Chapter I

Alabama

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I. Bodily Injury Damages

A. Compensatory

1. Legal Standards for Recovery of Compensatory Damages

No damages may be awarded without a finding that an injury occurred. Compensatory damages are awarded for injury to person or property and are intended to be given as a substitute of equal value for the loss or injury. Accordingly, a plaintiff may only recover compensatory damages that naturally and necessarily flow from the underlying alleged tort, i.e. those injuries that are proximately caused by the tortious act.

The fact finder—in most instances the jury—has discretion in assessing damages, particularly with regards to damages that are not “fixed,” such as those for physical pain and suffering, mental anguish, and emotional distress. In Alabama, “there is no fixed standard for ascertainment of compensatory damages recoverable ... for physical pain and mental suffering” and “the amount of such [an] award is left to the sound discretion of the jury, subject only to correction by the court for clear abuse or passionate exercise of that discretion.” The court has consistently held that a trial court cannot interfere with a jury verdict merely because it believes the jury gave too little or too much. In the absence of a flawed verdict, “there is no statutory authority to invade the province of the jury in awarding compensatory damages.”

2. Economic Losses—Recoverable

A plaintiff may recover for property damage as well as all reasonable and necessary medical expenses incurred as the result of the tort even if he or she was not required to have actually paid for the expenses associated with the damage. With respect to the medical expenses, a plaintiff’s recovery may include future as well as past medical expenses, if the evidence confirms such damages. Alabama, however, has abrogated the collateral source rule rendering admissible evidence that medical expenses have been or will be paid or reimbursed by sources other than the defendant. Travel expenses relating to the medical treatment are equally recoverable.

A plaintiff is also entitled to recover his lost earnings and for any impairment of earning capacity due to his or her injuries.

The loss of services of an injured child are also recoverable damages. This claim is distinguishable from the loss of consortium claim between spouses, discussed below. The loss of services of a child must specifically relate to the proceeds of a child’s labor and not of the loss of the society of a child. The loss of the society of a child is not an element of recoverable
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This recovery includes compensation for the loss of the child’s services up to the
time of his or her age of majority. Additionally, a parent may recover for losses incurred in
caring for an injured child which is measured by the value of the services in nursing or caring
for the child as well as the time lost from the parent’s work or duties in caring for the injured
child.

3. Non-economic Losses—Recoverable

The plaintiff is entitled to recover for pain and suffering. There is no established standard
for evaluating such damages. Rather, they are left to the sound discretion of the jury.

Alabama also recognizes recovery for mental anguish and emotional distress, but in most
cases only if accompanied by some physical injury. Where the tort results in only injury to
property without any physical injury to the person, mental distress is generally denied. There,
however, are exceptions to this rule, such as when the injury to the property is committed under
circumstances of “insult or contumely” or intentional torts are involved.

Loss of consortium is an additional non-economic loss recoverable by a plaintiff in Alabama.
It may be sought by either a husband or a wife and arises from the loss of the right to the
company, fellowship, cooperation, and assistance in the relationship. Although such a claim is
derivative of the injury resulting from the tort, it is an independent claim brought by the spouse
of the injured party.

4. Statutory Limits on the Recovery of Compensatory Damages

There are no statutory limits on the recovery of compensatory damages.

5. Defendants Jointly and Severally Liable for Damages

Defendants are considered joint tortfeasors if their separate acts “combine and concur” to
produce a single harmful result. “If a plaintiff is damaged as a result of the combined or
concurring wrongful acts, omissions, or negligence of others, the plaintiff is entitled to full
compensation for all damages proximately caused by such wrongful acts.” Under these
circumstances, Alabama law prohibits apportionment of damages and contribution or indemnity
from other joint tortfeasors. In other words, each and every joint tortfeasor is liable for the full
and complete amount of damages awarded. The plaintiff may enforce the judgment against the
joint tortfeasor(s) of his choice—one, all, or some. Nevertheless, indemnity on the basis of an
expressed agreement (i.e. contract, warranty, etc.) between parties may be enforced under certain
circumstances.

B. Punitive

1. Legal Standards for Recovery of Punitive Damages

No defendant is liable in Alabama for punitive damages unless the trier of fact finds that the
defendant “consciously or deliberately engaged in oppression, fraud, wantonness or malice.” A
defendant is liable only for punitive damages that are commensurate with that defendant’s own
conduct.

