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Illinois

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

Tort Actions

The statute of limitations in Illinois for negligence actions involving personal injury is two years. 735 ILCS 5/13-202. The statute of limitations in Illinois for negligence actions involving property damage claims is five years. 735 ILCS 5/13-205. The limitations period begins to accrue on the date the injury occurs.

Wrongful Death & Survival Actions

Tort actions in the transportation industry often include wrongful death and survival actions. For wrongful death actions, the statute of limitations in Illinois is two years after the date of death in the absence of some intentional or criminal conduct. 740 ILCS 180/2(d), (e). For survival actions brought on behalf of a decedent, the statute of limitations in Illinois is the later of: (1) the expiration of the limitations period for the underlying claim; or (2) one year from the date of the decedent's death. 735 ILCS 5/13-209(a)(1).

Contract Actions

The statute of limitations for a breach of written contract claim in Illinois is ten years. 735 ILCS 5/13-206. The statute of limitations for a breach of an oral contract claim in Illinois is five years. 735 ILCS 5/13-205. For breach of contract claims, the limitations period begins to accrue at the time of the breach. *Indiana Ins. Co. v. Machon & Machon, Inc.*, 324 Ill. App. 3d 300, 303 (1st Dist. 2001).

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.

Generally, Illinois has not tolled or otherwise extended the statutes of limitations as a result of the COVID-19 pandemic. The only statute of limitation tolling exception related to the COVID-19 pandemic relates exclusively to the Court of Claims. This exception only existed during the Gubernatorial Disaster Proclamation and is set to expire on April 2, 2022. Prior to Governor Pritzker's November 13, 2020 Disaster Proclamation there were no statute of limitation tolling exceptions in Illinois.

"Pursuant to the disaster proclaimed by the Governor in Gubernatorial Proclamation number 2020-038, the statute of limitations for filing claims in the Illinois Court of Claims … is tolled for the pendency of this disaster and for a period of 30 days thereafter." (Ill. Admin. Code tit. 74, § 790.4(d)).

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

Illinois follows the "modified" comparative negligence approach. Under this

approach, Plaintiff is barred from recovering damages if fact finder determines that Plaintiff is more than 50% of the proximate cause of the injury or damage for which relief is sought. 735 ILCS 5/2-1116. Any fault 50% or less diminishes Plaintiff's recovery in proportion to that fault. *Id.*

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

Illinois allows tortfeasors to seek recovery pursuant to the Joint Tortfeasor Contribution Act [740 ILCS 100/0.01 et seq]. Under the Act, "where 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death, there is a right of contribution among them, even though judgment has not been entered against any or all of them." 740 ILCS 100/2(a).

In order to establish a prospective party's fault in contribution, the defendant seeking contribution and the prospective defendant, from whom contribution is sought, must both be capable of being held liable under the plaintiff's claims. "[A] party's obligation to make contribution rests on his liability in tort to the injured or deceased party, i.e., the plaintiff in the underlying action. There is no requirement that the bases for liability among the contributors be the same." *Vroegh v. J & M Forklift*, 165 Ill. 2d 523, 528–29, 651 N.E.2d 121, 125 (1995). As such, contribution does not require that liability be apportioned according to relative fault as in comparative negligence. *Id.*

Contribution under the Joint Tortfeasor Contribution Act applies both to cases where tortfeasors act concurrently or successively, so long as the same injury relates to the action/inaction of both tortfeasors. *Evans v. Tabernacle No. 1 God's Church of Holiness in Christ*, 283 Ill. App. 3d 101, 109, 669 N.E.2d 697, 703 (1st Dist. 1996) ("The Contribution Act applies to joint, concurrent and successive tortfeasors.")

The Joint Tortfeasor Contribution Act does not apply in several situations related to Transportation. First, contribution does not apply to intentional tort-feasors. *Lawyers Title Ins. Corp. v. Dearborn Title Corp.*, 904 F. Supp. 818, 821 (N.D. Ill. 1995) ("In Illinois, a defendant sued for an intentional tort may not assert a claim for contribution.") Second, contribution claims based on contractual liability are likewise not permitted under the Act. *Guerino v. Depot Place P'ship*, 191 Ill. 2d 314, 322, 730 N.E.2d 1094, 1098 (2000) ("[A] party seeking contribution whose only liability is contractual liability fails to state a cause of action for contribution under the Act."). Third, contribution claims brought by an intoxicated tortfeasor are not permitted. *Jodelis v. Harris*, 118 Ill. 2d 482, 484, 517 N.E.2d 1055, 1056 (1987) ("[A] dramshop is not liable under the Dramshop Act in a third-party action for contribution where the original plaintiff is the intoxicated patron."

