

Indiana

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

A. Bodily Injury Statute of Limitations

Pursuant to Indiana Code §34-11-2-4 an action for injury to person must be commenced within two (2) years after the cause of action accrues. Ind. Code §34-11-2-4.

B. Property Damage Statute of Limitations

Pursuant to Indiana Code §34-11-2-4 an action for damage to personal property must also be commenced within two (2) years after the cause of action accrues. Ind. Code §34-11-2-4. The statute of limitations for real property is six (6) years. Ind. Code § 34-11-2-7.

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.

Currently, there are no Indiana Supreme Court Orders in effect concerning tolling or extending the statute of limitations for filing suit. The same is true for the number of jurors sat on a jury trial. However, there have been anecdotal reports of individual judges either reducing the number of alternate jurors to limit the number of people in the courtroom or increasing the number of alternate jurors to ensure a full jury in the event of COVID related dismissal of a juror.

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

Yes. Indiana has adopted the Comparative Fault Act which governs any tort action based upon fault to recover damages for injury or death to a person or harm to property. Ind. Code § 34-51-2-1. In an action based on fault, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault. Ind. Code § 34-51-2-5. However, compensation is barred if the claimant's contributory fault is found to be greater than the fault of all persons whose fault proximately contributed to the claimant's damages. Ind. Code § 34-51-2-6. In other words, plaintiff's claim will be barred if (s)he is found to be more than 50% at fault.

However, this act does not apply to governmental entities, and public employees are excepted from the Indiana Comparative Fault Act. Tort claims against governmental entities such as Department of Transportation are subject to common law principles of negligence since the Comparative Fault Act is inapplicable to government entities. *Hopper v. Carey*, 716 N.E.2d 566, 570 (Ind. Ct. App. 1999).

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

No. The adoption of the Indiana Comparative Fault Act abrogated the common law rule of joint and several liability by requiring the jury to allocate a percentage of responsibility for the plaintiff's injuries to each defendant and any non-party who contributed to those injuries as each defendant need only to pay their proportional share. *Ind. Dept. of Ins. v. Everhart*, 960 N.E.2d 129 (Ind. 2012)). However, the abrogation of joint and several liability only applies to liability grounded in negligence. *Id.* Indiana Statute expressly states that in cases of intentional tort, a plaintiff who suffered injuries is entitled to receive one hundred percent (100%) of his damages in a civil action from a defendant who was convicted after a prosecution based on the same evidence, and therefore joint and several liability is still allowable only with respect to intentional torts. See Ind. Code § 34-51-2-10.

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

No.

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

Indiana subscribes to the general principle of tort law that all damages directly attributable to the wrong done are recoverable. However, there are some notable statutory damage limitations placed on punitive damages and certain causes of action.

The most applicable statutory cap is in certain wrongful death lawsuits. Indiana does not cap damage awards for the wrongful deaths of persons under twenty (20) years of age or persons between the ages of twenty (20) and twenty-three (23) who are enrolled as students or for a wrongful death lawsuit on behalf of a victim who is survived by a spouse or a dependent child. However, when an unmarried adult (age 23 or above) with no dependents is the victim of a wrongful death, that person's estate cannot obtain more than \$300,000 for emotional distress, including loss of the adult persons' love and companionship, through a wrongful death lawsuit. Ind. Code § 34-23-1-2. However, reasonable attorney's fees, reasonable medical, hospital, funeral and burial expenses are recoverable over and above the \$300,000 cap.

In Indiana, a punitive damage award may not be more than the greater of three times the amount of compensatory damages awarded in the action, or \$50,000. Ind. Code § 34-51-3-4. If the trier of fact awards punitive damages that exceed the statutory limits, the court is required to reduce the punitive damage award with regard to the statutory limits. Ind. Code § 34-51-3-5.

The Indiana Tort Claims Act limits the combined aggregate liability of all government entities and of all public employees, acting within the scope of their employment and not excluded from liability under one of the statutory immunity provisions, to \$700,000 for injury to or the death of one person in any one occurrence occurring on or after January 1, 2008, and \$5 million for injury to or death of all persons in that occurrence. Ind. Code § 34-13-3-4. The court applies these statutory limitations of liability at the time of entry of a final judgment. *Indiana State Highway Com'n v. Morris*, 528 N.E.2d 468 (Ind. 1988). In applying these limitations to a case involving multiple plaintiffs, the key is not whether each plaintiff is a "person" under the Act but rather, whether each plaintiff's claim is separate from the claims of other plaintiffs in the action. *Elkhart Community Schools v. Yoder*, 696 N.E.2d 409 (Ind. Ct. App. 1998).

