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Transportation Claims by State

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CHEAT SHEET FOR TRANSPORTATION CLAIMS

ARIZONA

A. Statute of Limitations

- **Personal Injury:** Two years from date of accident – A.R.S. §12-542
- **Property Damage:** Two years from the date of loss – A.R.S. §12-542
- **PIP Subrogation:** Arizona does not recognize PIP subrogation rights
- **Wrongful Death:** Two years from death – A.R.S. §12-542
- **No-Fault:** Not applicable to Arizona
- **Action Against Municipality:** A claimant must file a notice of claim against a public entity within 180 days and a lawsuit within 1 year after the cause of action accrues – A.R.S. §12-821; A.R.S. §12-821.01

B. Comparative Negligence

Arizona is one of 13 states that have adopted a "pure" comparative fault law (A.R.S. §12-2501 et seq.). The pure comparative doctrine allows a plaintiff to recover damages from a defendant minus his or her percentage of comparative negligence. Even if the plaintiff is 99% responsible for the accident, he or she can recover 1% of the damages in Arizona.

C. Joint & Several Liability

Arizona abolished joint & several liability in favor of pure comparative negligence principles, with a few notable exceptions. Joint and several liability remains the rule in cases where vicarious liability applies; where the tortfeasors acted in concert; for actions brought under the Federal Employers' Liability Act, which addresses compensation of injured railroad workers; and for waste disposal cases. Ariz. Stat. §12-2506; *Yslava v. Hughes Aircraft Co.,* 936 P.2d 1274 (Ariz. 1997).

D. Serious Injury Threshold

Not applicable to Arizona

E. PIP Subrogation

Arizona does not recognize direct PIP subrogation rights. Assignment of a personal injury cause of action is prohibited. *Allstate Ins. Co. v. Druke*, 576 P.2d 489 (Ariz. 1978). A carrier can perfect its lien against any third-party recovery for Med Pay benefits in excess of $5,000 by recording the lien within 60 days after payment with the office of the county recorder where the accident occurred. A.R.S. § 20-259.01(J).

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 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. 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).

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CHEAT SHEET FOR TRANSPORTATION CLAIMS

CALIFORNIA

A. Statute of Limitations

- **Personal Injury:** Two years from date of injury. If injury was not discovered right away, then the statute of limitations runs from the date the injury was discovered. – CCP 335.1; as to the discovery rule, *see, e.g.,* (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103 [245 Cal.Rptr. 658, 751 P.2d 923]).
- **Property Damage:** Three years from the date the property was damaged. – CCP 338(c)(1).
- **PIP Subrogation:** Coverage not applicable.
- **Wrongful Death:** Two years from date of injury. – CCP 335.1.
- **Action Against Municipality:** In the State of California, a person has six months to file an administrative claim. The city has 45 days to respond. If the government agency denies the claim, the claimant has six months to file a lawsuit from the date the denial was mailed or personally delivered. If the claimant does not get a rejection letter, claimant has two years to file from the day the incident occurred. – CA Gov Code 911.2, 912.4, 912.6, 945.6(a)(2).

B. No Fault

California is not a no fault state.

C. Comparative Negligence

California is one of 13 states that have adopted a "pure" comparative fault law (CACI 406; *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270).

The pure comparative fault doctrine allows a plaintiff to recover damages from a defendant minus his or her percentage of comparative negligence. Even if the plaintiff is 99% responsible for the accident, he or she can recover 1% of the damages in California.

D. Joint & Several Liability

For economic damages, joint liability applies. An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several. (Civil Code 1431.).

The liability of each defendant for non-economic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against that defendant for that amount. (Civil Code 1430 *et seq.*; CC 1431.2(a)).

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, despite the general rule of California Vehicle Code §17150 et seq, that a vehicle's title owner is presumptively liable. Absent evidence of direct negligence (negligent hiring/ supervision/entrustment), a plaintiff's claims are barred.

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).

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CHEAT SHEET FOR TRANSPORTATION CLAIMS

COLORADO

A. Statute of Limitations

- **Personal Injury:** Two years. C.R.S. § 13-80-102(1)(a))
- **Property Damage:** Two years. C.R.S. § 13-80-102
- **PIP Subrogation:** Med Pay Subrogation is prohibited by statute in Colorado. C.R.S. § 10-4-635(3)(a) precludes an insurer from bringing either damages or subrogation claims seeking to recover benefits paid under an insured's Med Pay coverage.
- **Wrongful Death:** Two years. C.R.S. § 4-2-725.
- **No-Fault:** Colorado is an at-fault state.
- **Action Against Municipality:** 180 days. C.R.S. § 24-10-109

B. Comparative Negligence

- Colorado operates on modified comparative negligence as governed by C.R.S. 13-21-111.
- Under this law, if any party involved in an accident is determined to have been 50 percent responsible or above, that party forfeits any right to receive compensation for their injuries.
- https://law.justia.com/codes/colorado/2016/title-13/damages-and-limitations-on-actions/article-21/part-1/section-13-21-111

C. Joint and Several Liability

- Joint and several liability is one way of holding defendants in a personal injury claim accountable for their conduct. Under joint and several liability, victims of an accident can recover all of the compensation they deserve from any defendant. Colorado abolished this rule in favor of a pro rata rule based on comparative fault.
- https://www.shouselaw.com/co/personal-injury/joint-several-liability/

D. Non-Economic Damages

- On April 2019, Governor Jared Polis signed Senate Bill 19-109 into law, increasing Colorado's statutory damages caps for the first time in more than a decade. The law increases damages for noneconomic loss or injuries, derivative noneconomic loss, wrongful death, dram shop/social host matters, and solatium (an alternative damages amount in wrongful death matters).
- The new cap amounts for claims accruing on or before January 1, 2020, are as follows:
  - » For Non-economic Loss or Injury: $613,760, which can be increased by the court upon clear and convincing evidence to a maximum of $1,227,530. See R.S. 13-21-102.5(3)(a)[2] (This is an increase from the previous cap of $468,010 and $936,030.)

- » For Derivative Noneconomic Loss or Injury: $613,760. See R.S. 13-21-102.5(3)(b). (This is an increase from the previous cap of $468,010.)
  - » For Noneconomic Loss in Wrongful Death Actions: $571,870. See R.S. 12-21-203(1). (This is an increase from the previous cap of $436,070.)
  - » For Dram Shop Act Claims: $368,260. See R.S. 12-47-801. (This is an increase from the previous cap of $280,810.)
  - » For Solatium Damages: $114,370. See R.S. 13-21-203.5. (This is an increase from the previous solatium amount of $68,250.)
- Another important provision in the new law is that it requires that the damages caps be adjusted every two years. This means that on January 1, 2022, and every two years thereafter in perpetuity, Colorado's damages caps will increase again.
- Source: https://www.lexology.com/library/detail.aspx?g=272c4837-22b0-4b85-bfae-c15eb0a8dd0c

E. PIP Subrogation

- Med Pay Subrogation is prohibited by statute in Colorado. C.R.S. § 10-4-635(3)(a) precludes an insurer from bringing either damages or subrogation claims seeking to recover benefits paid under an insured's Med Pay coverage.

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. This holds true in Colorado as well as decided by *Watson v. Reg'l Transp. Dist.*, 762 P.2d 133 (Colo. 1988) (holding that a driver's negligence may not be imputed to the owner of a vehicle so as to limit an owner's recovery for injuries or damage unless the owner-passenger is independently negligent and that negligence causes the injury).

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CHEAT SHEET FOR TRANSPORTATION CLAIMS

CONNECTICUT

A. Statute of Limitations

- **Personal Injury:** Two years from the date the injury is sustained, or from when the injury is first discovered. No action shall be brought later than three years from the date the act or omission complained of occurred. Conn. Gen. Stat. § 52-584.
- **Property Damage:** Two years from the date the injury is sustained, or from when the injury is first discovered. No action shall be brought later than three years from the negligent act omission complained of occurred. Conn. Gen. Stat. § 52-584.
- **PIP Subrogation:** Not applicable in Connecticut.
- **Wrongful Death:** Two years from the date of death, but not later than five years from the date of the act or omission complained of occurred. Conn. Gen. Stat. § 52-555.
- **No-Fault:** Not applicable in Connecticut.
- **Action Against Municipality:** Written notice of an alleged injury must be given to a defendant municipality within ninety (90) days of the injury. Action must be brought within two years of the date of injury. Conn. Gen. Stat. § 13a-149.

B. Comparative Negligence

Connecticut follows the modified comparative fault rule. Under this doctrine, a plaintiff's recovery is reduced by their percentage of comparative fault up to 50%. If a plaintiff is found to be more than 50% at fault for a personal injury, they are barred from recovery. Conn. Gen. Stat. § 52-572h(b).

C. Joint & Several Liability

Joint and several liability does not apply to negligence matters in Connecticut. If multiple defendants are found to be at fault for a plaintiff's injuries, each defendant is liable to the plaintiff for that defendant's proportionate share of damages. Conn. Gen. Stat. § 52-572h(b).

If it is determined that a judgment as to a particular defendant is deemed uncollectable, that defendant's portion of damages may be reapportioned among the remaining defendants in the amount of their portions of liability. Conn. Gen. Stat. § 52-572h(g).

D. PIP/Medical Payment Coverage

Connecticut does not require PIP coverage. As a result, there are no statutes that specifically provide for PIP subrogation in Connecticut.

If a plaintiff has optional medical payments coverage ("med-pay") and some or all of their bills were paid by med-pay, defendants are entitled to a post-trial collateral source reduction of those payments, offset by the amount the plaintiff specifically paid for the med-pay coverage. *Jones v. Riley*, 263 Conn. 93, 818 A.2d 749 (2003). Conn. Gen. Stat. § 52-225a.

E. Medical Damages

In Connecticut, Plaintiffs are permitted to submit the full amount of their medical bills, regardless of insurance or other payments, to the jury, as part of their claimed economic damages. After a verdict is entered, Defendants are entitled to move for a post-trial collateral source reduction, which is ultimately decided by the trial judge. Plaintiffs may be entitled to an offset of any reduction for the amounts of health insurance premiums paid on behalf of the plaintiff during the time the plaintiff treated. Conn. Gen. Stat. § 52-225a.

In practice, its important to know that a jury will most likely only be aware of the full amount of medical bills charged, and will not know if the bills were paid or written off by insurance. Any post-trial reduction of medical bills will also likely be offset by the amounts both a plaintiff and their employer paid on their behalf.

