. 2017) .

⁵⁸ Fla. Stat. Ann. § 766.118(4)(a).

⁵⁹ Fla. Stat. Ann. § 768.73(1)(a)(1)-(2).

⁶⁰ Fla. Stat. Ann. § 768.73(1)(b)(1)-(2).

⁶¹ Fla. Stat. Ann. § 768.73(1)(c)

claimant pleads and proves, by clear and convincing evidence, that the practitioner acted in a wrongful manner.⁶²

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.⁶³ 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.⁶⁴

Georgia

In 2010, the Georgia Supreme Court deemed the statutory cap on noneconomic damages as unconstitutional.⁶⁵ 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.⁶⁶ Except in cases of intentional harm or those involving drugs or alcohol, punitive damages are limited to \$250,000.⁶⁷

⁶² Fla. Stat. Ann. § 766.118(6).

⁶³ Fla. Stat. Ann. § 768.81(2).

⁶⁴ Fla. Stat. Ann. § 768.81(3).

⁶⁵ Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt, 286 Ga. 731, 691 S.E.2d 218 (2010).

⁶⁶ Ga. Code Ann. § 51-12-5.1(b).

⁶⁷ Ga. Code Ann. § 51-12-5.1(g).

In tort cases arising from product liability, there are no limitations to the award of punitive damages.⁶⁸ However, 75% of the punitive damage award arising out of a product liability action shall be paid into the treasury of the state.⁶⁹

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.⁷⁰ 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.⁷¹

⁶⁸ Ga. Code Ann. § 51-12-5.1(e)(1).

⁶⁹ Ga. Code Ann. § 51-12-5.1(e)(2).

⁷⁰ Ga. Code Ann. § 51-12-31 and Ga. Code Ann. § 51-12-33(b).

⁷¹ Ga. Code Ann. § 51-12-33(a).

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.⁷² For noneconomic damages, the cap is \$375,000 for personal injury and medical malpractice claims with exceptions for specific situations.⁷³

Hawaii has codified its abolishment of joint and several liability for co-defendants⁷⁴, 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.⁷⁵ 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.⁷⁶

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.)⁷⁷ The limitation of awards of noneconomic damages shall not apply to causes of action arising out of willful or reckless

⁷² Haw. Rev. Stat. § 663-8 through HRS § 663-8.3

⁷³ Haw. Rev. Stat. § 663-8.7.

⁷⁴ Haw. Rev. Stat. § 663-31.

⁷⁵ Haw. Rev. Stat. § 663-10.9(1).

⁷⁶ Haw. Rev. Stat. § 663-10.9(2).

⁷⁷ Idaho Code Ann. § 6-1603(1).

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.⁷⁸ 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.⁷⁹ 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.⁸⁰

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.⁸¹ In 2010, the Illinois Supreme Court held caps on noneconomic damages in medical malpractice actions were unconstitutional.⁸² There are no current caps on economic damages either.⁸³ Illinois follows the comparative fault rule when more than one party is responsible for the damages.⁸⁴

Indiana

⁷⁸ Idaho Code Ann. § 6-1603(4)(a)-(b).

⁷⁹ Idaho Code Ann. § 6-1604(3).

⁸⁰ Idaho Code Ann. § 6-803.

⁸¹ Ill. Comp. Stat. Ann. § 5/2-1207.

⁸² Lebron v. Gottlieb Mem. Hosp., 237 Ill.2d 217, 930 N.E.2d 895 (Ill. 2010).

⁸³ Ill. Comp. Stat. Ann. § 5/2-1115.2.

⁸⁴ Ill. Comp. Stat. Ann. § 5/2-1116.

Indiana follows the comparative fault rule, meaning a party is only liable for their percent of fault for an 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

The comparative fault rule also applies to punitive damages – the fact finder may award and reduce punitive damages proportionate to the defendant's fault in causing the accident.⁸⁷ Also, a punitive damage award may not be more than the greater of three times the amount of compensatory damages awarded in the action or \$50,000.⁸⁸ However, Indiana does not allow for the recovery of punitive damages for wrongful death actions.⁸⁹ And, punitive damages are not recoverable for breach of contract cases unless an independent tort has been pled and proven.⁹⁰

For medical malpractice claims, Indiana damage caps apply to the total amount of compensation that an injured plaintiff-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.⁹¹ 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

