

New Jersey

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

New Jersey has a two (2)-year statute of limitations for tort claims. The statute of limitations for contract actions in New Jersey is six (6) 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.

Per the New Jersey statewide order on court operations, the period between March 16, 2020 and May 10, 2020 was not included when calculating court filing deadlines, including statute of limitations calculations.

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

In New Jersey, an individual's fault cannot be more than the individual from whom damages are sought. Therefore, recovery of damages is permitted when a plaintiff is 50% or less at fault. The amount of damages reduced by the percentage a plaintiff is considered at fault.

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

New Jersey also permits full recover from a single defendant if it is found to be 60% or more negligence. Under the New Jersey joint tortfeasor law, if a joint tortfeasor pays judgment in whole or in part, it is entitled to recover contribution from the other joint tortfeasor(s) for the excess so paid over its pro rata share.

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

In New Jersey, per a July 22, 2021 law signed by Governor Phil Murphy, insurers who issue policies of private passenger automobile insurance in New Jersey are now required to disclose an insured's policy limits to a licensed, practicing New Jersey attorney who makes a written demand for the same. This legislation does not apply to commercial vehicles.

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

In New Jersey, punitive damages shall not exceed \$350,000 or five (5) times the amount of any compensatory damages, whichever amount is greater.

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.

In 2018, the New Jersey Senate Judiciary Committee pushed forward Senate Bill S-

1766, legislation which would expand the state's wrongful death statute to allow for recovery of damages from "mental anguish, emotional pain and suffering, loss of society and loss of companionship." Currently, wrongful death beneficiaries cannot be compensated for such emotional loss. Under the present New Jersey wrongful death law, damages are recoverable for "pecuniary/economic loss" only. However, no recent action has been taken on this bill.

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

The amount of time between a Complaint being filed and a jury trial largely depends on which "track" a case is placed. A case's track depends on the type of case which is filed, and can range from a period of 150-450 days or more for discovery. Notably, automobile negligence claims typically require a 300-day discovery period, while products liability matters required a 450-day discovery period.

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

In tort actions, including products liability actions, pre-judgment interest is calculated from the date of the institution of the action or from a date six (6) months after the date the cause of action arises, whichever is later. Pre-judgment is not allowed on any recovery for future economic losses. The interest rate is equal to the average rate of return for the State of New Jersey Cash Management Fund for the preceding fiscal year, rounded off to the nearest one-half percent, which, for 2022, is 0.25%.

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

Evidence of the amounts collectible or paid under a standard automobile insurance policy is inadmissible in a civil action for recovery of damages for bodily injury by such injured person. Per a 2019 New Jersey Supreme Court decision, "allow[ing] the admission of evidence medical expenses falling between the insured's PIP policy limit and the \$250,000 PIP statutory ceiling transgresses the overall legislative design of the No-Fault Law to reduce court congestion, lower the cost of automobile insurance and most importantly avoid fault based suits in a no-fault system." Haines v. Taft, 204 A.3d 263 (N.J. 2019).

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

Courts have consistently found that there is no blanket privilege for internal investigations or self-critical analyses. Rather, courts generally use a flexible, case-by-case balancing test to consider whether such sensitive documents should be disclosed in the litigation process. In these cases a court will weigh an individual's right to information against the public interest in the confidentiality of the documents. It is also noteworthy that a driver's statements to an insurance adjuster are only privileged if the statement is taken at the behest of an attorney. Moreover, while these documents may be discoverable, the notes made by the adjuster may be redacted which includes any mental impressions.

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?

While the New Jersey Supreme Court has yet to specifically address this issue, lower courts appear poised to reject independent negligence claims where a motor carrier admits vicarious liability for any fault of a driver.

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

No. New Jersey courts have held that “spoliation” is not a separate cause of action. Rather, spoliation may permit an adverse inference and discovery sanctions during discovery and/or trial. However, if the spoliation is intentional, a plaintiff may pursue a separate cause of action known as “fraudulent concealment.” This tort requires the plaintiff to show that: (1) the defendant had a legal obligation to disclose the evidence to the plaintiff; (2) the evidence was material to the plaintiff’s case; (3) the plaintiff could not have readily learned of the concealed information from another source; (4) the defendant intentionally withheld, altered or destroyed the evidence with the purpose to disrupt the litigation; and (5) the plaintiff was harmed by the nondisclosure by having to rely upon an evidential record void of the evidence that the defendant concealed. Tartaglia v. UBS PaineWebber, Inc., 961 A.2d 1167, 1188 (N.J. 2008).