



A. Statute of Limitations

- **Personal Injury:** Two years from date of accident – K.S.A. 60-513.
- **Property Damage:** Two years from date of accident – K.S.A. 60-513 (attorneys' fees shift in any auto property claim \$15,000 or less – K.S.A. 60-2006).
- **Wrongful Death:** Two years from death – K.S.A. 60-513.
- **PIP subrogation:** Two years from the date of the accident – K.S.A. 60-513.
- **Action Against Municipality:** The statute of limitations is the same as other actions but a plaintiff must serve a notice of claim on the municipality before proceeding with a lawsuit. K.S.A. 12-105b.
- **Actions Under the Kansas Judicial Review Act:** Claims arising under the Kansas Judicial Review Act must be appealed from agency action to the district court within 30 days from final agency action. K.S.A. 77-613.

B. Comparative Negligence

Kansas follows the 50% bar rule. Plaintiff cannot recover if he was 50% or more at fault for his injuries. K.S.A. 60-258.

C. Joint & Several Liability

In Kansas, each party found liable is responsible to pay only its portion of the awarded damages. K.S.A. 60-258a (1974); *Brown v. Keill*, 580 P.2d 867, 874 (Kan. 1978). Because defendants do not pay another's share of the damages, there is no right of contribution between them. *Mathis v. TG&Y*, 751 P.2d 136 (Kan. 1988). A partial settlement has no effect on the liability of the remaining tortfeasors. *Dodge City Implement, Inc. v. Board of County Commissioners*, 205 P.3d 1265 (Kan. 2009).

D. PIP Subrogation

A carrier can subrogate for PIP benefits which replace "economic damages" without limitation and can subrogate for PIP benefits which replace "non-economic damages" once the \$2K no-fault threshold is met. K.S.A. 40-3113a(b); *Noon v. Smith*, 829 P.2d 922 (Kan. App. 1992). If PIP benefits are paid as a substitute for lost wages or medical bills, subrogation recovery can be had regardless of the amount of the claim and without the no-fault threshold as an encumbrance. Section 40-3117 sets forth the threshold for an injured insured to recover damages for "pain, suffering, mental anguish, inconvenience, and other non-pecuniary loss." These thresholds do not apply to lawsuits for medical bills or lost wages – only non-pecuniary damages. Kansas courts have confirmed that the failure to meet the no-fault threshold of \$2,000 does not apply to or

affect the tort recovery of economic damages. PIP carrier can sue third-party directly after 18 months. K.S.A. 40-3113a(c). Subro recovery reduced by injured party's percentage of negligence. K.S.A. 40-3113a(c); *State Farm v. Kroeker*, 676 P.2d 66 (Kan. 1984). Subro recovery limited to those damages which are duplicative of PIP benefits paid.

E. Graves Amendment

Under the Graves Amendment, the owner of a leased vehicle cannot be held vicariously liable for the negligent operation of that vehicle. There are no Kansas state or federal decisions citing the Graves Amendment.

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).