F. Highway Defect Statute

Conn. Gen. Stat. §13a-149, commonly known as Connecticut's highway defect statute, provides that claims arising from injuries or damages to people or property resulting from a defective road or bridge can be asserted against a party responsible for maintaining that road or bridge. Conn. Gen. Stat. §13a-149. The statute extends to sidewalks and is the exclusive remedy for a plaintiff against a municipality in cases involving a highway defect. *Ferreira v. Pringle*, 255 Conn. 330, 354 (2001).

G. Graves Amendment

Vehicle owners may be vicariously liable for the negligent or reckless acts of vehicle operators, if the operator was an agent, employee, or family member of the vehicle owner. Conn. Gen. Stat. § § 182, 183.

The Graves Amendment, 49 U.S.C. § 30106, preempts state law imposing vicarious liability on the lessor of a motor vehicle for damages caused by the negligent acts of the lessee or an agent. *Rodriguez* v. *Testa*, 296 Conn. 1, 3-4, 993 A.2d 955 (2010).

The statute provides:

> (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).

49 U.S.C. § 30106 (a).

The statute additionally provides:

> (b) Nothing in this section supersedes the law of any State or political subdivision thereof
>
> (1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or
>
> (2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.

49 U.S.C. § 30106 (b).

In Connecticut, courts have interpreted the language of the statute to mean that in the absence of actual negligence or criminal wrongdoing as to an owner-lessor of a vehicle, the Graves Amendment exempts the owner-lessor from liability. *Rahaman* v. *Falconer*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV-07-6000713-S (June 2, 2009, *Adams, J.*).

CHEAT SHEET FOR TRANSPORTATION CLAIMS

FLORIDA

A. Statute of Limitations

- **Personal Injury:** Four (4) years from date of accident - Fla. Stat. § 95.11(3)(a)
- **Property Damage:** Four (4) years from date of accident - Fla. Stat. § 95.11(3)(a)
- **PIP Subrogation:** Four (4) years from the date of payment of the medical invoice
- **Wrongful Death:** Two (2) years from date of accident - Fla. Stat. § 95.11(4)(d)
- **Actions Against the State and its Agencies or Subdivisions:** An individual may not file a claim "against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency … within 3 years after such claim accrues and the Department of Financial Services or the appropriate agency denies the claim in writing …" Fla. Stat. § 768.28 (6)(a). Additionally, any action against the state or one of its agencies or subdivisions alleging damages for negligence, wrongful act, or omission must be commenced within 4 years after such claim accrues. Fla. Stat. § 768.28 (14)

B. Comparative Negligence

Florida is a pure comparative negligence state which means that any fault assigned to a plaintiff will proportionally reduce a damages award. Additionally, a Plaintiff can still recover against a Defendant found to only be 1% at fault.

For example, if a jury awarded a Plaintiff damages totaling $100,000.00 and apportioned fault at 50% Plaintiff and 50% Defendant, the Plaintiff could recover $50,000.00 (i.e., 50% of $100,000.00) from the Defendant.

C. Joint and Several Liability

Joint & several liability was abolished by the Florida Legislature in 2006. As noted above, Florida defendant are only responsible for their own percentage of liability.

D. Permanency Threshold & Florida's No Fault Act

Pursuant to Fla. Stat. §627.737(2), Florida plaintiffs may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease only in the event that the injury or disease consists in whole or in part of:

(a) significant and permanent loss of an important bodily function;

(b) permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement;

(c) significant and permanent scarring or disfigurement; or

(d) death.

Notably, a plaintiff must present expert medical testimony to establish the existence and permanency of an alleged injury. *See*, Fla. Stat. § 627.737(2), *City of Tampa v. Long*, 638 So. 2d 35 (Fla. 1994); *Avis Rent-A-Car Sys., Inc. v. Stuart*, 301 So. 2d 29 (Fla. 2d DCA 1974); and *Mattek v. White*, 695 So. 2d 942 (Fla. 4th DCA 1997)

E. PIP Subrogation

Generally, there is no subrogation right for PIP benefits in Florida. However, there is a "commercial vehicle" exception to the rule. Fla. Stat. §627.7405 (1) provides the following:

> "Notwithstanding ss. 627.730-627.7405, an insurer providing personal injury protection benefits on a private passenger motor vehicle shall have, to the extent of any personal injury protection benefits paid to any person as a benefit arising out of such private passenger motor vehicle insurance, *a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle*, if the benefits paid result from such person having been an occupant of the commercial motor vehicle or having been struck by the commercial motor vehicle while not an occupant of any self-propelled vehicle."

In the context of PIP subrogation, Florida defines a "commercial motor vehicle" as "any motor vehicle which is not a private passenger motor vehicle." Fla. Stat. §627.732 (3)(b). Thus, the weight of a vehicle does not matter.

F. Graves Amendment

The federal Graves Amendment 49 USCS §30106 provides immunity to the owner of a vehicle who has rented or leased the vehicle, if the owner is: (1) in the trade or business of renting or leasing motor vehicles, and (2) has not committed any negligence or criminal wrongdoing. In *Vargas v. Enter. Leasing Co.*, 60 So. 3d 1037 (Fla. 2011), the Florida Supreme Court noted that "Congress in 2005, through the Graves Amendment, clearly sought to eliminate vicarious liability for a specific category of owners/lessors … those 'engaged in the trade or business of renting or leasing motor vehicles.'" *Citing to*, 49 USCS §30106). In *Rivers v. Hertz Corp.*, 121 So. 3d 1078 (Fla. 3rd DCA 2013), the court explained that "if there is no negligence or criminal wrongdoing on the part of the owner of rental vehicles, the owner shall not be liable by reason of being the titleholder of the vehicle." *Citing to, Vargas v. Enter. Leasing Co.*, 60 So. 3d 1037, 1041-1042 (Fla. 2011).

A. Statute of Limitations

- **Personal Injury:** Two years from the date of accident. O.C.G.A § 9-3-33.
- **Property Damage:** Four years from the date of loss. O.C.G.A. § 9-3-32.
- **Subrogation:** Two years statute of limitation. O.C.G.A. § 33-7-11.
- **Wrongful Death:** Two years from death. O.C.G.A. § 51-4-2.
- **Against Municipality:** Ad Litem Notice must be made within six months of the injury. O.C.G.A. § 36-33-5.
- **Action Against a County:** Claim must be presented within 1 year of the accident. O.C.G.A. § 36-11-1.

B. Comparative Negligence

Georgia is a modified comparative negligence state. A plaintiff may only recover damages if he or she is less than fifty percent at fault for the accident. O.C.G.A. § 51-12-33.

C. Joint and Several Liability

The State of Georgia does not recognize joint and several liability amongst joint tortfeasors because under Georgia law, as the liability of all defendants is to be considered by the jury. The Supreme Court of Georgia has recently restricted the appointment of fault even further by their ruling in *Alston & Bird, LLP v. Hatcher Management Holding, LLC*, 862 S.E.2d 295. The Court held that fault can no longer be apportioned to a non-party in a case with a single defendant. In other words, to apportion any fault to a non-party in a single defendant case, that party must be brought into the case by suit. There is currently a proposed bill in the state legislature to change this; however, it may be some time before it is passed.

D *Respondeat Superior*

Georgia recognizes the doctrine of *respondeat superior*. An employer can be held liable for the actions of an employee if an employee was operating in the course and scope of their employment. In 2020, the Georgia Supreme Court, in *Quynn v. Hulsey*[1], held that Georgia law requires that "once liability has been established and the damages sustained by the plaintiff have been calculated, the trier of fact must then assess the relative fault of all those who contributed to the plaintiff's injury — including the plaintiff himself — and apportion the damages based on this assessment of relative fault." Thus, where "an action is brought against more than one person for injury to person or property," § 51-12-33(b) states that the jury is to assign the percentages of fault for its damage award among those parties found liable. As a result, the claims encompassed by the *respondeat superior* rule are claims that the employer is at "fault" within the meaning

1 2020 Ga. LEXIS 761 (2020).

of the apportionment statute and sticking with the prior *respondeat superior* rule would keep the jury from assigning fault to the employer for negligent entrustment, hiring, training, supervision, and retention. Any allocation of relative fault among those at fault, which may include the plaintiff, could differ if a person/entity's fault were excluded from consideration. This recent change negates the old benefit to employers of conceding vicarious liability on claims for negligent entrustment, hiring, training, supervision, and retention as a derivative claim of the employee(s)' negligence. Now, such an admission no longer relieves the jury from apportioning fault "under the plain language of the apportionment statute." *Id*.

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, provided no evidence exists indicating the owner engaged in any negligence or criminal wrongdoing. *See. Seymour v. Penske Truck Leasing Co.,* L.P., 2007 U.S. Dist. LEXIS 54843 at *8 (S.D. Ga. July 30, 2007)

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).

F. Direct Action Statute against Insurers of /& to Motor Carriers

At this time, there are two Direct Action Statutes: O.C.G.A. § 40-1-112,which applies to motor carriers operating pursuant to a permit issued by the Georgia Department of Public Safety, and O.C.G.A. § 40-2-140, enacted in order to administer the UCR system after the state adopted the federal Unified Carrier Registration Agreement. Both actions provide for a cause of action against the motor carrier and its insurer. Although some insurers have argued there is ambiguity in O.C.G.A. § 40-2-140 about whether or not its Direct Action provision applies to purely interstate carriers, this argument has twice has twice been rejected by District Courts in Georgia. *Bramlett v. Bajric*, 2012 U.S. Dist. LEXIS 148797 (2012) and *Cameron v. Teeberry Logistics*, 2013 U.S. Dist. LEXIS 186035 (2013).

Motor Carrier = person/entity who undertakes the transporting of goods or passengers for compensation.

Insurer of Motor Carrier = only those who issue primary policy(s) of insurance to the defined 'motor carrier.'

EXCLUDED from direct action (being named in) lawsuit:

(a) Excess Insurers, *See Jackson v. Sluder*, 256 Ga. App. 812 (2002);
(b) School Bus;
(c) Taxicabs;
(d) Vehicles operating within municipalities and subject to the authority of such municipality;
(e) Limousine Carriers;
(f) Hotel passenger vehicles;
(g) Motor vehicles operated Not for Profit to Transport Elderly or Disabled Passengers;
(h) Federal Government owned and operated Vehicles; and
(g) Ambulances.

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

ILLINOIS

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 <u>not</u> 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.