In order to recover punitive damages in any tort action in Alabama, other than for wrongful
death, the plaintiff must prove by “clear and convincing evidence” that he or she is entitled to such damages.26 “Clear and convincing evidence” is “evidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion.”27

2. Application to the Driver and the Motor Carrier

Punitive damages are no less recoverable when a defendant is found vicariously as opposed to directly liable.28 Alabama Code § 6-11-27(a), however, requires a heightened standard for awarding punitive damages against a principal based on the acts of the principal’s agent. Furthermore, Alabama Code § 6-5-300 precludes the imposition of punitive damages against a trucking company in the absence of evidence that the company participated in, authorized, or ratified the alleged wanton misconduct of their agent driver, or that they had negligently hired or retained his services, or that they had benefited from the driver’s alleged misconduct.29

3. Circumstances in Which Punitive Damages Have Been Upheld against Motor Carriers

Punitive damages are imposed in trucking accident cases only if the plaintiff proves wantonness or malice.30 Because of Alabama’s Wrongful Death Statute (which is further explained herein below), punitive damages are also repeatedly imposed in trucking accident cases for wrongful death.31

4. Statutory Limitations on Recoverable Punitive Damages

Alabama Code § 6-11-21 provides for the following limitations on punitive damage awards:

(a) no award of punitive damages shall exceed three times the compensatory damages or $500,000, whichever is greater;
(b) punitive damages against a small business (a net worth of $2 million or less) shall not exceed $50,000 or 10% of the business’ net worth, whichever is greater; and
(c) punitive damages for physical injury may not exceed three times the compensatory damages or $1.5 million, whichever is greater.

These limitations do not apply to actions for wrongful death or intentional infliction of physical injury.32

II. Wrongful Death and Survival Damages

A. Wrongful Death

1. Persons Legally Entitled to Recover

Alabama’s Wrongful Death Statute is set forth at Alabama Code § 6-5-410 (1975) and provides, inter alia, that a “personal representative” of a decedent may institute a wrongful death action under certain circumstances described therein:

A personal representative may commence an action and recover such damages as the jury may assess in a court of competent jurisdiction within the State of Alabama, and not elsewhere,
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for the wrongful act, omission, or negligence of any person, persons, or corporation, his or their servants or agents, whereby the death of his testator or intestate was caused, provided the testator or intestate could have commenced an action for such wrongful act, omission, or negligence if it had not caused death.33

Similarly, the action survives against the personal representative of the deceased tortfeasor.34

To qualify as a personal representative under Section 6-5-410(a), the person bringing the action must have been appointed through probate proceedings as the decedent’s executor or administrator.35 Failure to so qualify will result in the nullification of any wrongful death action instituted by such person.36

At the same time, however, a “personal representative is not required to prove his capacity as such before bringing a wrongful death action, so long as the [personal representative] alleges in the complaint that he is the proper party to bring the action and the defendant does not specifically deny his capacity.”37

2. Damages Available for Wrongful Death

In Alabama, only punitive damages are recoverable for a wrongful death claim.38 For purposes of a wrongful death action under Section 6-5-410, a personal representative may “recover such damages as the jury may assess.”39

3. Punitive Damages Recoverable in the Wrongful Death Action

As mentioned hereinabove, although the wrongful death statute has evolved throughout the years, it has, “under the crushing weight of 150 years of stare decisis, consistently held that [the] wrongful death statute allows for the recovery of punitive damages only.”40 It is solely within the jury’s discretion whether such damages are warranted.41

Typically, in order to recover punitive damages in a tort action in Alabama, the plaintiff must prove by “clear and convincing evidence” that he or she is entitled to the same.42 “Clear and convincing evidence” is “evidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion.”43 However, despite the fact that the only recoverable damages for wrongful death in Alabama are punitive damages, actions for wrongful death do not require proof of entitlement to punitive damages by clear and convincing evidence. Alabama Code Section 6-11-20(a) states that “punitive damages may not be awarded in any civil action, except civil actions for wrongful death pursuant to . . . 6-5-410, other than in a tort action where it is proven by clear and convincing evidence . . . .” (emphasis added). Because of this statutory exception, coupled with Alabama’s unique punitive damages-only recovery in wrongful death actions, the Supreme Court of Alabama has interpreted Section 6-11-20(a) to allow for the recovery of punitive damages in a wrongful death action even when the plaintiff alleges simple negligence where the burden of proof is a preponderance of the evidence.44 The U.S. Supreme Court long ago held that Alabama’s wrongful death recovery mechanism is constitutional even in this regard.45

4. Statutory Limitations for Recovery of Wrongful Death Damages

The framework for statutory caps on punitive damages provided in Alabama Code Section 6-11-21 is inapplicable in wrongful death actions.46
The “guideposts” are “(1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.” After consideration of the guideposts, a punitive damages award is subject to scrutiny under Hammond and Green Oil Company with consideration of the following factors:

[T]he reprehensibility of [the defendant’s] conduct; (2) the relationship of the punitive-damages award to the harm that actually occurred, or is likely to occur, from [the defendant’s] conduct; (3) [the defendant’s] profit from its misconduct; (4) [the defendant’s] financial position; (5) the cost to [the plaintiff] of the litigation; (6) whether [the defendant] has been subject to criminal sanctions for similar conduct; and (7) other civil actions [the defendant] has been involved in arising out of similar conduct.

