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CHEAT SHEET FOR TRANSPORTATION CLAIMS

FLORIDA

A. Statute of Limitations

- **Personal Injury:** Four (4) years from date of accident - Fla. Stat. § 95.11(3)(a)
- **Property Damage:** Four (4) years from date of accident - Fla. Stat. § 95.11(3)(a)
- **PIP Subrogation:** Four (4) years from the date of payment of the medical invoice
- **Wrongful Death:** Two (2) years from date of accident - Fla. Stat. § 95.11(4)(d)
- **Actions Against the State and its Agencies or Subdivisions:** An individual may not file a claim "against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency … within 3 years after such claim accrues and the Department of Financial Services or the appropriate agency denies the claim in writing …" Fla. Stat. § 768.28 (6)(a). Additionally, any action against the state or one of its agencies or subdivisions alleging damages for negligence, wrongful act, or omission must be commenced within 4 years after such claim accrues. Fla. Stat. § 768.28 (14)

B. Comparative Negligence

Florida is a pure comparative negligence state which means that any fault assigned to a plaintiff will proportionally reduce a damages award. Additionally, a Plaintiff can still recover against a Defendant found to only be 1% at fault.

For example, if a jury awarded a Plaintiff damages totaling $100,000.00 and apportioned fault at 50% Plaintiff and 50% Defendant, the Plaintiff could recover $50,000.00 (i.e., 50% of $100,000.00) from the Defendant.

C. Joint and Several Liability

Joint & several liability was abolished by the Florida Legislature in 2006. As noted above, Florida defendant are only responsible for their own percentage of liability.

D. Permanency Threshold & Florida's No Fault Act

Pursuant to Fla. Stat. §627.737(2), Florida plaintiffs may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease only in the event that the injury or disease consists in whole or in part of:

(a) significant and permanent loss of an important bodily function;

(b) permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement;

(c) significant and permanent scarring or disfigurement; or

(d) death.

Notably, a plaintiff must present expert medical testimony to establish the existence and permanency of an alleged injury. *See*, Fla. Stat. § 627.737(2), *City of Tampa v. Long*, 638 So. 2d 35 (Fla. 1994); *Avis Rent-A-Car Sys., Inc. v. Stuart*, 301 So. 2d 29 (Fla. 2d DCA 1974); and *Mattek v. White*, 695 So. 2d 942 (Fla. 4th DCA 1997)

E. PIP Subrogation

Generally, there is no subrogation right for PIP benefits in Florida. However, there is a "commercial vehicle" exception to the rule. Fla. Stat. §627.7405 (1) provides the following:

> "Notwithstanding ss. 627.730-627.7405, an insurer providing personal injury protection benefits on a private passenger motor vehicle shall have, to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such private passenger motor vehicle insurance, *a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle*, if the benefits paid result from such person having been an occupant of the commercial motor vehicle or having been struck by the commercial motor vehicle while not an occupant of any self-propelled vehicle."

In the context of PIP subrogation, Florida defines a "commercial motor vehicle" as "any motor vehicle which is not a private passenger motor vehicle." Fla. Stat. §627.732 (3)(b). Thus, the weight of a vehicle does not matter.

F. Graves Amendment

The federal Graves Amendment 49 USCS §30106 provides immunity to the owner of a vehicle who has rented or leased the vehicle, if the owner is: (1) in the trade or business of renting or leasing motor vehicles, and (2) has not committed any negligence or criminal wrongdoing. In *Vargas v. Enter. Leasing Co.*, 60 So. 3d 1037 (Fla. 2011), the Florida Supreme Court noted that "Congress in 2005, through the Graves Amendment, clearly sought to eliminate vicarious liability for a specific category of owners/lessors … those 'engaged in the trade or business of renting or leasing motor vehicles.'" *Citing to*, 49 USCS §30106). In *Rivers v. Hertz Corp.*, 121 So. 3d 1078 (Fla. 3rd DCA 2013), the court explained that "if there is no negligence or criminal wrongdoing on the part of the owner of rental vehicles, the owner shall not be liable by reason of being the titleholder of the vehicle." *Citing to, Vargas v. Enter. Leasing Co.*, 60 So. 3d 1037, 1041-1042 (Fla. 2011).