

NEBRASKA

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

The statute of limitations for tort actions in Nebraska is four years. NEB. REV. STAT. § 25-207. The statute of limitations for contract actions depends on whether the contract is written or oral. The statute of limitations for actions on written contracts is five years. NEB. REV. STAT. § 25-205. The statute of limitations for actions on oral contracts is four years. NEB. REV. STAT. § 25-206. Pursuant to NEB. REV. STAT. § 30-810, wrongful death actions must be filed within two years after death. Beyond those just mentioned, we are not aware of any specific statute of limitations specifically related to the transportation industry.

2. What effects, if any, has the COVID Pandemic had on tolling or extending the statute of limitations for filing a transportation suit and the number of jurors that are sat on a jury trial.

Nebraska has neither tolled nor extended the statute of limitations for filing suit, including transportation-related suits, during the COVID-19 pandemic. Statewide judicial COVID-19 orders do not address tolling or extending the statute of limitations for *any* actions. *See* Order of the Chief Justice of the Nebraska Supreme Court, Administrative Order Regarding Novel Coronavirus and COVID-19 Disease (Aug. 9, 2021).

The COVID-19 pandemic has not directly affected the number of jurors that are sat on a jury trial. The Nebraska Supreme Court has, however, ordered that no persons with an elevated risk of transmitting COVID-19 may attend any hearing, trial, conference, deposition, or other proceeding without prior authorization of the court.

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

Nebraska employs a modified comparative negligence scheme. The plaintiff's own negligence proportionately diminishes their recovery, and the plaintiff is barred from recovering any amount if they are found to be 50% or more at fault. NEB. REV. STAT. § 25-21,185.09.

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

If multiple defendants are involved in a common enterprise and cause harm, the liability of each defendant for economic and noneconomic damages is joint and several. In actions involving more than one defendant, but not a common enterprise scenario, defendants have joint and several liability for economic damages. *See* NEB. REV. STAT. § 25 – 21,185.10.

For non-economic damages, defendants are subject to only several liability and not joint liability. Nebraska law sets forth that in this scenario, each defendant is "liable only for the amount of noneconomic damages allocated to that defendant in direct proportion to that defendant's percentage of negligence, and a separate

judgment shall be rendered against that defendant for that amount.” NEB. REV. STAT. § 25 – 21,185.10.

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

Nebraska does not require pre-suit disclosure of insurance limit information. Per Nebraska Court Rules, such information may be obtained upon the filing of suit. See NEB. CT. R. DISC. § 6-326(b)(2).

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

Nebraska does not have monetary caps on compensatory damages for standard tort claims. There are, however, caps on damages in medical malpractice suits (NEB. REV. STAT. §44-2825) and tort claims against political subdivisions (NEB. REV. STAT. §13- 926).

Nebraska law does not permit an award for punitive damages. Under Nebraska law, “punitive, vindictive, or exemplary damages contravene NEB. CONST. ART. VII, § 5, and thus are not allowed in this jurisdiction.” *O'Brien v. Cessna Aircraft Co.*, 298 Neb. 109, 139, 903 N.W.2d 432, 458 (2017); *Miller v. Kingsley, Sr.*, 194 Neb. 123, 124, 230 N.W.2d 472, 474 (1975); *Gorji v. C.R. Bard, Inc.*, No. 4:21CV3134, 2022 WL 597334, at *5 (D. Neb. Feb. 28, 2022). Notably, there remains some ambiguity in Nebraska’s denial of punitive damages as NEB. CONST. ART. VII, § 5 also provides that “[a]ll fines, penalties . . . shall be appropriated exclusively to the use and support of the common schools.” See *Abel v. Conover*, 170 Neb. 926, 104 N.W.2d 684 (1960). The *Abel* court, while finding that penalties paid for the benefit of a private person were unconstitutional, stated that punitive damages are available in Nebraska if such damages are paid into the school fund. As a practical matter, Nebraska courts have not awarded punitive damages despite this language.

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.

Nebraska has not recently implemented any tort reforms that may affect transportation lawsuits.

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

In Nebraska, cases tried to a jury should be disposed of within one year to eighteen months per the Court Rules. See NEB. CT. R. § 6-101. However, as a practical matter, District Court cases are generally in litigation at least two years before a jury trial occurs.

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

Both the accrual date of pre-judgment interest and the rate depend on the type of action. The Nebraska Supreme Court recently recognized that there are two “alternate and independent” statutory bases for litigants to recover prejudgment interest. See *Weyh v. Gottsch*, 303 Neb. 280, 313-14, 929 N.W.2d 40, 63 (2019).