5. Defendants Jointly and Severally Liable for Damages

The proscription against apportionment as discussed above in the context of compensatory damages is equally applicable in the wrongful death context even though the damages are only punitive in nature. Thus, if the defendants’ separate acts “combine and concur” to produce a single harmful result, the defendants are jointly and severally liable for the plaintiff’s damages.

Punitive damages are also no less recoverable in a wrongful death action when a defendant is found vicariously as opposed to directly liable. Alabama Code Section 6-11-27(a), which requires a heightened standard for awarding punitive damages against a principal based on the acts of the principal’s agent, is inapplicable in wrongful death actions.

B. Survival

1. Persons Entitled to Recovery

The Survival of Actions Act in Alabama is codified in the Sections 6-5-460 through 6-5-466 of the Code of Alabama. Alabama Code § 6-5-462 provides that the following claims survive the death of a victim in favor of the personal representative of the estate:

   (a) All claims upon which an action has been filed;
   (b) Claims based on contract, expressed or implied, even if no action has been filed;
   (c) All “personal claims” upon which an action has been filed, except for injuries to the reputation.

Claims of an equitable nature do not survive. When a tortfeasor dies, letters of administration should be issued not later than six months after his death. In Nelson v. Estate of Frederick, the court ruled that the statute of limitation is tolled during the period between the tortfeasor’s death and the appointment of an administrator, but that tolling period does not exceed six months. When Ala. Code § 6-5-462 and Ala. Code § 6-2-14 are read together, it is evident that when a person dies, the claim against the personal representative of the estate survives, and the statute of limitations is tolled for up to six months to allow the representative to sue or be sued in the decedent’s name.
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A personal representative of a decedent may also be able to recover for damages incurred between the time of the decedent’s injury and the time of the decedent’s death under a contract theory, i.e., a breach of warranty claim. For example, in Benefield v. Aquaslide ‘N’ Dive Corporation, the Supreme Court of Alabama, in a case of first impression, addressed whether “simultaneous recovery of both punitive damages for wrongful death under a tort claim and compensatory damages for injuries suffered by the decedent between the date of his injury and the date of his death under a contract claim may be sought,” answering the question affirmatively. The decedent, Jeffrey G. Benefield, suffered an injury on a swimming pool slide and died nine days later from that injury. Benefield’s personal representative filed suit against the slide manufacturer, asserting claims for wrongful death under the Alabama Extended Manufacturer’s Liability Doctrine and breach of warranty; with respect to the breach of warranty claim, Benefield’s personal representative sought recovery for Benefield’s pain and medical expenses incurred during the nine-day period between his injury and death. After the trial court’s dismissal of the breach of warranty claim, the Supreme Court of Alabama reversed and remanded the trial court’s dismissal, holding that the wrongful death and the breach of warranty claims were separate claims that should not be merged, and further stated that the breach of warranty claim survived Benefield’s death, notwithstanding the fact that he did not file the claim before he died.

2. Statutory Damages that May Be Recovered in a Survival Action

Alabama courts construe the Survival Statute and the Wrongful Death Statute in pari materia. Where an individual suffers an injury from the negligence or intentional conduct of a tortfeasor, he has a common-law action for personal injuries. If the injured person dies of a cause unrelated to the subject injuries after filing a claim, the action can be revived by the personal representative, and damages are recoverable under the Survival Statute.

If the plaintiff dies of the injuries inflicted by the tortfeasor, however, the remedy is under the Wrongful Death Act, Ala. Code § 6-5-410, and only punitive damages are recoverable, not compensatory damages that he had incurred up until the time of his death. The rationale of this rule is that because of the remedy under the Wrongful Death Act, allowance of an additional personal injury action under the survival statute would work an injustice in that the plaintiff would be permitted to receive a double recovery.

Actions for wrongful death of a minor are treated under Alabama Code §§ 6-5-391 and 6-5-390 which permit a father or mother an equal right to commence an action.

3. Punitive Damages Recoverable in the Survival Action

In order to recover punitive damages in any tort action in Alabama, other than for Wrongful Death, the plaintiff must prove by “clear and convincing evidence” that he or she is entitled to such damages. “Clear and convincing evidence” is “evidence that, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of the conclusion.”

4. Statutory Limits on the Recovery of Survival Damages

There are no statutory limits on the recovery of survival damages other than the required limits of such claims as well as the limitations on punitive damages as described above.
5. Defendants Jointly and Severally Liable for Damages

Defendants are jointly or severally liable for survival damages as explained above under the Compensatory Damages section.