CHEAT SHEET FOR TRANSPORTATION CLAIMS

INDIANA

A. Statute of Limitations

- **Personal Injury:** Two years from the date of the accident. I.C. § 34-11-2-4(a)(1).
- **Property Damage:** Two years from the date of the accident. I.C. § 34-11-2-4(a)(2).
- **Med Pay Subrogation:** Two years from the date of the insured's accident. I.C. § 34-11-2-4(a)(1).
- **Wrongful Death:** Two years from the date of death; regardless of whether the deceased person was an adult or a child. I.C. § 34-23-1-1; I.C. § 34-23-2-1.
- **Action Against Political Subdivision:** In Indiana, a political subdivision can be sued for the negligent operation of its vehicles. *State v. Turner*, 153 Ind. App. 197 (1972). An injured party must file a notice of claim within 180 days after the injury occurs and has two years from the date of the accident to file suit against the political subdivision. I.C. § 34-13-3-8(a); I.C. § 34-11-2-4 (a)(1).

B. Comparative Negligence

Indiana has adopted a "modified" comparative fault system, or 51% Fault Rule, which prohibits personal injury claimants from recovering any compensation if they bear more than 50% of the responsibility for their injury. I.C. § 34-51-2-6. An injured party who bears 50% or less of the responsibility for their injury will be able to recover compensation in proportion to their percentage of fault. *Id*.

C. Several Liability

Indiana is a pure several liability state. Thus, the at-fault parties are only responsible for payment of damages in the amount proportionate to the percentage of fault that a jury has assessed to them. I.C. § 34-51-2-8. There is no right of contribution among the at-fault parties. I.C. § 34-51-2-12.

D. Punitive Damages

Punitive damages are governed by statute in Indiana. I.C. §§ 34-51-3-0.2 – 34-51-3-6. A claim for punitive damages has its own prerequisite elements of proof; however, a claim for punitive damages is not treated as a separate cause of action. *Yost v. Wabash Coll.*, 3 N.E.3d 509, 514 (Ind. 2014). To prevail, the plaintiff must show, by clear and convincing evidence, that a defendant acted with malice, fraud, gross negligence, or oppressiveness that is not the result of mistake of law or fact, honest judgment error, overzealousness, mere negligence or other such human failing. *Sims v. Pappas*, 73 N.E.3d 700, 706 (Ind. 2017).

An award of punitive damages may not be more than the greater of three times the time amount of compensatory damages awarded in the action or fifty thousand dollars, whichever is greater. I.C. § 34-51-3-4.

Punitive damages are not recoverable under Indiana's wrongful death statutes. *See* I.C. §§ 34-23-1-0.1 – 34-23-2-1; *see also Durham v. U-Haul Int'l*, 745 N.E.2d 755, 761 (Ind. 2001).

E. Negligent Hiring, Retention, and Supervision

Indiana law recognizes a separate and distinct cause of action against an employer based on theory of negligent hiring and retention of an employee. *Davis v. Macey*, 901 F. Supp. 2d 1107, 1111 (N.D. Ind. 2012). However, absent special circumstances, a plaintiff is precluded from bringing a separate cause of action for negligent hiring and retention when an employer admits that an employee was acting within the course and scope of his or her employment with the employer. *Sedam v. 2JR Pizza Enters., LLC*, 84 N.E.3d 1174 (Ind. 2017); *see also Branscomb v. Wal-Mart Stores E., L.P.*, 165 N.E.3d 982, 985 (Ind. 2021) (holding that "while Indiana recognizes the tort of negligent hiring, training and supervision, it does not apply when the tortfeasor employee is acting in the course and scope of employment.").

F. Indiana and the Federal Motor Carrier Safety Regulations

Indiana has explicitly adopted 49 CFR Parts 40, 375, 380, 382 through 387, 390 through 393, and 395 through 398 of the Federal Motor Carrier Safety Regulations ("FMCSRs"), with some exclusions. I.C. 8-2.1-24-18. The adopted FMCSRs must be complied with by all interstate and intrastate motor carrier of persons or property throughout Indiana.

Of note, the provisions of 49 CFR 395 which regulate the hours of service of drivers, including requirements for the maintenance of logs, do not apply to a driver of a truck that is registered by the bureau of motor vehicles and used as a farm truck, as defined by statute, or a vehicle operated in intrastate construction or construction related service. *See* I.C. 8-2.1-24-18(a).

CHEAT SHEET FOR TRANSPORTATION CLAIMS

KANSAS

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).

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

LOUISIANA

A. Statute of Limitations (referred to a Prescription in Louisiana)

- **Personal injury:** 1 year from date of loss
- **Wrongful death:** 1 year from date of death

B. Comparative Fault

- Louisiana is a pure comparative fault state. Each party (whether involved or named in suit) will be assessed his or her proportionate share of fault and is liable for only those damages. La. Civ. Cod article 2323

C. Joint and Several Liability

- See above regarding pure comparative fault.

D. Serious Injury Threshold

- None in Louisiana.

E. PIP Subrogation

- Louisiana does not have PIP coverage.

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

MAINE

A. Statute of Limitations

- **Personal Injury –** Six years from the date of the accident – 14 M.R.S. §752
- **Wrongful Death –** Two years from the date of death, six years if death was homicide. 18-C M.R.S. §2-807
- **Personal Property –** Six years from the date of the accident – 14 M.R.S. §752
- **Med Pay –** Insurer has 30 days to pay or deny a claim. Med Pay only covers claims for medical costs incurred within one year of the date the injuries are sustained. 24-A M.R.S. §2436; 29 M.R.S. §1605-A
- **UM/UIM –** Six years after the cause of action accrues, however, certain insurance contracts can reduce the statute of limitations. 14 M.R.S. §752
- **Actions against Government Entities –** written notice must be provided within 365 days, lawsuit must be initiated within 2 years. The notice period was previously 180 days, but a 2019 amendment extended the notice period to 365 days. 14 M.R.S. §§8107, 8110.

B. Contributory Negligence

Maine uses a modified comparative fault standard. If the plaintiff is equally at fault, he or she may not recover. If the plaintiff is 49% at fault or less, he or she can recover damages, but the damages are diminished by the plaintiff's degree of fault. 14 M.R.S. §156.

C. Joint and Several Liability

In Maine, defendants are jointly and severally liable for the total damages. Defendants have the right to use special interrogatories to request the jury calculate the percentage of fault contributed by each defendants. 14 M.R.S. §156. Joint tortfeasors have an equitable, but not statutory, right to proportional contribution, as long as the tortfeasor has not acted intentionally. *See Hobbs v. Hurley,* 117 Me. 449 (1918); *Packard v. Whitte*n, 274 A.2d 169 (Me. 1971).

D. Med Pay

Maine is an "at fault" state, and therefore any insurance policy issued in the state does not offer PIP coverage. A motor vehicle liability policy issued in Maine must provide coverage for medical payments for at least $2,000.00 of medical costs incurred as a result of injuries sustained in an accident. The benefits only apply to medical costs incurred within one-year following the date the injuries are sustained. 29-A M.R.S. §1605-A.

To subrogate for medical payment benefits, an insurer must include a provision in the policy that: (1) requires the written approval of the insured; (2) provides that the insurer's subrogation right is subject to subtraction to account for the pro rata share of the insured's attorney's fees incurred in obtaining the recovery from another source; and (3) the provision is approved by the Superintendent of Insurance. 29-A M.R.S. §2910-A.

E. Serious Injury Threshold

As an "at fault" state, Maine does not require a plaintiff to meet any kind of threshold for injuries or damages before he or she files a lawsuit.

F. Non-economic Damages

Maine allows plaintiffs to recover punitive damages when there is clear and convincing evidence that the defendant acted with malice. *See Sebra v. Wentworth*, 2010 ME 21, 990A.2d 538 (2010) and *Tuttle v. Raymond*, 494 A.2d 1353, 1985 Me. LEXIS 744 (1985). In cases of wrongful death, the damages that can be awarded for loss of comfort, society, and companionship, including damages for emotional distress, are limited to $750,000.00, and punitive damages awards are limited to $250,000. 18-C M.R.S. §2-807.

G. 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 Maine's statutory requirements set forth at 29A M.R.S. §1652 stating that an owner engaged in the business of renting motor vehicles is jointly and severally liable with the renter for damage caused by the driver's negligence. 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 State District Court, District of Maine, held that 29A M.R.S. §1652 was "clearly" preempted by the Grave's Amendment, also known as SAFETEA-LU. *See Enter. Rent-A-Car Co. of Boston, LLC v. Maynard*, 2012 U.S. Dist. LEXIS 67021, 2012 WL 1681970 (D. Me 2012).

Pursuant to 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).

H. Unfair Claims Practices

Pursuant to 24-A M.R.S. §2436, an insurer must either pay or deny an insured's claim for payment of benefits within 30 days after it receives proof of loss. If the insurer requests additional information regarding the claim, the 30 day period begins again once the insurer received the requested information. If an insurer fails to either pay or dispute a claim within 30 days, it is deemed overdue. If the insurer fails to pay the undisputed claim when due, the claim bears the interest rate of 1.5% per month after the due date, and the insurer will be liable to pay reasonable attorney's fees if its insured is successful in the claim.

An insured is also entitled to bring a civil action to recover damages, costs, attorney's fees, and interest, for the following acts 24-A M.R.S. §2436-A sets forth as being unfair claims settlement practices: (A) knowingly misrepresenting the terms of coverage, (B) failing within a reasonable time to acknowledge or review claims, (C) threatening to appeal from an arbitrator's award solely to compel the insured to accept a less favorable settlement, (D) failing to affirm or deny coverage within a reasonable time after investigating a claim, or (E) failing without just cause to promptly, fairly and equitably settle claims once liability has become reasonably clear.

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 –
>
> (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).

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.

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

MICHIGAN

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).

A. Statute of Limitations

- **Personal Injury:** Generally, three years from the date of accident; latent disease cases three year period runs from date of discovery-Miss. Code Ann. § 15-1-49.
- **Property Damage:** Three years for tort cases- Miss. Code Ann. § 15-1-49.
- **Wrongful Death:** Three years from date of death - Miss. Code Ann. § 15-1-49.
- **No-Fault:** Mississippi is not a no-fault state.
- **Action Against Municipality:** One year and ninety-five days - Miss. Code Ann. § 11-46-11. An action for personal injury or property damage against a governmental entity may be filed after all procedures within the governmental entity have been exhausted. Tortious conduct by a governmental entity or its agent is subject to a one-year statute of limitations. Notice must be filed with the chief executive officer of the governmental entity at least 90 days before instituting suit. After filing the required notice, the statute of limitations period may be tolled for 95 days.

