

Massachusetts

Sean McDonough
smcdonough@morrisonmahoney.com

Gareth Notis
gnotis@morrisonmahoney.com

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

The statute of limitation for tort claims is 3 years. The statute of limitations for contract claims is 6 years.

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.**

As a result of the Covid pandemic, statute of limitations was tolled from 3/17/20 – 6/30/20. Also, in the state superior court the number of jurors deliberating in a jury trial has been decreased from 12 to six jurors.

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

Yes, if the plaintiff is 51% negligent, he or she recovers nothing. If the plaintiff is less than 51% negligent the award is reduced by the percentage of negligence attributable to the plaintiff

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

Yes. Joint tortfeasors (JTs) are held liable for their pro rata share of liability based upon the number of joint tortfeasors, regardless of their percentage of fault or liability. (I.e.: 2 JTs = 50% each; 3JTs=33% each).

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

Yes, MGL c. 175, Sec. 112C requires an insurer to disclose its coverage limits or it is liable for a \$500 penalty, but not insurance policies. An insured on the other hand has no obligation to provide insurance information or limits.

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

Generally, there are no caps on compensatory damages in tort actions. Punitive awards are not generally available either, except under the MA Wrongful Death statute and only where the conduct reached a level of gross negligence or greater. Punitive damages are available against insurers for unfair claim settlement practices under MGL c. 176D and 93A. There are no exemplary damages in tort actions.

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.

24 – 36 months.

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

Pre-judgment interest starts accumulating on the date the complaint was filed at a rate of 12% annually, and generally amounts to 24-36% interest by the time of trial.

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

Plaintiffs can enter evidence the actual amount of medical bills charged. Defendants can enter evidence the amount generally accepted by medical providers.

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

Not specifically a privilege. There is no clear evidentiary rule on this issue and the admissibility of self-critical analysis is within the discretion of the judge.

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, but it is within the discretion of the judge whether to exclude such evidence where vicarious liability is not disputed or stipulated to by the motor carrier defendant.

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

Spoliation claims are generally brought by motion within the underlying lawsuit. Sanctions can range from corrective instructions by the judge to the jury to a finding of liability.