In addition to limiting the liability of a government entity, the Indiana Tort Claims Act prohibits any award of

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punitive damages against a government entity. Ind. Code § 34-13-3-4. An award of punitive damages against a governmental entity generally violates public policy. *Marion Community School Corp. v. Marion Teachers Ass'n*, 873 N.E.2d 605 (Ind. Ct. App. 2007).

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.

No.

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

The Indiana Trial Rules do not require trial to be set a specific amount of time after a Complaint is filed. While some Indiana counties vary, an initial trial date is usually set 12-15 months after suit is filed.

The Southern District of Indiana's Local Rule 40.4 states: The court expects that cases will be tried within 18 months after the complaint is filed, unless the court determines that this deadline is unreasonable due to:

- (a) the case's complexity;
- (b) staging provided by the case management plan; or
- (c) the demands of the court's docket.

The Northern District of Indiana does not have a similar local rule, but 18 months is an appropriate approximation as to when to expect an initial trial date to be set.

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

Indiana's Tort Prejudgment Interest Statute governs the award of prejudgment interest in any civil action arising out of tortious conduct. Under Indiana Code § 34-51-4-6, a prerequisite to the recovery of prejudgment interest is a settlement letter. The purpose of the settlement letter is to afford the adverse party notice of a claim and provide it with an opportunity to engage in meaningful settlement. *Alsheik v. Guerrero*, 979 N.E.2d 151 (Ind. 2012); *Woude v. First Midwest Bank*, 45 N.E.3d 847 (Ind. Ct. App. 2015).

The award of prejudgment interest is based on the deprivation of use of money or its equivalent and the theory that unless the interest is added, the plaintiff cannot be fully compensated. *Wayne Tp. v. Lutheran Hosp. of Fort Wayne, Inc.*, 590 N.E.2d 1130 (Ind. Ct. App. 1992); *Cincinnati Ins. Co. v. BACT Holdings, Inc.*, 723 N.E.2d 436 (Ind. Ct. App. 2000). Prejudgment interest is recoverable as additional damages to accomplish full compensation. *Wayne Tp. v. Lutheran Hosp. of Fort Wayne, Inc.*, 590 N.E.2d 1130 (Ind. Ct. App. 1992); *Crawford County Community School Corp. v. Enlow*, 734 N.E.2d 685 (Ind. Ct. App. 2000). A determination of whether the prejudgment interest is allowable hinges upon whether the damages were ascertainable in accordance with the fixed rules of evidence and the accepted standards of valuation. *Brane v. Roth*, 590 N.E.2d 587 (Ind. Ct. App. 1992). Prejudgment interest is proper only where simple mathematical computation is required. *Brane v. Roth*, 590 N.E.2d 587 (Ind. Ct. App. 1992); *Thor Electric, Inc. v. Oberle & Associates, Inc.*, 741 N.E.2d 373 (Ind. Ct. App. 2000); *Lystarczyk v. Smits*, 435 N.E.2d 1011 (Ind. Ct. App. 1982); *Wilson v. Jenga Corp.*, 490 N.E.2d 375 (Ind. Ct. App. 1986); *Fort Wayne Nat. Bank v. Scher*, 419 N.E.2d 1308 (Ind. Ct. App. 1981).

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

In Indiana, it is beneficial for a Defendant to obtain both the amount of medical bills that were billed and paid.

In Indiana, a Plaintiff can seek both the amount charged by the medical provider or the amount paid to the medical provider. An injured plaintiff is entitled to recover damages for medical expenses that were both necessary and reasonable. *See Cook v. Whitsell-Sherman*, 796 N.E.2d 271, 277 (Ind. 2003). Statements of charges for medical, hospital, or other health care expenses for diagnosis or treatment are admissible into evidence and are prima facie evidence that the charges are reasonable. Ind. R. Evid. 413. However, the opposing party may produce contradictory evidence to challenge this prima facie showing of reasonableness of the proffered medical bills. *Cook*, at 277. The actual amount charged to the plaintiff or the amount actually paid by him may tend to prove the reasonable and fair value of the services rendered to the plaintiff but are not conclusive on the issue. *Chemco Transp., Inc. v. Conn*, 506 N.E.2d 1111, 1115 (Ind. Ct. App. 1987) (quoting *Herrick v. Slayer*, 160 F. Supp 25, 29 (N.D. Ind. 1958)).