⁸⁵ Ind. Code Ann. § 34-51-2-1

⁸⁶ Ind. Code Ann. § 34-51-2-6

⁸⁷ *Stroud v. Lints*, 790 N.E.2d 440 (Ind. 2003)

⁸⁸ Ind. Code Ann. § 34-51-3-4

⁸⁹ *Durham v. U-Haul Int'l*, 745 N.E.2d 755 (Ind. 2001)

⁹⁰ *Allstate Ins. Co. v. Hennings*, 827 N.E.2d 1244 (Ind. Ct. App. 2005)

⁹¹ Ind. Code Ann. § 34-18-14-3(a)(3)

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.⁹²

Iowa

Iowa does not cap either economic or noneconomic damages in any type of injury case.⁹³ There is also no cap on punitive damages.⁹⁴ 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.⁹⁵ 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.⁹⁶

Kansas

Until as recently as June 14, 2019, Kansas had a statutory cap on noneconomic damages prescribed by K.S.A. § 60-19a02. However, following the Supreme Court of Kansas' decision in *Hilburn v. Enerpipe LTD.*, Kansas' statutory cap on noneconomic damages has been ruled unconstitutional as it violates the right to a trial by jury guaranteed in Section 5 of the Kansas Constitution.⁹⁷

For punitive damages, an award shall not exceed the lesser of the annual gross income earned by the defendant or \$5,000,000.⁹⁸ 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

⁹² Ind. Code Ann. § 34-18-14-3(b)-(c)

⁹³ Iowa Code Ann. § 624.18

⁹⁴ Iowa Code Ann. § 668A.1.

⁹⁵ Iowa Code Ann. § 668.4.

⁹⁶ Iowa Code Ann. § 668.4.

⁹⁷ *Hilburn v. Enerpipe LTD.*, 442 P.3d 509 (Kan. 2019).

⁹⁸ Kan. Stat. Ann. § 60-3701(e).

shall be equal to 1.5 times the amount of profit which the defendant gained.⁹⁹ 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.¹⁰⁰ Under Kansas' comparative fault system, a claimant may only recover damages if their negligence is less than the casual negligence of the party or parties against whom a claim is made.¹⁰¹ 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.¹⁰²

Kentucky

Kentucky has no cap on economic and noneconomic damages in any type of injury case. There are also no caps on punitive damages.¹⁰³ Kentucky follows the comparative fault rule, meaning that parties are responsible for payment of damages that are commensurate to the percentage of fault apportioned to it by a jury.¹⁰⁴

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).¹⁰⁵ Providers found liable for medical malpractice only have to pay \$100,000 if they are covered by the state's Patient Compensation

⁹⁹ Kan. Stat. Ann. § 60-3701(f).

¹⁰⁰ Kan. Stat. Ann. § 60-258a(a).

¹⁰¹ Kan. Stat. Ann. § 60-258(a)

¹⁰² Kan. Stat. Ann. § 60-258a(d).

¹⁰³ Ky. Rev. Stat. Ann. § 411.186.

¹⁰⁴ Ky. Rev. Stat. Ann. § 411.182.

¹⁰⁵ La. Rev. Stat. Ann. 40 § 1231.2(B)(1).

Fund.¹⁰⁶ 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.¹⁰⁷

Maine

Main's damages cap for noneconomic damages in wrongful death cases is \$500,000.¹⁰⁸ In a wrongful death case, the jury may also give punitive damages not exceeding \$250,000.¹⁰⁹ 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.¹¹⁰ 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%.¹¹¹ 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.¹¹²

Maryland

Maryland's cap on noneconomic damages increases \$15,000 per year on October 1 of each year.¹¹³ On October 1, 2019, the cap on non-economic damages will be \$815,000 for medical malpractice claims and \$860,000 for non-medical malpractice claims. 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).

¹⁰⁶ La. Rev. Stat. Ann. 40 § 1231.2(B)(2).

¹⁰⁷ La. Civ. Code Ann. § 2324(B).

¹⁰⁸ Me. Rev. Stat. tit. 18 § 2-804(b).

¹⁰⁹ Id.

¹¹⁰ Me. Rev. Stat. tit. 14 § 8105(1).

¹¹¹ Me. Rev. Stat. tit. 14 § 8105(4).

