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Rhode Island

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

   Torts: In Rhode Island, the statute of limitations for all tort suits is three (3) years from the date of injury. R.I.G.L. § 9-1-14. The three-year statutory limit governs all tort suits to recover damages for personal injuries, regardless of the legal theory on which relief is sought. *Arnold v. R.J. Reynolds Tobacco Co.*, 956 F. Supp. 110 (D.R.I. 1997). For plaintiffs to recover damages for property damages, actions must be brought ten (10) years from when the cause of action accrues. *See* R.I.G.L. § 9-1-13(a).

   Contracts: Generally, contract actions must be commenced within ten (10) years of the alleged breach. R.I.G.L. § 9-1-13(a). In breach of warranty actions related to product liability, actions shall be commenced within ten (10) years after the date the product was purchased for use. R.I.G.L. § 9-1-13(b). An action for breach of any contract for the sale of goods must be commenced within four (4) years after the cause of action has accrued. R.I.G.L. § 6A-2-725.

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.**

   None. To the best of our knowledge, the COVID Pandemic has not had any impact on tolling or extending the statute of limitations for filing a transportation suit, or any suit for that matter. Moreover, Rhode Island opened its courtrooms for in-person jury trials and has not changed the number of required jurors for a jury trial.

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

   Yes. Rhode Island is a pure comparative negligence jurisdiction. *See* R.I.G.L § 9-20-4. Accordingly, plaintiff's damages shall be reduced in proportion to the plaintiff's own negligence. Unless plaintiff is found to be one hundred (100) percent liable, a plaintiff's own negligence will not act as a bar to recovery. For example, if a plaintiff and defendant are involved in a car accident in which the plaintiff is more at fault than the defendant; the trier of fact will determine the total liability and apportion the damages based on the percentage of fault. Even if the trier of fact determines plaintiff to be ninety-nine percent (99%) at fault, plaintiff may still recover one percent (1%) of his or her damages from the defendant.

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

   Yes. Rhode Island recognizes joint and several tortfeasor liability. R.I.G.L. § 10-6-2 defines joint tortfeasors as "two (2) or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them." However, parties deemed to have a

"master and servant" or "principal and agent" relationship are treated as single actors under the joint tortfeasor statute.

Importantly, Rhode Island has recently amended R.I.G.L. § 10-6-7, affecting the release or settlement of tortfeasors. Previously, if a tortfeasor settled, the remaining tortfeasors would receive the greater benefit of the sum of the pro rata share or cash-value credit against the total award. The amended law now permits only a cash-value credit.

For example, in the past, joint tortfeasors X and Y were sued. X settled, while Y proceeded to trial. If Y was found liable, Y could reduce the damage award based either on X's apportioned fault or the cash-value credit of X's settlement, whichever was greater. Now, because of the amendment, Y can receive only a credit equal to the cash-value of X's settlement.

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

Yes. In Rhode Island, if a claimant requests an insureds' policy limit of liability coverage, the insureds' insurance company must reveal the amount of the coverage within fourteen (14) days of the request. R.I.G.L. § 27-7-5.

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

No. There are generally no caps on compensatory, exemplary, or punitive damages. There is no statute that limits compensatory damages. Compensatory damages are awarded to a person in satisfaction of, or in response to, loss or injury sustained. *Auchincloss v. Halloran Construction Co.*, 105 R.I. 565, 571, 253 A.2d 622, 625 (1969). Compensatory damages awards are limited only when the award "shocks the conscience" or is grossly excessive. *Proffitt v. Ricci*, 463 A.2d 514, 519 (R.I. 1983).

Rhode Island recognizes one statutory exception in which compensatory damages may be capped as it applies to suits against the government and governmental entities. Rhode Island imposes a $100,000 cap on damages for a tort action against the State, political subdivision thereof, or cities, towns, or fire districts. R.I.G.L. §§ 9-31-2, 9-31-3.

Under Rhode Island Law, there are no caps on punitive or exemplary damages. *Fenwick v. Oberman*, 847 A.2d 852, 855 (R.I. 2004). Although there are no statutory caps on punitive damages, judges may set aside a punitive damages award if it "shocks the conscience" or appears motivated by "passion and prejudice" rather than "unbiased judgment." *Carrozza v. Voccola*, 90 A.3d 142, 169 (R.I. 2014) (*quoting Zarrella v. Robinson*, 460 A.2d 415, 418 (R.I.1983); *Cady v. IMC Mortgage Co.*, 862 A.2d 202, 220 (R.I.2004) (internal quotation marks omitted); *Minutelli v. Boranian*, 668 A.2d 317, 319 (R.I.1995) (internal quotation marks omitted)).

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.

