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OHIO

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

According to Ohio Revised Code § 2305.10(A), the statute of limitations for a personal injury tort claim is **two (2)** years. Personal injury claims arising from motor vehicle accidents start to accrue on the day of the accident. *Thomas v. Galinsky* (Ohio App. 11 Dist., Geauga, 05-28-2004) No. 2003-G-2537, 2004-Ohio-2789, 2004 WL 1192129. However, for purposes of accrual of an injury when an injury does not manifest itself immediately, the cause of action arises upon the date on which the plaintiff is informed by competent medical authority that he has been injured, or upon the date on which, by the exercise of reasonable diligence, he should have become aware that he had been injured, whichever date occurs first. *Grimme v. Twin Valley Community Local School Dist. Bd. of Edn*. (Ohio App. 12 Dist., 10-15-2007) 173 Ohio App.3d 460, 878 N.E.2d 1096, 2007-Ohio-5495.

In terms of contract claims, effective June 16, 2021, O.R.C. § 2305.06 provides a statute of limitation period of **six (6)** years based on a written contract. Further, O.R.C. § 2305.07(A) provides a statute of limitations of **four (4)** years based on an oral contract. Both O.R.C. §§ 2305.06 and 2305.07(A) state that the limitations period begins to run when "the cause of action accrued." Typically, the cause of action accrues when the breach of contract occurs, thus is it critical to understand the terms of the contract in order to be aware of such breach.

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.**

The 88 county courts in Ohio, the 12 district Court of Appeals, and federal courts operated under amended operations to safely deal with COVID-19 related concerns. Each court issued their own orders outlining its accommodations for COVID-19. Statute of limitations for civil actions were tolled, pursuant to Am. Sub. H. B. No. 197, during the period of March 9, 2020, and July 30, 2020. Thus, the tolling period expired on July 31, 2020.

Throughout this time, many courts postponed civil jury trails and limited grand jury sessions. For example, the Franklin County Court of Common Pleas suspended jury trials until January 29, 2021. The use of video conference and teleconference were encouraged for non-trial proceedings such as arraignments, pre-trial status conferences, mediations, probation, and specialized dockets appointments. If necessary, in-person court proceedings were limited to the number of people which permitted the observing of social distancing requirements and other health safety protocols.

Jury trials perhaps faced the most COVID-19 pandemic-related delays. The primary concern was not the number of jurors that sat on a trial. Instead, the concern was facilitating the jurors in a safe way. As such, the Northern District of

Ohio, for example, published Jury Trial Protocols for the COVID-19 Pandemic. The Protocol asked juror to arrive at staggered times to avoid congestion, tables and chairs were placed to social distance, plexiglass barriers were installed around the courtroom, and the jurors were provided hand sanitizer, anti-bacterial wipes, masks, and gloves. To note, however, jury trials make up less than one-tenth of 1% of all court dispositions in Ohio.

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

In 1980, Ohio became the 35th state to enact a comparative negligence law. Pursuant to O.R.C. § 2315.33, Ohio law allows an injured person to recover damages if they were not more than fifty percent responsible for the event that caused the injury. Therefore, under Ohio's statute, evidence of plaintiff's negligence is considered by the trier of fact in determining whether any damages award will be reduced or if damages are altogether precluded. Ohio Rev. Code § 2315.33; *Golembiewski v. Dept. of Transp.*, 91 Ohio Misc.2d 34, 697 N.E.2d 273, 276 (Ohio Misc. 1997).

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

In accordance with O.R.C. § 2307.25(A), if one or more persons are jointly and severally liable in tort for the same injury or loss to person or property or for the same wrongful death, there may be a right of contribution. As Ohio Courts have established, "contribution, when it exists, is the right of a person who has been compelled to pay what another should pay in part to require partial – usually proportionate – reimbursement and arises from principles of equity and natural justice." *Travelers Indem. Co. v. Trowbridge*, 41 Ohio St.2d 11, 13-14, 321 N.E.2d 787 (1975). The tortfeasor seeking contribution will be limited to recovering only the amount paid by that tortfeasor in excess of his or her proportionate share. Further, there is no right of contribution in favor of any tortfeasor against whom an intentional tort claim has been alleged and established. Finally, pursuant to O.R.C. § 2307.26, an action for contribution from a joint tortfeasor must be brought within one (1) year after a judgment or timely settlement.

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

Ohio does not have a statute, regulation, or case law that compels an insurance carrier to reveal policy limits pre-suit. However, once the suit has commenced, a party's insurance coverage can be obtained. Pursuant to Ohio Civ.R. 26, 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."