B. Comparative Negligence

Mississippi is a pure comparative fault state. Miss. Code Ann. § 11-7-15. Pursuant to this statute, contributory negligence will not be a complete bar to recovery; instead, a Plaintiff's recoverable damages may be reduced in proportion to their assigned fault. For example, if a Plaintiff is found to be 60% at-fault, any award of damages will be reduced by 60%.

C. Joint & Several Liability

Generally, the liability for two or more persons shall be several only. Miss. Code Ann. § 85-5-7. However, joint and several liability may be imposed when two or more persons are found to have conspired to commit a tortious act. Each joint tortfeasor will be responsible only for damages directly proportional to their percentage of fault.

D. Limitations on Damages

Except for medical malpractice actions, a Plaintiff may not recover noneconomic damages, such as pain and suffering, in excess of $1,000,000. Miss. Code Ann. § 11-1-60(2)(b). Mississippi does not recognize an award of damages for loss of enjoyment of life separate from an award of pain and suffering; instead, there can only be one award of general damages. Miss. Code Ann. § 11-1-69(1). Mississippi also prohibits an award for loss of enjoyment of life in a wrongful death action. Miss. Code Ann. § 11-1-69(2).

In the event the plaintiff's claim is against a governmental entity or its employee, liability shall not exceed $500,000 for all claims arising out of a single occurrence. Miss. Code Ann. § 11-46-15.

E. Punitive Damages

Mississippi allows for punitive damages only in exceptional circumstances where plaintiff proves by clear and convincing evidence that a defendant "acted with actual malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, or committed actual fraud." Miss. Code. Ann. § 11-1-65. In the event an award for punitive damages is warranted, damages will be limited to:

1. $20,000,000 for a defendant with a net worth of more than $1,000,000,000
2. $15,000,000 for a defendant with a net worth of $750,000,000 - $1,000,000,000
3. $5,000,000 for a defendant with a net worth of $500,000,000 - $750,000,000
4. $3,750,000 for a defendant with a net worth of $100,000,000 - $500,000,000
5. $2,500,000 for a defendant with a net worth of $50,000,000 - $100,000,000
6. 2% of a defendant's net worth if their net worth is less than $50,000,000
7. There is no limitation on damages if a defendant was charged with a felony in connection with the incident or was under the influence of drugs or alcohol at the time of the incident.

Punitive damages will not be awarded in claims against a governmental entity or its employees. Miss. Code Ann. § 11-46-15.

F. Negligent Hiring, Employment and Entrustment

Federal District Courts in Mississippi have uniformly held that a Plaintiff may not pursue a claim for negligent hiring, employment, and entrustment against an employer where the employer acknowledges that it is vicariously liable for the negligence of its employee. See e.g., *Parker v. Pitts*, 2017 U.S. Dist. LEXIS 219096 (S.D. Miss. 11/12/17); *Dinger v. American Zurich Ins. Co.*, 2014 U.S. Dist. LEXIS 18378 (S.D. Miss. 2/13/14); *Booker v. Hadley*, 2009 U.S. Dist. LEXIS 63498 (S.D. Miss. 7/02/09).

The Mississippi Court of Appeals has also held that a Plaintiff cannot assert a claim against an employer for negligent hiring, employment, and entrustment when the employer has admitted their vicarious liability for the negligence of its own employee. *Carothers v. City of Water Valley*, 242 So.3d 138, 144 (Miss. Ct. App. 2017). Although the Mississippi Supreme Court has not addressed this issue directly, it has held that evidence of an employer's independent negligence is inadmissible if the employer admitted it would be vicariously liable for an employee's negligence. *Nehi Bottling Co. v. Jefferson*, 84 So.2d 684, 686 (Miss. 1956).

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 U.S.C. Section 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. There are no reported Mississippi state court cases interpreting the preemptive effect of the Graves Amendment as it applies to Mississippi law. Federal courts in Mississippi, however, have repeatedly recognized that the Graves Amendment prevents a plaintiff from pursuing a vicarious liability claim against a commercial lessor

of a vehicle. Instead, a plaintiff must establish that the commercial lessor owed the plaintiff an independent duty of care.

Federal courts have frequently required some evidence of culpable conduct on the part of the commercial lessor to support these claims; generic allegations of negligence that are not shown to be the cause of an accident frequently fail to survive dispositive motions. For example, the commercial lessor is not required to equip the leased vehicle with specialized alarms, controls or safety devises to allow for long-distance driving. *Martinez v. Overnight Parts Alliance, LLC*, 2020 WL 5983889 (S.D. Miss. 10/08/20). Federal courts also recognize that a plaintiff has a claim against a commercial lessor for "negligent entrustment"; however, this claim requires proof that the lessor knew or should have known that the driver of the leased vehicle "is a careless and reckless driver."

CHEAT SHEET FOR TRANSPORTATION CLAIMS

MONTANA

A. Statute of Limitations

- **Personal Injury:** Three years. Mont. Code § 27-2-204.
- **Property Damage:** Two years. Mont. Code § 27-2-207.
- **PIP Subrogation:** Three years. Mont. Code § 33-23-201.
- **Wrongful Death:** Three years. Mont. Code § 27-1-513.
- **No-Fault:** Montana is an at-fault state.
- **Action Against Municipality:** Six Mont. Code § 27-2-209.

B. Comparative Negligence

- Montana negligence laws follow the doctrine of modified comparative negligence which means that the person asking for damages in a lawsuit has to be less responsible for the accident than the person who allegedly caused the accident. Mont. Code § 27-1-701.

C. Joint and Several Liability

- Montana law provides that any defendant who is more than 50% at fault incurs joint and several liability to the plaintiff. However, this rule does not apply to a defendant whose negligence is "determined to be 50% or less." These defendants are only responsible for an award up to their percentage of fault. Mont. Code § 27-1-705.

D. Non-Economic Damages

- Cap on non-economic damages set at $250,000.
- Mont. Code § 27-1-702.

E. PIP Subrogation

- In Montana, § 33-23-201 permits "reasonable subrogation clauses" in auto policies. Under Montana public policy, an insured must be made whole before an insurer can pursue subrogation provided under an auto policy's subrogation clause, and nothing in § 33-23-201 permitting "reasonable subrogation clauses" alters that equitable doctrine. However, equitable subrogation is still considered against public policy.

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. This holds true in Montana as well as decided by *Smith v. Babcock*, 482 P.2d 1014 (1971) (explaining that contributory negligence of a driver cannot be imputed to owner in owner's suit against the tortfeasor).

CHEAT SHEET FOR TRANSPORTATION CLAIMS

NEVADA

A. Statute of Limitations

- **Personal Injury:** within two years. NRS 11.190(4)(e).
- **Wrongful Death:** within two years. NRS 11.190(4)(e).
- **Property damage:** within three years. NRS 11.190(3)(c).
- **Relief for Fraud or Mistake:** NRS 11.190(3)(d).
- **Libel, slander, assault, battery, false imprisonment or seduction:** within two years. NRS 11.190(4)(c).

B. Negligence

In Nevada, to prevail upon a negligence theory, Plaintiff must establish (1) that Defendant owed a duty of care; (2) that Defendant breached that duty; (3) that the breach was the legal cause of the injury; and (4) that Plaintiff suffered damages. *See, Scialabba v. Brandise Construction Co.*, 112 Nev. 965, 968, 921 P. 2d 928, 930 (1996).

C. Common Carrier Law

Nevada law requires the common carrier of passengers to exercise the highest degree of care that human judgment and foresight and are capable of to make their passenger's journey safe. Whoever engages in the business impliedly promises that their passenger shall have this degree of care. In other words, the carrier is conclusively presumed to have promised to do what, under the circumstances, the law requires them to do so. *Forrester v. Southern Pac. Co.*, 36 Nev. 247, 311, 134 P. 753, 774, 1913 Nev. LEXIS 31, *112.

D. Comparative Negligence

Nevada is a modified comparative fault state, meaning if the negligence of the Plaintiff exceeds that of the Defendant, Plaintiff is barred from any recovery. If Plaintiff is found to be less than 51% negligent, Plaintiff's recovery is decreased based on their percentage of negligence.

E. Negligent Entrustment

Pursuant to Nevada law, negligent entrustment of a motor vehicle occurs when a person knowingly entrusts a vehicle to an inexperienced or incompetent person, such as a minor child unlicensed to drive a motor vehicle, and such person may be found liable for damages resulting thereby. *Zugel by Zugel v. Miller*, 100 Nev 525, 688 P. 2d 310 (1984). The question of whether a Defendant was negligent in entrusting a motor vehicle is a question of fact for the jury to resolve. *Id.* The elements of negligent entrustment include whether an entrustment actually occurred, and whether the entrustment was negligent. *See, McCart v. Muir,* 230 Kan. 618, 641 P. 2d 384 (1982).

F. Joint & Several Liability

Under Nevada law, liability is joint and several when two or more tortfeasors cause injury through their combined or concurrent tortious conduct. *Buck v. Greyhound Lines, Inc.*, 105 Nev. 756, 763 (1989). Any one of several tortfeasors whose conduct contributed to a Plaintiff's injuries can be tapped for the entire amount of damages. Id. The defense of comparative negligence bars a Plaintiff's recovery if his negligence exceeds that of the Defendant or combined negligence of multiple Defendants. NRS 14.141(2)(a). In personal injury actions, if contributory or comparative negligence is a legitimate defense, NRS 41.141 deviates from the common law requirements of joint and several liability on Defendants against whom judgments are entered. *Id*; See also NRS 41.141(4) ("each Defendant is severally liable to the Plaintiff only for that portion of the judgment which represents the percentage of negligence attributable to him"). The statute only applies where a Plaintiff's contributory negligence can be asserted as a bona fide issue in the case. *Id* at 764. If one Defendant settles with the Plaintiff, absent comparative negligence, the judge must deduct the amount of that settlement from the net sum otherwise recoverable by the Plaintiff against the remaining Defendants. *Coughlin v. Hilton Hotels Corp.*, 879 F. Supp. 1047, 1049 (Nev. 1995); *See also* NRS 14.141(3).

G. Negligence Per Se and Traffic Statutes

Negligence per se is a common law theory that reduces the elements a claimant must prove by substituting the Duty of Care and Breach of Duty elements with evidence that the alleged tortfeasor violated a statute. A violation of statute establishes the duty and breach elements of negligence only if the injured party belongs to the class of persons that the statute was intended to protect, and the injury is of the type against which the statute was intended to protect. *Sagebrush Ltd. v. Carson City*, 99 Nev. 204, 208, 660 P.2d 1013, 1015 (1983). The Supreme Court of Nevada, however, has held that violations of traffic laws will not act to support claims of Negligence Per Se, codified as NRS 41.144. *Langdon v. Matamoros*, 121 Nev. 142, 144-45, 111 P.3d 1077, 1078 (2005). Langdon involved an automobile accident, wherein the Defendant was issued a citation for failure to yield the right-of-way and pled nolo contendre. *Id*.

