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District of Columbia

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

Injury to Person	3 years (§ 12-301(8))
Injury to Personal Property	3 years (§ 12-301(2, 3))
Contracts (simple, written or oral)	3 years ((§ 12-301(7))
Contracts (sales, breach of warranty)	4 years (§ 28.2-725)
Fraud	3 years (§ 12-301(8))
Judgments	12 years (§ 15-101)
Where Limitations not Specified	3 years (§ 12-301(8))

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.

Any statutes of limitation for initiating suit were tolled from March 18, 2020, to January 15, 2021. Civil jury trials resumed in March 22, 2021. A jury must have at least six (6) jurors, and COVID has not affected that number. *See* D.C. SCR Civ. 48(a).

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

The District of Columbia does not recognize comparative negligence, but does recognize the doctrine of contributory negligence. Contributory negligence is "conduct which falls below the standard to which a plaintiff should conform for his own protection." *Washington Metropolitan Area Transit Authority v.* Cross, 849 A.2d 1021, 1024 (D.C. 2004); *Scoggins v. Jude*, 419 A.2d 999, 1004 (D.C. 1980) Generally, a plaintiff in a negligence action cannot recover if he or she is found to have been contributorily negligent. *Asal v. Mina*, 247 A.3d 260, 271 (D.C. 2021); *Civic v. Signature Collision Ctrs., LLC*, 221 A.3d 528, 530 (D.C. 2019). Contributory negligence evaluates "the objective reasonableness of the plaintiff's conduct," determining whether "the plaintiff's behavior in encountering the risk created by the defendant's breach of duty departed from the standard of care that is to be expected of the reasonable person in the plaintiff's position." *Asal*, 247 A.3d at 271 (cleaned up).

Contributory negligence is generally a question of fact for the jury. *Washington v. A&H Garcias Trash Hauling Co.*, 584 A.2d 544, 545 (D.C. 1990). However, evidence may be "so clear and unambiguous that contributory negligence should be found as a matter of law." *Washington*, 584 A.2d at 547. Thus, "[w]hen there is but one reasonable inference which may be drawn from undisputed facts, negligence and contributory negligence pass from the realm of fact to one of law." *Asal*, 247 A.3d at 276 (internal quotation marks omitted).

Even a contributorily negligent plaintiff may recover if the defendant had the "last clear chance" to avoid the injury. *District of Columbia v. Huysman*, 650 A.2d 1323, 1326 (D.C. 1994). For the last clear chance doctrine to apply, there must be evidence:

> (1) that the plaintiff was in a position of danger caused by the negligence of both plaintiff and defendant; (2) that the plaintiff was oblivious to the danger, or unable to extricate herself from the position of danger; (3) that the defendant was aware, or by the exercise of reasonable care should have been aware, of the plaintiff's danger and of her oblivion to it or her inability to extricate herself from it; and (4) that the defendant, with means available to him, could have avoided injuring the plaintiff after becoming aware of the danger and the plaintiff's inability to extricate herself from it, but failed to do so.

Huysman, 650 A.3d. at 1326 (citing *Felton v. Wagner*, 512 A.2d 291, 292 (D.C. 1986). It is the plaintiff's burden to prove these elements. The doctrine does not apply to "an emergency that is so sudden that there is no time to avoid the collision, for the defendant is not required to act instantaneously." *Huysman*, 650 A.3d. at 1326 (internal quotation marks omitted).

The D.C. Code carves out certain exceptions to the general contributory negligence rule. Section 50-2204.52 of the D.C. Code provides a modified contributory negligence standard, providing that:

> (a) Unless the plaintiff's negligence is a proximate cause of the plaintiff's injury and greater than the aggregated total negligence of all the defendants that proximately caused the plaintiff's injury, the negligence of the following shall not bar the plaintiff's recovery in any civil action in which the plaintiff is one of the following:
>
> (1) A pedestrian or vulnerable user of a public highway or sidewalk involved in a collision with a motor vehicle or another vulnerable user; or
>
> (2) A vulnerable user of a public highway or sidewalk involved in a collision with a pedestrian.

* * *

D.C. Code § 50-2204.52 (effective on November 26, 2016). A vulnerable user is defined as "an individual using an all-terrain vehicle, bicycle, dirt bike, electric mobility device, motorcycle, motorized bicycle, motor-driven cycle, non-motorized scooter, personal mobility device, skateboard, or other similar device." D.C. Code § 50-2204.51(13). A pedestrian is defined as "any person afoot or who is using a wheelchair or motorized wheelchair." D.C. Code § 50-2204.51(9); 18 DCMR § 9901.1. Thus, under Section 50-2204.52, a plaintiff is not barred from recovery simply by being negligent if the plaintiff is a pedestrian or vulnerable user. Rather, in order to bar the plaintiff from recovery, it must be shown that the plaintiff's negligence is greater than the total allocation of negligence among the defendants.

Further, in actions by employees against a common carrier to recover damages for injuries, or where such injuries have resulted in the employee's death, "the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributed negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee." D.C. Code § 35-302. That statute is also explicit that all questions of negligence and contributory negligence are for the jury. D.C. Code § 35-302.

