

Oklahoma

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

In Oklahoma, negligence actions resulting in bodily injury or property damage must be brought within two years of the date it accrued. 12 O.S. § 95(A)(3). Contract actions must be brought within three years of the breach for oral contracts and five years for written contracts. 12 O.S. § 95(1)-(2). The statute of limitations for tort actions begins accruing once the plaintiff knows, or should have known of the breach of duty. *Calvert v. Swinford*, 2016 OK 100, ¶ 11, 382 P.3d 1028, 1033. The statute of limitations for breach of contract actions begins accruing when the contract is breached, regardless of the party's knowledge of the breach or if damages have resulted yet. *Morgan v. State Farm Fire & Cas. Co.*, 2021 OK 27, ¶¶ 21, 25, 488 P.3d 743, 749-750. Oklahoma law does not ascribe different statutes of limitations for actions related to the transportation industry.

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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.**

Oklahoma Supreme Court Third Joint Emergency Order No. 2020-09 on April 29, 2020, postponed all court deadlines, including statutes of limitations, from March 16, 2020, until May 15, 2020, in each of Oklahoma's 77 counties. "For all cases pending before March 16, 2020, the deadlines are extended for only the amount of days remaining to complete the action. For example, if the rule required the filing of an appellate brief within 20 days, and as of March 16, ten (10) days remained to file the brief, then the party has 10 days with May 16, 2020 being the first day." *Shanahan v. McBee Design*, 2021 OK 60, ¶18.

Shanahan expressly extended the application of the Oklahoma Supreme Court's emergency orders to statutes of limitation as well. *Id.* For example, a cause of action for negligence that arose on March 15, 2020, would now be subject to a statute of limitations that accrues on May 14, 2022, sixty days after the original deadline for filing.

COVID has not affected the number of jurors used in a jury trial. During the Covid-19 pandemic, district court judges have generally been granted wide discretion in the timing of jury trials.

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

Oklahoma is a comparative negligence state. 23 O.S. §§ 13, 14. Oklahoma follows a "50 percent rule" regarding fault. *Id.* This means that an injured party alleging negligence resulting in personal injuries or wrongful death will not recover if their own negligence

is greater than the other party. *Id.* The specific actions of each party will directly affect the compensation they receive for their injuries, and it is plausible that no single person will be deemed responsible for the accident. Additionally, a judgment in favor of a plaintiff will be reduced in correlation with their amount of fault.

Where there are multiple defendants, fault may be apportioned among them; each codefendant may be liable for that proportion of the damages attributable to his own substandard conduct. *Graham v. Keuchel*, 1993 OK, 6, ¶147, 847 P.3d 342, 361. Comparative negligence will not apply to conduct found wanton or intentional, and will not apply to any punitive damages consideration in Oklahoma. *Id.*, ¶152, 363. Oklahoma courts also consider the negligence of non-parties or ghost tortfeasors should be considered in assessing proportionate fault in comparative negligence cases. *Norton v. Spring Rose Operating Co.*, 2020 OK CIV APP 18, ¶139, 466 P.3d 598, 610.

For example, if a plaintiff is 10 percent negligent, but wins an \$100,000 trial judgment, their \$100,000 damage award will be reduced by 10 percent to \$90,000.

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

Oklahoma only recognizes several liability. Oklahoma law states in pertinent part as follows:

A. In any civil action based on fault and not arising out of contract, the liability for damages caused by two or more persons shall be several only and a joint tortfeasor shall be liable only for the amount of damages allocated to that tortfeasor.

B. This section shall not apply to actions brought by or on behalf of the state.

23 O.S. § 15. Oklahoma courts have applied this principle to actions that do not arise out of fault, as well. *Stokes v. Lake Raider, Inc.*, 2014 U.S. Dist. LEXIS 177675 (E.D. Okla. Dec. 29, 2014).

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

There is no requirement to provide insurance limit information before a party files suit in the state of Oklahoma. However, after filing suit both parties must produce any insurance agreement that would help satisfy the judgment in a lawsuit pursuant to a 12 O.S. § 3234 request for production from the other party. *See* 12 O.S. § 3226(B)(1)(b).

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

No, the Oklahoma Supreme Court recently struck down a punitive damage cap, holding it was a special law forbidden by the State Constitution as it unevenly targeted similarly situated persons who may sue to recover bodily injury. *Beason v. I.E. Miller Services, Inc.*, 2019 OK 28, ¶7, 441 P.3d 1107, 1111.

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.

Oklahoma has not recently implemented any court reforms regarding transportation lawsuits nor are there plans known to the public to do so.

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

2021 Oklahoma Trials Regarding Transportation-Related Complaints:

1. Melton v. Keim and Ratchford, CJ-2020-137
 - a. Month of filing Complaint: January 2020
 - b. Month of Trial: May 2021
2. Gray v. Lee and Gutierrez Trucking, E.D. OK 19-CV-268-RAW
 - a. Month of filing Complaint: October 2018
 - b. Month of Trial: May 2021
3. Kohler Transport v. Central State Trucking Co., 19-CV-1019-R
 - a. Month of filing Complaint: November 2019
 - b. Month of Trial: May 2021
4. Nilson v. Council, CJ-2018-3635.
 - a. Month of filing Complaint: August 2018
 - b. Month of Trial: August 2021
5. Plumley v. Lopez and JL Trucking, Inc., CJ-2019-6620.
 - a. Month of filing Complaint: November 2019
 - b. Month of Trial: November 2021

Based on this data, it currently takes around twenty-five months between the filing of a transportation-related complaint and its corresponding jury trial.