H. Offers of Judgment

Offers of Judgment in Nevada are governed by NRCP 68, and are designed to facilitate and encourage settlement by placing the risk of loss on the non-accepting offeree, with no risk to the offeror. *Matthew v. Collman*, 110 Nev. 940, 950 (1994). NRCP 68 allows either party to make an offer, rather than only the Defendant. Once an offer is made, the offeree has ten days to accept it. *Nava v. Second Jud. Dist. Court*, 118 Nev. 396, 398 (2002). The offer is revocable during the ten day period. *Id*. If the offeree rejects an offer and fails to obtain a more favorable judgment, the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment, and the offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer. NRCP 68(f). If the offeror's attorney is collecting a contingent fee, the amount of any attorney fees awarded to the party for whom the offer is made must be deducted from that contingent fee. *Id*. Under NRCP 68, any party may serve an offer of judgment in writing, as opposed to its federal counterpart with limits offers to defendants only.

I. Limitation on Awards

Pursuant to NRS 41.035, an award for damages in a tort action brought against a present or former officer or employee of the State or any political subdivision, immune contractor or State legislator arising from an act or omission within the scope of the person's public duties or employment may not exceed $100,00, and may not include any exemplary or punitive damages. NRS 41.035.

Pursuant to NRS 42.005, punitive damages awards may not exceed three times the amount of compensatory damages awarded to the Plaintiff if the amount of compensatory damages is $100,00 or more, or $300,000 if the amount of compensatory damages awarded to the Plaintiff less than $100,000 or more.

CHEAT SHEET FOR TRANSPORTATION CLAIMS

NEW HAMPSHIRE

A. Statute of Limitations

- **Personal Injury –** Three years from the date of the accident – RSA 508:4(I)
- **Wrongful Death –** Three years from the date of death – RSA 508:4(I), RSA 556:11 (provides for a separate six year statute of limitations subject to the provisions of RSA 508)
- **Personal Property –** Three years from the date of the accident – RSA 508:4(I)
- **Medical Payment –** Coverage for medical payments provided under a motor vehicle insurance policy only allows for payment of medical costs incurred within three years of the date the injuries are sustained. Subrogation for these costs is prohibited. RSA-264:16; 17
- **Actions against Governmental Units –** written notice must be presented within 60 days of the injury, and the suit must be commenced within three years. RSA 507-B:7
- **Actions against the State** – written notice must be presented within 180 days of the injury, and the suit must be commenced within three years. RSA 541-B:14

B. Contributory Negligence

New Hampshire allows a plaintiff who is less than 51% at fault to recover damages in personal injury and property damages claims. However, the plaintiff's damages award is diminished in proportion to the amount of fault attributed to him or her. RSA 507:7-d.

C. Joint & Several Liability

When a defendant is at least 50%, New Hampshire imposes a joint and several liability standard. However, if a defendant is less than 50% at fault, he or she is only severally liable, and is only liable for the damages attributable to him or her. In cases where defendants are found to have knowingly pursued or taken active part in a common plan or design resulting in harm, the defendants are jointly and severally liable. The defendants each have a right of contribution among themselves if they are jointly and severally liable. A defendant may bring a separate action for contribution concerning the proportionate share of the damages. If a defendant's share is found to be uncollectible by the court, that defendant's share is reallocated amount the remaining defendants. RSA 507:7-e; f.

D. Serious Injury Threshold

As an "at fault" state, New Hampshire does not require a plaintiff to meet any kind of threshold for injuries or damages before he or she files a lawsuit.

E. Non-economic Damages

As a general rule, New Hampshire does not allow plaintiffs to recovery for punitive damages unless specifically provided by statute (RSA 507:16), and allows for recovery only on a compensatory damages basis. New Hampshire courts have held that the wrongful death statute, RSA 556:12, permits recovery for hedonic damages, which are damages resulting from the loss of enjoyment of life. Hedonic damages are meant to compensate a plaintiff for the alleged lost ability to engage in activities that once brought pleasure. These damages can be brought as either temporary or permanent impairment claims. S*ee Marcotte v. Timberlane/Hampstead Sch. Dist.*, 143 N.H. 331, 733 A.2d 394 (1999); *Bennett v. Lembo*, 145 N.H. 276, 761 A.2d 494 (N.H. 2000); & *Stachulski v. Apple, Inc.,* 2018 N.H. LEXIS 133 *19 (N.H. Sup. July 18, 2018).

In wrongful death claims, surviving spouses and minor children may be awarded damages for their losses resulting from the decedent's death. However, a surviving spouse's award is limited to $150,000, and a minor child is limited to $50,000. RSA 556:12.

F. Med Pay

New Hampshire is an "at fault" state, and therefore any insurance policy issued in the state does not offer any PIP coverage. Residents are not required to obtain automobile insurance. For automobile insurance policies issued in New Hampshire, insurers are required to provide at least $1,000.00 in medical payments coverage. The coverage only applies to reasonable medical costs incurred within three years following the date the injuries are sustained. RSA 264:16. New Hampshire law prohibits the right of subrogation of insurers for benefits provided through medical payments coverage under RSA 264:16. RSA 264:17.

G. 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. 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. *See Windmill Distrib. Co. LP v. Hartford Fire Ins. Co.*, 449 Fed. Appx. 81 (2d Cir. 2012). To date, New Hampshire has not addressed the question or whether the Graves Amendment preempts any applicable New Hampshire law. However, The New Hampshire Supreme Court has refused to hold that a self-insured owner and lessor of a vehicle was required to provide primary financial responsibility protection for the benefit of the driver renting the vehicle. *See Progressive Northern Ins. Co. v. Enter. Rent-A-Car Co. of Boston, Inc.*, 149 N.H. 489, 821 A. 2d 991 (2003).

Pursuant to 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).

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

NEW JERSEY

1. Statutes of Limitation

- **Bodily Injury:** A cause of action for bodily injury and property damage based on negligence must be filed within two (2) years from the time of the injury.
- **Property Damage Claims:** A cause of action for property damage must be filed within six (6) years from the time of injury.

2. Negligence

In general terms the operator of a motor vehicle must exercise such reasonable care and caution for his own safety as an ordinarily prudent man would exercise under like circumstances. He must exercise such amount of care as is commensurate with the risk of harm involved. *Ambrose v. Cyphers*, 29 N.J. IBS, 144 (1959). This standard requires motor vehicle drivers to use reasonable care in the control and operation of their vehicles. They must make observations of traffic and road conditions and exercise such judgment as a reasonably prudent person would in the circumstances so as to avoid collision or injury to others. The duty of reasonable care between drivers upon the highways is mutual and drivers may assume that others will observe the proper standard of conduct.

3. Negligence as Matter of Law

Proof of a violation of a statutory duty is not the same as proof of negligence, although it is evidence to be considered by the jury. Where, however, a statute specifically incorporates a common-law standard of care, a jury finding of statutory violation constitutes a finding of negligence.

The Careless Driving statute is an example of the principle because it provides that a person is guilty of careless driving if a person drives a vehicle carelessly or without due caution and circumspection, in a manner so as to endanger or be likely to endanger, a person or property. Since the statute contains a standard of care, a violation is negligence per se. Further under New Jersey common law a vehicle that rear ends another vehicle is negligent as a matter of law. *Dolson v. Anastasia*, 55 M.J. 10 (1969).

4. Comparative Fault

- **Type of Comparative Fault System**

  The modified comparative negligence statute will not bar recovery if plaintiff's negligence was not greater than the negligence of the defendants. Therefore, plaintiff may recover damages only if plaintiff is found to be less than 51 percent at fault. Any damage award received by plaintiff will be reduced by plaintiff's percentage of negligence, if any.

- **Status of Joint and Several Liability**

  A recovering party may recover the full amount of its damages against any party determined to be responsible for 60% or more of the total damages. If a party is found to be less than 60% responsible for total damages, it can be held responsible only for payment of that percentage of damages directly attributable to its negligence.

5. Respondeat Superior

The doctrine used to hold an employer liable for the torts of its employees when the employee was acting within the scope of employment. The employee's action will generally be deemed to be within the scope of employment if it is the kind of action that the employee is employed to perform, it occurs within the authorized time and space limits, and it is activated, at least in part, by a purpose to serve the employer.

New Jersey has adopted the "dual purpose" rule which states that when a trip serves the employee/driver's private affairs and is also in furtherance of the master's business, the master is subject to liability for the employee's actions.

Those engaged in the business of leasing or renting vehicles, however, are not liable as the actions of the driver or lessee absent an employment or agency relationship with the lessor.

6. Negligent Hiring, Training and Retention

New Jersey recognizes a cause of action for negligent hiring, supervision, and training. An action for negligent hiring or retention of an employee, requires proof that the employer knew or had reason to know of the particular unfitness, incompetence, or dangerous attributes of the employee and the employer could reasonably have foreseen that those qualities created a risk of harm to other persons. Additionally, the employee's unfitness or dangerous characteristics must have proximately caused the injury.

7. Negligent Entrustment

New Jersey recognizes a cause of action for negligent entrustment based on the ownership and use of a vehicle. An owner of a vehicle who loans or rents a vehicle to another is not vicariously liable for the borrowee's negligence unless that individual is an agent or employee of the owner. The owner of a motor vehicle may be liable to a third party only if there is an agency relationship between the owner and the driver. Moreover, neither an accommodation signer nor co-lessee of a vehicle has any duty to determine the competence or fitness of a lessee to operate the vehicle, and neither may be held liable for injuries caused by a lessee's incompetence as a driver.

8. Loading/Unloading Doctrine

All motor vehicle insurance policies must include coverage (omnibus coverage) for an individual, other than the named insured, who uses the vehicle with the consent of the insured. The omnibus clause extends coverage to any person using, operating or riding in the insured vehicle if done with permission. The term "use" has been given a broad interpretation, including, but not limited to, encompassing the "loading and unloading" of the insured vehicle.

Under the "loading and unloading" doctrine, a trucking company may be held to defend and indemnify other parties involved in the loading and unloading of its truck. The Courts have begun to create exceptions to this doctrine such as where the accident occurs after the completion of the loading and unloading of the freight or where the cause of the accident is not necessary to the loading and unloading of the freight.