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

The District of Columbia recognizes the doctrine of joint and several liability. *See Nat'l Health Labs., Inc. v. Ahmadi*, 596 A.2d 555, 557 (D.C. 1991) ("[W]hen two tortfeasors jointly contribute to harm to a plaintiff, both are potentially liable to the injured party for the entire harm."). Joint tortfeasors then must "share equally" the burden of any adverse judgment "through the principle of contribution." *Ahmadi*, 596 A.2d at 557; *George Washington University v. Bier*, 946 A.2d 372, 375 (2008). Liability as a joint tortfeasor may be either "judicially established," *Drs. Groover, Christie & Merritt, P.C. v. Burke*, 917 A.2d 1110, 1112 n. 1 (D.C. 2007) (internal quotation marks and citation omitted), or conceded by a stipulation of "all parties." *Berg v. Footer*, 673 A.2d 1244, 1251 (D.C. 1996). Evidence of a joint tort feasors's financial standing is not admissible where liability cannot be apportioned. *Remeikis v. Boss & Phelps, Inc.*, 419 A.2d 986, 991* (D.C. 1980) (citing *Washington Gas Light Co. v. Lansden*, 172 U.S. 534 (1899)). Because the District of Columbia does not have "any principle of comparative fault, no attempt is made to assess the respective amount of contribution through a theory of comparative negligence." *Id.* at 557 n.4. Thus, contribution claims in the District of Columbia may only be used to establish that each joint tortfeasor is liable for an equal amount of any judgment in favor of the injured party. However, "punitive damages may be apportioned among joint tort feasors because punitive damages must be related to the degree of culpability and the defendants' ability to pay if they are to carry their intended sanction." *Remeikis*, 419 A.2d at 991*.

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

The District of Columbia requires insurers and/or insureds to provide insurance information to claimants for vehicle accidents pre-suit. D.C. Code § 31-2403.01. The claimant is entitled to obtain the applicable limits of coverage under which the insurer may be liable to (1) satisfy all or part of the claim, or 92) indemnify or reimburse for payments made to satisfy a claim. D.C. Code § 31-2403.01(a). In order to obtain such information, a claimant must provide to the insurer, in writing: (1) the date of the vehicle accident; (2) the name and last known address of the alleged tortfeasor; (3) a copy of the vehicle accident report, if any; (4) the insurer's claim number, if available; (5) the claimant's health care bills and documentation of the claimant's loss of income, if any, resulting from the vehicle accident; and (6) the records of health care treatment for the claimant's injuries caused by the vehicle accident. D.C. Code § 31-2403.01(b). If the claim is brought by the estate of an individual, then in addition to the documents and information listed above, the claimant must also provide the following: a copy of the decedent's death certificate; copies of the letters of administration issued to appoint the personal representative of the decedent's estate; the name of each beneficiary of the decedent, if known; and the relationship to the decedent of each known beneficiary of the decedent. D.C. Code § 31-2403.01(c).

After receipt of the information outlined above, the insurer must respond in writing within thirty (30) days and disclose the limits of coverage of all policies, even if the insurer contests the applicability of any such policy. D.C. Code § 31-2403.01(d). Further, disclosure of the documentation required under the statute is not (1) an admission that the asserted claim is subject to the applicable agreement between the insurer and the alleged tortfeasor; or (2) a waiver of any term or condition of the applicable agreement between the insurer and the alleged tortfeasor or any right of the insurer, including any potential defense concerning coverage or liability. D.C. Code § 31-2403.01(e).

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

The District of Columbia does not have any caps on damages, economic and non-economic, on general tort, personal injury, wrongful death, or products liability cases. The District of Columbia courts, however, will apply damage caps from another jurisdiction when applying that jurisdiction's law. *See Drs. Groover, Christie & Merritt, P.C. v. Burke*, 917 A.2d 1110, 1118 (2007) (applying Maryland's statutory cap on non-economic

damages to a personal injury claim asserted by a Maryland resident against Maryland doctors for medical services rendered in Maryland). There is also no cap on punitive damages. In order to recover punitive damages, the plaintiff must prove, by clear and convincing evidence, that (1) the defendant acted with evil motive, actual malice, deliberate violence or oppression, or with intent to injure, or in willful disregard for the rights of the plaintiff; and (2) the defendant's conduct itself was outrageous, grossly fraudulent, or reckless toward the safety of the plaintiff. *Croley v. Republican Nat'l Comm.*, 759 A.2d 682, 695 (D.C. 2000).

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.**

None.

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

In the District of Columbia, the time the filing of a complaint to a jury trial is generally eighteen (18) months. This time period has lengthened during the COVID-19 pandemic, but jury trials have resumed.

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

For liquidated debts for which interest is payable by contract or by law, a plaintiff may recover interest from the time the liquidated debt was due and payable, at a rate fixed by the contract, if any. D.C. Code § 15-108. The purpose of prejudgment interest is to compensate the plaintiff for the loss of use of money over time. *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 823 A.2d 513, 531 (2003). Indeed, "[s]tatutes providing for prejudgment interest are thus remedial and should be generously construed so that the wronged party can be made whole." *Mazor v. Farrell*, 186 A.3d 829, 832 (2018). However, "[i]t may be appropriate to limit prejudgment interest, or perhaps even deny it altogether, where the plaintiff has been responsible for undue delay in prosecuting the lawsuit." *Federal Marketing Co.*, 823 A.2d at 533. Unless the contract specifies otherwise, the pre-judgment interest rate remains at six percent (6%). D.C. Code § 28-3302(a).