Notes

6. Id. at 240.
12. Id.
13. Id.
14. Id.
24. See Ala. Code §§ 6-11-20(a) & 6-11-21(c) (1975).
25. Id.
30. Ala. Code §§ 6-11-20(a) & 6-11-21(c) (1975); Abston v. Kelley Bros. Contr. Inc., 99 F. Supp. 1392 (S.D. Ala. 1998) (upholding punitive award for driver’s failure to take any action to avoid the accident, including failure to warn plaintiff of impending collision); Hill v. Campbell, 804 So. 2d 1107, 1108 (Ala. Civ. App. 2001) (awarding punitive damages when the driver was intoxicated, was traveling on the wrong side of the road, and left the scene after the collision); Osborne Truck Lines v. Langston, 454 So. 2d 1317, 1321 (Ala. 1984) (awarding punitive damages for improper turn across lanes of traffic, resulting in plaintiff’s vehicle hitting the side of the truck).
31. See, e.g., Mack Trucks, Inc. v. Witherspoon, 867 So. 2d 307 (Ala. 2003) (remitting punitive damage award from $19 million to $6 million in a wrongful death case based on a claim that the tractor-trailer driven by the
deceased was defective); Tillis Trucking Co. v. Moses, 748 So. 2d 874 (Ala. 1999) (remitting a $7 million award and affirming a judgment in wrongful death case involving the negligent/wanton operation of a log truck driven by an agent who left the scene of an accident). See *Ross Neely Sys., Inc. v. Occidental Fire & Cas. Co.*, 196 F.3d 1347 (11th Cir. 1999) (affirming summary judgment based on an exclusion of punitive damages in the policy in favor of the insurer in an action brought by the insured trucking company to recover a $250,000 punitive damage award paid to non-party plaintiff).

32. *LA. CODE § 6-11-21(j) (1975).* See also *Shiv-Ram, Inc. v. McCaleb*, 892 So. 2d 299 (Ala. 2003) (affirming the legislature’s limitations on punitive damages and confirming that the older limitation, which was declared unconstitutional in *Henderson v. Alabama Power Co.*, 627 So. 2d 878 (Ala. 1993), was impliedly repealed); FORREST S. LATTA, *PUNITIVE DAMAGES IN ALABAMA: WHERE ARE WE NOW?* (December 2000).

33. *LA. CODE § 6-5-410(a) (1975).*

34. See *Ivey v. Wiggins*, 276 Ala. 106, 159 So. 2d 618; *Ellis v. Zuch*, 546 F.2d 643 (5th Cir. 1977).


36. **Id.** (citing *Downtown Nursing Home, Inc.*).


39. *LA. CODE § 6-5-410(a) (1975).*

40. *Lance, Inc. v. Ramanauskas*, 731 So. 2d 1204, 1221 (Ala. 1999) (emphasis added). See also *Tillis Trucking Co. v. Moses*, 748 So. 2d 874, 890–91 (Ala. 1999) (“The legislatively authorized action for wrongful death is intended to punish the wrongdoer and the phrase ‘such damages as the jury may assess’ is to be interpreted in light of that purpose.”).


42. *LA. CODE § 6-11-20(a).*

43. *LA. CODE § 6-11-20(b)(4).*


48. **Id.** at 42–43. See, e.g., *Mack Trucks, 867 So. 2d* at 308 (requiring a remittitur of a $25 million punitive damages award to $6 million in a wrongful death action on the basis of *Gore, Hammond, Green Oil Co.*, and *General Motors Corp. v. Johnson*).


51. *LA. CODE § 6-11-29* (stating that Section 6-1-27(a)’s heightened standard for awarding punitive damages against a principal “shall not pertain to or affect any civil actions for wrongful death pursuant to Section[] . . . 6-5-410”). See also *Cain*, 723 So. 2d at 634 (reversing a judgment in favor of the defendant corporation in a wrongful death action where the jury was charged with Section 6-11-27(a)’s heightened standard for awarding punitive damages against a principal because that heightened standard is inapplicable in wrongful death actions).
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54. 855 So. 2d 1043 (2003).
56. Id. at 874.
57. Id.
58. Id. at 875. Accord, Indus. Chem. & Fiberglass Corp. v. Chandler, 547 So. 2d 812, 834 (Ala. 1989) (noting that decedent’s personal representative could assert not only a wrongful death claim, but also a breach of implied warranty claim against the defendant).
60. Parker v. Fies & Sons, 243 Ala. 348, 10 So. 2d 13 (1942). See Roberts & Cusimano, Alabama Tort Law, ¶ 33.5 at 1133.

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