9. Buses

Owners and operators of some buses are exempted from tort liability for non-economic losses as a result of bodily injury unless the plaintiff has sustained a personal injury which results in death; dismemberment; significant disfigurement or significant scarring; displaced fractures; loss of a fetus; or a permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement. An injury is considered permanent when the body part or organ, or both, has not healed to function normally and will not heal to function normally with further medical treatment. However, the threshold limitation does not apply to passengers on New Jersey Transit buses and other buses not eligible for bus-PIP benefits [e.g. school buses] who are not named insureds electing the verbal threshold.

10. PIP Subrogation

Insurers paying PIP benefits for medical expenses have the right to recover the amount paid from any tortfeasor which was not, at the time of the accident, required to maintain personal injury protection or medical expense benefits coverage, other than for pedestrians, under the laws of New Jersey, including personal injury protection coverage required to be provided in accordance with Section 18 of P.L.1985, c. 520 (C.17:28-1.4), or although required, did not maintain personal injury protection or medical expense benefits coverage at the time of the accident. This does not represent a lien against plaintiff's recovery from a third-party; but instead a direct claim which may be asserted by the PIP insurer. The insurer's right to recover must be asserted within two years from the date of receipt of the PIP application and must be submitted to arbitration. A PIP reimbursement claim must await resolution of any release of bodily injury claim before any payment on a liability policy can be made.

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

NEW YORK

A. Statute of Limitations

Personal Injury: Three years from date of accident -CPLR 214(5)
Property Damage: Three years -CPLR 214(4)/ 9% interest accrues from date of loss.
PIP Subrogation: Three years from date of payment of the medical invoice.
Wrongful Death: Two years from death- EPTL 5-4.1
No-Fault: A provider needs to submit a bill for payment 45 days from date of service
— A denial must be sent to the provider within 30 days
Action Against Municipality: In the State of New York a person has 90 days to file a notice of claim and 1 year and 90 days to commence a lawsuit against a city, village or town government or their agencies. (General Municipal Law § 50-e and § 50-i).

B. Comparative Negligence

New York is one of 13 states that have adopted a "pure" comparative fault law (CPLR 1411).

The pure comparative doctrine allows a plaintiff to recover damages from a defendant minus his or her percentage of comparative negligence. Even if the plaintiff is 99% responsible for the accident, he or she can recover 1% of the damages in New York.

C. Joint & Several Liability

In New York, motor vehicle accidents are exempt from joint and several liability limitations. For motor vehicle accidents, New York has adopted the 1% rule.

The 1% rule is something that will routinely come into play in many motor vehicle accidents in New York involving large commercial vehicles. A typical scenario would involve one defendant that only has a minimum $25,000 policy and another defendant that is a large commercial vehicle having a $1+ million policy. As long as there is at least 1% liability against the insured vehicle, the insured ends up being responsible for all of the damages awarded after the exhaustion of the co-defendant's $25,000 policy. This applies to economic and non-economic damages.

D. Serious Injury Threshold

In New York, a plaintiff must establish that they sustained a "serious injury" as defined under §5102(d) of the New York State Insurance Law in order to recover non-economic damages in a motor vehicle accident. Essentially, the threshold is a bar to recovery in a lawsuit for alleged injuries arising out of a motor vehicle accident.

Section 5102(d) of the Insurance Law defines "serious injury" as an injury that results in one of the following:

death;

dismemberment;

significant disfigurement;

a fracture;

loss of a fetus;

permanent loss of use of a body organ, member, function or system;

permanent consequential limitation of use of a body organ or member;

significant limitation of use of a body function or system; or

a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

A threshold defense in New York can be used in settlement negotiations, in motion practice to get the Complaint dismissed or at trial to obtain a defense verdict even in those cases where liability is unfavorable.

E. PIP Subrogation

New York loss transfer laws allow for PIP subrogation recovery from the negligent motorist's vehicle insurer.

The right to recover under the loss transfer requires one of two conditions to be met: At least one of the motor vehicles involved must weigh more than 6,500 lbs. unloaded or one of the vehicles involved must be used principally for the transportation of persons or property for hire. N.Y. INS. LAW § 5105(a). If one of these two conditions is met, an insurer is free to pursue a loss transfer against the negligent motorist's vehicle insurer for the recovery of the $50,000 first-party benefits.

Arbitration is the sole remedy for pursuing a loss transfer in New York. There is no requirement that the insurer/carrier be a signatory as arbitration is the sole remedy of any insurer seeking a loss transfer arising from a motor vehicle accident in New York.

Note, loss transfer is only applicable to the $50,000 first-party benefits a compensation insurer becomes obligated to pay under Section 5102(b)(2) of New York's Insurance Law. An award of payment of a PIP subrogation claim does not reduce the bodily injury limit. (N.Y. Insurance Law § 5105 (c)).

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).

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LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

OHIO

A. Statute of Limitations

- **Personal Injury:** Two years from the date of the accident – O.R.C. § 2305.10
- **Property Damage:** Two years from the date of the accident – O.R.C. § 2305.10
- **PIP Subrogation:** PIP is not available in Ohio. Ohio is an "at-fault" state, which means at lease one driver is found to be at fault after a collision.
- **Wrongful Death:** Two years from death – O.R.C. § 2125.02
- **Action Against Municipality:** Two years from the date of accident – O.R.C. § 2744.04

B. Comparative Negligence

Ohio follows a modified comparative fault system wherein negligence is apportioned in accordance with the percentage of fault a jury assigns to each party. If the plaintiff is deemed 51% at fault, he or she is barred from any recovery.

C. Joint & Several Liability

Ohio follows a modified joint and several liability system. In Ohio, if a defendant is more than 50% at fault that defendant is jointly and severally liable for all plaintiff's economic damages. If a defendant is less than 50% at fault, that defendant is only liable for its percentage of the plaintiff's total economic damages. Thus, if two or more defendants are deemed liable for the plaintiff's injuries each defendant will be responsible for its percentage share of fault for the plaintiff's non-economic damages.

D. Damages Cap

In Ohio, a plaintiff does not need to establish that they suffered a "serious injury" to recover non-economic damages in a motor vehicle accident. However, Ohio caps non-economic damages at the greater of (a) $250,000 or (b) three times economic damages, which is subject to a maximum of $350,000 per person or $500,000 per accident. Ohio law provides an exception to the cap where the plaintiff sustained a catastrophic loss, such as a substantial and permanent physical deformity, including the lost use of a limb or a permanent physical functional injury that prevents the injured person from being able to independently care for one's self and perform life-sustaining activities.

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. The owner of the leased vehicle can only be liable for if it was directly

negligent or engaged in criminal conduct. As long as the owner demonstrates it was engaged in the business of renting or leasing motor vehicles and was not otherwise directly negligent, the owner/lessor will be dismissed from the litigation pursuant to the Graves Amendment. *See. Moran v. Ruan Logistics,* S.D. Ohio No. 1:18-CV-223, 2018 WL 4491376 (Sept. 19, 2018).

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 at 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).

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

PENNSYLVANIA

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 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).

CHEAT SHEET FOR TRANSPORTATION CLAIMS

RHODE ISLAND

A. Statutes of Limitations and Notice of a Claim (Where Applicable)

- **Personal Injury –** Three years from the date of the accident ("after the cause of action shall accrue") – R.I. Gen. Laws § 9-1-14(b). **Where an action is properly/timely filed against an insured tortfeasor, an action against the insurer under § 27-7-2 has an extended statute of limitations: 120 days after the expiration of the statute of limitations in the first action.** R.I. Gen. Laws § 9-1-14(c).
- **Wrongful Death –** Three years after the death of the person – R.I. Gen. Laws § 10-7-2. "With respect to any death caused by any wrongful act, neglect or default which is not known at the time of death, the action shall be commenced within three (3) years of the time that the wrongful act, neglect or default is discovered or, in the exercise of reasonable diligence, should have been discovered." *Id*.
- **Personal Property – TEN YEARS** after the cause of action shall accrue – R.I. Gen. Laws § 9-1-13.
- **Actions against Municipalities – "**A person with a claim or demand of money against a town must present to the town council of that town an account of that person's claim, debt, damages, or demand, and how incurred or contracted; if just satisfaction is not made upon that person within forty days after the presentment, the person may commence suit against the town treasurer." R.I. Gen. Laws § 45-15-5. Further, written notice of an injury on a highway or bridge must be filed with the town within 60 days of the injury. R.I. Gen. Laws § 45-15-9(a). For when suit must be brought: **three years** R.I. Gen. Laws § 9-1-25; **three years** against towns for injury or damage arising out of maintenance of highways, causeways, or bridges. R.I. Gen. Laws § 45-15-9. There is a general $100,000 cap on claims against a local government. R.I. Gen. Laws § 9-31-3 ("provided, however, that in all instances in which the city or town or fire district was engaged in a proprietary function in the commission of the tort, the limitation of damages set forth in this section shall not apply.").
- **Actions against the State/Political Subdivision Thereof – three years.** R.I. Gen. Laws § 9-1-25. Notice of Claim must be given within three years from the date the cause of action accrues. *Id*. There is a general $100,000 cap on claims against the State. R.I. Gen. Laws § 9-31-2 ("provided, however, that in all instances in which the state was engaged in a proprietary function in the commission of the tort, or in any situation whereby the state has agreed to indemnify the federal government or any agency thereof for any tort liability, the limitation on damages set forth in this section shall not apply.").

B. Contributory Negligence

Rhode Island is a pure comparative negligence state, meaning a plaintiff would still recover 10% of their damages if found 90% at fault. R.I. Gen. Laws § 9-20-4. In addition, interest runs at 12% annually **from the date of incident (not date of suit)**. R.I. Gen. Laws § 9-21-10. Fault in Rhode Island is actually adjudicated amongst the co-defendants, as opposed to proportional share among joint tortfeasors.

C. Joint & Several Liability

A plaintiff may recover 100% of his or her damages from a joint tortfeasor who has contributed to the injury in any degree, and that joint tortfeasor can either seek statutory contribution in a separate action or implead the other tortfeasor ("pure" joint and several liability). R.I. Gen. Laws § 10-6-2; *Roberts-Robertson v. Lombardi*, 598 A.2d 1380 (R.I. 1991). There is a one year statute of limitations after judgment or settlement. R.I. Gen. Laws § 10-6-4.

D. Serious Injury Threshold

None. As an at fault state, Rhode Island does not require a plaintiff to meet any kind of threshold for injuries or damages before filing suit.

