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Iowa

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

   A. Bodily Injury: 2 years

      i. "[I]njuries to the person or reputation, including injuries to relative rights, whether based on contract or tort," hold a statute of limitations of two years. Iowa Code § 614.1(2).

   B. Property Damage: 5 years

      i. Injuries to property hold a statute of limitations of five years from the date of accident or injury. Iowa Code § 614.1(4).

   C. Unwritten Contracts: 5 years

      i. Claims founded on unwritten contracts hold a statute of limitations of 5 years. Iowa Code § 614.1(4).

   D. Written Contracts: 10 years

      i. Claims founded on written contracts hold a statute of limitations of 10 years. Iowa Code § 614.1(5).

   E. Product Defect: 15 years

      i. Claims of injury or death against a "manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of a product" based on an alleged defect in that product hold a fifteen-year statute of limitations when based on theories of strict liability in tort, negligence, or breach of an implied warranty unless a longer warranty was expressly given. Iowa Code § 614.1(3).

   F. Wages: 2 years

      i. Claims for wages or for a liability or penalty for failure to pay wages hold a statute of limitations of two years. Iowa Code § 614.1(8).

   G. Death of Party Having Action: additional 1 year from date of death

      i. If a person dies within one year prior to when the statute of limitations would otherwise run on his cause of action, the "statute of limitations is automatically extended for one year after his death." Iowa Code § 614.9.

H. Injured Party's Mental Illness: additional 1 year from and after the termination of the disability

   i. The times limited under Iowa Code § 614.1 are extended in favor of persons with mental illness so that they have one year from and after the termination of the disability within which to commence the action. Iowa Code § 614.8(1)

I. Minor Parties: additional 1 year after their attainment of majority

   i. The times limited under Iowa Code § 614.1 are extended in favor of minors so that they have one year from and after the attainment of majority within which to commence the action. Iowa Code § 614.8(2).

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.

There are no current extensions of statute of limitations or restrictions on the number of jurors based upon the COVID pandemic.

The Iowa Supreme Court previously tolled statute of limitations from March 17, 2020, to June 1, 2020 (76 days) so that any deadline which would expire between March 17, 2020, and December 31, 2020, would be extended by 76 days (ex., "if the statute would otherwise run on July 7, 2020, it now runs on September 21, 2020 (76 days later)"). See In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services ¶ 45 (May 22, 2020). This extension was phased out so that if the deadline for commencing the action would otherwise have expired on any date from December 31, 2020 to March 16, 2021 (the 76th day of 2021), that deadline would become March 17, 2021, and thereafter there would be no tolling at all. *Id*.

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

Iowa recognizes a modified system of comparative negligence.

The Iowa Supreme Court, in *Goetzman v. Wichern*, abandoned contributory negligence as a complete defense to a tort claim and adopted pure comparative negligence. 327 N.W.2d 742, 754 (Iowa 1982). Under this system, contributory negligence would not bar recovery but merely would reduce "it in the proportion that the contributory negligence bears to the total negligence that proximately caused the damages." *Id*. However, two years after *Goetzman*, the Legislature enacted a modified system of comparative fault combining elements from the two approaches. Iowa Code Chapter 668. Under this modified system, a plaintiff cannot recover damages if he or she is more than fifty percent at fault and any damages allowed are diminished in proportion to the amount of fault attributable to the plaintiff. Iowa Code § 668.3(1); *Reilly v. Anderson*, 727 N.W.2d 102 (Iowa 2006). *See also Eurich v. Bass Pro Outdoor World, L.L.C.*, 909 N.W.2d 443 (Iowa Ct. App. 2017) (applying the statutory comparative fault statute to a premises liability case).

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

Iowa recognizes the doctrine of joint and several liability. However, the rule does not apply to defendants "who are found to bear less than fifty percent of the total fault assigned to all parties." Iowa Code § 668.4 (2022). In the event that a defendant is found to bear fifty percent or more of fault, that defendant will be jointly and severally liable for strictly economic—not noneconomic—damages. *Id.*; *see also Jahn v. Hyundai Motor Co.*, 773 N.W.2d 550, 560 (Iowa 2009) (the provisions of Iowa Code section 668.4 "apply to parties liable for divisible or indivisible injuries").

