



A. Statute of Limitations

- **Person Injury:** Two years from the date of accident *735 ILCS 5/13-202*
- **Property Damage:** Five years from the date of the accident *735 ILCS 5/13-205*
- **Wrongful Death:** Two years from the date of death *735 ILCS 5/13-202*
- **Survival Actions:** Two years from the date of the accident *735 ILCS 5/13-202 & 755 ILCS 5/27-6*
- **Med Pay Subrogation:** Two years from the date of the insured's injury if provided in the underlying policy language *735 ILCS 5/13-202*
- **PIP Subrogation:** Not applicable as these policies are not generally sold in Illinois.

B. Comparative Negligence

Modified Comparative Fault: Illinois is one of twelve that follows the "51 percent Bar Rule." This means that Plaintiff cannot recover *any* damages if they are more than 50 percent at fault (51 percent or more) for the underlying accident; however, if the Plaintiff is 50 percent or less at fault, they may recover damages, and their recovery is reduced by their commensurate degree of fault, if any. *735 ILCS 5/2-1116*.

If the Plaintiff's fault is at issue, fault is allocated among the Plaintiff and *all tortfeasors* to establish Plaintiff's contributory fault percentage. "All tortfeasors" may include the Plaintiff's employer, any settling defendant, or any party who was not sued who may be liable to the Plaintiff. *735 ILCS 5/2-1116; see also Ready v. United/Goedecke Servs., 232 Ill. 2d 369 (2008)*.

C. Joint and Several Liability – 735 ILCS 5/2-1117

Illinois has adopted modified joint and several liability among defendants*. Any defendant whose fault is less than 25 percent is "severally" responsible for non-medical damages. Any defendant whose fault is 25 percent or greater are jointly and severally liable for all damages. All defendants found liable to the Plaintiff are jointly and severally liable for medical related expenses. *735 ILCS 5/2-1117*.

- While Plaintiff's employer and settling defendants are included on verdict forms for the purpose of determining Plaintiff's comparative fault, they are not included in calculations of joint and several liability. After eliminating Plaintiff's employer and settling defendants and their respective percentages of comparative fault, the fault of the remaining parties must be recalculated on a proportional basis. *735 ILCS 5/2-1117; see also Ready v. United/Goedecke Servs., 232 Ill. 2d 369 (2008)*.

D. Serious Injury Threshold

Illinois does not recognize any kind of “serious injury threshold.” Plaintiff’s in Illinois bodily injury matters may claim any and all non-economic damages allowable by law, regardless of the nature and extent of the Plaintiff’s injury, including, but not limited to, past and future pain and suffering, loss of normal life/disability, and emotional distress.

E. Wrongful Death and Survival Actions

Under the Illinois Survival Act, a representative of the estate of the deceased individual may file a cause of action against the negligent party for the personal injuries of the decedent. The decedent’s estate may claim any economic or non-economic damages that would have been available to the decedent had he survived the accident. *755 ILCS 5/27-6*.

Conversely, a wrongful death lawsuit is brought by a surviving family member for any damages suffered as a result of the decedent’s death. Typically, damages are non-economic in nature, i.e. loss of consortium. However, economic damages in the form of funeral or medical expenses may be claimed, if applicable, pursuant to the Family Expense Act. Illinois’ Family Expense Act holds spouses jointly and severally liable for expenses of the family, including medical and funeral expenses. *740 ILCS 180/1 et seq.*

F. Prejudgment Interest – 745 ILCS 5/2-1303

On May 28, 2021, Governor J.B. Pritzker signed into law the Prejudgment Interest Act, and the law became effective on July 1, 2021. The Act provides the following:

- In nearly all personal injury or wrongful death actions, Plaintiff shall recover prejudgment interest on all damages, except punitive damages, sanctions, statutory attorney’s fees and statutory costs.
- Prejudgment interest will begin to accrue at a rate of 6% per annum as of the effective date or the date that the action is filed, whichever is later, and shall accrue for a period no longer than five years.
- Prejudgment interest may be reduced or eliminated through settlement negotiations. To reduce or eliminate prejudgment interest, the Defendant must make a written settlement offer within twelve months from the effective date or the date the action is filed, whichever is later, and the plaintiff must reject the offer or fail to accept the offer within 90 days.
 - » If a subsequent judgment is greater than the offer, interest is calculated on the judgment amount less the amount of the highest written settlement offer.
 - » If a subsequent judgment is less than the offer, Plaintiff cannot collect prejudgment interest.

G. Graves Amendment

Under the Graves Amendment, the owner of a leased vehicle cannot be held vicariously liable for the negligent operation of that vehicle.

- Pursuant to Federal statute 49 USC § 30106, the Graves Amendment preempts all state statutory and common law to the extent those laws hold owners in the business of renting or leasing motor vehicles, vicariously liable for the negligence of drivers.

- 49 USC § 30106(a) states:
 - » (a) In general. – An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if –
 - (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and
 - (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).
- The Graves Amendment has been addressed by the Illinois Appellate Courts in only one instance. In *Nelson v. Artley*, 2014 IL App (1st) 121681, the First District Court of Appeals held that a self-insured rental car company was responsible for paying the full amount of a default judgment entered against its lessor driver.
 - » The appellate court specifically noted that the Illinois Vehicle Code did not impose liability on a rental company by reason of ownership and only imposed financial responsibility requirements with which the company may choose to comply by filing a bond, insurance policy, or certificate of self-insurance. Based on the foregoing and the Graves Amendment's guarantee that it does not supersede any state laws "imposing financial responsibility or insurance standards on the owner of a motor vehicle" the court found that the Graves Amendment was not applicable and did not preempt the Vehicle Code.
 - » This holding was later overturned by the Illinois Supreme Court on the basis that the appellate court misconstrued portions of the Illinois Vehicle Code imposing financial responsibility requirements on car rental companies and failed to follow well-settled Illinois case law. The Illinois Supreme Court chose not to address the company's additional argument, including the incompatibility of the appellate court's holding with the Graves Amendment. See *Nelson v. Artley*, 2015 IL 11805.