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FLORIDA

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

   Florida has a separate statute of limitations for tort actions and contract actions; however, the limitations apply equally to various industries. In accordance with Florida Statute 95.11, which governs the limitations of actions, a legal or equitable action on a contract, obligation or liability founded upon a written instrument must be brought within five (5) years (F.S. §95.11(2)(b)) while an action founded upon negligence (tort) must be brought within four (4) years (F.S. §95.11 (3)(a)).

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.

   Though the Florida Supreme Court has issued multiple administrative orders in response to the COVID pandemic, none have tolled or extended the statute of limitations under F.S. 95.11.

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

   Yes; Florida is a pure comparative negligence state, i.e., the jury can apportion fault however they wish amongst named parties and/or non-parties affirmatively plead by the Defendant. For a jury to consider the comparative fault of a non-party, the Defendant must prove at trial, by a preponderance of the evidence, the fault of the nonparty in causing the Plaintiff's injuries. See §768.81, Fla. Stat.

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

   In negligence matters the doctrine of joint and several liability has been statutorily abolished, except in statutorily specified circumstances. Since Florida is a pure negligence state (see Answer #3, above) the judgment against a negligent defendant is based solely on that defendant's percentage of fault. See §768.81, Fla. Stat. Hence, a defendant cannot be responsible for more than percentage of fault assigned to them. The negligence judgment cannot be entered based on the doctrine of joint and several liability. See §768.81, Fla. Stat. The substance of claim determines whether it is a negligence matter, not the form of the allegations. Thus, matters sounding in negligence, strict liability, products liability, professional malpractice, breach of warranty, or similar theories are negligence matters, regardless attempts in a plaintiff to allege them in some other manner. See §768.81(1)(c) & (d), Fla. Stat.

   Although Florida retains a contribution statute (see §768.31, Fla. Stat.) seeking contribution against a joint tortfeasor is not available as each parties' liability for

damages would have already been apportioned in the negligence judgment. A percentage of fault can be assigned to non-party defendants, frequently referred to as *Fabre* defendants who are specifically identified in the *Fabre* affirmative defense.

However, in a few limited, statutorily defined circumstances, joint and several liability may be imposed. §768.81(4), Fla. Stat. (comparative fault "does not apply to any action ... to recover actual economic damages resulting from pollution to any action based upon an intentional tort, or to any cause of action as to which application of the doctrine of joint and several liability is specifically provided by [Florida Statute] chapter 403, chapter 498, chapter 517, chapter 542, or chapter 895.")

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

Yes; Florida law mandates that an insurer which does or may provide liability insurance in response to a claim provide certain insurance information upon being placed on notice, including pre-suit. Under §627.4137, Fla. Stat. upon written request of a claimant, an insurer shall provide, within 30 days, a statement under oath of a corporate officer, insurer's claim manager, or superintendent, which sets forth (a) the name of the insurer; (b) the name of each insured; (c) the limits of liability coverage; (d) a statement of any policy of coverage defenses that the insurer reasonably believes is available at the time of such statement; and (e) a copy of the policy.

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

No. However, Florida codified the collateral source rule in personal injury actions. Under Fla. Stat. § 768.76(1), the trial court must reduce the amount of a plaintiff's recovery by "all amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from all collateral sources," except in instances in which the right of subrogation or reimbursement exists. *Id.* The collateral source rule applies to amounts which have been paid, contributed, or forfeited by a plaintiff or beneficiaries. Although the statute governing collateral sources constitutes an abrogation of common law, it must be liberally construed, because it is also remedial in nature. *Goble v. Frohman*, 848 So. 2d 406 (Fla. 2d DCA 2003), review granted 865 So. 2d 480, approved 901 So. 2d 830.

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.

Yes. The Florida Supreme Court is considering significant changes to Florida's civil trial system which are designed to accelerate the resolution of civil cases. See, Jud. Mgmt. Council, Workgroup on Improved Resolution of Civil Cases: Final Report (Nov. 15, 2021). The plan submitted by the Judicial Management Council (JMC) in January 2022 proposes procedures like those used by Federal trial courts to manage their dockets and would require trial judges to place their cases in one of three (3) tracks: streamlined, general, or complex. Each track would have its own set of strict pre-trial deadlines. Under the proposed changes, general track jury cases will be expected to resolve within 18 months, and complex cases within 30 months.

If adopted, these changes could significantly impact litigation of transportation lawsuits, which often involve catastrophic damages and require significant discovery, but do not qualify for complex track.

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

Under the current rules, 18 months is considered a "presumptively reasonable time period for the completion" of civil jury cases. See Fla. R. Jud. Admin. 2.250(1)(B). However, historically, civil jury cases generally take 24 to 36 months to reach trial. The pandemic has significantly extended this period.

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

In Florida, prejudgment interest is allowed and begins to accumulate "from the date of the loss or the accrual of [the] cause of action." *Amerace Corp. v. Stallings*, 823 So. 2d 110, 116 (Fla. 2002).

However, prejudgment interest is only recoverable when the amount of the plaintiff's damages becomes "ascertainable and not speculative." See *Bosem v. Musa Holdings, Inc.*, 46 So. 3d 42, 46 (Fla. 2010). For this reason, prejudgment interest is generally only recoverable "in contract actions, and in certain tort cases, once the amount of damages is determined…" *Amerace*, 823 So. 2d at 116. Damages in personal injury cases are deemed "too speculative to liquidate before final judgment," therefore prejudgment interest is not recoverable. *Lumbermens Mutual Casualty Co. v. Percefull*, 653 So. 2d 389, 390 (Fla.1995).

