



A. Statute of Limitations

- **Personal Injury:** Three years from date of accident - MCL § 600.5805(2)
- **Property Damage:** Three years from date of accident - MCL § 600.5805(2)
- **Wrongful Death:** Three years from date of accident - MCL § 600.5805(2)(10)
- **No-Fault:** A provider needs to submit a bill for payment 30 days from date of service
- **Action Against Government for Failure to Maintain Highway:** Two years from date of accident - MCL § 691.1402, 691.1411

B. Modified Comparative Negligence

Michigan follows the modified comparative fault standard whereby a plaintiff found to be 51% at fault is barred from recovery. For a plaintiff found to be less than 51% at fault, damages will be reduced by the percentage of fault attributed to plaintiff. MCL § 600.2959.

C. Joint & Several Liability

In Michigan, each defendant's liability for damages is several only and each defendant's liability is directly proportioned to its percentage of fault. However, joint and several liability exists for a defendant found grossly negligent or where the acts or omissions causing the damages constitute a crime for the use of alcohol or a controlled substance. MCL § 600.6312.

D. No Fault - Serious Impairment Threshold

In Michigan, tort liability for a non-economic loss arising out of the ownership, maintenance or use of a motor vehicle is limited to where the injured party sustained a "threshold" injury, defined as death, serious impairment of a body function or a permanent serious disfigurement. MCL § 500.3135(1)(3)(b). The "serious impairment of body function" is "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(5).

To establish a serious impairment of body function, plaintiff must show: an objectively manifested impairment that is observable or perceivable from actual symptoms or conditions; of an important body function (that of value, significance, or consequence to the injured person); that, affects the person's general ability to lead a normal life (influences the capacity to live in a normal manner).

The impairment that must be objectively manifested, not the injury. Subjective complaints of pain and suffering alone are not enough to satisfy the "objectively manifested impairment" requirement. Rather, the plaintiff must introduce evidence establishing that there is a physical basis for those subjective complaints of pain and suffering. This showing generally requires medical testimony.

E. No Fault - Close Head Injury Exception

In addition to the broader language provided in Michigan's No Fault Act for establishing a threshold injury of a "serious impairment of body function," plaintiff may argue that there is a question of fact that plaintiff sustained "closed-head injury" as defined by MCL 500.3135(2)(a)(ii). This provision acts as an exception to the requirements of the No Fault Act in establishing an issue of fact relating to a "serious impairment of body function" as to the nature and extent of a closed-head injury "if a licensed allopathic or osteopathic physician who regularly diagnoses or treats closed-head injuries testifies under oath that there may be a serious neurological injury." MCL 500.3135(2)(a)(ii); see also, *Churchman v. Rickerson*, 611 N.W.2d 333, 335 (Mich. Ct.App. 2017). Importantly, it is not enough that a doctor simply diagnoses a plaintiff as having sustained a closed-head injury. That testimony must also include some indication by the doctor that the neurological injury sustained was severe. *Id.* at 337.

F. Graves Amendment

Under the Graves Amendment, the owner of a leased vehicle cannot be held vicariously liable for the negligent operation of that vehicle, despite the general rule of NY VTL 388 that a vehicle's title owner is presumptively liable. So 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. See *Gluck v. Negben*, 72 A.D.3d 1023 (2d Dep't 2010). 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).