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

Under Ohio Revised Code § 2315.18, there is no limitation on the amount of compensatory damages that represents the economic loss of the person who is awarded the damages in the tort action. However, this section places a cap on noneconomic damages to the greater of (1) $250,000 or (2) three times your economic damages, which is subject to a maximum of $350,000 per person and $500,000 per accident. Furthermore, under section (B)(3), there is an exception in cases where the victim has sustained a catastrophic loss. Catastrophic injuries include:

- Permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system;
- Permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life-sustaining

Next, to recover punitive damages, the defendant must have *intended* to harm the plaintiff. Punitive damages are meant to punish the defendant for such acts against the plaintiff – rather than to compensate the plaintiff. As such, Ohio Revised Code §2315.21(D) limits punitive damages. Punitive damages are capped at twice the

value of compensatory damages. To note, a plaintiff can recover a maximum of $350,000 in punitive damages, even if twice the amount of the compensatory damage award exceeds that. However, if the defendant is an individual or a small employer, the punitive damages are limited to ten percent of net worth up to a maximum of $350,000.

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.**

As described above, Ohio currently has caps on noneconomic damages of $250,000 or "an amount that is equal to three (3) times the economic loss" not to exceed $350,000 for each plaintiff or $500,000 for each occurrence. Ohio Rev. Code § 2315.18(B)(2). However, there are no caps on noneconomic damages if the losses are "[p]ermanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system" or "[p]ermanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life-sustaining activities." Ohio Rev. Code § 2315.18(B)(3)(a) and (b).

On July 14, 2021, the Ohio Supreme Court accepted a discretionary appeal in *Brandt v. Pompa*, 2021-Ohio-2307, 163 Ohio St. 3d 1501, 170 N.E.3d 891. In the trial court level, the jury awarded the plaintiff $20 million in noneconomic damages. However, because of Ohio Rev. Code § 2315.18(B)(2), the Court reduced that award to $250,000. The Eighth District Court of Appeals held that Ohio Rev. Code § 2315.18(B)(2) is not unconstitutional as it does not violate the plaintiff's right to a trial by jury, does not violate her rights to have a meaningful remedy, and does not violate her rights to due process and equal protection. *Brandt v. Pompa*, 2021-Ohio-845, 169 N.E.3d 285 (Ct. App.).

Since the enactment of the damages caps in 2005, the Ohio Supreme Court has heard two constitutional challenges: *Arbino v. Johnson & Johnson*, 116 Ohio St. 468, 2007-Ohio-6948, 880 N.E.2d 420, and *Simpkins v. Grace Brethren Church of Delaware*, 149 Ohio St. 3d 307, 2016-Ohio-8118, 75 N.E.3d 122. The plaintiff in *Brandt* has made the same arguments that were overruled in *Simpkins*, namely that the statue is unconstitutional because it violates her right to trial by jury, violates her right to a meaningful remedy, and violates her right to due process and equal protection. In the Ohio Supreme Court, the plaintiff's two propositions of law are the same arguments she made in the lower appellate court: (1) the statute is unconstitutional; and (2) *Arbino* should be overruled. If the Ohio Supreme Court finds Ohio Rev. Code § 2315.18(B)(2) unconstitutional, there could be far-reaching consequences for potential jury verdicts in personal injury lawsuits. Cases arising from accidents with commercial motor vehicles that may be minor could result in runaway jury verdicts.

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

In State trial court, unless it constitutes complex litigation (which most transportation related complaints should not), the time between the filing of a complaint to a jury trial is a maximum of 24 months. *See* and Supp. R 39(A) and https://www.supremecourt.ohio.gov/JCS/casemng/statisticalReporting/Form_A.pdf. However, with the Covid-19 pandemic causing at various times cancellation of all jury trials, some trial courts have a severe backlog of cases. Generally, State courts set trial dates at the initial conference and usually set the trial within one (1) year.

In Federal court, it depends on the Judge assigned to the case. Federal judges in Ohio District Courts usually set discovery deadlines first, and then have a pretrial conference to see if the case is ready to set for trial. As with State trial courts, there is a backlog of cases in Federal courts, although not as severe as State courts.

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

Prejudgment interest is permitted in tort actions that have not been settled by agreement and if the Court determines at a hearing held after the verdict or decision that the party required to pay money failed to make a good faith effort to settle the case and the party to whom money is to be paid did not fail to make a good

faith effort to settle the case. Ohio Rev. Code § 1343.03(C)(1). If a party has admitted liability in a pleading, interest accrues from the date the cause of action accrued to the date the judgment was rendered. Ohio Rev. Code § 1343.03(C)(1)(a). If a party required to pay engaged in conduct resulting in liability with deliberate purpose to cause harm, interest accrues from the date the cause of action accrued to the date the judgment was rendered. Ohio Rev. Code § 1343.03(C)(1)(b). In all other actions, interest accrues the longer of either: (i) the date the party to whom money is to be paid first gave notice to the date judgment was rendered (only applies if the party to whom money is to be paid made a reasonable attempt to determine if the party required to pay had insurance coverage and gave the party and any insurer written notice in person or by certified mail that the action had accrued); or (ii) from the date the party to be paid filed the pleading to the date the judgment was rendered. Ohio Rev. Code § 1343.03(C)(1)(c).

