



# Health Law in Practice: Paving the Way for Justice and Equity

## *The Value of a Life:* **U.S. Measure of Damages in Health Law Litigation**

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RUNAWAY

VERDICT



Why is the US so Litigious?



*Disclaimer: A plaintiff's attorney's perspective:*

**We are litigious because there is no good financial safety net for injured Americans**



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**#1 cause of US personal bankruptcy is from *unpaid medical bills.***

**+**

**US has most expensive health care in the world and costs are *rising***

**+**

**No guaranteed U.S. long term unemployment benefits**

**+**

**Government disability payments modest and not universal**

**=**

***An Incentive to file a suit for damages if injured due to someone else's fault.***

# The top 10 countries with highest health care costs:



Country	Per Capita Costs
United States	\$12,555
Switzerland	\$8,049
Germany	\$8,011
Norway	\$7,898
Netherlands	\$7,358
Austria	\$7,275
Belgium	\$6,600
Australia	\$6,597
France	\$6,517
Sweden	\$6,438



# “Best” Healthcare in the World

Country	Index (2023)
Italy	72.15
Singapore	67.22
Iceland	65.15
Hong Kong	64.32
Finland	60.53

**US ranked # 23 in the world:**

United States . 51.34 ←

<https://worldpopulationreview.com/country-rankings/health-care-costs-by-country?ref=pestleanalysis.com>

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# So Why are U.S. Health Care Costs So High ?

- Improved Medical Technology
- Higher Patient Expectations
- Top Heavy Administrative Costs by Insurers (*no US single payer system*)
- Pharmaceuticals



# What damages can an injured person recover in damages in the United States?

Depends on *the kind of case*, and in *which state* the injured person was hurt

- **Worker's Compensation**
- **General Tort case**  
car accident, slip & fall, product liability
- **Medical Malpractice**  
negligence cases against licensed health care providers



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# Worker's Compensation Claims



- Damages include past & future medical and wage loss/loss of earning capacity.
- **Workers injured on the job *cannot recover general damages...***
- **...The trade off is all workers are covered, without question of fault if they were injured on the job.**
- **No right to a jury trial (*guaranteed in all other personal injury cases.*)**
- **No punitive damages**
- **Exceptions:**  
In some jurisdictions 3<sup>rd</sup> party responsibility (not employer) allows for:  
General damages; and,  
Right to a jury trial

## Types of Damages Recoverable in General Injury and Malpractice Cases

**Economic Damages** *Measurable* financial losses (called “out of pocket expenses”)

- **Medical Expenses:** Costs for medical treatment, rehabilitation, and future medical care related to the injury.
- **Lost Wages:** Compensation for income lost due to the injury, including time off work for recovery.
- **Loss of Earning Capacity:** The amount to compensate for the loss of the ability to earn income in the future.
- **Property Damage:** Costs to repair or replace personal property damaged (eg car.)

**Non-Economic Damages:** Compensation for subjective losses that *do not have a specific dollar value*. These damages can vary widely and include:

- **Pain and Suffering:** Physical pain and emotional distress resulting from the injury.
- **Emotional Distress:** Psychological impact, including anxiety, depression, or post-traumatic stress disorder (PTSD).
- **Loss of Enjoyment of Life:** Diminished enjoyment affecting quality of life.
- **Loss of Consortium:** Damages awarded to the spouse for loss of companionship.

# Controversial personal injury damages: Death of a fetus

***Dobbs v. Jackson Women's Health***: A landmark US Supreme Court decision finding **no federal constitutional right to an abortion, instead allowing each state to legislate.**

***Dobbs* has a significant impact on the recovery of damages for the wrongful death of a fetus, with varying state laws:**

**1. Conception Standard:** Some allow claims from conception.

**2. Viability Standard:** Some require the fetus to be viable.

**3. Quickening Standard:** Some allow claims if the mother can feel fetal movements (between 10th week and 4th month of pregnancy.)

**4. No Protection Standard:** Some states do not recognize such claims under any circumstances. (*many of these are states that choose to allow abortions.*)



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Punitive damages only allowed in cases where the defendant's conduct was *egregious, reckless, or intentional*.

A higher burden of *proof of clear and convincing evidence* is required.

Purpose is to *punish* defendant and *deter similar behavior in future*.

Amount often subject to *statutory limits*.

Not covered by insurance, *most verdicts for punitive damages are appealed*.



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# Caps on Damages

## Medical Malpractice:

- 29 states have a cap on malpractice damages.
- Some of these states only have limits on general damages for pain and suffering.
- Others, like Indiana, have a “hard cap” that cannot be exceeded no matter how great the loss.

## • General personal injury cases:

- 11 states currently have caps on non-economic damages in *all* personal injury cases.



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# Politics and U.S. Damages Caps

Other states also had caps that *were reversed on appeal based on state constitutions that barred such limits.*

In prior elections, former Pres. Trump promised to cap all damages *in all tort cases* if he was elected. He is expected to attempt to do this on a national level if re-elected.

Time will tell, because he will also need a majority in Congress to get such legislation passed, *if he is elected.*

Even then, a federal cap on all tort damages will be challenged on due process, right to a jury trial (to set damages) and states' rights.

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# An alternative to capping damages: Use the power of the trial court

Damages must Be “reasonable” in proportion to the loss.

In jury trials, trial courts already have the ability to change the verdict if the jury’s verdict is “unreasonable.”

Following the jury’s verdict, either party can file a motion for the **trial court to either *increase the verdict (additur)* or *reduce the jury verdict (remittitur)*.**

In some cases, the court may encourage the parties to accept an additur or remittitur **to avoid a lengthy and expensive appeal of the verdict.**

Many headline jury verdicts are overturned on appeal or settle out of court for far less than the verdict.



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This damages presentation painted with a “broad brush” over a topic that is exhaustive and complicated by 50 individual states (plus territories) with individual laws that can be inconsistent one from the other and ever changing.

There are nuances, exceptions and multiple issues we have no time left to explore today.....

# Questions

