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.