

**AN OVERVIEW OF DAMAGES IN GEORGIA**

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Generally damages in tort claims are divided into three categories - special damages, general damages and punitive damages.

Special and general damages are defined by O.C.G.A. § 51-12-2. As provided by O.C.G.A. § 51-12-2, special damages are those which actually flow from a tortious act and must be proven in a specific amount. Special damages must be proven and are not automatically awarded by jury in its verdict. Special damages, such as medical expenses and lost wages, primarily consist of damages that can be more easily measured based on a generally accept means of accounting. However, to recover such damages, they must be specifically pled. See O.C.G.A. § 9-11-9(g). This means that medical and lost wage “specials” must be stated in a specific monetary amount. Failure to amend the complaint to specifically plead special damages by monetary amount before entry of a pretrial order can result in dismissal of those damage claims. See O.C.G.A. § 9-11-9(g).

Examples of special damages include medical expenses, lost wages and other monetary losses that be proven/calculated with relative certainty. For example, lost profits and loss of earning capacity are recoverable if they can be calculated with relative certainty. All future special damages must be reduced to present day value. Similarly, lost profits must consist of net and not gross profits. Authentic Architectural Millworks, Inc. v. SCM Group USA, Inc., 262 Ga. App. 826, 586 S.E.2d 726 (2003).

O.C.G.A. § 51-12-2 defines general damages as those that which the law presumes to flow from any tortious act. They can be recovered without proof of any specific amount. Generally, pain and suffering is a form of general damages. As a general form of damages, a pain and suffering award is determined based on the “enlightened conscience of the jury”. In other words, the jury

decides, in its discretion, what to award in pain and suffering. Clearly, this is one of the most difficult form of damages to estimate. It is wholly dependent on the makeup of the jury with the attendant world views and values of its members. As a result, jury selection has a greater impact on an award of pain and suffering than most other forms of damages.

Other forms of general damages consist of mental pain and suffering and emotional distress. These damages are clearly recoverable in intentional tort cases where the defendant engaged in intentional, wanton or reckless conduct. See Edwards v. Sabat, 263 Ga. App. 852, 589 S.E.2d 618 (2003). Although Georgia does not recognize negligent infliction of emotional distress as a permissible cause of action, mental pain and suffering can be recovered in negligence cases where the Plaintiff can establish a physical injury or illness as a result of the negligent act in question. See OB-GYN Association of Albany v. Littleton, 261 Ga. 664, 410 S.E.2d 121 (1991).

Punitive damages are a statutory form of damages provided by O.C.G.A. § 51-12-5.1. That code section provides in relative part:

§ 51-12-5.1. Punitive damages

(a) As used in this Code section, the term “punitive damages” is synonymous with the terms “vindictive damages,” “exemplary damages,” and other descriptions of additional damages awarded because of aggravating circumstances in order to penalize, punish, or deter a defendant.

(b) Punitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful

misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.

(c) Punitive damages shall be awarded not as compensation to a plaintiff but solely to punish, penalize, or deter a defendant.

(d)(1) An award of punitive damages must be specifically prayed for in a complaint. In any case in which punitive damages are claimed, the trier of fact shall first resolve from the evidence produced at trial whether an award of punitive damages shall be made. This finding shall be made specially through an appropriate form of verdict, along with the other required findings.

(2) If it is found that punitive damages are to be awarded, the trial shall immediately be recommenced in order to receive such evidence as is relevant to a decision regarding what amount of damages will be sufficient to deter, penalize, or punish the defendant in light of the circumstances of the case. It shall then be the duty of the trier of fact to set the amount to be awarded according to subsection (e), (f), or (g) of this Code section, as applicable.

(e)(1) In a tort case in which the cause of action arises from product liability, there shall be no limitation regarding the amount which may be awarded as punitive damages. Only one award of punitive damages may be recovered in a court in this

state from a defendant for any act or omission if the cause of action arises from product liability, regardless of the number of causes of action which may arise from such act or omission.

(2) Seventy-five percent of any amounts awarded under this subsection as punitive damages, less a proportionate part of the costs of litigation, including reasonable attorney's fees, all as determined by the trial judge, shall be paid into the treasury of the state through the Office of Treasury and Fiscal Services. Upon issuance of judgment in such a case, the state shall have all rights due a judgment creditor until such judgment is satisfied and shall stand on equal footing with the plaintiff of the original case in securing a recovery after payment to the plaintiff of damages awarded other than as punitive damages. A judgment debtor may remit the state's proportional share of punitive damages to the clerk of the court in which the judgment was rendered. It shall be the duty of the clerk to pay over such amounts to the Office of Treasury and Fiscal Services within 60 days of receipt from the judgment debtor. This paragraph shall not be construed as making the state a party at interest and the sole right of the state is to the proceeds as provided in this paragraph.