¹¹² Id.

¹¹³ Md. Code, Courts and Judicial Proceedings § 3-2A-09(b)(2).

Maryland has no cap on economic damages.¹¹⁴ 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.¹¹⁵ 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.¹¹⁶ 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.¹¹⁷

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.¹¹⁸ There is no cap on economic damages.¹¹⁹ 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.¹²⁰

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.¹²¹

Michigan

¹¹⁴ Md. Code, Courts and Judicial Proceedings, § 11-109.

¹¹⁵ Md. Code. Ann. 14 § 156.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Mass. Gen. Laws Ann. 231 § 60H.

¹¹⁹ Mass. Gen. Laws Ann. 230 § 2.

¹²⁰ Mass. Gen. Laws Ann. 231 § 85.

¹²¹ Mass. Gen. Laws Ann. 229 § 2.

In a single medical malpractice claim, there is a \$280,000 cap on noneconomic damages.¹²² 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.¹²³ The cap on noneconomic damages is adjusted according to the consumer price index at the end of every calendar year.¹²⁴ 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.¹²⁵

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.¹²⁶ Otherwise, the injured person's percent fault is applied proportionally to the award and reduced to proportion of defendant's fault.¹²⁷ Joint tortfeasors shall not be compelled to make contribution beyond his own pro rate share of the entire liability.¹²⁸

Minnesota

¹²² Mich. Comp. Laws Ann. § 600.1483(1).

¹²³ Mich. Comp. Laws Ann. § 600.1483(1)(a).

¹²⁴ Mich. Comp. Laws Ann. § 600.1483(4).

¹²⁵ Mich. Comp. Laws Ann. § 691.1610(1).

¹²⁶ Mich. Comp. Laws Ann. § 600.2925b.

¹²⁷ Id.

¹²⁸ Mich. Comp. Laws Ann. § 600.2925a(2).

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.¹²⁹ However, if a claimant is found to be more than 50% at fault, the claimant is barred from recovery.¹³⁰ When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each.¹³¹ 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.¹³²

¹²⁹ Minn. Stat. Ann. § 604.02.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *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 \$500,000.¹³³ 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 \$100,000,000; \$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.¹³⁴ 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.¹³⁵

Mississippi is a pure comparative negligence state.¹³⁶ 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

¹³³ Miss. Code Ann. § 11-1-60.

¹³⁴ Miss. Code Ann. § 11-1-65(3)(a).

¹³⁵ Miss. Code Ann. § 11-1-65(3)(d).

¹³⁶ Miss. Code Ann. § 11-7-15.

him in direct proportion to his percentage of fault.¹³⁷ 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.¹³⁸

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)].¹³⁹ The Missouri Supreme Court deemed the statute capping medical malpractice damages as unconstitutional in 2012.¹⁴⁰ In 2014, the Supreme Court of Missouri also deemed a punitive damages cap unconstitutional.¹⁴¹ 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.¹⁴² 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.¹⁴³ 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.¹⁴⁴ 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.¹⁴⁵

¹³⁷ Miss. Code Ann. § 85-5-7(2).

¹³⁸ Miss. Code Ann. § 85-5-7(4).

¹³⁹ Mo. Ann. Stat. § 510.270.

¹⁴⁰ Watts v. Lester E. Cox Med. Centers, 376 S.W.3d 633 (Mo. 2012) (en banc), However, in medical malpractice actions in wrongful death, statutory limitations on non-economic damages have been held as constitutional. Dodson v. Ferrara, 491 S.W.3d 542 (Mo. 2016) (en banc), as modified (May 24, 2016)

¹⁴¹ Lewellen v. Franklin, 441 S.W.3d 136 (Mo. 2014).

¹⁴² Gustafson v. Benda, 661 S.W.2d 11, 16 (Mo. 1983) (en banc) (adopting a system of comparative fault for all cases).

¹⁴³ Mo. Ann. Stat. § 537.067(1).

¹⁴⁴ *Id.*

¹⁴⁵ Mo. Ann. Stat. § 537.067(2).

