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

Pursuant to R.S. Mo. § 516.120, the statute of limitations for tort actions is five years. However, it should be noted that there is currently a proposed bill in the Missouri House of Representatives that seeks to modify the statute of limitations for personal injury claims from five years to two years.

The statute of limitations for contract actions, express or implied is five years. However, if the action falls under R.S. Mo. § 516.110 which is for "an action upon any writing, whether sealed or unsealed, for the payment of money or property," then the statute of limitations is 10 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.

The COVID-19 Pandemic has had no effect on tolling or extending the statute of limitations for filing a transportation suit in Missouri. The Supreme Court of Missouri issued an Order in which "judges presiding over a civil case or matter may exercise their discretion to waive, for good cause shown, any filing deadlines or time limitations set through Missouri's e-filing system or by court order, local rule, or Missouri Supreme Court Rules 41 through 81." While some discretion in filing deadlines was authorized, the Order specifically states that the "authorization does not apply to any deadline or time limitations set by statute or constitutional provision." Thus, the statute of limitations was not tolled nor extended due to the COVID Pandemic.

The COVID Pandemic has not changed how many jurors sit on a jury trial. The Supreme Court of Missouri issued an April 6, 2021 Order implementing guidelines and procedures for jury proceedings such as re-configuring courtrooms to allow for social distancing during the jury selection process and encouraging courts to limit the number of potential jurors involved at any one time. The April 6, 2021 Order has now been rescinded, but the Courts and Judges may continue implementing any of the procedures set forth in that order if the Court finds it necessary or useful to safely carry on jury proceedings.

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

Missouri is a pure comparative fault state, where the amount of a Plaintiff's recovery can be reduced by the percentage of fault that is assigned to him or her by a jury. For example, if the jury finds Plaintiff 75% at fault and Defendants 25% at fault and awards $100,000, Plaintiff would only be entitled to a judgment against Defendants in the amount of $25,000.

"Under a pure comparative fault system, the plaintiff's negligence is not compared with that of defendant A and then again with defendant B, but rather it is compared with the cumulative negligence of all the defendants." *Cornell v. Texaco, Inc.,* 712

S.W.2d 680, 682 (Mo. 1986).

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

Yes, Missouri recognizes joint and several liability amongst tortfeasors. "In all tort actions for damages, if a defendant is found to be fifty-one percent or more at fault, then such defendant shall be jointly and severally liable for the entire amount of the judgment rendered against the defendants." R.S. Mo. § 537.067.1. "If a defendant is found to be less than fifty-one percent at fault, then the defendant is only responsible for the percentage of the judgment for which the defendant is determined to be responsible by the trier of fact." *Id.* There is an exception however in which a party is responsible for the fault of another defendant or for payment of the proportionate share of another defendant when: 1) the other defendant was acting as an employee of the party; or 2) the party liability for the fault of another person arises out of a duty created by the federal Employers' Liability Act. *See* R.S. Mo. § 537.067.1.

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

Missouri law does not recognize an obligation to disclose insurance limit information pre-suit to third-party claimants. However, insurance limit information is, for the most part, discoverable once the case is in suit. In Missouri, "[n]o insurer shall fail to fully disclose to first-party claimants all pertinent benefits, coverages or other provisions of an insurance policy under which a claim is presented." 20 Mo. Code of State Regulations 100-1.020(1)(A).

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

Missouri does not impose a monetary cap on compensatory damages unless it is a case alleging a medical malpractice claim. Appellate courts typically evaluate the reasonableness of compensatory awards based on the following factors: (1) loss of present and future income; (2) medical expenses; (3) plaintiff's age; (4) the nature and extent of plaintiff's injuries; (5) economic considerations; (6) awards approved in comparable cases; and (7) the trial court's and jury's superior opportunity to evaluate plaintiff's injuries and other damage. Past and future pain, suffering, effect on life-style, embarrassment, humiliation, and economic loss can be taken into consideration, however, there is no fixed measure or standard in determining the measure of damages, other than what is "fair and reasonable."