E. Non-Economic Damages

Rhode Island allows for the recovery of non-economic damages, namely loss of consortium, pain & suffering, scarring/disfigurement, and emotional distress, as well as possibly punitive damages. For punitive damages, there must be "evidence of such willfulness, recklessness, or wickedness, on the part of the party at fault, as amounts to criminality that should be punished." *Fenwick v. Oberman*, 847 A.2d 852, 854 (R.I. 2004). It is therefore quite rare for punitive damages to be awarded in a personal or property injury matter.

In wrongful death claims, recovery of punitive damages is available if such damages would have been recoverable had the decedent survived. R.I. Gen. Laws § 10-7-7.1. In essence, punitive damages are available under the same circumstances as a typical tort, where there must be "evidence of such willfulness, recklessness, or wickedness, on the part of the party at fault, as amounts to criminality that should be punished." *Fenwick v. Oberman*, 847 A.2d 852, 854 (R.I. 2004). Surviving spouses, parents, and/or children may be awarded damages for their losses resulting from the decedent's death. R.I. Gen. Laws § 10-7-1.2. Further, it is important to note that R.I. Gen. Laws § 10-7-2 provides for 'minimum damages' against a liable tortfeasor in a wrongful death action: a plaintiff who prevails will receive at least $250,000 in damages for the wrongful death of the decedent.

F. Med Pay

As an at fault state; any insurance policy issued in Rhode Island does not offer any PIP coverage. Residents are required to obtain automobile insurance, however, with statutory minimum coverages. For automobile insurance policies issued in Rhode Island, insurers are required to provide at least $2,500.00 in medical payments coverage for each individual and $5,000.00 in the aggregate. R.I. Gen. Laws § 27-7-2.5(a). However, a named insured can reject that coverage in writing. *Id*.

Subrogation is allowed, subject to a pro-rata sharing of recovery costs. *Jennings v. Nationwide Ins. Co.*, 669 A.2d 534 (R.I. 1996). Additionally, "[s]ubrogation is an insurer's right, if it pays a loss incurred by its insured, to assert the insured's rights against the 'third party who was responsible for the injury.' *Lombardi*, 429 A.2d at 1291 (citing *Silva v. Home Indemnity Co.* R.I., 416 A.2d 664 (R.I. 1980)). **According to the 'made whole' principle, an insurer may not subrogate to its insured's right against the tortfeasor until the insured's total judgment is satisfied**. *Id.*, at 1291-93 (summarizing authorities)." *Foote v. Geico Indem. Co.*, No. WC-2011-0040, 2013 R.I. Super. LEXIS 28, at *26 (Super. Ct. Jan. 5, 2013) (emphasis added).

G. 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. The Rhode Island Supreme Court in *Puerini et al. v. LaPierre*, 208 A.3d 1157 (R.I. 2019) held that R.I. Gen. Laws § 31-34-4 (which allows for recovery against the title owner of a vehicle through vicarious liability) "clearly conflicts with the Graves Amendment" and was thus specifically preempted by the Graves Amendment with respect to owners of leased or rented vehicles.

Pursuant to 49 U.S.C. § 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).

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

TEXAS

A. Statute of Limitations

- **Personal injury and property damage:** two years from the day of the accident
- **Wrongful death:** two years from the date of death

Sec. 16.003 Tex. Civ. Practice & Remedies Code

B. Comparative Fault

- A plaintiff may not recover damages if their percentage of responsibility is greater than 50%
- Plaintiff's damages are reduced by their percentage of responsibility
- Negligence of settling defendants submitted in liability question
- Negligence of designated responsible third parties submitted in liability question

Tex. Civ. Practice & Remedies Code Chapter 33

C. Joint and Several Liability

Each liable defendant is jointly and severally liable for damages recoverable by the claimant if the defendant's percentage of responsibility is greater than 50% or the defendant acted with specific intent to do harm and committed a felony (murder, kidnapping, etc.) A defendant who is jointly and severally liable is only liable for damages after the total award is reduced by the plaintiff's percentage of responsibility and the dollar amounts of all settlements.

Tex. Civ. Practice & Remedies Code §33.013

D. Responsible Third Parties

Defendants can designate parties not sued by the Plaintiff as responsible third parties. Negligence of designated responsible third parties submitted in liability question.

Tex. Civ. Practice & Rem. Code § 33.011(6)

E. PIP

No subrogation for PIP.

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

UTAH

A. Statute of Limitations

- **The statute of limitations for personal injury is four years** - Utah Code Annotated Section 78B-2-307.
- **For property damage claims it is three years** - Utah Code Annotated Section 78B-2-305.
- **For wrongful death claims it is two years** - Utah Code Annotated Section 78B-3-105 and 106.
- **For PIP claims it is three years from the date of the last payment** - Utah Code Annotated Section 78B-2-305.

B. Comparative Negligence

A plaintiff that is 50% at fault or more is barred from recovery. Utah Code Annotated Section 78B-5-818. No defendant is liable for more than its proportionate share of fault. Utah Code Annotated Section 78B-5-818 and 819. The negligence of settling parties is still apportioned.

C. Joint & Several Liability

Joint and several liability has been done away with. As well as contribution from one defendant to another. Utah Code Annotated Section 78B-5-820.

D. Comparing Fault of Non-Parties

This can be done but a party must file a notice of intent to do so setting forth the factual and legal basis for the fault and the identity of the non-party if known. This must be filed at least 90 days before trial. Utah Code Annotated Section 78B-5-821 and Utah Rule of Civil Procedure 9.

E. Comparing Fault of Immune Parties

The fault of an immune party may be compared (an employer or a governmental entity) and if the immune party is found to be 40% at fault or more that fault stands. If it is less than 40%, that fault is reapportioned among all of the other parties found to be at fault proportionately. Utah Code Annotated Section 78B-5-819.

F. Personal Injury Protection

Utah does require personal injury protection benefits. At a minimum this must be $3,000 in medical coverage, $1,250 a month for lost wages up to one year and $20 a day for loss of household service benefits for up to one year. There is also a $3,000 death benefit and a $1,500 funeral benefit. Utah Code Annotated Section 31A-22-307. The personal injury protection reimbursement claim does not belong to an injured party but only belongs to his carrier. The carrier can only collect through binding arbitration from the other carrier responsible. If the other carrier pays its limit there is no recovery. Utah Code Annotated Section 31A-22-309. A vehicle registered in another State is only required to have personal injury protection benefits if it is required in that State or if the vehicle has been in Utah for 90 days of the prior 365 days. Utah Code Annotated Section 41-12a-303.

G. Interest Recoverable

A plaintiff is entitled to recover interest on all special damages from the date of the accident regardless of when they were incurred. The interest rate is 2% above prime that has a ceiling of 10% and a floor of 5%. Utah Code Annotated Section 78B-5-824.

H. Medical Bills

A plaintiff may claim the amounts that he was billed on his medical bills regardless of what was actually paid and accepted. The defendant is precluded from demonstrating that a lesser amount was accepted under the Collateral Source Rule. However, a defendant can challenge the reasonableness of the medical bills by presenting expert testimony.

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

VERMONT

A. Statute of Limitations[1]

- **Personal Injury:** Three years from the discovery of the injury. 12 V.S.A. § 512 (4)
- **Property Damage:** Three years from the discovery of the injury. 12 V.S.A. § 512 (5)
- **PIP Subrogation:** Not applicable in Vermont.
- **Wrongful Death:** Two years from the date of death, but not later than two years from the discovery of the death of the person, but if the person against whom the action accrues is out of the State, the action may be commenced within two years after the person comes into the State. After the cause of action accrues and before the two years have run, if the person against whom it accrues is absent from and resides out of the State and has no known property within the State that can by common process of law be attached, the time of his or her absence shall not be taken as part of the time limited for the commencement of the action. If the death of the decedent occurred under circumstances such that probable cause is found to charge a person with homicide, the action shall be commenced within seven years after the discovery of the death of the decedent or not more than two years after the judgment in that criminal action has become final, whichever occurs later. 14 V.S.A. § 1492
- **No-Fault:** Not applicable in Vermont.
- **Action Against Municipality:** Three years (see above)

B. Comparative Negligence

Vermont follows the modified comparative fault rule. Under this doctrine, a plaintiff's recovery is reduced by their percentage of comparative fault up to 50%. If a plaintiff is found to be more than 50% at fault for a personal injury, they are barred from recovery. 12 V.S.A. § 1036

C. Joint & Several Liability

Joint and several liability does not apply to negligence matters in Vermont. If multiple defendants are found to be at fault for a plaintiff's injuries, each defendant is liable to the plaintiff for that defendant's proportionate share of damages. 12 V.S.A. § 1036

D. PIP/Medical Payment Coverage

Vermont does not require PIP coverage. As a result, there are no statutes that specifically provide for PIP subrogation in Vermont.

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1 Statutes of limitation are tolled in cases involving defendants who are absent from the state of Vermont. See 12. V.S.A. § 552

E. Medical Damages

In Vermont, Plaintiffs are permitted to submit the full amount of their medical bills, regardless of insurance or other payments, to the jury, as part of their claimed economic damages. Defendant may not introduce evidence of how much Plaintiff's providers accepted as payment for medical services because that evidence would violate the collateral source rule.

F. Highway Defect Statute

State Highways – Written notice within 20 days. Vehicle may not exceed gross weight limits.

All rights of action on account of the insufficiency or want of repair of any bridge or culvert on the highways taken over by the State shall exist against the State and not against the town, provided that the notice required in sections 987 and 988 of this title is first given in writing to the Agency. 19 V.S.A. § 23. Liability is limited to $75,000 or maximum policy limits, whichever is greater.

Town Highways - Written notice within 20 days. Vehicle may not exceed gross weight limits.

If damage occurs to a person, or his or her property, by reason of the insufficiency or want of repair of a bridge or culvert that the town is liable to keep in repair, the person sustaining damage may recover in a civil action. If the damage accrues in consequence of the insufficiency or want of repair of a bridge erected and maintained by two or more towns, the action shall be brought against all the towns liable for the repairs. The damage and costs shall be paid by the towns in the proportions in which they are liable for the repairs. 19 V.S.A. § 985. Liability is limited to $75,000 or maximum policy limits, whichever is greater.

G. Graves Amendment - 49 U.S.C. § 30106 (a)

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).

49 U.S.C. § 30106 (a)

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

VIRGINIA

A. Statute of Limitations

- **Personal Property:** 5 Years - Va. Code § 8.01-243(B)
- **Personal Injury:** 2 Years from the date of accident. Va. Code § 8.01-243(A)
- **Wrongful Death:** 2 Years from the date of death. Va. Code § 8.01-244

B. Contributory Negligence

Virginia does not have comparative negligence. It is a contributory negligence state. If the plaintiff is found to be even 1% at fault, he or she will not recover anything.