However, the Indiana Supreme Court decision in *Stanley v. Walker* held that amounts paid by private health insurance providers in full satisfaction of medical services are admissible to determine the reasonable value of the medical services that were performed. *Stanley v. Walker*, 906 N.E.2d 8852, 855 (Ind. 2009). The court noted that an injured plaintiff is entitled to recover damages for medical expenses that were both necessary and reasonable. *Id.* at 855 (citing *Cook v. Whitsell-Sherman*, 796 N.E.2d 271, 277 (Ind. 2003)). It found that this measure of damages cannot be read as permitting only full recovery of medical expenses billed to the plaintiff nor can it be the amounts actually paid. *Id.* at 856. The Court reasoned that the focus is on the reasonable value, not the actual charge. *Id.* at 856-57. As a result, the Court held that the collateral source statute does not bar evidence of discounted amounts in order to determine the reasonable value of medical services. *Id.* at 858.

In 2016, the Indiana Supreme Court reaffirmed its holding in *Stanley* and expressly held that the principles set forth in *Stanley*, which permit the admission of both the amounts billed and those accepted by medical providers, apply with equal force to government benefits such as Medicare and Medicaid. *Patchett v. Lee*, 60 N.E.3d 1025, 1032 (Ind. 2016). The Court further stated that its decision solidified Indiana's desire to "chart a middle course by admitting billed charges and accepted amounts." *Id.* at 1032.

With respect to post-judgment reductions or off-sets, evidence of an advance payment is not admissible until there is a final judgment in favor of the plaintiff. In this case, the court shall reduce the judgment to the plaintiff to the extent of the advance payment. The advance payment inures to the exclusive benefit of the defendant or the defendant's insurer making the payment. Ind. Code § 34-18-16-2. If the advance payment exceeds the liability of the defendant or the insurer making the advance payment, the court shall order any adjustment necessary to equalize the amount that each defendant is obligated to pay, exclusive of costs. An advance payment in excess of an award is not repayable by the person receiving the advance payment. *Id.*

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

Indiana does not recognize the self-critical analysis privilege. *Scroggins v. Uniden Corp. of Am.*, 506 N.E.2d 83, 86 (Ind. Ct. App. 1987). In *Scroggins*, the Indiana Court of Appeals found that "no privilege against production of self-critical analysis exists in Indiana." *Id.* at 86. The court reasoned that neither Congress nor the Indiana legislature had chosen to create a self-critical analysis privilege, and Indiana courts are reluctant to create common-law privileges. *Id.* at 85-86. As a result, the court refused to create one. *Id.* at 86.

The Indiana Court of Appeals has also held that post-accident investigations are admissible, and

evidence of post-accident investigations is not automatically excluded as subsequent remedial measures. *J.B. Hunt Transport, Inc. v. Guardianship of Zak*, 58 N.E.3d 956, 967 (Ind. Ct. App. 2016). However, information prepared in anticipation of litigation by the defendant, counsel for defendant, or agents of the defendant, is protected by work product and the attorney-client privilege. *Richey v. Chappell*, 594 N.E.2d 443, 445 (Ind. 1992). See also *Ind. Code* § 34-46-3-1(1).

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?

No. In *Sedam*, the Indiana Supreme Court ruled that respondeat superior and negligent hiring, training, and/or supervision claims cannot be brought simultaneously if the employer admits that an employee was acting within the course and scope of his or her employment. *Sedam v. 2JR Pizza Enters., LLC*, 84 N.E.3d 1174, 1176–77 (Ind. 2017). The court reasoned that the two claims are inconsistent as the former is within the scope of employment whereas the latter requires an act outside the scope of employment. *Id.* at 1177. Thus, admitting an employee was acting within the course and scope of employment precludes the other negligence claims as prejudicial to the employer, inconsistent, and duplicative. Taken together with the comparative fault act, this ruling effectively allows the employer to absorb the employee’s apportionment of fault while limiting the employer’s fault to that of its employee. *Id.* at 1178–79.

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

No. If an alleged tortfeasor negligently or intentionally destroys or discards evidence that is relevant to a tort action, the plaintiff in the tort action does not have an additional independent cognizable claim against the tortfeasor for spoliation of evidence. *Gribben v. Wal-Mart Stores, Inc.*, 824 N.E.2d 349, 355 (Ind. 2005).

Indiana courts may sanction parties, but not third parties, for the spoliation of evidence through: (1) evidentiary inferences that the spoliated evidence was unfavorable to the responsible party; (2) sanctions for discovery violation under Indiana Trial Rule 37(B), which authorizes courts to respond with sanctions which include among others, ordering that designated facts be taken as established, prohibiting the introduction of evidence, dismissal of all or part of an action, rendering judgment by default against a disobedient party, and payment of reasonable expenses including attorneys’ fees; and (3) discipline for spoliating attorneys under Indiana Rules of Professional Conduct.