LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

MASSACHUSETTS

A. Statute of Limitation

- **Personal Injury –** Three years from the date of the accident - M.G.L. c. 260, §§2A & 4
- **Wrongful Death –** Three years from the date of the death or from the date when the deceased's executor/ administrator knew or should have known the factual basis for a cause of action – M.G.L. c 229, §2
- **Property Damage –** Three years from the date of the accident - M.G.L. c. 260, §2A
- **Personal Injury Protection (PIP) –** Two years from date of accident – M.G.L. c. 90, §34M
- **UIM and UM Claims –** Six years from the date of the accident, unless otherwise set forth in the insurance policy. Multiple insurance providers have Massachusetts Amendments that lower the statute of limitations to 2 years – M.G.L. c. 260, §2
- **Action Against Commonwealth –** Claims must be presented in writing to Commonwealth within two years, and a lawsuit must be commenced within three years. – M.G.L. c. 258, §4

B. Contributory Negligence

In Massachusetts, contributory negligence does not bar recovery for a party to recover damages for negligence resulting in death or injury to another person or property, as long as their negligence was not greater than 50%. If the injured party was partially negligent, their damages will be diminished in proportion to the percentage for which they are at fault. M.G.L. c. 234, §85.

C. Joint & Several Liability

Massachusetts implements a pure joint and several liability standard. When there are joint tortfeasors, there is a right of contribution among them, even if judgment is not recovered against all or any of them. The tortfeasor's liability is divided equally between them, regardless of percentage of fault, but each tortfeasors is entitled to recover any amount it paid in excess of its pro-rata share of liability against each other in a separate action. If a liability insurer pays even part of tortfeasor's liability, and therefore has discharged its obligation as an insurer, must be subrogated to the extent that it paid any amount over its insured's tortfeasor's pro rate share of the common liability. M.G.L. c 231B, §1.

D. Non-economic Damages

In Massachusetts, pursuant to M.G.L. c. 231, §6D, a plaintiff must prove that he or she incurred one of the following injuries in order to recovery pain and suffering damages from a motor vehicle accident:

1. Plaintiff incurred at over $2,000.00 in reasonable and necessary medical services;
2. Plaintiff died;
3. Plaintiff lost a whole or part of a body member;

4. Plaintiff suffered a whole or part of permanent and serious disfigurement;
5. Plaintiff experienced loss of sight or hearing as defined in M.G.L. c. 152 §36; or
6. Plaintiff sustained a fracture.

Punitive damages are only available if specified by statute. The Massachusetts wrongful death statute, set forth at M.G.L. c. 229, §2, includes a provision that if a defendant is liable for wrongful death, he or she shall be liable for punitive damages in an amount not less than $5,000.00 when the death was cause by the defendant's malicious, willful, wanton or reckless conduct, or by gross negligence.

E. Personal Injury Protection (PIP)

Massachusetts requires that automobile insurers "provide personal injury protection benefits," which are "granted in lieu of damages otherwise recoverable by the injured person or persons in tort as a result of an accident." G. L. c. 90, § 34M. This is known as a no-fault automobile insurance scheme, as insurers are required to provide a certain level of coverage to injured parties regardless of culpability. Such personal injury protection (PIP) benefits must include payment to the named insured of all reasonable expenses incurred within two years from the date of accident for necessary medical, surgical, x-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, and professional nursing services up to eight thousand dollars on account of injury to any one person. Importantly, the automobile insurer is only responsible for the first $2,000 of medical-related expenses, after which the injured party's health insurer, if any, would cover the expenses. Additional medical-related expenses not covered by the health insurer would be paid by the PIP carrier up to $8,000.

F. Graves Amendment

Under the Graves Amendment, the owner of a leased or rented vehicle cannot be held vicariously liable for the negligent operation of that vehicle, despite Massachusetts's general rule that registration as owner of a car is prima facie evidence that the owner is legally responsible for injuries to property or person (M.G.L. c. 231, §85A). As long as the owner demonstrates, prima facie, that it was engaged in the business of renting or leasing motor vehicles and was not otherwise negligent, the owner/lessor will be dismissed from the litigation pursuant to the Graves Amendment. The United States District Court for the District of Massachusetts has specifically held that the Graves Amendment preempts Massachusetts laws that impose vicarious liability on business that rent or lease motor vehicles. *See Moura v. Cannon*, 2021 U.S. Dist. LEXIS 184736 (D. Mass 2021).

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 –
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> (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and
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> (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

G. Unfair Claim Settlement Practices

In Massachusetts, M.G.L. c. 176D regulates conduct for insurance companies. Pursuant to §3(f), unfair claim settlement practices include:

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) Failing to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(h) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) Making claims payments to insured or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(k) Making known to insured or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements of compromises less than the amount awarded in arbitration;

(l) Delaying the investigation or payment of claims by requiring that an insured or claimant, or the physician of either, submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) Failing to settle claims promptly, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(n) Failing to provide promptly a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

A violation of M.G.L. c. 176D §3 is a violation of the Massachusetts Consumer Protection statute set forth at M.G.L. c. 93A. If found to have violated c. 93A, insurers could be subject to an award of multiple damages, costs and attorneys' fees.