The same rules apply in federal courts in Ohio as "state law governs awards of prejudgment interest." *Willacy v. Marotta*, 683 F. App'x 468, 476 (6th Cir. 2017).

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

A plaintiff will be permitted to place the total of all medical bills into evidence. However, the defendant can also introduce evidence of the actual paid amount of medical bills as the value of a plaintiff's medical damages. Ohio Rev. Code § 2317.421; *Robinson v. Bates,* 2006-Ohio-6362, ¶ 6, 112 Ohio St. 3d 17, 19, 857 N.E.2d 1195, 1197; *Jaques v. Manton,* 2010-Ohio-1838, ¶ 16, 125 Ohio St. 3d 342, 345-46, 928 N.E.2d 434, 439; *Moretz v. Maukkassa*, 2013-Ohio-4656. Expert testimony is not required to introduce evidence of write-offs. *Moretz v. Muakkassa,* 2013-Ohio-4656, ¶ 94, 137 Ohio St. 3d 171, 192, 998 N.E.2d 479, 498.

The same rules apply in federal courts in Ohio. *Akbar v. Zam Chin Khai*, No. 3:18-cv-339, 2020 U.S. Dist. LEXIS 186512, at *4 (S.D. Ohio Oct. 7, 2020); *Buccina v. Grimsby*, 157 F. Supp. 3d 704, 707 (N.D. Ohio 2016).

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

Ohio does not recognize the "self-critical analysis" or "self-evaluating" privilege in civil litigation. *Geggie v. Cooper Tire & Rubber Co.*, 3d Dist. Hancock No. 5-05-01, 2005-Ohio-4750, ¶ 30; *see State ex rel. Celebrezze v. Cecos Internatl., Inc.*, 66 Ohio App.3d 262, 265-266, 583 N.E.2d 1118 (12th Dist. 1990); *Johnson v. Bay W. Paper Corp.*, No. C-1-04-91, 2005 U.S. Dist. LEXIS 60822, at *4 (S.D. Ohio Oct. 21, 2005).

The Sixth Circuit has also not explicitly adopted the privilege. *United States ex rel. Sanders v. Allison Engine Co.*, 196 F.R.D. 310, 314 (S.D. Ohio 2000). The Northern District of Ohio has applied the privilege in the past. *Hickman v. Whirlpool Corp.*, 186 F.R.D. 362, 363 (N.D. Ohio 1999). The Southern District of Ohio is less clear as it has doubted the privilege even though it analyzed it and ultimately found it did not apply to the facts of the case. *United States ex rel. Sanders*, 196 F.R.D. at 314-15. However, the Southern District of Ohio has indicated the privilege will not apply to "routine reviews done in the normal course of business." *Id.* at 313.

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. An employer may be vicariously liable for torts committed by an employee in the course and scope of employment but may also be liable in its own right for negligent hiring, retention, and supervision. *Simpkins v. Grace Brethren Church of Del.*, 2014-Ohio-3465, ¶ 49, 16 N.E.3d 687, 702-03 (Ct. App.); *Kingston Mound Manor I v. Keeton*, 2019-Ohio-3260, ¶ 31 (Ct. App.); *Stephens v. A-Able Rents Co.*, 101 Ohio App. 3d 20, 26, 654 N.E.2d 1315, 1319 (1995); *Atwood v. UC Health*, No. 1:16cv593, 2018 U.S. Dist. LEXIS 146817, at *16 (S.D. Ohio Aug. 29, 2018); *Terek v. Finkbiner*, No. 3:14 CV 1391, 2015 U.S. Dist. LEXIS 124939, at *12 (N.D. Ohio Sep. 18, 2015); *see also Byrd v. Faber*, 57 Ohio St. 3d 56, 57, 565 N.E.2d 584, 586 (1991).

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

Ohio recognizes a cause of action in tort for interference with or destruction of evidence. The elements are:

(1) pending or probable litigation involving plaintiff;
(2) knowledge on the part of defendant that litigation exists or is probable;
(3) willful destruction of evidence by defendant designed to disrupt the plaintiff's case;
(4) disruption of the plaintiff's case; and
(5) damages proximately cause by the defendant's acts.

See Smith v. Howard Johnson Co., 1993-Ohio-229, 67 Ohio St. 3d 28, 29, 615 N.E.2d 1037, 1038. A defendant is under a duty to preserve evidence that it knows or reasonably should know is relevant to an action. *Foradis v. Marc Glassman, Inc.*, 2016 Ohio App. LEXIS 3119, 2016-Ohio-5235, ¶ 29 (8th Dist.). Destroying evidence after receiving a preservation of evidence letter could potentially lead to punitive damages. *Baker v. Swift Transp. Co. of Arizona, LLC*, No. 2:17-cv-909, 2018 U.S. Dist. LEXIS 75961, at *18 (S.D. Ohio May 4, 2018).