FOR MORE INFORMATION

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Mississippi

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

   Mississippi's statute of limitations for general negligence and breach of contract is three (3) years. Miss. Code Ann. 15-1-49. Mississippi has a one (1) year statute of limitations for intentional torts such as assault, battery, false imprisonment, malicious arrest, slander and intentional infliction of emotional distress. Miss. Code Ann. 15-1-35.

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.**

   Mississippi has not formally recognized a tolling or extending the statute of limitations due to COVID. Federal court judges may seat juries with smaller number of jurors than usual.

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

   Mississippi is a pure comparative fault state. Miss. Code Ann. 11-7-15. A party may only be responsible for damages proportionate to the percentage of fault allocated by the fact finder. A plaintiff's negligence does not bar recovery, but damages shall be reduced in proportion to the amount of fault allocated to plaintiff.

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

   Mississippi abolished joint and several liability in most cases, including negligence, malpractice, strict liability, or failure to warn. Miss. Code Ann. 85-5-7. In those cases, liability for damages is several only and a joint tort-feasor shall be liable only for the amount of damages allocated to him in direct proportion to his percentage of fault.

   For most trucking cases, there is no joint and several liability.

   Joint and several liability applies only to all who consciously and deliberately pursue a common plan or design to commit a tortious act or actively take part in it. Any party held jointly and severally liable has a right of contribution against his fellow defendants acting in concert.

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

   Mississippi does not require proof of insurance limits pre-suit. The information is discoverable once suit is filed.

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

   Mississippi has a $1,000,000 cap on non-economic damages for cases other than medical negligence. Non-economic damages" are defined as subjective, nonpecuniary damages arising from death, pain, suffering, inconvenience, mental

anguish, worry, emotional distress, loss of society and companionship, loss of consortium, bystander injury, physical impairment, disfigurement, injury to reputation, humiliation, embarrassment, loss of the enjoyment of life, hedonic damages, other nonpecuniary damages, and any other theory of damages such as fear of loss, illness or injury. The term "noneconomic damages" shall not include punitive or exemplary damages. Miss. Code Ann. 11-1-60.

There are statutory caps on punitive damages based on the defendant's net worth. The caps are on a sliding scale with the lowest being 2% of the defendant's net worth for a defendant with a net worth of $50,000,000 or less. The highest cap is $20,000,000 for a defendant with a net worth more than $1,000,000,000. The caps are lowered as the net worth diminishes. Miss. Code Ann. 11-1-65.

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.**

We are not aware of any recent or planned reforms which may affect transportation lawsuits.

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

The answer varies on the venue including whether state or federal court. Generally, there is at least one (1) year between filing of the complaint and trial.

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

Pre-judgment interest may begin to run upon filing the complaint but no earlier. The judge has discretion to establish the rate and date interest begins to accrue. Miss. Code Ann. 75-17-7. No pre-judgment interest is allowed if the amount owed is unliquidated prior to judgment. This should be true in most negligence personal injury cases.

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

Mississippi recognizes the collateral source rule which provides that compensation received by a plaintiff from a collateral source, wholly independent of the wrongdoer, cannot be used by a defendant in mitigation or reduction of damages. *Burr v. Mississippi Baptist Medical Center*, 909 So. 2d 721 (Miss. 2005). However, the rule is not absolute. "If evidence is introduced for a purpose other than to mitigate damages, the collateral source rule is not violated and the evidence may be admitted." *Burr*, 909 So. 2d at 729.

Under current Mississippi law, a plaintiff may recover for expenses written off by healthcare providers. Mississippi courts have recognized this as a form of the collateral source rule. *Williams v. Manitowoc Cranes, LLC*, 216 U.S. Dist. LEXIS 3553 (S.D. Miss. January 12, 2016); *Wal-Mart Stores, Inc. v. Frierson*, 818 So. 2d 1135 (Miss. 2002); *Brandon HMA, Inc. v. Bradshaw*, 809 So. 2d 611 (Miss. 2001).

