



### A. Statute of Limitations

- **Personal Injury:** Two years from the date of the accident. 42 Pa.C.S. §5524(2).
- **Property Damage:** Two years from the date of the accident. 42 Pa.C.S. §5524(3).
- **Wrongful Death:** Two years from the date of death. 42 Pa.C.S. §5524(2).
- **No Fault:** If “full tort” coverage is chosen, insured may file a lawsuit against the other driver regardless of the severity of injuries, and prove the other driver was at fault. Economic and pain and suffering damages may be recovered. If “limited tort” coverage is chosen (for lower premium), the insured must file a claim with his or her own insurer for medical expenses and lost wages. If the injury is considered serious, that is a permanent impairment of bodily function or disfigurement, non-economic damages may be recovered. 75 P.S. §1705.
- **Action Against Municipality:** Six month notice provision prerequisite to filing suit. 42 Pa.C.S. §5522.

### B. Comparative Negligence

The Pennsylvania Comparative Negligence statute permits a plaintiff to recover when the percentage of the plaintiff’s own negligence does not exceed the defendant’s causal negligence. When the plaintiff’s percentage of negligence is 50% or less, the amount of the verdict is reduced by the proportion of negligence attributed by the jury to the plaintiff.

### C. Joint and Several Liability

Pennsylvania modified joint and several liability in its Fair Share Act in 2011. The Fair Share Act amended the comparative negligence statute. 42 Pa.C.S. §7102. Previously, any defendant found negligent could be compelled to pay the entire verdict. Under the Fair Share Act, a defendant is only compelled to pay the percentage of the judgment as apportioned by the jury in its liability breakdown.

### D. Serious Injury Threshold

For a limited tort insured to file suit for non-economic damages, a serious injury is “a personal injury resulting in death, serious impairment of body function or permanent serious disfigurement.” It is the court’s function to evaluate the plaintiff’s condition to determine if the injuries are serious under the statute.

Catastrophic injuries that permanently alter the plaintiff’s life, such as paralysis, amputation, traumatic brain injury, blindness, and loss of hearing would be considered serious. But lesser injuries are subject to interpretation by the court, which would likely rely on prior case law for a particular type of injury. Courts have

found that the day-to-day life of a plaintiff must be impaired to be classified as serious injury. The determination of whether a plaintiff suffered a serious injury should be made by the jury in all but the clearest of cases. *Washington v. Baxter*, 719 A.2d 733 (Pa. 1998).

#### **E. PIP Subrogation**

Historically prohibited in any action arising out of use or maintenance of motor vehicle. 75 P.S. § 1720. However, an unreported Superior Court decision affirms that § 1720 does not prevent PIP subrogation where insured is made whole and subrogation does not interfere with the insured's claim. *State Farm Mut. Auto. Ins. Co. v. Soxman*, J-A13040, No. 2659 EDA 2010 (Pa. Super. 2011) (*unreported decision*).

#### **F. Graves Amendment**

The Graves Amendment, 49 U.S.C. § 30106(a), provides, in relevant part, that:

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).

United States District Courts in Pennsylvania that have addressed the issue concluded that negligent entrustment liability under Pennsylvania law falls into the savings clause of the Graves Amendment and is thus not prohibited. *Knecht v. Balanescu*, 2017 U.S. Dist. LEXIS 169829, 2017 WL 4573796, at \*25-29 (M.D. Pa. 2017). Because negligent entrustment liability under Pennsylvania law requires negligent conduct for liability to attach, such liability is not prohibited by the Graves Amendment. *See also, Schneider Nat'l Carriers, Inc. v. Syed*, 2019 U.S. Dist. LEXIS 6505, \*7, 2019 WL 183905 (M.D. Pa. 2019). Immunity under the Graves Amendment is available only when «there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate owner).» *Wolff v. Zipcar Inc.*, 2022 U.S. Dist. LEXIS 15464, \*7, 2022 WL 254392 (W.D. Pa. 2022) (plaintiff sufficiently alleged, in the complaint, that Zipcar was negligent, and the Graves Amendment cannot serve as a basis for immunity at the motion to dismiss stage).