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California

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

The statute of limitations for personal injury and wrongful death cases gives a claimant two years from the date of the injury to go to court and file a lawsuit against those who could be at fault. (California Code of Civil Procedure section 335.1.)

The statute of limitations for breach of written contract is four years. (California Code of Civil Procedure section 337(a).) This limitations period applies to a cause of action for express indemnity and accrues when the indemnitee sustains a loss by paying the money sought to be indemnified from the indemnitor.

The statute of limitations for an equitable indemnity cause of action is two years from the date the claimant "pays more than one's proper share of a settlement to a plaintiff." (California Code of Civil Procedure section 335.1; *Preferred Mut. Ins. Co. v. Reiswig* (1999) 21 Cal.4th 208, 213.)

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.**

Under California Emergency Rule 9(a), the statute of limitations for civil causes of action that exceed 180 days tolled from April 6, 2020, until October 1, 2020. (Amendments to the California Rules of Court, effective April 6, 2020, Appendix I). This was effectively a 178-day freeze for the statute of limitations for personal injury and property damage causes of action.

This tolling provision will only affect cases for which the cause of action 1) did not expire before April 6, 2020; and 2) accrued before October 1, 2020. (Cal. Code Civ. Proc. § 362, *See Evelyn, Inc. v. California Employment Stabilization Com* (1957) 48 Cal.2d 588, 592, *Doe v. Doe* (2012) 208 Cal.App.4th 1185, 1195.)

[Note: Emergency Rule 9(b) also tolled the statute of limitations for civil causes of action that are 180 days or less from April 6, 2020, until August 3, 2020.]

Although almost all California Courts temporarily suspended jury trials at the height of the pandemic, almost all California Courts are now conducting civil jury trials, some with masking requirements, some without. California did not reduce the number of civil jurors sat in a civil jury trial.

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

California is a pure comparative negligence jurisdiction. (California Civil Jury Instruction 405. Comparative Fault of Plaintiff; *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 808.) The doctrine is a "flexible, commonsense concept, under which a jury properly may consider and evaluate the relative responsibility of various parties for

an injury (whether their responsibility for the injury rests on negligence, strict liability, or other theories of responsibility), in order to arrive at an "equitable apportionment or allocation of loss." (*Pfeifer v. John Crane* (2013) 220 Cal.App.4th 1270, 1285).

In practical terms, this means that all parties or third parties who are "at fault" for a tort (discussed immediately below) will be placed on the verdict form, and the jury will assign a percentage of fault to each tortfeasor.

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

Under California Civil Code section 1431.2 (commonly called "Proposition 51" among practitioners) modified California's joint and several liability principles. Non-economic damages such as pain and suffering, emotional distress, and the like are "several only," which means that each defendant will be responsible for payment of non-economic damages in proportion to their percentage share of liability (see section 3, above).

On the other hand, economic damages such as medical special damages, lost wages, and the like are "joint and several," and a plaintiff is entitled to recover 100% of all economic damages from any defendant who is at least 1% at fault. This plaintiff-friendly rule can drive litigation against large companies in questionable-liability cases.

Finally, Proposition 51 addresses "fault," not "liability." Thus, even if a person or entity is immune from liability, so long as a defendant can show that the immune party was arguably at fault for the plaintiff's harm, that immune party will usually go on the verdict form. (Note: whether an immune, at fault, party will go on the verdict form can be a fact-intensive analysis, requiring analysis of the statutory form of immunity, and must be evaluated on a case-by-case basis).

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

California's Insurance Information and Privacy Protection Act (Cal. Ins. Code § 791, et seq.) prohibits the release of policy limits information by the insurer without the insured's consent. However, when a carrier receives a pre-suit request for such information, the carrier risks bad-faith if it fails to ask its insured for permission to reveal the limits. (*Aguilar v. Gostischef* (2013) 220 Cal.App. 4th 475.)

Upon receipt of a pre-suit request to disclose policy limits, the carrier should notify its insured in writing of the request and ask the insured whether to release policy-limits information.

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

Yes, in certain contexts.

A. In medical malpractice actions, a plaintiff's non-economic damages is "capped" at $250,000. Cal. Civ. Code § 3333.2.

B. In tort cases against government entities, punitive damages cannot be alleged or recovered from the public entity. Cal. Gov. Code, § 818. However, one may pursue such damages against the public employee. *Austin v. Regents of University of California* (1979) 89 Cal.App.3d 354.