Under R.S. Mo. § 510.265, "no award of punitive damages against any defendant shall exceed the greater of: 1) Five hundred thousand dollars; or 2) Five times the net amount of the judgment awarded to the plaintiff against the defendant." In 2014, the Missouri Supreme Court held that Missouri Statute §510.265 was unconstitutional. See *Lewellen v. Franklin*, 441 S.W.3d 136 (Mo. 2014). While the Supreme Court declared the Missouri Statute §510.265 unconstitutional, Missouri legislature has passed an amended version of Missouri Statute §510.265, effective August 28, 2020, which sets limits on punitive damages in certain cases.

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.

Missouri recently enacted a new punitive damages statute which went into effect on August 28, 2020, and applies to all cases filed after that date. The new law, R.S. Mo. § 510.261, codifies the standard of proof for punitive damages. Pursuant to Section 510.261.1, plaintiffs will be required to prove "by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others."

Section 510.261 also changes the timing of pleadings relative to a claim for punitive damages. The new law prohibits plaintiffs from seeking punitive damages in an initial pleading. Section 510.261.5 provides that plaintiffs seeking punitive damages must submit a motion for leave of court to file an amended petition

containing a punitive damages claim. The motion must be supported by evidence "establishing a reasonable basis for recovery of punitive damages." *Id*. The motion should be supported by "affidavits, exhibits, or discovery materials establishing a reasonable basis for recovery of punitive damages." *Id.*

Finally, the new law sharply limits vicarious liability for punitive damages. Punitive damages will lie against an employer or other principal for an agent's actions in only four circumstances:

- The principal authorized the "doing and manner" of the act
- The agent was unfit and the principal acted recklessly in employing or retaining the agent
- The agent was employed in a managerial capacity and acted within the scope of employment
- The principal ratified the agent's act

R.S. Mo. § 510.261.3.

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

At this time, jury trials are typically being set approximately 9-14 months after the filing of the petition.

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

In non-tort claims, prejudgment interest accrues at the statutory rate of interest, "for all moneys after they become due and payable." In claims for breach of a written contract, prejudgment interest typically begins on the date of the breach or when payment was due under the contract.

In tort claims, to qualify for prejudgment interest, the plaintiff must satisfy the statutory requirements contained in R.S. Mo. § 408.040. Pursuant to Section 408.040, the plaintiff must make a demand for payment, or an offer of settlement, in a writing sent by certified mail return receipt requested to the other party and to the insurer of the other party, if any. *Id.* The demand or offer must include an affidavit by the plaintiff describing the injuries suffered by the plaintiff and a computation of the damages sought by the plaintiff. *Id.* The demand or offer must also include the documents that support the claim, if any. *Id.*

In actions alleging wrongful death, personal injury, or bodily injury, the above demand or offer must include a list of the names and addresses of the medical providers who provided treatment to the plaintiff for the injuries claimed. R.S. Mo. § 408.040. The demand or offer must also include copies of available related medical bills and authorizations consenting to the other party and its insurer obtaining the medical records of the plaintiff. Finally, the demand or offer must reference Missouri's prejudgment interest statute and must state that the demand shall be left open for 90 days. *Id.*

If these, and other, statutory requirements for tort actions are met, the judgment, if it is greater than the amount of the demand or offer, shall then include prejudgment interest equal to the intended Federal Funds Rate, as established by the Federal Reserve Board, plus 3%. R.S. Mo. § 408.040. Such prejudgment interest shall begin to accrue 90 days after the date of the certified mail return receipt or the date on which the demand was rejected without counteroffer, whichever is earlier.

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

As part of the 2005 Missouri tort reform R.S. Mo. § 490.715 was amended to include a new subsection 5 that addressed valuation of the medical expenses, including a provision that there was a rebuttable presumption that the "value" of medical treatment is "the dollar amount necessary to satisfy the financial obligation to the health care provider." Plaintiffs were not permitted to introduce evidence of medical expenses that exceeded

the reasonable "value" of medical care and treatment. *See id.* Missouri cases, however, significantly undermined this statutory tort reform by allowing evidence of "sticker price" bills to get to the jury upon a very low showing of the "reasonableness" of the full-price bill, which could be satisfied by affidavits or the testimony of the health care providers or their records custodians. *See Deck v. Teasley*, 322 S.W.3d 536 (Mo. banc 2010). The bar to rebut the presumption was so low in practice that the statutory reform failed to have the desired effect.

