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THE GLOBAL LEGAL NETWORK

NEW YORK

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

The limitation period based on negligence has a three-year period under *CPLR §214(5)* running from the date of loss. There is a 90-day limitation period for filing a notice of tort claim in connection with an action against a municipal transportation defendant, *GML §50-e(1)(a)*.

There is a 6-year statute of limitations governing actions upon a contractual obligation or liability, express or implied, *CPLR §213(2)*, and applies to an action based on an express or implied contract of indemnity, *Tedesco v. A.P. Green Industries, Inc*., 8 N.Y.3d 243 (2007).

Whether an action is in contract or in tort does not affect the applicability of a statute establishing a three-year limitations period for actions for damages for a personal injury where the nature and origin of the liability asserted are, regardless of form, a liability for damages caused by negligence, *Rickard v. Farmer's Museum*, 284 A.D.140 (3rd Dept. 1954). Similarly, in a personal injury action against a common carrier, even though it is alleged that the carrier's conduct was in violation of the contract to carry the passenger safely, the three-year statute controls rather than the statute pertaining to actions on contracts, *Loehr v. East Side Omnibus Corp.*, 259 A.D. 200, 18 N.Y.S.2d 529 (1st Dept. 1940), *judgment aff'd*, 287 N.Y. 670, 39 N.E.2d 290 (1941). On the other hand, even though the three-year statute has run against a cause of action for negligent performance of duties, a breach of contract claim may still be viable, *Essley Shirt Co. v. Lybrand*, 285 A.D. 1044, 140 N.Y.S.2d 12 (1st Dept. 1955).

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.**

On March 7, 2020, Governor Cuomo issued Executive Order 202 declaring a disaster emergency for the entire State of New York due to the transmission of COVID-19. On March 2020, Governor Cuomo issued Executive Order 202.8, which
essentially tolled any statute of limitations contained in the CPLR and other "procedural laws of the state" until April 19, 2020. Then, in a series of Executive Orders issued approximately every 30 days, the Governor extended the COVID-19 Toll "until November 3, 2020."

In New York, parties to a civil case have constitutional right to trial by a full 6-member jury, *See McKinney's Const. Art. 1, § 2; McKinney's CPLR 4104, 4113(a)*. We have not seen that this right was changed or altered as a result of the COVID pandemic.

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

Yes. New York State's highest court, the Court of Appeals, decided the seminal case of *Rodriguez v. City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898, 101 N.E.3d 366 (2018) which deals with comparative fault. In *Rodriguez*, the Court of Appeals held that a plaintiff is no longer obligated to prove the absence of their own comparative fault. Comparative fault is no longer a defense to a negligence cause of action, it is only an affirmative defense which, if proven by the defendant, will reduce the amount of damages awarded to plaintiff.

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

In New York, the general rule is joint and several liability. Personal injury defendants who are found less than 50 % liable face several-only liability for the plaintiff's noneconomic damages. N.Y. C.P.L.R. § 1601. However, CPLR § 1602 contains several exclusions to the above-stated rule. Significantly, for the transportations industry, a defendant remains jointly and severally liable where liability arises from claims based on use of a motor vehicle or motorcycle and claims based on the reckless disregard of another's safety. Other exclusions include: the *respondeat superior* doctrine and actions requiring proof of intent.

Where a tortfeasor has paid more than its proportionate share based on the allocation of its liability, it is entitled to contribution from the other tortfeasors. CPLR § 1401.

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

New York Insurance Law § 3420 (d)(1)(C) requires a motor vehicle insurer doing business in New York to disclose, within 45 days, the bodily injury liability limits of any liability insurance policy that might be relevant, to an individual (or their lawyer) who has filed a claim for damages and made a written request for such information. The time for an insured to make a supplementary UM/UIM claim is tolled during the period when the insurer of any other owner or operator of another motor vehicle that may be liable for damages to the insured fails to disclose its coverage. Section 3420(f)(2)(A) of New York's Insurance Law provides for a similar obligation on the part of a supplemental UM/UIM carrier, within 45 days of a request.