Despite the language of Iowa Code section 668.4, it does not impact the common law rule when persons act in concert. In *Reilly v. Anderson*, the Iowa Supreme Court clarified that "[t]he common law rule providing for joint

and several liability among persons acting in concert does not distinguish between economic and non-economic damages." 727 N.W.2d 102, 111-12 (Iowa 2006). In that case, a driver and front-seat passenger were found to have acted in concert when the front-seat passenger attempted to steer the vehicle while its driver used a marijuana pipe. *See id.* at 103. The Court held that the individuals were acting in concert; therefore, they were jointly and severally liable for the rear passenger's economic and non-economic damages. *See id.* at 111.

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

In Iowa, there is no express requirement applicable to either insurers or insureds to provide insurance limit information pre-suit. Nevertheless, the Iowa Supreme Court has implicitly made room for the rare occasion where an insurer's failure to disclose such information may be seen as bad faith. According to *Ferris v. Emp'rs. Mut. Cas. Co.*, "not every negligence of the insurer should be held evidence of bad faith. It is only acts of negligence that show or permit an inference of indifference to or disregard of the interest of the insured that can fairly be said to support a charge of bad faith." 122 N.W.2d 263, 266 (Iowa 1963). Thus, under this holding, an insurer would be liable for bad faith only if its failure to disclosure insurance limit information pre-suit was seen as an "inference of indifference to or disregard of the interest of [its] insured." *Id*.

Regardless, in Iowa, disclosing insurance limit information becomes mandatory following the commencement of litigation at both state and federal levels through the initial disclosure process. Iowa Rule of Civil Procedure 1.500(1)(a) holds that parties, "without awaiting a discovery request," must disclose (in part):

> [T]he declarations page of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment, and, in any action in which coverage is or may be contested, a copy of the agreement and all letters from the insurer to the insured regarding coverage.

Iowa R. Civ. P. 1.500(1)(a)(4); *see also* Fed. R. Civ. P. 26(a)(1)(A)(iv).

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

Currently, Iowa does not cap monetary damages for bodily injury. Rather, the state leaves considerable discretion in the hands of the jury to determine an adequate amount. *See Wildeboar v. Petersen*, 166 N.W. 464, 465 (Iowa 1918) ("We must assume . . . that the finding of the jury as to actual damages rested upon what the jury found to be the actual damages sustained."). However, in 2018, Iowa passed a law creating a statutory cap on damages for medical malpractice suits. *See* Iowa Code Ann. § 147.136A(2) (2022). Specifically, noneconomic damages in such cases are limited to $250,000.00, "unless the jury determines that there is a substantial or permanent loss of impairment of a bodily function, substantial disfigurement, or death, which warrants a finding that imposition of such a limitation would deprive the plaintiff of just compensation for the injuries sustained." *Id*. Proposed legislation is currently pending, which would cap maximum recovery in such instances at $1,000,000.00. *See* 2021 IA S.F. 2275. The cap set forth in Iowa Code Annotated section 147.136A does not apply if the defendant acted with actual malice. *See* Iowa Code Ann. § 147.136A(3).

There is currently no cap on punitive damages in Iowa. However, the percentage of the punitive damage award that a plaintiff may personally recover depends on "[w]hether the conduct of the defendant was directed specifically at the claimant, or at the person from which the claimant's claim is derived." Iowa Code § 668A.1(1)(b) (2022). If the defendant's conduct is directed specifically at the claimant, the full amount of

punitive damages awarded will be given directly to the claimant. *See* Iowa Code § 668A.1(2)(a) (2022). However, if not, no more than 25% of the awarded punitive damages will be given to the claimant, "with the remainder of the award to be ordered paid into a civil reparations trust fund administered by the state court administrator." Iowa Code § 668A.1(2)(b) (2022). Although this statute is not a "cap" per se, it can be a useful negotiating tool when explaining to a plaintiff that their excitement over a potential punitive damage recovery should be tempered by the risk that the majority of any punitive damage award could go to the State of Iowa's civil reparations trust fund, rather than in the plaintiff's pocket.