Montana

Montana caps noneconomic damages in medical malpractice cases at \$250,000.¹⁴⁶ The cap is applied per-patient. Montana does not have a cap on economic damages in medical malpractice actions.¹⁴⁷ 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.¹⁴⁸ Punitive damages will not be awarded in any action arising from contract or breach of contract.¹⁴⁹ 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.¹⁵⁰ If the claimant is found to be 50% at fault or more, the rule bars the claimant from collecting any damages.¹⁵¹ 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.¹⁵² 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.¹⁵³ 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.¹⁵⁴

Nebraska

¹⁴⁶ Mont. Code. Ann. § 25-9-411(1)(a).

¹⁴⁷ Mont. Code. Ann. § 25-9-411(b).

¹⁴⁸ Mont. Code. Ann. § 27-1-220(3).

¹⁴⁹ Mont. Code. Ann. § 27-1-220(2).

¹⁵⁰ Mont. Code. Ann. § 27-1-703(1).

¹⁵¹ *Id.*

¹⁵² Mont. Code. Ann. § 27-1-703(2).

¹⁵³ Mont. Code. Ann. § 27-1-703(2).

¹⁵⁴ *Id.*

Nebraska has a \$2,250,000 total cap on all damages in medical malpractice actions for any occurrence after December 31, 2014.¹⁵⁵ 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.¹⁵⁶

When fault is shared between two or more parties, the damages are reduced depending on the amount of fault assigned to the injured person.¹⁵⁷ If a claimant's fault percent is more than 50%, the claimant is barred from recovery.¹⁵⁸ 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.¹⁵⁹ 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.¹⁶⁰ 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.¹⁶¹

¹⁵⁵ Neb. Rev. Stat. Ann. § 44-2825(1).

¹⁵⁶ Neb. Rev. Stat. Ann. § 44-2825(2)-(3).

¹⁵⁷ Neb. Rev. Stat. Ann. § 25-21,185.09.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Neb. Rev. Stat. Ann. § 25-21,185.10.

¹⁶¹ *Id.*

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.¹⁶² 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.¹⁶³ 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 \$100,000.¹⁶⁴ 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.¹⁶⁵

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

¹⁶² Nev. Rev. Stat. Ann. § 41A.035.

¹⁶³ Nev. Rev. Stat. Ann. § 42.005(1).

¹⁶⁴ Nev. Rev. Stat. Ann. § 42.005(1)(a)-(b).

¹⁶⁵ Nev. Rev. Stat. Ann. § 42.005(2).

altogether.¹⁶⁶ 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.¹⁶⁷

When fault is shared between two or more parties, the damages are reduced depending on the amount of fault assigned to the injured person.¹⁶⁸ If a claimant's fault percent is more than 50%, the claimant is barred from recovery.¹⁶⁹ 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.¹⁷⁰

New Hampshire

In 2012, the New Hampshire Supreme Court deemed caps on damages unconstitutional.¹⁷¹ 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.¹⁷² However, if a defendant is found to be 50% or more at fault, the defendant will be held jointly and severally liable.¹⁷³

¹⁶⁶ Nev. Rev. Stat. Ann. § 41.035(1).

¹⁶⁷ Nev. Rev. Stat. Ann. § 41.035(2).

¹⁶⁸ Nev. Rev. Stat. Ann. § 41.141(1).

¹⁶⁹ Id.

¹⁷⁰ Nev. Rev. Stat. Ann. § 41.141(4).

¹⁷¹ Carson v. Maurer, 120 N.H. 925, 424 A.2d 825 (1980).

¹⁷² N.H. Rev. Stat. Ann. § 507:7-e(I)(a).

¹⁷³ N.H. Rev. Stat. Ann. § 507:7-e(I)(b).

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.¹⁷⁴ 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.¹⁷⁵

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. .¹⁷⁶ If the claimant is found to be more than 50% at fault, the claimant is barred from recovery.¹⁷⁷

New Mexico

New Mexico has an overall cap of \$600,000 on all categories of damages available to a medical malpractice plaintiff.¹⁷⁸ The cap specifically excludes compensation for past and future medical care.¹⁷⁹ The cap also does not apply to punitive damages.¹⁸⁰ 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.¹⁸¹ 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.¹⁸²

¹⁷⁴ N.J. Stat. Ann. § 2A:15-5.14.

¹⁷⁵ N.J. Stat. Ann. § 2A:15-5.13(e).

¹⁷⁶ 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”.)