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

There is no cap on damages in New York. Any party may challenge, at the trial court level and on appeal, a damages award or lack thereof that "deviates materially from what would be reasonable compensation." *See*, CPLR § 5501(c).

7. Has your state recently implemented any court reforms which may affect transportation lawsuits or is your state planning to, and if so explain the reforms.

On February 24, 2022, New York's Governor signed legislation to amend New York State's Comprehensive Insurance Disclosure Act. The new statute applies to all actions (except those to recover no-fault personal injury protection benefits) commenced on or after February 24, 2022. Specifically, the legislation amends Section 3101(f) of the New York Civil Practice Law and Rules. It requires that no later than 90 days after serving an answer, a defendant, third-party defendant, or defendant on a cross-claim or counter-claim, must provide the plaintiff and any other party in the action with detailed insurance information. Unless the plaintiff or party agrees in writing to accept a declaration page, the entire insurance policy (not including the application) for all primary, excess, and umbrella policies, contracts or agreements must be produced.

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

24-48 months. The rate at which a particular case moves from inception to trial depends on several factors, including the level of motivation of the plaintiff's attorney, the number of defendants that are sued (a single-truck accident v. a catastrophic highway wreck), and whether judicial intervention is sought early in the case.

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

Interest does not begin to run until there is a judgment. After the entry of a judgment, interest is 9% per annum.

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

Plaintiff can submit medical bills to a jury, even if they have been paid by a collateral source. If the action is tried by a jury, no evidence of collateral source payments should be taken in the presence of the jury. The jury should determine plaintiff's losses without reference to any reimbursement that plaintiff may have received. CPLR §4545.

Pursuant to CPLR §4545, the issue of collateral source payments is resolved in a post-trial hearing before the trial judge. The task of determining the amount, if any, that should be deducted from a plaintiff's damage award is assigned to the trial judge alone. A medical provider's write-off of a balance on medical bills is not an item of damages for which a plaintiff can recover, since the plaintiff incurred no liability for those bills. *Kastick v. U-Haul Company*, 292 A.D.2d 797 (4th Dept. 2002).

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

New York does not recognize a self-critical analysis privilege. Internal accident reports made in the regular course of business are generally not privileged from disclosure so long as they were not made for the sole purpose of litigation. *Sigelakis v. Washington Grp., LLC,* 46 A.D.3d 800 (2nd Dept. 2007).

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, New York does allow independent negligence claims against a motor carrier if the motor carrier admits that it is vicariously liable for any fault or liability that is assigned to its driver in some instances. If the employer is acting within his/her scope of employment, the employer is then liable for that employee's negligence, and generally no claim may proceed against the employer for negligent hiring, retention, supervision or training. However, such a claim may be permitted when punitive damages are sought by the plaintiff. This claim must be based on facts evincing gross negligence in the hiring or retention of an employee. *Quiroz v. Zottola*, 96 A.D.3d 1035, 1037 (2nd Dept. 2012).

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

No, New York does not recognize an independent claim for spoliation. *Ortega v. City of New York*, 9 N.Y.3d 69 (NY 2007). The decision to impose sanctions for the spoliation of evidence is within the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion. The nature and severity of a sanction for spoliation depends upon a number of factors, including, but not limited to, the knowledge and intent of the spoliator, the existence of proof of an explanation for the loss of the evidence, and the degree of prejudice to the opposing party. *Weiss v. Bellevue Maternity Hospital*, 121 A.D.3d 1480 (3rd Dept. 2014), *Watson v. 518 Pennsylvania Housing Development Fund Corporation*, 160 A.D.3d 907 (2nd Dept. 2018). In a

personal injury action, the defendant's destruction or disassembly of an item involved in an accident before the plaintiff has had an opportunity to inspect may require the court's grant of a motion to strike the defendant's answer. *O'Keefe v. Uniondale Fire District*, 198 A.D.2d 336 (2nd Dept. 1993).