(f) In a tort case in which the cause of action does not arise from product liability, if it is found that the defendant acted, or failed to act, with the specific intent to cause harm, or that the defendant acted or failed to act while under the influence of alcohol,

drugs other than lawfully prescribed drugs administered in accordance with prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to that degree that his or her judgment is substantially impaired, there shall be no limitation regarding the amount which may be awarded as punitive damages against an active tort-feasor but such damages shall not be the liability of any defendant other than an active tort-feasor.

(g) For any tort action not provided for by subsection (e) or (f) of this Code section in which the trier of fact has determined that punitive damages are to be awarded, the amount which may be awarded in the case shall be limited to a maximum of \$250,000.00.

(h) This Code section shall apply only to causes of action arising on or after April 14, 1997.

As provided by this code section, punitive damages are only awarded where there is clear and convincing evidence that the defendant's actions showed wilful misconduct, malice, fraud, wantonness, oppression or an entire want of care which would raise the presumption of conscious indifference to the consequences. Such damages are only awarded in an effort to penalize, punish or deter the defendant from such conduct or activity. They are not be awarded as compensation to the Plaintiff.

In order to recover punitive damages, they must be specifically pled. In addition, where

punitive damages are pled, the Court must bifurcate the trial. During the first phase, the jury is asked in a special jury verdict form to determine whether the Plaintiff has proven by clear and convincing evidence that punitive damages should be assessed against one or more of the defendants. Should the jury respond affirmatively to that question, then the same jury would be reconvened in the second phase of the trial to determine what amount of punitive damages are to be awarded. This provision is intended to prevent the defendant from being prejudiced during the initial phase of the trial. Introduction of evidence concerning the amount of punitive damages to be awarded could influence a jury's award of pain and suffering.

It should be noted that the higher "clear and convincing" and not "preponderance of the evidence" burden of proof applies to whether a Plaintiff is entitled to punitive damages. See O.C.G.A. § 51-12-5.1(d). It should also be noted that O.C.G.A. § 51-12-5.1 only applies to tort causes of action and does not apply to causes of action based on contract or equity theories of recovery.

Although there is no limit to the amount of punitive damages that can be awarded in product liability cases, they are generally limited in other types of tort actions. Damages in other tort causes of action are limited to \$250,000.00 unless the Plaintiff can prove that the Defendant acted with the specific intent to cause harm or acted/failed to act while under the effect of alcohol or drugs at the time of the incident in question to the extent that his/her judgment was substantially impaired. As such, damages in a typical tort claim are limited to \$250,000 where there is no allegation of alcohol/drug use and unless there is evidence that the Defendant acted with the specific intent to harm Plaintiff. Such intent is difficult to prove in typical negligence cases.

In breach of contract actions, the Plaintiff can recover damages that result naturally and

normally from the breach in question. These damages also consist of losses which the parties contemplated when the contract was made as a probable result of the breach in question. See O.C.G.A. § 13-6-2 and Lingren v. Dowis, 236 Ga. 278, 223 S.E.2d 682 (1976). These damages can include lost profits and losses of that nature if they can be proven with relative certainty. However, damages which are too remote and speculative cannot be recovered. See O.C.G.A. § 13-6-8. As indicated above, punitive damages cannot be awarded in breach of contract causes of action.

One area that is especially challenging is the calculation of damages in wrongful death cases. Damages in wrongful death cases consist of the economic value of the life of the decedent (reduced to present day value) as well as the non-economic value of the decedent's life. This second aspect of wrongful death damages is sometimes referred to as "Hedonic Damages". Frequently, the economic value of a decedent's life must be calculated through the services of an economist.

The issue of damages at trial typically ends up being a battle of the economics experts and their credibility before a jury. Typically, the economic value of a life is determined based on the decedent's education, training, age, likely amount of wages earned during the decedent's lifetime, relative health of the decedent before his/her death and other factors. Typically wrongful death cases are emotional for a jury. Great care must be taken to avoid alienating the jury at trial by appearing insensitive while presenting the facts of the case to them. In addition, to damages awarded for the wrongful death claim itself, a defendant can also be potentially liable for lost wages, medical expenses and other elements of damages incurred by the decedent between the time of his/her injuries were sustained and when the decedent actually passed away from the effects of those injuries.

It should be noted that this paper is intended only to be an overview of the types of damages



in Georgia. Damages in each case must be evaluated on an individual basis. A multitude of factors are taken into account in making an estimate of a potential jury verdict in each case. Nevertheless, this paper should give a basic idea concerning damages that are often claimed in Georgia lawsuits and a framework for making a “ballpark” determination of potential exposure in a case.