Notwithstanding the extent of a plaintiff's punitive damage recovery, it is worth noting that punitive damages may only be recovered in Iowa with a showing by "clear, convincing, and satisfactory evidence" that "the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights or safety of another." Iowa Code § 668A.1(a) (2022). The Iowa Supreme Court has "stated that in the context of section 668A.1, 'willful and wanton' means the actor has intentionally done an act of unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow, and which thus is usually accompanied by a conscious indifference to the consequences." *Brokaw v. Winfield-Mt. Union Comm. School Dist.*, 788 N.W.2d 386, 396 (Iowa 2010).

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 Iowa Legislature has recently proposed a bill that would limit liability for employee negligence in actions involving commercial motor vehicles and limit noneconomic damages recoverable against commercial motor vehicle owners and operators. The proposed bill would add Iowa Code section 668.12A and Iowa Code section 668.15A to the Iowa Code.

As currently proposed, Iowa Code section 668.12A would provide that if a commercial motor vehicle employer stipulates that the person who caused damages that are the subject of the lawsuit was the employer's employee and was acting within the course and scope of employment with the employer, the employer will not be liable for direct negligence in hiring, training, supervision, or other similar negligence claim. Instead, the employer will only be liable on the basis of respondeat superior. However, if the employer makes the stipulation outlined above and the employee's negligence is found to have caused or contributed to causing the damages, the employer will be vicariously liable for the resulting damages.

As currently proposed, Iowa Code section 668.15A would cap the total amount recoverable in any civil action for noneconomic damages for personal injury or death against the owner or operator of a commercial motor vehicle at one million dollars, regardless of the number of derivative claims, theories of liability, or defendants in the action. Noneconomic damages are defined in the bill as damages arising from pain, suffering, inconvenience, physical impairment, mental anguish, emotional pain and suffering, loss of chance, loss of consortium, or any other nonpecuniary damages.

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

Generally, at least 12-24 months transpire between the filing of a transportation related complaint and a jury trial.

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

Pre-judgment interest begins accumulating from the date of the commencement of the action and shall be calculated as of the date of judgment "at a rate equal to the one-year treasury constant maturity published by

the federal reserve in the H15 report settled immediately prior to the date of the judgment plus two percent." Iowa Code § 668.13. The interest rate, as of February 15, 2022, is 3.13%. *See* *Iowa Post-Judgment Interest Table*.

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

Iowa allows plaintiffs to recover expenses for "necessary" medical care, rehabilitation services, and custodial care. Iowa Code § 668.14. If medical care is found to be "necessary," a plaintiff may still only recover those medical expenses that are "reasonable." *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 156 (Iowa 2004). "[T]he plaintiff has the burden to prove the reasonable value of the services rendered. The reasonable value of medical services can be shown by evidence of the amount paid for such services or through the testimony of a qualified expert witness." *Id*.

In June 2020, Iowa passed a law, codified in Iowa Code § 622.4, that further addressed the evidence available to prove a plaintiff's recoverable medical expenses:

> Iowa Code § 622.4 Medical expenses: Evidence offered to prove past medical expenses *shall be limited to evidence of the amounts actually paid to satisfy the bills that have been satisfied, regardless of the source of payment, and evidence of the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied.* Evidence of the amounts actually necessary to satisfy the bills that have been incurred shall not exceed the amount by which the bills could be satisfied by the claimant's health insurance, regardless of whether such health insurance is used or will be used to satisfy the bills. This section does not impose upon any party an affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled.

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

Iowa state courts apply the self-critical analysis privilege solely in the context of hospital or medical peer review panels. Iowa Code § 147.135. Iowa state courts have declined to expand the self-critical analysis privilege from the limited context of hospital or medical peer review panels. In *Wells Dairy, Inc. v. Am. Indust. Refrigeration, Inc.*, an explosion occurred at a factory, and the factory owner retained outside experts to investigate the cause of the explosion and provide recommendations for actions that would help avoid similar occurrences in the future. 690 N.W.2d 38, 40-41 (Iowa 2004). During subsequent litigation, opposing counsel requested the retained experts' report. *Id.* at 41. The Iowa Supreme Court held that the self-critical analysis privilege did not apply. Deciding this case in 2004, the Court reasoned that the self-critical analysis privilege was "relatively new," had "not gained much support from the federal courts," and had not yet been recognized by the Iowa Legislature. *Id.* at 49-50.