When recoverable, interest on judgments or decrees is adjusted quarterly by the Chief Financial Officer. See Fla. Stat. § 55.03. Since October 1, 2021, the legal interest rate has remained 4.25% per year.

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

Although evidence of the gross medical bills is generally admissible ("boardable"), a post-verdict hearing is used to reduce the actual damages award by the amount of the medical bills paid or otherwise resolved without actual payment by the plaintiff. The public policy underlying the scheme is that the tortfeasor or wrongdoer cannot benefit from the plaintiff's earned benefit or foresight in contracting for protection against losses, but as a corollary the plaintiff cannot recover for damages never suffered – no windfalls.

Florida's Collateral Sources statute requires that "the court shall reduce the amount of such [damages] award by the total of all amounts which have been paid for the benefit of the claimant [plaintiff], or which are otherwise available to the claimant [plaintiff], from all collateral sources." §768.76(1), Fla. Stat. The statute defines the payment types that must be deducted from the medical damages awarded by the jury. Generally, the statute excludes any payment made under a right of subrogation.

By way of example, private health insurer's negotiated discounts with health care providers are collateral sources which means evidence of the full charges (before application of the contractual discount) are admissible, but a post-verdict hearing deducts those contractually discounts from the past medicals award. *See Nationwide Mut. Fire Ins. Co. v. Harrel*, 53 So.3d 1084 (Fla. 1st DCA 2011) (holding that gross amounts billed were admissible medical damages because the plaintiff paid premiums to a private insurer to earn the benefits); *Goble v. Frohman*, 901 So.2d 830 (Fla. 2d DCA 2003) (the $400,000 difference between the amount billed and amount paid by the plaintiff's insurance constituted a collateral source, [and] to "allow… such a windfall completely undermines the purpose of the [Collateral Sources] Act by requiring insurers [of the tortfeasor] to pay damages based on a billing fiction…").

Note also, that Florida courts are split regarding bills paid by Medicare or Medicaid, but there is currently a case before the Florida Supreme Court which hopefully will resolve whether gross medical bills or only the amounts paid are admissible. *See generally Elaine Dial v. Calusa Palms Master Association, Inc.*, SC21-43, 2021 WL 1604008 (Fla. Apr. 26, 2021)

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

Florida has no statutory self-critical analysis privilege, except in the context of peer review of medical care. *See generally Liberty Mut. Ins. Co. v. Wolfson*, 773 So.2d 1272, 1274 (Fla. 4th DCA 2000).

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?**

Florida does not allow a plaintiff to bring independent negligence claims when a motor carrier admits that it is vicariously liable for any fault or liability assigned to the driver. *Clooney v. Geeting*, 352 So.2d 1216, 1220 (Fla. 2nd DCA 1977) (stating that where independent negligence theories impose no additional liability in a motor vehicle accident case, a trial court should not allow them to be presented to the jury, as the desirability of allowing these theories is outweighed by the prejudice to the defendants.).

An exception to this general rule exists when the plaintiff asserts a separate claim for punitive damages based on the issues of negligent hiring, retention, or training. In this situation, evidence to support independent negligence claims can be presented to the jury as a basis for an award of punitive damages. *See generally Wright Fruit Co., Inc. v. Morrison,* 309 So.2d 54 (Fla. 2d DCA 1975).

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

The Florida Supreme Court has abolished "first party" spoliation claims. Accordingly, a plaintiff cannot bring an independent cause of action against a defendant or tortfeasor who negligently or intentionally destroys evidence. *Martino v. Wal-Mart Store, Inc.*, 908 So.2d 342, 347 (Fla. 2005). Instead, the available remedies against a first party for spoliation of evidence range from discovery sanctions and striking a party's pleadings for intentional spoliation, to adverse inferences, in circumstances of negligent destruction of evidence. *Id.* In its discretion, a court may allow for an adverse inference because of the spoliation of evidence in the first-party context if it finds that: (1) the evidence existed at one time; (2) the spoliator had a duty to preserve the evidence; and (3) the evidence was critical to an opposing party being able to prove its prima facie case or a defense. *Id*. *See also Hagopian v. Publix Supermarkets, Inc.*, 788 So.2d 1088, 1090 (Fla. 4th DCA 2001); *Fed. Ins. Co. v. Allister Mfg*. *Co.*, 622 So.2d 1348, 1351 (Fla. 4th DCA 1993).

In contrast, an independent cause of action for third-party spoliation continues to exist in Florida. *Martino*, 908 So.2d at 346. But as a general rule, a third-party spoliation claim does not accrue until the underlying lawsuit is completed. *Yoder v. Kuvin*, 785 So.2d 679, 681 (Fla. 3d DCA 2001); *Shaw v. Cambridge*, 888 So.2d 58, 63 (Fla. 4th DCA 2004) ("A spoliation claim compensates the plaintiff for the loss of recovery in the underlying case due to the plaintiff's inability to prove the case because of the lost or destroyed evidence and not for the 'bodily injury' actually sustained. 'Because of the nature of the claim, liability for spoliation does not arise until the underlying action is completed.'). *But see Miller v. Allstate Ins. Co.*, 573 So.2d 24, 28 (Fla. 3d DCA 1990) (for reasons of "judicial economy, and to prevent piecemeal litigation" destruction of evidence claims may be permitted before underlying lawsuit is complete.).