FOR MORE INFORMATION

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North Carolina

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

N.C.G.S. §1-53 sets forth a statute of limitations of two years for actions for damages on account of the death of a person due to negligence or wrongful act.

N.C.G.S. §1-52 sets forth a statute of limitations for three years for actions:

- Arising out of a contract
- For injury any goods or chattels, including action for their specific recovery
- For personal injuries or physical damage to property
    - Actions for personal injury or property damage do not accrue until bodily harm or physical damage to property becomes apparent or ought reasonably to have become apparent to the claimant (whichever is first)
    - No cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action

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.**

Though the North Carolina Supreme Court Chief Justices seated during the COVID pandemic issued directives affecting statutes of limitations and jury trials, the last order of that nature expired in 2021 and no extensions as to statutes of limitations or other filing deadlines currently exist. Further, decision-making authority over when and how to conduct jury trials and other in person proceedings was returned to and remains with local judicial officials.

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

No. North Carolina is one of four states (Alabama, Maryland, and Virginia), along with Washington, D.C., that follow contributory negligence. Under this rule, if a plaintiff's own negligence was a proximate cause of his/her injuries, the plaintiff will be barred from recovery. In theory, even if a plaintiff is only 1% at fault, he/she cannot recover damages, although jury instructions on the issue do not reference a percentage of fault.

There are circumstances that allow a plaintiff to overcome contributory negligence:

- The defendant was grossly negligent, and the plaintiff was only ordinarily negligent; or
- The defendant had the "last clear chance" to avoid causing injury.

Despite a clear rule, in practice, some juries do award damages to a contributorily negligent plaintiff and reduce the award similarly to comparative negligence jurisdictions.

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

Yes. "Where an injury to a third person is proximately caused by the negligence of two persons, to whatever degree each may have contributed to the result, the negligence of the one may not exonerate the other, each being a joint tortfeasor, and the person so injured may maintain his action for damages against either one or both." West v. Collins Banking Co., 208 N.C. 526 (1935) citing White v. Carolina Realty Company, 182 N.C. 536, 109 S.E. 564 and Myers v. Southern Public Utilities Co., 208 N.C. 293, 295, 180 S.E. 694, 695.

North Carolina does not apportion fault between tortfeasors found to be jointly and severally liable. The plaintiff is the master of her complaint and can sue all the defendants at once, pursue them each separately, or maintain an action against all the multiple tortfeasors. However, plaintiff is only entitled to one full recovery, and the first judgment is res judicata as to the damages.

Joint Tortfeasor Liability permits a plaintiff to recover an entire verdict from a liable defendant who can pay when another liable defendant does not have the ability to pay. North Carolina permits contribution and indemnity claims. It is worth noting that the relative degree of fault is not considered.

North Carolina recognizes a right to contribution among joint tortfeasors. N.C.G.S. §1B-1. The right to contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share.

- There is no right of contribution for intentional tortfeasors.
- The right of contribution established by the Act does not impair any rights of indemnity.
- Defendants have one year from the date of payment or judgment to file a claim for contribution.

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

Insurance limit information generally is not required pre-suit. It is required once suit is filed and it is requested in discovery. Rule 26 states, "a party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment."

- Insurance information is not necessarily admissible as evidence at trial.
- Applications for insurance are not considered part of the insurance agreement.

*Please note, though, that N.C.G.S. §58-3-33 provides that a person who claims to have been physically injured or incurred property damage where said injury/damage is subject to a policy of nonfleet private passenger automobile insurance may request the policy limits if that person:

- Submits to the insurer relevant records and releases to obtain medical records for three years prior to the accident;
- Submits to the insurer written consent to participate in mediation of the claim; and
- Submits to the insurer a copy of the accident report and description of events at issue.

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

Compensatory damages in North Carolina include general and special damages. General damages include mental and physical pain and suffering, inconvenience, or loss of enjoyment, which cannot be definitively measured in monetary terms. Special damages refer to a pecuniary loss such as hospital expenses and loss of earnings. Except for medical malpractice actions, there are no limitations on compensatory damages in North Carolina.

North Carolina limits the amount of recovery available in all actions requesting punitive damages by statute. N.C.G.S. §1D-25 states:

- Jurors must determine the amount of punitive damages separately from the amount of all other damages.
- Punitive damages awarded against a defendant shall not exceed 3x the amount of compensatory damages or $250,000, whichever is greater.
- If punitive damages are awarded in excess of this limitation, the trial court will reduce the award and enter judgment for the maximum amount.
- The jury is not instructed on the limitation for punitive damages.

The limitation on punitive damages applies to the recovery of each plaintiff, even where multiple plaintiffs are joined together in one suit. The statute has been upheld as constitutional by the North Carolina Supreme Court, Rhyne v. K-Mart Corp. 358 N.C. 160, 594 S.E.2d 1 (2004).

*Please note that the cap on punitive damages does not apply if the defendant was driving while impaired pursuant to N.C.G.S. §1D-26.

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 2021, the North Carolina General Assembly introduced Senate Bill 447, titled the "Victims' Fair Treatment Act", which included a provision that replaced the doctrine of contributory negligence with comparative fault. While Senate Bill 447 did not pass, it is likely that a bill with a similar provision will be proposed again in the future.