Similarly, Iowa federal courts have not explicitly recognized the self-critical analysis privilege. Iowa federal courts have noted that "[t]he self-critical analysis privilege has had an ambiguous existence, neither uniformly adopted nor rejected." *Holland v. Muscatine Gen. Hosp.*, 971 F. Supp. 385, 390 (S.D. Iowa 1997). As the Eighth Circuit explains, "courts have appeared reluctant to enforce even a qualified 'self-evaluation' privilege. They typically concede its possible application in some situations, but then proceed to find a reason why the documents in question do not fall within its scope." *In re Burlington N. Inc.*, 679 F.2d 762, 765 fn. 4 (8th Cir.

1982). In *LeClere v. Mutual Trust Life Ins. Co.*, the Northern District of Iowa declined to apply the self-critical analysis privilege. Deciding the case in 2000, the court explained that the Eighth Circuit had not recognized a self-critical analysis privilege, and the court stated that it did "not believe that the Eighth Circuit Court of Appeals will ultimately recognize such a privilege." No. C99-0061, 2000 WL 34027973 at *3 (N.D. Iowa June 14, 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?

Yes. Iowa recognizes the doctrine of *respondeat superior* which makes an employer "liable for the negligence of an employee committed while the employee is acting in the scope of his employment." *Jones v. Blair*, 387 N.W.2d 349, 355 (Iowa 1986). Admitting that a driver was acting "in the scope" of his employment creates the potential for accompanying claims of negligent hiring, retention, supervision or training. *See Godar v. Edwards*. 588 N.W.2d 701, 709 (Iowa 1999) (recognizing claims by injured third parties for negligent hiring, negligent retention, and negligent supervision and concluding that "an employer has a duty to exercise reasonable care in hiring individuals who, because of their employment, may pose a threat of injury to members of the public.").

In order to successfully prove these theories, a claimant must establish:

(1) [T]hat the employer knew, or in the exercise of ordinary care should have known, of its employee's unfitness at the time of [hiring/retention/engaging in wrongful or tortious conduct/training];

(2) that through the negligent [hiring/retention/supervision/training] of the employee, the employee's incompetence, unfitness, or dangerous characteristics proximately caused the resulting injuries; and

(3) that there is some employment or agency relationship between the tortfeasor and the defendant employer.

Id. at 708-709. The Iowa Supreme Court has held that punitive damages may be recovered against an employer who recklessly hires or retains an employee. *See Briner v. Hyslop*, 337 N.W.2d 858, 867 (Iowa 1983).

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

In Iowa, there is no independent claim for spoliation. Spoliation of evidence occurs when: "(1) the evidence was 'in existence'; (2) the evidence was 'in the possession of or under control of the party' charged with its destruction; (3) the evidence 'would have been admissible at trial'; and (4) 'the party responsible for its destruction did so intentionally.'" *Iowa v. Hartsfield*, 681 N.W.2d 626, 630 (Iowa 2004) (quoting *Iowa v. Langlet*, 283 N.W.2d 330, 335 (Iowa 1979)). In *Meyn v. State*, the Iowa Supreme Court refused to adopt a "negligent spoliation of evidence theory." 594 N.W.2d 31, 34 (Iowa 1999). Rather, the destruction of evidence must be "intentional, as opposed to merely negligent or . . . the result of routine procedure." *Lynch v. Saddler*, 656 N.W.2d 104, 111 (Iowa 2003) (citing *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 719 (Iowa 2001)).

Currently, the remedies available for spoliation of evidence include: (1) discovery sanctions, (2) barring duplicate evidence where fraud or intentional destruction is indicated, and/or (3) instructing on an unfavorable inference to be drawn from the fact that evidence was destroyed. *Hendricks v. Great Plain Supply*, 609, N.W.2d 486, 491 (Iowa 2000).