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

D.C. allows a claimant to introduce and claim the full amount of medical expenses billed, without deduction for amounts written off by a health insurer. *Hardi v. Mezzanotte*, 818 A.2d 974, 983 (D.C. 2003).

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

The D.C. Courts and legislature has not recognized the self-critical analysis privilege, nor has any D.C. Court specifically rejected it. Generally, a party "may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable." D.C. R. 26(b)(1). That rule is not without limitation. Rule 26(b)(3)(A) provides that "[o]rdinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent)." Despite this limitation, a party is entitled to "obtain the person's own previous statement about the action or

its subject matter." D.C. R. 26(b)(3)(C).

Thus, if documents contained in an internal investigation file were prepared in anticipation of litigation, such documents may not be discoverable under the District of Columbia's work product doctrine. *See Wallace v. Eckert, Seamans, Cherin & Mellott, LLC*, 57 A.3d 943, 959 (D.C. 2012) (work product doctrine "protects an attorney's mental impressions, opinions and theories, protects materials prepared for *any* litigation or trial as long as they were prepared by or for a party to the subsequent litigation.'" (quoting *Fed. Trade Comm'n v. Grolier, Inc.,* 462 U.S. 19, 25 (1983))); *see also Wood v. Neuman*, 979 A.2d 64, 75 n. 6 (D.C. 2009) ("files contain[ing] attorney work product . . . enjoy[] a protection that is broader than attorney-client privilege[.]") Often, where a motor carrier conducts the investigation itself, prior to a lawsuit or prior to indication of any lawsuit, such investigative records, such as driver reports, will be found to have been prepared in the ordinary course of business, and not in anticipation of litigation.

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?

The District of Columbia the majority view that when an employer has stipulated to the agency relationship between it and the employee, it is improper to allow a plaintiff to proceed against the employer on negligent hiring, retention, and supervision claims. *Hackett v. Washington Metropolitan Area Transit Authority*, 736 F.Supp. 8, 11 (D.D.C. 1990).

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

The D.C. Court of Appeals has recognized an independent action for spoliation of evidence.

Holmes v. Amerex Rent-A-Car, 710 A.2d 846 (D.C. 1998).

Spoliation of evidence includes two sub-categories of behavior: "the deliberate destruction of evidence and the simple failure to preserve evidence." *Battocchi v. Wash. Hosp. Ctr*., 581 A.2d 759, 765 (D.C. 1990) (citing *Brown & Williamson Tobacco Corp. v. Jacobson*, 827 F.2d 1119, 1134 (7th Cir. 1987)). "It is well settled that a party's bad faith destruction of a document relevant to proof of an issue at trial gives rise to a strong inference that production of the document would have been unfavorable to the party responsible for its destruction." *Battocchi*, 581 A.2d at 765.

Negligent or reckless spoliation of evidence is an independent and actionable tort in the District of Columbia. *Holmes v. Amerex Rent-A-Car*, 710 A.2d 846, 848 (D.C. 1998). Indeed, "a plaintiff has a legally protectable interest in the preservation of evidence required for securing recovery in a civil case." *Holmes*, 710 A.2d at 848. This tort applies to defendants in the suit, as well as third-parties. *Id*. To prevail on this tort, a plaintiff must establish seven elements:

> (1) the existence of a potential civil action; (2) a legal or contractual duty to preserve evidence which is relevant to that action; (3) destruction of that evidence by the duty-bound defendant; (4) a significant impairment in the ability to prove the potential civil action; (5) a proximate relationship between the impairment of the underlying suit and the unavailability of the destroyed evidence; (6) a significant possibility of success of the potential civil action if the evidence were available; and (7) damages adjusted for the estimated likelihood of success in the potential civil action.

Cook v. Children's Nat. Med. Center, 810 F.Supp.2d 151, 155 (D.D.C. 2011) (citing *Holmes*, 710 A.2d at 848)).

Where a trial court finds that a party lost or destroyed potential evidence within its exclusive control with "gross indifference to or reckless disregard for the relevance of the evidence to a possible claim," the court "must submit the issue of lost evidence to the trier of fact with corresponding instructions allowing an adverse inference." *Williams v. Wash. Hosp. Ctr*., 601 A.2d 28, 31 (D.C. 1991) (quoting *Battocchi v. Wash.*

Hosp. Ctr., 581 A.2d 759, 767 (D.C. 1990)). Even if no finding of "gross indifference or reckless disregard" is made, however, the court may, at its discretion, impose an adverse inference instruction after consideration of three factors: (1) "the degree of negligence or bad faith involved, (2) the importance of the evidence lost to the issues at hand, and (3) the availability of other proof enabling the party deprived of the evidence to make the same point." *Williams*, 601 A.2d at 32.