An employer's liability is capped at the amount it paid under the Illinois Worker's Compensation Act absent a waiver of that protection. See *Kotecki v. Cyclops Wielding Corp.,* 146 Ill.2d 155, 585 N.E.2d 1023, 166 Ill.Dec. 1 (1991) and *Braye v. Archer Daniels Midland Company,* 175 Ill.2d 201 (1997); *Herington v. J.S. Alberici Const. Co., Inc.*, 266 Ill. App. 3d 489 (5th Dist. 1994).

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

Yes. Under 215 ILCS 5/143.24b, insurers of persons or entities against claims arising out of vehicular accidents shall disclose the dollar amount of liability coverage under the insured's personal private passenger automobile liability insurance policy upon receipt of either: (a) a certified letter from a claimant or any attorney purporting to represent any claimant which requests such disclosure or (b) a brief description of the nature and extent of the injuries, accompanied by a statement of the amount of medical bills incurred to date and copies of medical records. Pre-suit disclosure of the policy information must remain confidential and available only to the claimant and his or her attorney.

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

Illinois does not have a cap on either compensatory or punitive damages, and the collateral source rule applies to any insurance payments received by the Plaintiff.

However, in *Doe v. Parillo,* 2021 IL 126577 at ¶ 54-55, the Illinois Supreme Court opined that single-digit multipliers, that is, where the award exceeds a ratio between punitive and compensatory damages, it is less likely to satisfy due process, affording a greater likelihood of being overturned on appeal. The *Doe* court clarified that not *all* single digit multipliers comport with due process, but they are more likely to do so when a defendant's conduct is particularly egregious and the plaintiff's harm arose from a physical assault or injury. *Id.* at ¶ 55, *citing State Farm Automobile Insurance Co. v. Campbell,* 538 U.S. 408, 425-46 (2003).

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.

The implementation of pre-judgment interest is the most recent tort reform enacted in Illinois. See question 9 below for a detailed discussion on the newly enacted pre-judgment interest award.

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

It is heavily dependent on many factors and jurisdictions – especially within the pandemic era. A reasonable estimate would fall within the range of 30-40 months.

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

Effective July 1, 2021, Illinois began recognizing an award of pre-judgment interest in the amount of 6% per annum in all actions for personal injuries or wrongful death caused by the negligence, willful and wanton conduct, intentional conduct, or struct liability of another. 735 ILCS 5/2-1303(c). A plaintiff shall recover pre-judgment interest on all damages, except for punitive damages, sanctions, statutory attorney's fees, and statutory costs. *Id.*

The pre-judgment interest generally begins accruing on the date the action is filed. *Id.* However, for claims that occurred before July 1, 2021, interest shall begin accruing on the date the action is filed or July 1, 2021, whichever is later. *Id.* Pre-judgment interest is tolled when plaintiff voluntarily dismisses an action until it is refiled. *Id.* There is a five-year cap on the accrual of pre-judgment interest. *Id.*

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

In order for an injured plaintiff to recover damages arising from medical expenses, "the plaintiff must prove (1) that she has paid or become liable to pay a specific amount and (2) that the charges were reasonable for services of that nature." *Verci v. High*, 2019 IL App (3d) 190106-B, ¶ 16, 161 N.E.3d 249, 254. The amount of damages presented to the court can reflect the amount initially billed by the providers, rather than the lesser amount actually paid by the insurer. *Arthur v. Catour*, 216 Ill. 2d 72, 74–75, 833 N.E.2d 847, 849 (2005) ("[A] plaintiff may present to the jury the amount that the plaintiff's health-care providers initially billed for services rendered.")

Under the Collateral Source Rule, defendants are prevented from presenting evidence that the Plaintiff has already been compensated for their damages from a source "wholly independent" from the defendant-tortfeasor. *Id.* 216 Ill. 2d at 78; 833 N.E.2d at 851. "The collateral source rule protects collateral payments made to or benefits conferred on the plaintiff by denying the defendant any corresponding offset or credit. Such collateral benefits do not reduce the defendant's tort liability, even though they reduce the plaintiff's loss" *Id.* The Collateral Source Rule serves to prevent a jury from learning *anything* about collateral income. *Id.* 216 Ill. 2d at 79; 833 N.E.2d at 852.

The decision of *Perkey v. Portes*, 2013 IL App (2d) 120470, provides some hope of a post-verdict setoff of medical bills written off by an insurer but only in cases where the injured Plaintiff had insurance. The Court held that Section 2-1205 of the Code of Civil Procedure modifies the collateral source rule such that a Defendant is entitled to a setoff for medical bills which have been paid by an insurer or fund, at a reduced level, to the extent of that reduction A more recent decision from the 4th District Appellate Court rejects the Perkey analysis and holds that no setoff is allowed even where the bills have been written off and Plaintiff does not have to pay the written off amounts. *Miller v. Sarah Bush Lincoln Health Ctr.*, 2016 IL App (4th) 150728. Whether our liberal Supreme Court will allow this interpretation to prevail, especially since it contradicts *Wills* and *Miller*, remains to be seen.