Mississippi allows the plaintiff to submit evidence of incurred medicals to the jury. *McCary v. Caperton*, 601 So. 2d 866 (Miss. 1992). Plaintiff can "board" the face amount of the bills regardless of adjustments/amount actually paid. Miss. Code Ann. Section 41-9-119 establishes a rebuttable presumption that the face amount of the bills are reasonable and necessary medical expenses incurred by plaintiff. A defendant is entitled to "rebut the necessity and reasonableness of the bills, and the ultimate question is for the jury to determine." *Herring v. Poirrier*, 797 So. 2d 797, 809 (Miss. 2000). Defendants in Mississippi are increasingly retaining medical billing experts to audit the face amount of medical bills and testify that the face amounts are unreasonable and have no relation to the cost of the service performed nor to the expected payment.

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

The Mississippi Supreme Court refused to recognize a self-critical analysis privilege when a defendant was seeking to protect documents created for "self-analysis and criticism – that is, documents it created in an attempt to identify and address its problems." Roman Catholic Diocese of Jackson v. Morrison, 905 So. 2d 1213, 1245 (2005).

No reported Mississippi decisions were found regarding to discovery of preventability determinations as related to trucking companies. In an unreported decision, *Cameron v. Werner Enters.*, 2016 U.S. Dist. LEXIS 68711, *9 (S.D. Miss. 2016), the Defendants argued that no evidence to show the preventability of the accident should be admitted "because preventability of an accident is part of the accident review required of the motor carrier industry." The Defendants cited 49 USCS § 504(f) which states:

> No part of a report of an accident occurring in operations of a motor carrier, motor carrier of migrant workers, or motor private carrier and required by the Secretary, and no part of a report of an investigation of the accident made by the Secretary, may be admitted into evidence or used in a civil action for damages related to a matter mentioned in the report or investigation.

The Court agreed that the report was inadmissible; but held "it does not believe that it necessarily follows that all references to the preventability of the accident should be excluded. Therefore, though the report will be excluded, other evidence of preventability will not be excluded at this time." *Id.* As such, evidence of preventability may be admissible in trial; however, the report is not.

While admissibility may be contested, Mississippi courts generally allow discovery of reports or records that are prepared in the ordinary course of business and would most likely allow discovery of preventability determinations. Haynes v. Anderson, 597 So.2d 615 (Miss. 1992). Discovery of post-accident investigation by opposing counsel depends on the circumstances of what the investigation consisted of and when and by whom it was conducted. As a general rule, if the investigation was done in the ordinary course of business, regardless of whether a claim or lawsuit had been made, then it is likely discoverable. If investigation was done at the request of counsel or after notice of a claim, then the investigation is likely not discoverable. *Haynes v. Anderson*, 597 So.2d 615 (Miss. 1992). The analysis under Mississippi law is whether the materials were prepared in the anticipation of litigation. *Dunn v. State Farm Fire & Cas. Co*, 927 F.2d 869 (5th Cir. 1991).

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

Admission that a driver was in the "course and scope" of employment and vicarious liability prevents a negligent hiring/supervision/training claim against the employer. Hood v. Dealer's Transport Co., 459 F. Supp. 684(N.D. Miss. 1978). Multiple Mississippi federal courts have addressed the issue and reached the same result. There is no such definitive holding from Mississippi state courts, but we anticipate the holding would be the same.

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

Mississippi does not recognize an independent claim for spoliation. The remedy for spoliation is a negative inference instruction to the jury. The Mississippi Supreme Court has held that "[w]hen evidence is lost or destroyed by one party . . . thus hindering the other party's ability to prove his case, a presumption is raised that the missing evidence would have been unfavorable to the party responsible for its loss." *Thomas v. Isle of Capri Casino*, 781 So. 2d 125, 133 (Miss. 2001). The Thomas court further held, "Because the presumption of unfavorability is not solely confined to the specific issue of what information was contained in the missing evidence, the fact finder is free to draw a general negative inference from the act of spoliation, regardless of what the spoliator's rebuttal evidence shows." *Id*.; *See also DeLaughter v. Lawrence County Hosp*., 601 So. 2d 818, 822 (Miss. 1992). The negative inference applies in cases of both intentional or fraudulent spoliation and negligent destruction of evidence. *Bolden v. Murray*, 2012 Miss. App. LEXIS 221, *20-21 (Miss.Ct.App. 2012); *Thomas*, 781 So. 2d at 133.