

Arkansas

1. What are the statute of limitations for tort and contract actions as they relate to the transportation industry.

Five (5) years for contract and three (3) years for tort.

2. What effects, if any, has the COVID Pandemic had on tolling or extending the statute of limitation for filing a transportation suit and the number of jurors that are sat on a jury trial.

No tolling or extending statute of limitations. Early in the pandemic the Arkansas Supreme Court issued an order that tolled the time for serving a summons but that order has now been rescinded and the normal rules apply again.

3. Does your state recognize comparative negligence and if so, explain the law.

Yes. As to fault of a claiming party, "In all actions for damages for personal injuries or wrongful death or injury to property in which recovery is predicated upon fault, liability shall be determined by comparing the fault chargeable to a claiming party with the fault chargeable to the party or parties from whom the claiming party seeks to recover damages." *Ark. Code Ann 16-64-122* If the fault of the claiming party (plaintiff) is equal to, or more than, the fault of defendants then plaintiff recovers nothing. If the fault of plaintiff is less than defendant, but more than zero, any reward is reduced by the percentage of plaintiff's fault.

The fault of all parties, and in some circumstances, non-parties (*Rule 9(h) of the Arkansas Rules of Civil Procedure*), is compared and determined by the trier of fact. Each party is then responsible only for his percentage of fault. (See note 4 below for limited exceptions to this rule.)

4. Does your state recognize joint tortfeasor liability and if so, explain the law.

Arkansas law is severable liability, not joint. Ark. Ann Sec. 16-55-201. However, the statute includes a provision that permits a plaintiff to seek an increase in percentage of fault against a defendant if the plaintiff petitions the court and establishes that another defendant is not able to pay his share of a judgment. Generally, the statute says that where there are several defendants against whom several judgments have been entered in a case, if plaintiff moves the court within 10 days after entry of the judgment; and if the judge concludes by a preponderance of the evidence that one or more of the defendants' shares will not reasonably be collectible, the judge could modify the percentages of fault within these boundaries:

- a. For defendants with 10% or less of fault, the judge can't increase the percentage of fault;
- b. For defendants with fault of greater than 10% but less than 50%, the judge can increase the percentage by no more than 10%;
- c. For defendants with fault of 50% or more, the judge can increase the

percentage by no more than 20%.

But under no circumstances can the judge increase the total percentage of all defendants to more than 100%.

This statute does not apply to punitive damages.

5. Are either insurers and/or insureds obligated to provide insurance limit information pre-suit and if so, what is required.

No as to third-party suits. Yes, as to first party suits.

6. Does your state have any monetary caps on compensatory, exemplary or punitive damages.

No.

7. Has your state recently implemented any court reforms which may affect transportation lawsuits or is your state planning to, and if so explain the reforms.

None at present.

8. How many months generally transpire between the filing of a transportation related complaint and a jury trial.

Assuming no COVID delays, approximately 18 months to 2 years; unless the parties push and then it is possible to get a trial within 1 year.

9. When does pre-judgment interest begin accumulating and at what percent rate of interest.

No pre-judgment interest unless the damages are “definitely ascertainable by mathematical computation or if the evidence furnishes data that makes it possible to compute the amount of damages without reliance on opinion or discretion.” *Spann v. Lovett & Co., Ltd.*, 2012 Ark. App. 107. As a result, there are almost no instances where an award of pre-judgment interest would apply to a tort case involving claims of personal injury.

As to the interest rate, under Ark. Code Ann. § 16-65-114, it is the Federal Reserve primary credit rate plus 2%. The Federal Reserve primary credit rate is determined on the date the judgment is entered. Today, it is 0.25%, so if your judgment were entered today, prejudgment interest would be set at a rate of 2.25%. This statute was passed in 2019.

10. What evidence at trial are the parties allowed to enter into evidence concerning medical expense related damages.

The amount billed.

11. Does your state recognize a self-critical analysis or similar privilege that shields internal accident investigations from discovery?

Self-critical analysis is not recognized in Arkansas. There are no Arkansas statutes that provide a privilege that would protect internal accident investigations in transportation cases.

12. Does your state allow independent negligence claims against a motor carrier (i.e. negligent hiring, retention, training) if the motor carrier admits that it is vicariously liable for any fault or liability assigned to the driver?

When a defendant denies liability under *respondeat superior*, no problem is encountered by allowing a plaintiff to proceed under other consistent theories of recovery such as negligent hiring, supervision, retention, or training. *Elrod v. G & R Constr. Co.*, 275 Ark. 151, 154, 628 S.W.2d 17, 18-19 (1982). However, when the defendant admits liability under one of plaintiff's theories of recovery such as *respondeat superior*, a plaintiff may “proceed on only one theory of recovery in cases where liability has been admitted as to one

theory of recovery.” *Id.* at 153-54, 628 S.W.2d at 18; *see also Kyser v. Porter*, 261 Ark. 351, 358, 548 S.W.2d 128, 132 (1977); *Wheeler v. Carlton*, 3:06 CV 00068 GTE, 2007 WL 30261, at *8 (E.D. Ark. Jan. 4, 2007); AMI *Civil* (2016 ed.) 208 cmt. As a result, if the defendant admits to the elements of a *respondeat superior* claim, the plaintiff is barred from pursuing direct-negligence claims against the employer.

In *McLane v. Rich Transport, Inc.*, No. 2:11-CV-101 KGB, 2012 WL 3257658 (E.D. Ark. Aug. 9, 2012), the court recognized two exceptions to the general rule that a plaintiff may not proceed with direct-negligence claims against an employer when that employer has admitted to vicarious liability under a *respondeat superior* theory. *Id.* at *4-5. First, the *McLane* court held that a plaintiff is not barred from pursuing direct-negligence claims based on the policies and procedures of the defendant employer. *Id.* (citing *Regions Bank v. White*, No. 4:06-CV-1475 JLH, 2009 WL 3148732, at *5 (E.D. Ark. Sept. 24, 2009)). Second, *McLane* recognized that a plaintiff may proceed with direct-negligence claims when he or she has a valid claim for punitive damages against the employer based upon the employer’s independent negligence. *Id.* at *4 (citing *Wheeler*, 2007 WL 30261, at *12; *Perry v. Stevens Transport, Inc.*, No. 3:11-CV-48 JLH, 2012 WL 2805026 (E.D. Ark. July 9, 2012)).

13. Does your jurisdiction have an independent claim for spoliation? If not, what are the sanctions or repercussions for spoliation?

There is no independent claim for spoliation.

Sanctions for a successful spoliation claim ranges from an adverse inference instruction to the jury up to sanctions authorized by the Rules of Civil Procedure for discovery violations. This could include striking an answer, awarding costs, etc.