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

Under Oklahoma law, recovery of interest on a judgment must be predicated on statute. *Withrow v. Red Eagle Co.*, 1988 OK 16, ¶10, 755 P.2d 622, 625.

12 O.S. § 727.1 provides that for tort actions resulting in personal injuries, prejudgment interest begins calculating 24 months after the commencement of the lawsuit until either the end of the calendar year in which interest begins to accrue until the date the verdict is accepted by the trial court as expressly stated in the judgment or the date the judgment is filed with the court clerk, whichever occurs first. 12 O.S. § 727.1(E). The commencement of the lawsuit is considered the earlier of either filing of the petition or when a party admits liability. *Gregg v. Le Mars Ins. Co.*, 2009 OK CIV APP 93, ¶18, 227 P.3d 1107, 1110. In actions against state actors, prejudgment interest begins with either the “earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment or the date the judgment is filed with the court clerk.” 12 O.S. § 727.1(F).

The percent of interest calculated will be determined from “a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year” in effect 24 months after filing of the lawsuit. 12 O.S. §§ 727.1(E), (I).

Oklahoma courts have refused to apply 12 O.S. §727.1 to claims arising from property damage. *Shoemaker v. First Nat’l Bank and Trust Co.*, 2000 OK CIV APP 97, ¶8, 11 P.3d 1265, 1267-8; *Taylor v. State Farm Fire & Cas. Co.*, 1999 OK 44, ¶15, 981 P.2d 1253.

However, 23 O.S. §6 states that “any person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is also entitled to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor from paying the debt.” Further, courts have permitted an insured to recover pre-judgment interest for property damage under 36 O.S. § 3629 and 23 O.S. § 6, where the (1) insured is the prevailing party and (2) they establish that their property loss was for a liquidated amount or for an amount that could be made ascertainable by reference to well-established market values. *Taylor*, 981 P.2d at 1261;

Glazing Concepts, Inc. v. Hanover Ins. Co., 229 Fed. Appx. 732 (10th Cir. 2003); *McQuay v. Penn-America Ins. Co.*, 91 Fed. Appx. 626, 631 (10th Cir. 2003). 12 O.S. § 3629(B) provides that the rate of accrual shall be 15 percent per year and begin accruing from when the date of loss was payable under the insurance contract's provisions until the date of the verdict.

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

Regarding medical expense damages, Oklahoma statutory law provides:

Upon the trial of any civil case involving personal injury, **the actual amounts paid for any doctor bills, hospital bills, ambulance service bills, drug bills, and similar bills for expenses incurred in the treatment of the party shall be the amounts admissible at trial, not the amounts billed for expenses incurred in the treatment of the party.** If, in addition to evidence of payment, a signed statement acknowledged by the medical provider or an authorized representative that the provider in consideration of the patient's efforts to collect the funds to pay the provider, will accept the amount paid as full payment of the obligations is also admitted. The statement shall be part of the record as an exhibit but need not be shown to the jury. Provided, if a medical provider has filed a lien in the case for an amount in excess of the amount paid, then bills in excess of the amount paid but not more than the amount of the lien shall be admissible.

12 O.S. § 3009.1(A) (emphasis added). However, where a medical provider files a lien in the case for an amount in excess of the amount paid, the bills in excess of the amount paid but not more than the lien's amount shall be admissible. *Id.*, § 3009.1(B). Importantly, if no bills have been paid and there is no sworn statement by the medical provider per Section (A) or (B) of this statute by the pretrial hearing, the amount billed shall be admissible at trial. *Id.*, § 3009.1(D). This statute has been held to apply to all personal injury claimants. *Lee v. Bueno*, 2016 OK 97, ¶124, 381 P.3d 736, 745.

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

Oklahoma law does not recognize the self-critical analysis privilege as no state or federal court has willingly adopted this privilege. *Lindley v. Life Investors Ins. Co. of America*, 267 F.R.D. 382, 387 (N.D. Okla. 2010). Oklahoma does acknowledge a peer-review privilege for an exclusive list of professions but does not include transportation industry workers within the privilege. See 12 O.S. §§24-25; *Meistrell v. McPhail*, 1989 OK CIV APP 67, ¶¶7-8. The discovery of evidence pursuant to self-critical analysis will likely be permitted if it falls within the relevancy requirements of 12 O.S. § 3226 unless some other recognized form of privilege applies.

Importantly, admissibility of information will still be subject to the Oklahoma Evidence Code, which provides that evidence of subsequent remedial measures is inadmissible to prove negligence or culpability at trial. See 12 O.S. § 2407; Fed. R. Evid. 407.

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?

No, it precludes the separate claim because it would be "unnecessary and superfluous." *Jordan v. Cates*, 1997 OK 9, ¶¶15-16, 935 P.2d 289, 293. When an employer stipulates that an employee is acting within the scope of employment at the time of the altercation and punitive damages are available against it under a

theory of respondeat superior, an additional claim for negligent hiring, retention or supervision exposes the employer to no additional liability. *Id.*, ¶¶21, 294. Claims for negligent hiring, supervision, and retention are only available when vicarious liability is not established. *N.H. V. Presbyterian Church (U.S.A.)*, 1999 OK 88 ¶¶20, 998 P.2d 592, 600.

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

Oklahoma does not have an independent claim for spoliation. In cases where spoliation has occurred, the court will sanction the party who lost or destroyed evidence by issuing an adverse inference instruction that the missing evidence would be detrimental to the spoliating party.