

## NEW HAMPSHIRE

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

All personal actions, including those based on personal injury and contract, are to be commenced within three years of the act or omission complained of, subject to the discovery rule which allows the action to be commenced within 3 years of when the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of. RSA 508:4, I.

**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.**

COVID has had no effect on statutory deadlines or jury composition. Accommodations have been made for proceedings by Zoom and COVID precautions for in-person proceedings. During the height of the pandemic, jury trials were suspended but have now resumed.

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

Comparative fault is available in a modified form in New Hampshire. Comparative fault does not bar recovery if the plaintiff is not more than 50% at fault for the injury. If the comparative fault is more than 50%, the recovery is barred. If the comparative fault is 50% or less, the recovery will be reduced by the percentage of comparative fault. RSA 507:7-d.

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

Yes. In the event that more than 50% of fault for the at-issue injury is apportioned to an individual, then the liability is joint and several. If the liability apportioned to an individual is below 50%, the liability is several only. RSA 507:7-f; RSA 507:7-e.

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

There is no pre-suit obligation to disclose available insurance limits. Disclosure is mandated in tort cases after suit is filed, RSA 498:2-a, and disclosure of any insurance agreement or policy for "inspection and copying" is required by the Automatic Disclosures mandated in Superior Court Rule 22(a)(4). In practice, that requirement is met by disclosure of the applicable declarations page from the insurance policy.

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

In general, there are no statutory damage caps in New Hampshire. In certain loss of consortium cases, damage caps are in place. RSA 556:12.

Unless allowed by statute, punitive damages, in general, are not recoverable. Under certain circumstances, the courts will allow “enhanced compensatory damages.” When an act is wanton, malicious, or oppressive, the aggravating circumstances may be reflected in an award of enhanced compensatory damages, which are sometimes called liberal compensatory damages. *Stewart v. Bader*, 154 N.H. 75, 87 (2006). Enhanced compensatory damages may be awarded only in exceptional cases. *Id.* “The mere fact that an intentional tort is involved is not sufficient; there must be ill will, hatred, hostility, or evil motive on behalf of the defendant.” *Id.* (quotations omitted). Some enhanced damages are awarded pursuant to New Hampshire statute. See, e.g., RSA 358-A:10 (New Hampshire Consumer Protection Act, allowing for double or triple damages).

**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.**

Typically twelve (12) to eighteen (18) months.

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

Prejudgment interest begins to run on the date of the Complaint. RSA 524:1-d. The interest rate is variable, calculated by the State Treasurer. RSA 336:1, II. The calculated interest rate for 2022 is 2.0%.

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

There is a split currently existing among the trial courts of New Hampshire. Some trial judges allow only the amount of the medical bill actually paid, while some find the so-called “negotiated rate” between the insurance carrier and the provider to be inadmissible pursuant to the collateral source rule. There is no governing Supreme Court precedent on this issue. There is no basis for post-verdict reductions or offsets of medical expenses proven by the evidence.

Although the New Hampshire Supreme Court has not provided definitive guidance on this issue, the better practice is to obtain discovery of amounts actually paid v. amounts billed. In addition, the better practice is to raise as an affirmative defense that allowable damages for medical expenses are limited to the amount actually paid.

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

Generally, there is no specific self-critical analysis privilege in New Hampshire. Certain healthcare entities do have a quality assurance privilege which is similar to a self-critical analysis privilege. RSA 151:13-a. An argument may be made by analogy that the self-critical analysis should be protected to promote policy interests of accident/injury prevention under the same considerations which underlay the confidentiality of quality assurance review.

**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. See *Cutter v. Town of Farmington*, 126 N.H. 836 (1985).

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

### repercussions for spoliation?

New Hampshire courts and statutes have not addressed this specific issue. Instead, spoliation is often addressed in the form of a negative inference instruction. See, e.g., *New Hampshire Ball Bearings, Inc. v. Jackson*, 158 N.H. 421 (2009). An adverse inference can be made only when the evidence is destroyed deliberately, with fraudulent intent. *Rodriguez v. Webb*, 680 A.2d 604 (N.H. 1996). The timing of the destruction is not dispositive of the issue of intent. *Murray v. Developmental Servs.*, 818 A.2d 302 (N.H. 2003).”