FOR MORE INFORMATION

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Michigan

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

For PIP causes of action (PIP) the statute of limitation is one (1) year. (MCLA 500.1345). For third party causes of action for injury to person or personal property the statute of limitation is three (3) years. (MCLA 600.5805). For breach of contract actions, the statute of limitations is six (6) years. (MCLA 600.5807).

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 modifications to the statute of limitations or number of jurors requirements in Michigan. The Michigan Supreme Court is the judicial body responsible for amending court rules and procedures on account of the COVID pandemic. Since March 2020, they have issued 21 administrative orders in response to COVID. Only one administrative order remains active. That administrative order sets forth new requirements for landlord-tenant disputes.

Individual judges and courts continue to have unique and specific guidelines regarding court appearances.

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

Yes. Under Michigan's No-Fault Act, "damages shall be assessed on the basis of comparative fault, except that damages shall not be assessed in favor or a party who is more than 50% at fault." A Plaintiff is barred from any recovery if he is more than 50% at fault. MCL 500.3135(2)(b).

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

Yes. The governing statue is MCLA 600.2925(c). The recovery of a judgment against one tortfeasor does not discharge the other tortfeasors from liability unless the judgment is satisfied. When one tortfeasor who satisfies all or part of a judgment for which he is jointly liable is entitled to contribution only if the contribution defendant was made a party to the original action and a reasonable effort was made to notify him of the commencement of the action. In addition, a separate action for contribution must be filed within one (1) year after judgment has become final by lapse of time for appeal or after appellate review.

A tort-feasor who enters into a **settlement** with the claimant is entitled to bring an action for contribution when the contribution defendant's liability was extinguished by the settlement, a reasonable effort was made to notify him of the settlement negotiations, and he was given a reasonable opportunity to participate in the settlement negotiations. Contribution may be enforced by motion or a separate action. A liability insurer is subrogated to the rights of the contribution plaintiff. A separate action is barred unless the contribution plaintiff has paid within the statute of limitations applicable to plaintiff's right of action against him (three years) and has

commenced his contribution action within one (1) year after payment – unless contribution plaintiff has agreed while the underlying action is pending against him to discharge common liability and, within one (1) year after the agreement, paid liability and commenced his contribution action.

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

No.

If a lawsuit has commenced, then pursuant to MCR 2.302(A)(g), a party must provide a copy or an opportunity to inspect a copy of the pertinent portions of any insurance agreement under which a person may be liable to satisfy all or part of a possible judgment. Defendants have 14 days after the Plaintiff has served its initial disclosures or 28 days after the party has filed it answer.

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

For general tort and personal injury cases, there is no cap on compensatory or exemplary damages. Exemplary damages are awardable to compensate a plaintiff for mental anguish, humiliation, outrage, or increased injury to the plaintiff's feelings that he or she suffers due to the defendant's willful, malicious, or wanton conduct or reckless disregard for the plaintiff's rights. *See Peisner v. Detroit Free Press,* 364 N.W.2d 600 (Mich. 1984).

Punitive damages are not recoverable in Michigan. *Gregory v. Cincinnati, Inc.,* 450 Mich, 1, 23 n. 31 (Mich. 1995)

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?

Effective July 2, 2020, Michigan reformed its No-Fault statute. Under the former Act, the PIP carrier was responsible for all medical bills relating to injuries resulting from the accident. Now, the insured can limit the amount of medical coverage. If an insured has a limitation of $250,000, but medical expenses exceed that limit, the excess medical are now additional economic damages. This increases the potential liability against third party defendants.

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

There are no specific statistics published regarding the time period between when a complaint is filed and a trial is commenced. As the Michigan courts start to re-open to busines as usual, a backlog of criminal and civil trials will have priority. Recently, Federal Courts have issued Scheduling Orders relating to transportation trials with an initial trial date between 13 – 18 months from the date a complaint has been filed. Circuit Courts are issuing initial trial dates within 12 months of the complaint being filed, however realistically, it is currently trending closer to 18-24 months.

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

The calculation of a money judgment recovered in a civil action shall be calculated from the date the of filing of the complaint. The rate is currently 1.045%.

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

Medical expenses are admissible to provide evidence that the expenses were reasonable. Evidence of furnishing

or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability.

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

Michigan does not recognize a self-critical privilege. Except to the extent an internal accident report investigation falls under either the work-product doctrine, attorney client privilege or relevance, it is admissible. Michigan does recognize the private investigator-client privilege. MCL 338.840.

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?liation

Yes. By alleging independent negligence claims against the motor carrier, the plaintiff enjoys a tactical benefit in being able to introduce into evidence the prior bad acts of the driver, which would otherwise be potentially inadmissible. The most cited case on this issue is *Perin v Peuler*, 373 Mich 531, 130 NW2d 4 (1964).

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

No. Michigan does not allow direct causes of action against parties responsible for spoliation. Michigan does not recognize as "a valid cause of action spoliation of evidence that interferes with a prospective civil action against a third party," and declined the opportunity to recognize such a claim. *Teel v. Meredith*, 284 Mich.App 660, 661, 663–664; 774 NW2d 527 (2009). The Teel Court explained that the decision to impose new duties and recognize an independent tort claim for spoliation of evidence should be left to the Legislature. Id. at 663–665

Sanctions include costs and the entering of adverse inference jury instruction. However, Michigan recognizes that the adverse inference instruction is an extreme sanction that should not be given lightly. "[i]t is well settled that missing evidence gives rise to an adverse presumption only when the complaining party can establish 'intentional conduct indicating fraud and a desire to destroy [evidence] and thereby suppress the truth.'" *Ward v Consolidated Rail Corp*, 472 Mich 77: 84-85; 693 NW2d 366 (2005) quoting *Trupiano v Cully*, 349 Mich 568, 570; 84 N.W.2d 747 (1957).