For contract actions, prejudgment interest accrues at either the contract rate or 12% per year on the amount due. NEB. REV. STAT. § 45-104. Prejudgment interest begins accumulating “from the time that the money is wrongfully withheld.” *Weyh*, 303 Neb. at 315, 929 N.W.2d at 64. In *Weyh*, for example, the Court held interest began accumulating on the date the plaintiff “filed his initial complaint.” *Id.*

For tort actions and other unliquidated claims, prejudgment interest accrues at 2% above the statutory bond investment rate. NEB. REV. STAT. § 45-103.02. Prejudgment interest begins accumulating from “the date of the plaintiff’s first offer of settlement which is exceeded by the judgment until the entry of judgment” if the four conditions within § 45-103.02 are met.

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

The parties generally may offer any evidence concerning medical expense related damages, subject to the standard Nebraska Rules of Evidence and Discovery.

Nebraska has, however, adopted the collateral source rule, making evidence of any discounts to medical bills by independent sources, such as health insurance, inadmissible. As such, plaintiffs put on evidence of the retail value of their medical expenses. *Strasburg v. Union Pac. R.R. Co.*, 286 Neb. 743, 839 N.W.2d 273 (2013). Thus, plaintiffs in Nebraska may seek to recover the amount charged for medical damages. In some cases, plaintiffs have elected not to introduce medical expenses as evidence. In these situations, defendants may seek to offer the medical expenses. There have been mixed results in the courts, though in our experience, courts have deemed a defendant's offer of plaintiff's medical expenses relevant evidence to the issues at hand, and therefore allowed for the evidence to be introduced.

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

While Nebraska's Federal District Court has recognized the self-critical analysis privilege, Nebraska state courts have not yet adopted the privilege. *See Carlson v. Freightliner LLC*, 226 F.R.D. 343 (D. Neb. 2004) (holding that the privilege "remains largely undefined" and has not generally been recognized). However, the District Court in *Carlson* found that the privilege did not apply to "routine internal corporate reviews of matters related to business operations, recalls, and safety concerns." *Carlson*, 226 F.R.D. at 365.

If a state court were to face an issue with the self-critical analysis privilege, it is likely that the court would turn to *Carlson* for some guidance. We will not know how successful the privilege will be in Nebraska without further development. A party may also seek a protective order to evaluate the need to protect confidential information on a case-by-case basis.

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?

The Nebraska Supreme Court does not appear to have addressed the issue of whether a plaintiff may maintain a negligent hiring/retention/training claim where the employer has admitted scope and course of employment. Nebraska's Federal District Court has, however, predicted that "the Nebraska Supreme Court would apply the majority rule to bar" a plaintiff's independent claims for "negligent hiring, retention, training and supervision. That rule is consistent with established Nebraska case law, and ensures that the jury receives relevant, non-prejudicial evidence in its ultimate determination of fault." *Gibson v. Jensen*, No. 8:16-CV-296, 2017 WL 5067497, at *4 (D. Neb. July 17, 2017).

Until a Nebraska court takes up this issue, it remains uncertain whether a plaintiff can bring an independent negligence claim against a vicariously liable employer. It has been our experience in the trial courts that when we admit scope and course of employment, judges generally do not allow evidence on the issue of negligent hiring/supervision/training.

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

Courts have not addressed whether Nebraska recognizes an independent claim for spoliation of evidence. The sanction for spoliation is an adverse inference or instruction that the evidence would have been unfavorable to the case of the spoliator. *McNeel v. Union Pac. R. Co.*, 276 Neb. 143, 753 N.W.2d 321 (2008). Additionally, in extreme cases, a court may grant a motion for judgment as a matter of law if the claim depends

upon the reliability of inferences drawn from evidence that has been spoiled in bad faith or fraudulently. See 3 R. Collin Mangrum, *Mangrum on Nebraska Evidence* § 27-403 (2021 ed.).

Nebraska courts have, however, stated that in order to receive an adverse inference or instruction arising out of spoliation, the party seeking the instruction must prove “that the [spoliator’s] actions indicated fraud and a desire to suppress the truth.” *Richter v. City of Omaha*, 273 Neb. 281, 287, 729 N.W.2d 67, 72 (2007) (citing *State v. Davlin*, 263 Neb. 283, 302 (2002)). Since the rationale of the rule is that the intentional destruction amounts to an admission by conduct of the weakness of one’s own case, the inference does not arise where destruction was a matter of routine with no fraudulent intent. *McNeel*, 276 Neb. at 156, 753 N.W.2d at 332. The adverse inference drawn from the destruction of evidence is predicated on bad conduct. *Id.*