¹⁷⁷ N.J. Stat. Ann. § 2A:15-5.2(a)(2).

¹⁷⁸ N.M. Stat. Ann. § 41-5-6(A).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ N.M. Stat. Ann. § 41-5-6(D).

¹⁸² N.M. Stat. Ann. § 41-3A-1(B).

New York

In New York, there are no caps to economic, noneconomic, or punitive damages.¹⁸³ New York CPLR 1601 limits a defendant's liability in a personal injury action for non-economic loss if defendant's share of liability is 50% or less.¹⁸⁴ This statute only applies to personal injury actions.

North Carolina

North Carolina caps non-economic damages at \$500,000 in medical malpractice cases.¹⁸⁵ Beginning in 2014, North Carolina's cap will be adjusted upward for inflation every three years.¹⁸⁶ 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.¹⁸⁷ 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 \$250,000.¹⁸⁸ There is no cap on economic damages in a medical malpractice case.

In North Carolina, a claimant's contributory negligence bars recovery completely.¹⁸⁹ North Carolina imposes joint and several liability on joint tortfeasors.¹⁹⁰ 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.

¹⁸³ N.Y. Est. Powers & Trusts § 5-4.3.

¹⁸⁴ N.Y. C.P.L.R. § 1601. See N.Y. C.P.L.R. § 1602 for limitations to the applicability of C.P.L.R. § 1601.

¹⁸⁵ N.C. Gen. Stat. Ann. § 90-21.19(a).

¹⁸⁶ *Id.*

¹⁸⁷ N.C. Gen. Stat. Ann. § 90-21.19(b).

¹⁸⁸ N.C. Gen. Stat. Ann. § 1D-25(b).

¹⁸⁹ *Cobo v. Raba*, 347 N.C. 541, 545, 495 S.E.2d 362 (1998).

¹⁹⁰ *Young v. Baltimore & O. R. Co.*, 266 N.C. 458, 465, 146 S.E.2d 441 (1966).

North Dakota

In North Dakota, there is a \$500,000 cap on non-economic damages in medical malpractice cases.¹⁹¹ 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.¹⁹² 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.¹⁹³ If a claimant is found to be 50% or more at fault, the claimant is barred from recovery.¹⁹⁴ 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.¹⁹⁵

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.¹⁹⁶ 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

¹⁹¹ N.D. Cent. Code Ann. § 32-42-02.

¹⁹² *Id.*

¹⁹³ N.D. Cent. Code Ann. § 32-03.2-02.

¹⁹⁴ *Id.*

¹⁹⁵ N.D. Cent. Code Ann. § 32-03.2-02.

¹⁹⁶ Ohio Rev. Code Ann. § 2323.43(A)(2).

independently care for self and perform life-sustaining activities.¹⁹⁷ Punitive damages may not exceed twice the amount of economic damages.¹⁹⁸ There is no cap on economic damages.¹⁹⁹

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.²⁰⁰ 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.²⁰¹ 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.²⁰²

Oklahoma

Oklahoma has a \$350,000 cap on noneconomic damages.²⁰³ 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.²⁰⁴ There is no cap on economic damages.²⁰⁵

¹⁹⁷ Ohio Rev. Code Ann. § 2323.43(A)(3).

¹⁹⁸ Ohio Rev. Code Ann. § 2315.21(D)(2)(a).

¹⁹⁹ Ohio Rev. Code Ann. § 2323.43(A)(1).

²⁰⁰ Ohio Rev. Code Ann. § 2307.22(A)(1).

²⁰¹ Ohio Rev. Code Ann. § 2307.22(A)(2).

²⁰² Ohio Rev. Code Ann. § 2307.22(A)(3).

²⁰³ Okla. Stat. Ann. Tit. 23 § 23-61.2(B)

²⁰⁴ Okla. Stat. Ann. Tit. 23 § 23-61.2(C).

²⁰⁵ *Id.*

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.²⁰⁶ 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.²⁰⁷ 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.²⁰⁸

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.²⁰⁹

²⁰⁶ Okla. Stat. Ann. Tit. 23 § 9.1(B)(2).

²⁰⁷ Okla. Stat. Ann. Tit. 23 § 9.1(C)(2).

²⁰⁸ Okla. Stat. Ann. Tit. 23 § 9.1(D)(2)

²⁰⁹ Okla. Stat. Ann. Tit. 23 § 15(A).