No. To the best of our knowledge, Rhode Island has not recently introduced, nor does the State plan to introduce, any tort reforms which directly affect transportation lawsuits. However, when joint tortfeasors are involved in a claim, the reform discussed in question five (5) may significantly impact the lawsuit. Previously, if a tortfeasor settled, the remaining tortfeasors would receive the greater benefit of the sum of the pro rata share or cash-value credit against the total award. The amended law now permits only a cash-value credit.

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

Currently, in federal court, approximately eighteen to twenty-four (18-24) months transpire from the time a complaint is filed to a jury trial. In state court, due to the COVID-19 pandemic and previous backlogs, we would not anticipate that lawsuit would proceed to trial for at least twenty-four (24) months from the date of filing and perhaps even longer.

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

Prejudgment interest begins accumulating from the date the cause of action accrued. R.I.G.L. § 9-21-10. The prejudgment interest rate is set at "twelve percent (12%) per annum." *Id.*

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

In Rhode Island, itemized medical bills,

> "shall be admissible as evidence of the fair and reasonable charge for the services and/or the necessity of the services or treatment, the diagnosis of the physician or dentist, the prognosis of the physician or dentist; the opinion of the physician or dentist as to proximate cause of the condition so diagnosed, and the opinion of the physician or dentist as to disability, incapacity or permanency, if any, proximately resulting from the condition so diagnosed." R.I.G.L. § 9-19-27.

Rhode Island recognizes a collateral source rule at common law. *Moniz v. Providence Chain Co.*, 618 A.2d 1270 (R.I. 1993). As a result, parties are not allowed to admit into evidence medical bills that have been paid. In turn, this principle prevents defendants in tort actions from reducing their liability with evidence of payments made to injured parties by independent sources. *Esposito v. O'Hair*, 886 A.2d 1197, 1199 (R.I. 2005).

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

No. Although the Rhode Island Supreme Court has not ruled on this issue, only one trial court has considered the privilege and expressly refused to adopt the self-critical analysis privilege. *See Brokaw v. Davol Inc.*, 2008 WL 4897928 (R.I.Super.) at *6 (Gibney, P.J.). We would not anticipate that such a privilege would be recognized by the Rhode Island Supreme Court. *See Moretti v. Lowe*, 592 A.2d 855 (R.I. 1991) (reasoning that privileges, in general, are not favored in the law and therefore should be strictly construed); *Pastore v. Samson*, 900 A.2d 1067, 1078 (R.I. 2006) (explaining privileges, by their nature, shut out the light on ascertaining truth).

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. The State of Rhode Island permits independent negligence claims against a motor carrier, even if the carrier admits to vicarious liability. Rhode Island follows the minority approach, which permits claims of respondeat superior and negligent supervision or hiring of an unfit employee. The Rhode Island Supreme Court has established that "the liability of an employer in the negligent supervision or hiring of an unfit employee is an entirely separate and distinct basis from the liability of an employer under the doctrine of

respondeat superior." *Mainella v. Staff Builders Indus. Services, Inc.*, 608 A.2d 1141, 1145 (R.I. 1992); *see also Welsh Mfg. v. Pinkerton's, Inc.*, 474 A.2d 436, 440 (R.I.1984). For this determination, the *Mainella* Court relied on their holding in *Welsh Mfg.*, which dictated that the "liability for the harmful acts of employees is not premised on the doctrine of respondeat superior, but on a separate affirmative duty owed by the employer." *Welsh Mfg*., 474 A.2d at 440. The *Welsh* Court further explicated,

> "…the tort of negligent hiring addresses the risk created by exposing members of the public to a potentially dangerous [or dishonest] individual, while the doctrine of respondeat superior is based on the theory that the employee is the agent or is acting for the employer. Therefore the scope of employment limitation on liability which is a part of the respondeat superior doctrine is not implicit in the wrong of negligent hiring." *Id.*

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

Rhode Island does not have an independent claim for spoliation, rather the court awards sanctions in the applicable case. Sanctions are based upon five factors: (1) whether the party was prejudiced; (2) whether the prejudice can be cured; (3) the practical importance of the evidence; (4) whether the despoiler acted in good faith or bad faith; and (5) the potential for abuse if evidence is not excluded. *Farrell v. Connetti Trailer Sales, Inc.*, 727 A.2d 183, 187 (R.I. 1999). The range of sanctions for spoliation include: (1) dismissal of the action/entry of default; (2) exclusion of evidence or testimony; (3) instructing the jury on a negative inference to spoliation; and (4) monetary penalties, including costs and attorneys' fees. *Mead v. Papa Razzi*, 899 A.2d 437, 442-43 (R.I. 2006); *Tancrelle v. Friendly Ice Cream Corporation*, 756 A.2d 744, 748 (R.I. 2000). The most common sanction is an adverse jury instruction.