C. In tort actions, the measure of medical damages is the lesser of (1) the amount paid or incurred, and (2) the reasonable value of the medical services provided. *Howell v. Hamilton Meats & Provisions, Inc.* (2011)

52 Cal.4th541, 55.

D. In the punitive damages context, while there are no "per se" caps on punitive damages, the amount awarded for punitive damages must not be excessive and the amount of punitive damages awarded "…offends due process under the Fourteenth Amendment as arbitrary only if the award is grossly excessive in relation to the State's legitimate interests in punishment and deterrence." In determining the constitutional maximum for a particular punitive damage award under the Due Process Clause, courts are directed to follow three guideposts: (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. *Nickerson v. Stonebridge Life Ins. Co.,* 5 Cal. App. 5th 1, 1, 209 Cal. Rptr. 3d 690, 695 (2016). The California Supreme Court has discerned the presumption "ratios between the punitive damages award and the plaintiff's actual or potential compensatory damages significantly greater than 9 or 10 to 1 are suspect and, absent special justification (by, for example, extreme reprehensibility or unusually small, hard-to-detect or hard-to-measure compensatory damages), cannot survive appellate scrutiny under the due process clause." *Id.*

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

Yes. California recently amended California Code of Civil Procedure § 377.34 to increase the scope of recoverable damages in wrongful death actions. Now, damages for the decedent's pre-death pain, suffering, or disfigurement are recoverable, but not in all wrongful death lawsuits. The amendment to the statute applies only to suits filed after January 1, 2022, and before January 1, 2026, or to suits in which trial preference was granted before January 1, 2002. Trial preference is available on motion to parties over 70 years old, and in wrongful death and personal injury cases, where the moving party is under 14 years of age.

Further, due to the COVID-19 health emergency, every cause of action was tolled from April 6, 2020 to October 6, 2020 thereby extending the statute of limitations on personal injury claims for 178 days. Any claim that arise prior to and during the tolling will need to calculate the "Covid tolling" in determining whether a claim was timely filed.

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

This number varies depending on which one of California's 58 counties. However, in general, most California Courts were backlogged prior to the COVID-19 health emergency, and the health emergency only caused more delay for civil cases to get to trial. As of now, it appears that a case filed today would be ready for trial between 24 and 36 months, at best.

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

Pursuant to California Civil Code section 3287, a party is entitled to recover prejudgment interest where the damages are "certain" or "capable of being made certain by calculation" from the time the right to recover arises. (Cal. Civ. C. § 3287(a).) The test for determining "certainty" is whether the defendant actually knows the amount owed or could have computed the amount from reasonably available information. (*Wisper Corp. v. California Commerce Bank* (1996) 49 Cal.App.4th 948, 960.) However, where the amount of damages is in dispute (i.e. cannot be resolved except by verdict or judgment), an award of prejudgment interest is not appropriate. (Id.)

However, Prejudgment interest can come into play when analyzing C.C.P. § 998 offers and the "cost shifting" consequences associated with the offers. Pursuant to Civil Code §3291, prejudgment interest begins to run from the date of the § 998 offer. Civil Code § 3291 provides that if, in a tort action, the plaintiff makes an offer pursuant to C.C.P. § 998, the defendant does not accept the offer, and the plaintiff obtains a more favorable judgment at trial, then the plaintiff may recover prejudgment interest. (Cal. Civ. C. § 3291.)

Where interest is awarded on tort and other non-contractual claims, the rate is 7% per annum. (See California Constitution, Article 15, section 1; and *Children's Hospital and Medical Center v. Bonta*, (2002) 97 Cal. App. 4th 740, 775.)

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

As necessary background, California's delineation of what medical expenses are recoverable stems from the collateral source rule, which states that a tortfeasor may not benefit from the fact that a claimant has insurance. *Hanif v. Housing Authority*, (1988) 200 Cal.App.3d 635 stands for the proposition that an injured plaintiff is to be compensated for the loss or injury sustained as a result of the tortfeasor's action. However, for the injured plaintiff with medical insurance, she cannot recover more than the amount actually paid by her insurer on her behalf. *Howell v. Hamilton Meats & Provisions, Inc*. (2011) 52 Cal.App.4th 541. For the uninsured injured plaintiff, whom obtains medical treatment via a lien arrangement, the full billed amount is relevant and admissible as evidence in support of economic and noneconomic damage claims, with the caveat that the plaintiff must present an expert qualified to render an opinion as to the reasonable value of the medical treatment. *Bermudez v. Ciolek* (2015) 237 Cal.App.4th 1311. Once a Plaintiff has established the amount of treatment, it is incumbent on the defense to establish through expert testimony that the treatment or charges are unreasonable. To avoid reductions, plaintiffs have begun to seek treatment outside of their insurance plan so that they can present their medical specials at retail rates without subsequent reduction. *Pebley v. Santa Clara Organics, LLC* (2018) 22 Cal.App5th 1566, allows plaintiffs to go outside their insurance plan to seek treatment.

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

No.

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?

In short, no. The California Supreme Court in *Diaz v. Carcamo* (2011) 51 Cal.4th 1148, held that when an employer admits that its driver was acting within the course and scope of his employment, the employer may only be held vicariously liable for the driver's actions and not for its own negligence in hiring, training, or retaining the driver.

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

Spoliation in California is not an independent cause of action, but it is an issue that a jury can be instructed upon at trial. When it comes to failure to preserve evidence, California juries receive two back-to-back instructions. First, under Civil Jury Instruction 203 (Party Having Power to Produce Better Evidence), the

Court instructs:

> "You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence."

Next, under Civil Jury Instruction 204 (Willful Suppression of Evidence), if the facts permit, the Court will instruct:

> "You may consider whether one party intentionally concealed or destroyed evidence. If you decide that a party did so, you may decide that the evidence would have been unfavorable to that party."

This adverse jury instruction is the most severe penalty available in California for spoliation.