Oregon

The only damage cap in Oregon is \$500,000 for noneconomic damages in wrongful death claims arising from medical malpractice.²¹⁰ Oregon has no cap on economic damages in medical malpractice cases, whether they involve wrongful death or not.²¹¹ 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 (with no more than 20% paid to the prevailing party's attorney), 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.²¹²

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.²¹³ 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.²¹⁴ No tortfeasor is compelled to make contribution beyond the proportional share of the tortfeasor to the entire liability.²¹⁵

²¹⁰ Greist v. Phillips, 322 Or. 281, 906 P.2d 789 (1995); *see also* Vasquez v. Double Press Mfg., Inc., 288 Or. App. 503, 523–26, 406 P.3d 225, 237 (2017) (limiting the *Greist* ruling to “wrongful-death claims based on the historical limitations placed on those claims” and holding that a \$500,000 statutory cap on worker’s negligence claim was unconstitutional as applied); Rains v. Stayton Builders Mart, Inc., 289 Or. App. 672, 675, 410 P.3d 336, 338 (2018) (application of damages cap to noneconomic damages for strict products liability and loss of consortium claims violated the remedy clause of the state constitution).

²¹¹ *See Greist*, 322 Or. at 291, 906 P.2d at 789; Clarke v. Oregon Health Sciences University, 343 Or. 581, 609–10, 175 P.3d 418, 434 (2007).

²¹² Or. Rev. Stat. Ann. § 31.735(1).

²¹³ Or. Rev. Stat. Ann. § 31.600(1).

²¹⁴ Or. Rev. Stat. Ann. § 31.800(1).

²¹⁵ Or. Rev. Stat. Ann. § 31.800(2).

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 recovery is sought.²¹⁶ Any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.²¹⁷ 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.²¹⁸

Rhode Island

Generally, Rhode Island does not cap damages in personal injury or medical malpractice cases. However, in a tort action against the State of Rhode Island or a city, town or fire district, there is a \$100,000 cap on damages unless the defendant in question was engaged in a proprietary function.²¹⁹ The limitation on damages shall also not apply in any situation whereby the state has agreed to indemnify the federal government or any agency thereof for any tort liability.²²⁰ Under the Rhode Island Liquor Liability Act, punitive damages may not be awarded for actions based on negligent conduct, as set forth in § 3-14-6(c).²²¹ However, punitive damages may be awarded based on reckless conduct as set forth in § 3-14-7(c).²²² In all actions

²¹⁶ 42 Pa. Stat. Ann. § 7102(a).

²¹⁷ *Id.*

²¹⁸ 42 PA Stat. Ann. § 7102(a.1)(3).

²¹⁹ R.I. Gen. Laws Ann. § 9-31-2; 9-31-3.

²²⁰ R.I. Gen. Laws Ann. § 9-31-2.

²²¹ R.I. Gen. Laws Ann. § 3-14-8(b).

²²² *Id.*

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.²²³

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.²²⁴ 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.²²⁵ The limitations for noneconomic damages rendered against any health care provided 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.²²⁶

In South Carolina, punitive damages in injury cases are limited to the greater of three times the actual damages or \$500,000.²²⁷ 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.²²⁸ 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

²²³ R.I. Gen. Laws Ann. § 9-20-4.

²²⁴ S.C. Code Ann. § 15-32-220(A).

²²⁵ S.C. Code Ann. § 15-32-220(B)-(C).

²²⁶ S.C. Code Ann. § 15-32-220(E).

²²⁷ S.C. Code Ann. § 15-32-530(A).

²²⁸ S.C. Code Ann. § 15-32-520(G).

been convicted of a felony arising out of the same act or course of conduct that was proximate cause of plaintiff's damages, or the defendant acted or failed to act while under the influence of alcohol or drugs.²²⁹ 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.²³⁰

²²⁹ S.C. Code Ann. § 15-32-530(C).

²³⁰ S.C. Code Ann. § 15-38-15(A).

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.²³¹ 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.²³²

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.²³³ 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.²³⁴ 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.²³⁵ Punitive damages shall not exceed an amount equal to the greater of two times the total amount of compensatory damages or \$500,000.²³⁶ 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

²³¹ S.D. Codified Laws § 21-3-11.