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

It varies depending on the county, but it typically takes one to two years after the filing of the lawsuit for a case to go to trial.

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

The applicable interest rate is 8% per annum. N.C.G.S. §24-5 provides that "any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is commenced until the judgment is satisfied."

In federal court, the pre-judgment interest is the same, but post-judgment interest is calculated based on "the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of judgment" and is compounded annually. 28 U.S.C. 1961.

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

Under Rule 414 of the North Carolina Rules of Evidence, the admissible medical expenses are the amounts actually paid to satisfy the bill, regardless of the source of payment, and/or the amounts actually necessary to satisfy the bills that have not been paid. This rule deviates from the common law collateral source rule followed by a majority of states which prohibits the admission of evidence that a plaintiff received compensation from some other source other than the damages sought against the defendant.
The rule's applicability in federal court is questionable, but it is arguable that a federal court would apply the rule as in Sigmon v. State Farm, where a federal court in North Carolina prohibited the admission of evidence of billed medical expenses, mentioning in a footnote that "[t]he application of Rule 414 may affect the outcome of litigation and is substantive North Carolina law." 2019 WL 7940194 (W.D.N.C. 2019).

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

We are not aware of any explicit recognition of the "self-critical analysis privilege" by North Carolina Courts. In 2005, the United States District Court for the Eastern District of North Carolina specifically addressed this privilege and found that Courts within the Fourth Circuit have been mixed in their application of the privilege. McDougal-Wilson v. Goodyear Tire & Rubber Co., 232 F.R.D. 246, 250 (E.D.N.C. 2005) ("Courts in this Circuit have made clear that this particular privilege is of recent origin and one that is narrowly applied even in those jurisdictions where it is recognized."). The McDougal-Wilson Court declined to apply the privilege to affirmative action plans. Id. This ruling is consistent with other North Carolina federal court opinions in finding the application of the self-critical analysis privilege questionable at best. See Warren v. Legg Mason Wood Walker, Inc., 896 F. Supp. 540, 543 (E.D.N.C. 1995). We believe these rulings would be informative to North Carolina state courts if specifically faced with the application of this privilege.

As a result, we expect that information that may fall within this privilege would be more likely to find protection under North Carolina's rules related to material prepared in anticipation of litigation and/or North Carolina Rule of Evidence 407 (protecting evidence of subsequent remedial measures from admission into evidence). See Hall v. Cumberland Cty. Hosp. Sys., Inc., 121 N.C. App. 425, 431, 466 S.E.2d 317, 320 (1996) (where self-critical analysis privilege was asserted by counsel, but protection was analyzed under anticipation of litigation, attorney-client privilege and work product).

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?

When a motor carrier admits agency, a plaintiff may not assert independent negligence claims based on negligent or grossly negligent conduct against the motor carrier. North Carolina courts have consistently ruled that independent negligence claims are prejudicial if an agency relationship has been admitted and punitive damages are not at issue. However, independent negligence claims such as negligent hiring, retention, training, and/or entrustment are permissible to support punitive damages if claimed by the plaintiff.

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

North Carolina does not recognize an independent claim for spoliation, but a party may request an adverse inference jury instruction when the requesting party shows that the "spoliator was on notice of the claim or potential claim at the time of the destruction." Arndt v. First Union National Bank, 170 N.C. App. 518, 527-28, 613 S.E.2d 274, 281 (2005). "[The] obligation to preserve evidence may arise prior to the filing of a complaint where the opposing party is on notice that litigation is likely to be commenced." Id. Additionally, the evidence lost must be relevant to the issues of the case. Id.

The jury instruction on spoliation provides that "you may infer, though you are not compelled to do so, that [the evidence] would be damaging to the [party]. You may give this inference such force and effect as you determine it should have under all of the facts and circumstances." The inference is permitted even in the absence of bad faith or intentional acts.

Furthermore, the adverse inference is permissive rather than mandatory, making it improper to base the grant or denial of a motion for summary judgment on evidence of spoliation. See, e.g., Panos v. Timco Engine Center, Inc., 197 N.C. App. 510, 521, 677 S.E.2d 868, 876-77 (2009) (citation omitted). Another result of the inference being permissive and not mandatory is that, if the factfinder believes the documents were destroyed accidentally or for an innocent reason, the factfinder is free to reject the inference. Holloway v. Tyson Foods, Inc., 193 N.C. App. 542, 547, 668 S.E.2d 72, 75 (2008).

Although federal courts in North Carolina do not allow independent spoliation of evidence claims, they have the discretion to impose more severe sanctions than state courts. The "applicable sanction should be molded to serve the prophylactic, punitive, and remedial rationales underlying the spoliation doctrine." Silvestri v. General Motors Corp., 271 F.3d 583, 590 (4th Cir. 2001). Sanctions can range up to the dismissal of a lawsuit, when a party was "highly prejudiced" by having to rely on evidence collected by the other side's experts. Id. at 595. "Another available sanction for spoliation is the issuance of jury instructions permitting the jurors to

draw an adverse inference from a party's destruction of evidence." Teague v. Target Corp., No. 3:06CV191, 2007 WL 1041191, at *2 (W.D.N.C. Apr. 4, 2007).