C. Joint & Several Liability

In Virginia, if two or more persons are found liable, any one of them can be held responsible for the entirety of an injured person's loss. Where some but not all defendants settle with the plaintiff, those defendants are no longer subject to a claim for contribution. Va. Code § 8.01- 35.1. The non-settling defendants get a reduction in their exposure (the amount of the settlement) for any award to the plaintiff.

D. Nonsuit Option

Virginia has a unique option for plaintiffs – the Nonsuit Statute. Va. Code § 8.01-380. Pursuant to this statute, a plaintiff can take a nonsuit (a "voluntary dismissal without prejudice") at any point before the case goes to the jury. The plaintiff does not need the consent of the defendant(s) to nonsuit his or her case, and does not have to state a reason for the nonsuit. If a plaintiff takes a nonsuit, he or she must re-file the case within 6 months of the date of the Nonsuit Order.

E. PIP Subrogation

Virginia law prohibits inclusion of bodily injury subrogation clauses in auto insurance policies. Va. St. § 38.2-2209. Neither Med Pay nor PIP benefits can be subrogated. Virginia, in fact, does not have provisions for PIP coverage.

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. 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)

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

WASHINGTON

A. Statute of Limitations

- **Personal Injury –** Three years from the date of the accident.
- **Wrongful Death –** Three years from the date of death.
- **Personal Property –** Three years from the date of the accident.
- **Medical Payment –** Coverage for medical payments provided under a motor vehicle insurance policy allows for payment of medical costs. Subrogation for these costs is allowed and must be brought within three years of the date of the accident. There is no right to recovery if the claimant is not fully compensated.
- **Actions against Governmental Units –** written notice must be presented 60 days prior to filing the lawsuit and the suit must be commenced within three years.

B. Contributory Negligence

Washington is one of 13 states that have adopted a "pure" comparative fault law. (RCW 4.22.005) The pure comparative doctrine allows a plaintiff to recover damages from a defendant minus his or her percentage of comparative negligence. Even if the plaintiff is 99%responsible for the accident, he or she can recover 1% of the damages in Washington.

C. Joint & Several Liability

In Washington, when plaintiff is fault free, joint and several liability applies and each negligent defendant will be liable for all damages. (RCW 4.22.070). However, when a defendant is required to pay more than his or her equitable share, that defendant may bring a separate action against the other defendant for contribution in order to recover the payment beyond his or her equitable share. (RCW 4.22.050)

D. Serious Injury Threshold

Washington does not require a plaintiff to meet a threshold for injuries or damages before he or she files a lawsuit.

E. Non-economic Damages

Washington allows plaintiffs to recovery for both economic and non-economic damages. Economic damages include monetary losses, medical expenses, loss of earnings, burial costs, loss of use of property, replacement or repair cost, substitute domestic services, loss of employment, and loss of business and employment opportunities. Non-economic damages include damages such as pain and suffering, inconveniences, mental anguish, disability and disfigurement, emotional distress, loss of companionship,

loss of consortium, injury to reputation, and humiliation. (RCW 4.56.250). In wrongful death claims, surviving spouses and children are first tier beneficiaries and may be awarded damages for their losses resulting from the decedent's death.

Washington does not cap or limit the amount of compensation that can be awarded, as it has held such caps unconstitutional. However, Washington is one of four states which doesn't allow recovery for punitive damages in personal injury cases.

F. PIP Subrogation

For automobile insurance policies issued in Washington, insurers are required to offer PIP/UIM coverage and the insured must affirmatively decline the coverage or it is provided. Washington is a "no fault" state, and therefore any insurance policy issued in the state may offer PIP coverage, but motorists are not required to have it. Currently, motorists can purchase up to $35,000 in coverage. Washington law allows a PIP carrier to be reimbursed for PIP payments made to an insured. A PIP carrier may recover its PIP benefits from the insured's UIM benefits.

G. Graves Amendment

Washington recognizes the Graves Amendment and that the owner of a leased or rented vehicle, such as a rental car company, cannot be held vicariously liable for the negligent operation of that vehicle. Washington defines a rental car company as any person in the business of renting cars to the public. This also includes to a franchisee. (RCW 48.115.005). Although Washington recognizes the Graves Amendment, in many instances Washington State Court judges will decline to apply Graves broadly in favor of plaintiffs.

Pursuant to 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).

A. Statute of Limitations

- **Personal Property:** 3 Years – D.C. Code § 12-301(2,3)
- **Personal Injury:** 3 Years from the date of accident. D.C. Code § 12-301(8)
- **Wrongful Death:** 2 Years from the date of death. D.C. Code § 16-2702

B. Contributory Negligence

The District of Columbia does not have comparative negligence. It is a contributory negligence state. If the plaintiff is found to be even 1% at fault, he or she will not recover anything.

C. Joint & Several Liability

In the District of Columbia, if two or more persons are found liable, any one of them can be held responsible for the entirety of an injured person's loss.

D. PIP Subrogation

District of Columbia law provides that an insurer has the right of reimbursement from any other insurer, for PIP benefits paid, based on a determination of fault. D.C. Code § 31-2411(d). If the liability insurer already paid the injured person to settle that claim, the PIP insurer can still seek reimbursement. D.C. Code § 31-2406(f)(5) states:

> *(f) Mandatory uninsured motorist insurance . . . .*
>
> *(5) To the extent of any payment made to any person by the insurer under the coverage required by this section and subject to the terms and conditions of the coverage, the insurer is entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of any person against any other person legally responsible for the bodily injury . . . .*

See also, Hubb v. State Farm, 85 A. 3d 836 (2014).

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. This repealed a D.C. law that considered a vehicle operator to be the agent of the owner. *Johnson v. Agnant*, 480 F.Supp.2d 1 (D.D.C. 2006). 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)

CHEAT SHEET FOR TRANSPORTATION CLAIMS

WISCONSIN

A. Statute of Limitations

- **Personal Injury:** Three years from date of accident – W.S.A. 893.54.
- **Product Liability:** Three years from date of accident – W.S.A. 893.54; Statute of Repose – Fifteen years - W.S.A. 895.047.
- **Property Damage:** Three years if damage caused by automobile – W.S.A. 893.52; Six years if otherwise.
- **Wrongful Death:** Three Years from date of accident – W.S.A. 893.54.
- **Municipality:** The state of Wisconsin is immune to prosecution, with a few exceptions outlined in specific statutes. Claims against municipalities are permitted, but restrictions on types of cases and amounts of damages may apply. Notice is to be given within 120 days. W.S.A. 893.82. Suit must be filed within 6 mos thereafter. W.S.A. 893.80.
- **No-Fault:** Wisconsin is not a no-fault state.

For all tort actions, Wisconsin follows the "discovery rule" for determining accrual of a limitations period (other than those already governed by a legislatively created discovery rule) and such tort claims shall accrue on the date the injury is discovered or with reasonable diligence should have been discovered, whichever occurs first. *Hansen v. A.H. Robins, Inc.,* 335 N.W.2d 578 (Wis. 1983).

B. Comparative Negligence

Wisconsin is a modified comparative negligence state. A plaintiff is barred from recovery if his negligence is found to be over 50%. If his negligence is 50%, he recovers. WSA 895.045. Significant to this rule is that Wisconsin uses special verdicts so the jury must answer all questions asked of it and calculate out all percentages to arrive at its award. Because of this, a jury that finds a plaintiff over 50% responsible believes it is "awarding" plaintiff a sum but less than 50%. However, in effect the jury is negating any recovery and finding in favor of the defense.

C. Joint and Several Liability

Wisconsin follows a modified joint and several liability rule, in which the defendant is responsible for the entire verdict if they are found to be 51% or more at fault. If they are found to bear less than 51% of the fault, their liability must be limited to the percentage of fault attributed to them.

D. 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).

Noteworthy, in *Parker v. Flexi-Van Leasing* the U.S. Federal District Court for the Western District of Wisconsin found that the Graves Amendment did not bar vicarious liability for companies that have been negligent. In a ruling dated January 30, 2020, and based on Flexi-Van's motion to dismiss, the court found that the federal statute did not bar recovery when the Complaint properly plead negligence against a leasing company. In *Parker,* the driver of the cab had leased a trailer from Flexi-Van. The plaintiff plead that Flexi-Van was negligent in leasing the trailer to another defendant party, an allegation the court accepted as true on a motion to dismiss. Under the court's interpretation of the Graves Amendment, Parker's vicarious-liability claims against Flexi-Van were not preempted at the pleading stage. Importantly, the court's ruling was made at the pleading stage, not in a dispositive motion after discovery had been completed.

LEWIS BRISBOIS

CHEAT SHEET FOR TRANSPORTATION CLAIMS

WYOMING

A. Statute of Limitations

- **Personal Injury:** Four years. Wyo. Stat. §1-3-105(a)(v), (B)
- **Property Damage:** Four years. Wyo. Stat. § 1-3-105(a)(iv)
- **PIP Subrogation:** Four years. Wyo. Stat. § 1-3-105(a)
- **Wrongful Death:** Two years. Wyo. Stat. § 1-38-102
- **No-Fault:** At-fault state. Four years. Wyo. Stat. § 1-3-105(a)(v), (B)
- **Action Against Municipality:** One year. Wyo. Stat. § 1-39-114

B. Comparative Negligence

- Under Wyoming Statutes section 1-1-109, the state follows a modified "comparative negligence" rule. This means you can still recover damages in a car-accident-related lawsuit, but your award will be reduced according to your share of negligence—as long as your share of liability "is not more than fifty percent (50%) of the total fault of all actors."

C. Joint and Several Liability

- Wyoming applies Joint and Several liability. Wyo. Stat. § 34.1-3-116.

D. Non-Economic Damages

- Damage caps are generally prohibited by state constitution (Wyo. Stat. § 4), but there is a $250,000 cap on some claims against government entities. Wyo. Stat. § 1-39-118(i).

E. PIP Subrogation

- Subrogation allowed notwithstanding non-assignability of personal injury claims. Northern Utilities Div. of K.N. Energy, Inc. v. Town of Evansville, 822 P.2d 829 (Wyo. 1991). The four (4) year personal injury statute of limitations runs from the date of the insured's accident. Wyo. Stat. § 1-3-105(a) (1999).

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. This holds true in Wyoming as well as decided by Porter v. Wilson, 357 P.2d 309 (Wyo. 1960) (explaining that contributory negligence of a driver cannot be imputed to owner in owner's suit against the tortfeasor).

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