²³² S.D. Codified Laws § 15-8-15.1.

²³³ Tenn. Code Ann. § 29-39-102(a)(2).

²³⁴ Tenn. Code Ann. § 29-39-102(c)(d).

²³⁵ Tenn. Code Ann. § 29-39-104(a)(1).

²³⁶ Tenn. Code Ann. § 29-39-104(5).

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.²³⁷

Texas

Texas has a per-claimant \$250,000 cap on noneconomic damages in medical malpractice cases against a physician or health care provider.²³⁸ For medical malpractice cases against a single health care institution, there is a per-claimant cap of \$250,000 for noneconomic damages.²³⁹ 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 than \$250,000 in noneconomic damages, per-claimant.²⁴⁰ 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.²⁴¹ 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 \$200,000.²⁴² This limitation does not apply to limit a defendant's liability if the conduct of the defendant is found to violate certain criminal acts as defined in the Texas Penal Code including murder, aggravated assault, and other certain enumerated crimes.²⁴³

²³⁷ Tenn. Code Ann. § 29-39-102(b).

²³⁸ Tex. Civ. Prac & Rem. Code § 74.301(a).

²³⁹ Tex. Civ. Prac & Rem. Code § 74.301(b).

²⁴⁰ Tex. Civ. Prac & Rem. Code § 74.301(c).

²⁴¹ Tex. Civ. Prac & Rem. Code § 74.303.

²⁴² Tex. Civ. Prac & Rem. Code § 41.008(b).

²⁴³ Tex. Civ. Prac & Rem. Code § 41.008(c).

A claimant may not recover damages if his percentage of responsibility is greater than 50%.²⁴⁴ 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.²⁴⁵ 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.²⁴⁶ 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.²⁴⁷ 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.²⁴⁸

Utah

Utah has a \$450,000 cap on noneconomic damages for any medical malpractice case arising after May 15, 2010.²⁴⁹ The statutory cap does not apply if the medical malpractice resulted in death.²⁵⁰ 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

²⁴⁴ Tex. Civ. Prac & Rem. Code § 33.001.

²⁴⁵ Tex. Civ. Prac & Rem. Code § 33.012(a).

²⁴⁶ Tex. Civ. Prac & Rem. Code § 33.013(a).

²⁴⁷ Tex. Civ. Prac & Rem. Code § 33.013(b)(1).

²⁴⁸ Tex. Civ. Prac & Rem. Code § 33.013(b)(2).

²⁴⁹ Utah Code Ann. § 78B-3-410(1)(d).

²⁵⁰ Smith v. United States, 356 P.3d 1249, 2015 UT 68 (2015).

party.²⁵¹ The fault of a person seeking recovery may not alone bar recovery by that person.²⁵² 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.²⁵³ No defendant is liable to any person seeking recovery for any amount in excess of the proportion of fault attributed to that defendant.²⁵⁴

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.²⁵⁵ 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.²⁵⁶

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: \$2,250,000.²⁵⁷ The cap is currently set to stop increasing in 2031, when the limit will be

²⁵¹ Utah Code Ann. § 78B-8-201(3)(a).

²⁵² Utah Code Ann. § 78B-5-818(1).

²⁵³ Utah Code Ann. § 78B-5-818(2).

²⁵⁴ Utah Code Ann. § 78B-5-818(3).

²⁵⁵ Vt. Stat. Ann. Tit. 12 § 1036.

²⁵⁶ Vt. Stat. Ann. Tit. 12 § 1036.

²⁵⁷ Va. Code Ann. § 8.01-581.15.

\$3,000,000.²⁵⁸ 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 \$350,000.²⁵⁹

Washington

The Supreme Court of Washington has ruled that any statutory caps to noneconomic damages violates the state constitutional right to trial by jury.²⁶⁰ 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.²⁶¹ 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.²⁶² The sum of the percentages of the total fault to at-fault entities shall equal on hundred percent.²⁶³

West Virginia

West Virginia puts a \$250,000 per-occurrence cap on noneconomic damages in medical malpractice cases.²⁶⁴ 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.²⁶⁵ Both noneconomic damages caps have

²⁵⁸ Va. Code Ann. § 8.01-581.15.

²⁵⁹ Va. Code Ann. § 8.01-38.1.