Additionally, in Cook County a new administrative order relating to HIPAA limits the scope of medical records that can be introduced. As of November 5, 2021, Cook County General Administrative Order 21-3 propounds a new standard HIPAA qualified protective order which substantially limits the scope of medical record disclosures. Under GAO 21-3, any subpoena for medical records must specifically be restricted to the five-years prior to the incident. In addition to the five-year limitation, the scope of the subpoena is also limited to seeking records related exclusively to the condition(s) or part(s) of the plaintiff's body that is complained of. As such, the ability of a defendant to attempt to mitigate damages by making arguments based on preexisting conditions or injuries is significantly limited under GAO 21-3.

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

Illinois does not recognize a self-critical analysis privilege. *Harris v. One Hope United, Inc.*, 2015 IL 117200. Internal incident investigations are often admissible. For example, internal incident reports may be admissible under the "business record exception" to the rule against hearsay. However, some internal investigations may be shielded under the attorney-client privilege or work product doctrine.

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?

It depends. If the Plaintiff's allegations against the motor carrier are based only on vicariously liability, *and* the employer/principal admits agency, then derivative negligence claims are not permitted. In other words, the carrier must admit that any allocation of responsibility assessed to its employee, would be recoverable against the carrier/employer. **This does not mean the employer/carrier has to admit negligence, only responsibility for its agent**. This is often misconstrued in reading Illinois case law. The purpose of the prohibition is that to "allow both causes of action to stand would allow the jury to assess or apportion the principal's liability twice." *Thompson v. Ne. Illinois Reg'l Commuter R.R. Corp.,* 367 Ill. App. 3d 373, 376 (2006). "If it is not disputed that the employee's negligence is to be imputed to the employer under the doctrine of respondeat superior, then the cause of action [based on independent

negligence of the principal] is duplicative and unnecessary." *Id.,*

See also, Gant v. L.U. Transport, Inc., 331 Ill. App. 3d 924 (2002); A negligent entrustment claim is derivative of the employee's negligence. *Id.* The employer is responsible for all of the fault attributed to the negligent employee, but only the fault attributed to the negligent employee. *Id.* at 929. As such, once an employer admits responsibility for its employee's negligence, "then any liability alleged under an alternative theory, such as negligent entrustment or negligent hiring, becomes irrelevant and should properly be dismissed." *Neuhengen v. Global Experience Specialists, Inc.,* 2018 IL App (1st) 160322, ¶ 84 (citing *Neff v. Davenport Packing Co.,* 131 Ill. App. 2d 791, 792-93 (1971)). This principle applies even though claims such as negligent hiring and retention are based on the employer's negligence in hiring or retaining the employee and not the employee's wrongful act. *Gant,* 331 Ill. App. 3d at 927.

However, claims for willful and wanton conduct based on derivative theories of liability (entrustment, supervision, training, hiring, retention), can be viable paths to recover punitive damages under Illinois law. *See Neuhengen,* at ¶ 113. (holding that claims alleging willful and wanton conduct by an employer **are not** extinguished by an admission of *respondeat superior* liability for the actions of the employee).

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

Illinois does not recognize a separate, independent tort for spoliation of evidence. *Dardeen v. Kuehling*, 213 Ill. 2d 329 (2004); *Boyd v. Travelers Insurance Co*., 166 Ill. 2d 188 (1995). However, Illinois recognizes that a claim for negligent spoliation of evidence could be brought under existing negligence principles. *Id.* at 270.

To state a claim for negligent spoliation of evidence, a plaintiff must plead: (1) the existence of a duty to preserve evidence owed by the defendant to the plaintiff; (2) a breach of that duty; (3) an injury or damages proximately caused by the breach; and (4) damages. *Id.* at 194-95.

In addition to a claim for damages under negligent principles, the affected party can seek sanctions under Illinois Supreme Court Rule 219(c). Rule 219(c) gives courts the discretion to sanction parties that commit discovery violations. Ill. Sup. Ct. R. 219(c). A party commits a discovery violation when it destroys or alters requested evidence. In determining whether to sanction an offending party, the court considers six factors: (1) the surprise to the adverse party; (2) the prejudicial effect of the proffered testimony or evidence; (3) the nature of the testimony or evidence; (4) the diligence of the adverse party in seeking discovery; (5) the timeliness of the adverse party's objection to the testimony or evidence; and, (6) the good faith of the party offering the testimony or evidence. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 124 (1998).

The possible sanctions include a negative inference instruction, dismissal, barring the filing of a particular claim or defense, barring witness testimony, barring of other testimony or evidence relating to the spoliated evidence, and payment of reasonably expenses, including attorney's fees, as well as potential monetary fines for willful spoliation. Ill. Sup. Ct. R. 219(c).