Revised section 490.715, which went into effect on August 28, 2017, attempts to streamline the evidentiary requirements for recovery of medical bills by eliminating the presumption from the statute and replacing it with an "actual cost" standard. More specifically, Missouri law now defines the "actual cost of the medical care or treatment" recoverable as follows:

> [The] sum of money not to exceed the dollar amounts paid by or on behalf of a plaintiff or a patient whose care is at issue plus any remaining dollar amount necessary to satisfy the financial obligation for medical care or treatment by a health care provider after adjustment for any contractual discounts, price reduction, or write-off by any person or entity.

In short, Missouri has significantly altered the evidentiary standard for proving the value of medical treatment rendered to an injured party. While the new law appears to be sufficiently clear that medical bill evidence will be the amount actually paid and/or owed, and not the originally billed amount, or including any amounts written off, discounted or adjusted to the bill as a result of contracts with insurers or government programs, in *Brancati v. BiState Development Agency*, the Missouri Court of Appeals interpreted the amended statute to allow evidence of the amount of the charged medical bills as recoverable damages at trial. 571 S.W.3d 625 (Mo. App. 2018). Accordingly, despite the clear language of the statute, in practice, Missouri Courts appear poised to once again permit both the amounts billed and the amounts paid into evidence.

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

No Missouri Court has recognized the self-critical analysis or similar privilege that shields internal accident investigations from discovery.

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?

Missouri has adopted the majority rule that once an employer has admitted the agency relationship between it and the employee, it is improper to allow a plaintiff to proceed against the employer on any other theory of derivative or dependent liability. *McHaffie v. Bunch*, 891 S.W.2d 822, 826 (Mo. banc 1995) ("once an employer has admitted respondeat superior liability for a driver's negligence, it is improper to allow a plaintiff to proceed against an employer on any other theory of imputed liability."); *Young v. Dunlap*, 223 F.R.D. 520 (E.D. Mo. 2004); *Brown v. Larabee*, 2005 WL 1719908 (W.D. Mo. 2005); *Hoch v. John Christner Trucking, Inc.*, 2005 WL 2656958 (W.D. Mo. 2005); *Jackson v. Myhre*, 2007 WL 2302527 (Mo. App. E.D. 2007); *Connelly v. H.O. Wolding, Inc.*, 2007 WL 679885 (Mo. App. W.D. 2007); *Rebstock v. Evans Production Engineering Co., Inc.*, 2009 WL 3401262 (E.D. Mo. 2009).

It is important to note that the court in *McHaffie* left open the possibility that a plaintiff may pursue a separate, direct claim for punitive damages against the employer based on negligent entrustment and/or negligent hiring, training, supervision, and/or retention, which would not merge with the claim for vicarious liability. *McHaffie*, 891 S.W.2d at 828. Since *McHaffie*, most courts in Missouri have permitted plaintiffs to make a separate, direct claim for punitive damages against the employer based on negligent entrustment and/or negligent hiring,

training, supervision, and/or retention even when vicarious liability is admitted.

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

Missouri has not recognized intentional or negligent spoliation as a tort. As such, there is no separate cause of action for a spoliation claim in Missouri.

- Negative inference instruction

In Missouri, the victim of spoliation is entitled to an adverse inference which holds the spoliator to admit that the missing evidence would have been unfavorable to its position. *Marmaduke v. CBL & Associates Management Inc.*, 521 S.W.3d 257, at 269. The party asserting the doctrine is not entitled to any further inferences as a matter of law regarding that evidence and is not entitled to an adverse inference jury instruction. *Id.* The adverse inference does not prove the opposing party's case. *Id.* Missouri does not offer any other remedies when spoliation of evidence occurs. However, Rule 61.01 of the Missouri Rules of Civil Procedure provides courts with wide discretion in issuing sanctions for failure to make discovery. As such, spoliators are at risk of an adverse inference regarding the evidence as well as any other sanctions permissible under Rule 61.01 the court deems proper under the circumstances.