²⁶⁰ Sofia v. Fibreboard Corp., 112 Wash.2d 636, 771 P.2d 711 (Wash. 1989).

²⁶¹ Wash. Rev. Code. Ann. § 4.22.070(1).

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ W. Va. Code Ann. § 55-7B-8(a).

²⁶⁵ W. Va. Code Ann. § 55-7B-8(b).

been adjusted with inflation since 2004.²⁶⁶ Currently, in 2019, the caps total approximately \$340,000 and \$680,000, 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 2016.²⁶⁷ A trauma patient with economic damages in excess of \$500,000 may recover up to an additional \$1 million.²⁶⁸ 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.²⁶⁹

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.²⁷⁰ The amount of punitive damages may not exceed the greater of four times the amount of compensatory damages or \$500,000, whichever is greater.²⁷¹

In West Virginia, the liability of each defendant for compensatory damages is several only and not joint.²⁷² 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

²⁶⁶ W. Va. Code Ann. § 55-7B-8(c).

²⁶⁷ W. Va. Code Ann. § 55-7B-9c(a).

²⁶⁸ W. Va. Code Ann. § 55-7B-9c(c).

²⁶⁹ W. Va. Code Ann. § 55-7B-9c(a); *see also* <http://www.wvoems.org/files/trauma/designations/trauma-centers-list>.

²⁷⁰ W. Va. Code Ann. § 55-7-29(a).

²⁷¹ W. Va. Code Ann. § 55-7-29(c).

²⁷² W. Va. Code Ann. § 55-7-13c(a).

her share of that amount.²⁷³ 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.²⁷⁴ When joint liability is imposed, a defendant has a right to contribution from other defendants that acted in concert.²⁷⁵ 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.²⁷⁶ 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.²⁷⁷

Wisconsin

Wisconsin has a \$750,000 per-occurrence cap on non-economic damages in medical malpractice cases.²⁷⁸ 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.²⁷⁹ 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.²⁸⁰ The negligence of the plaintiff shall be

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ W. Va. Code Ann. § 55-7-13c(c).

²⁷⁷ *Id.*

²⁷⁸ Wis. Stat. Ann. § 893.55(d)(1).

²⁷⁹ Wis. Stat. Ann. § 895.043(6).

²⁸⁰ Wis. Stat. Ann. § 895.045(1).

measured separately against the negligence of each person found to be causally negligent.²⁸¹ 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.²⁸² 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.²⁸³

Wyoming

The Wyoming Constitution prohibits any statutory cap on damages; thus, Wyoming has no statutory caps on any kind of damages.²⁸⁴

Under the Wyoming Uniform Trade Secrets Act, the court may award exemplary damages in an amount not exceeding twice any award caused by the misappropriation if willful and malicious misappropriate exists.²⁸⁵

Additionally, Wyoming is a comparative fault state. Pursuant to Wyo. Stat. § 1-1-109, 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.²⁸⁶ Any damages allowed shall be diminished in proportion to the amount of fault attributed to the claimant.²⁸⁷ The court shall reduce the amount of damages determined in proportion to the percentage of fault

²⁸¹ Id.

²⁸² Wis. Stat. Ann. § 895.045(1).

²⁸³ Id.

²⁸⁴ WYO. CONST. art. 10, § 4.

²⁸⁵ Wyo. Stat. Ann. § 40-24-103(b) (LexisNexis 2019).

²⁸⁶ Wyo. Stat. Ann. § 1-1-109(b).

²⁸⁷ Id.

attributed to the claimant.²⁸⁸ Each defendant is liable only to the extent of that defendant's proportion of the total fault determined by the fact finder.²⁸⁹

In regard to an award of punitive damages, the Tenth Circuit held that, where the compensatory damage award is substantial, the ratio of 1:1 for an award of any punitive damages is the most the Constitution will permit. *Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041, 1069 (10th Cir. 2016). The Tenth Circuit noted that compensatory damages are often considered “substantial” if they are over \$1,000,000.00, but “in many cases, compensatory damages less than \$1,000,000 have also been substantial.” *Id.* at 1069-1070.

²⁸⁸ Wyo. Stat. Ann. § 1-1-109(d).

²⁸⁹ Wyo. Stat. Ann. § 1-1-109(e).