

Connecticut State Outline

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1. STATUE OF LIMITATIONS; NEGLIGENCE ACTIONS IN GENERAL

Two (2) years from the date when injury is first sustained or discovered or when the exercise of reasonable care should have been discovered except that no such action may be brought from more than three (3) years from the date of the act or omission complained of, per Connecticut General Statute §52-584. This would include bodily injury and property damage actions.

WRONGFUL DEATH ACTIONS:

Two (2) years from the date of death and no more than five (5) years from the date of the act or omission complained of, per Connecticut General Statute §52-555;

INDEMNIFICATION AGAINST THIRD PARTIES BY DEFENDANTS:

Three (3) years from the date of the determination of the underlying action either by judgment or settlement, per Connecticut General Statute §52-598a;

WAIVER:

A statute of limitations defense must be specifically pleaded as a special defense and a failure to do so will act as a waiver of that defense per Connecticut Practice Book §164;

2. TYPE OF NEGLIGENCE LAW

Comparative (not greater than) joint and several liabilities are abolished, per §52-572h; however, partial reallocation of any portion of a verdict that is unrecoverable is permitted, per §52-572h(g);

CONTRIBUTORY NEGLIGENCE

In negligence cases the contributory negligence of the plaintiff will only bar recovery if the negligence of the plaintiff was greater than the combined negligence of the defendants, per Connecticut General Statute §52-72H(b)

Damages recovered by a plaintiff in a negligence action are to be diminished and proportioned to the percentage of comparative negligence attributable to the plaintiff.

INDEMNITY:

Under Connecticut Law, ordinarily there is no right to contribution among joint tortfeasors, but where one party's negligence is active that party can be required to indemnify the party whose liability is based on passive negligence. Indemnity involves shifting the entire the loss between torfeasors. Where a party, vicariously liable for the tort of another, has paid damages to a third party, that party may recover the amount paid in an action against the actual tortfeasor. See Reilly v. Dibianco, 200 Conn. 804.

3. MATERIAL DAMAGE

Is loss of use owed if no rental occurred? Yes.

If so, at what rate? Market value.

Is diminution of value allowed? Yes.

Basis for calculating ACV on total loss, NADA and one other source approved by the Insurance Commissioner of the State of Connecticut, per 389-353.

Is sales tax owed on total loss? Yes, at the rate of six percent (6%).

Is insurer required to handle claimant salvage? No, if salvage is handled however, a salvage title is necessary from the Department of Motor Vehicles.

4. BODILY INJURY

As of January 01, 1994, Connecticut no longer has a mandatory no-fault statute. Statutorily required no-fault was repealed, via Public Act 93-297. However, no-fault insurance maybe purchased without right of subrogation thereafter.

All specials are collectible as part of the bodily injury.

It should be noted however that health insurance payments made by the self-insured provider are subject to subrogation. Only self-insured have a right to reimbursement of their health insurance payments in an automobile case. This is because Federal ERISA Law supersedes the statutory prohibition against subrogation as generally applies to health insurance payments in the State of Connecticut. In other words, self-insured health insurers may have a lien on plaintiff's settlement or judgment and

caution should be taken to determine exactly who has made payment to the plaintiff for any medical expenses incurred as a result of an accident.

Post verdict reductions of collateral sources, such as health or sickness insurance and medical payments whether purchased by the plaintiff or provided by others is permitted in the State of Connecticut. This is a post verdict hearing at which collateral source payments will reduce the overall verdict. This collateral source provision does not apply to settlements generally.

Workers' Compensation payments made are subrogatable. After July 01, 1993, employer or insurer need only give notice to the third party of its lien for workers' compensation benefits paid; filing an intervening complaint within thirty (30) days of notice of third party suit by employee is still advised. For injuries prior to July 1993, a third party intervening complaint must be filed within thirty (30) days of notice of the third party underlying action.

PERSONAL INJURY DAMAGES:

Includes fair and adequate compensation for medical expenses and lost earnings plus amounts for pain and suffering together with compensation for impaired future earning capacity. The plaintiff must produce evidence, which establishes with reasonable probability that the injury found was produced by the accident and that any claimed losses more probably than not resulted from that injury. An award of future damages can be upheld where a doctor testifies that the claimant might need future treatment and the injured party has testified that they still suffer from pain. Fear of future disability as an element of mental suffering is permitted.

WRONGFUL DEATH DAMAGES:

Damages for death are allowed as compensation for the destruction of the decedent's capacity to carry on life's activities, including his capacity to earn money. They are assessed on the basis of the loss to the decedent had he lived, and, except in that sense, not on the basis of loss to the estate. In many respects they are assessed in the same way as in a non-fatal case involving total and permanent destruction of the capacity to carry on life's activities. See Connecticut General Statute §52-555. Damages may include damage for pain and suffering before death.

PERIODIC PAYMENT OF DAMAGES ACT, §52-225d, provides that when a jury has rendered a verdict in excess of two hundred thousand dollars (\$200,000.00), the trial court shall enter a lump sum judgment for all amounts up to two hundred thousand dollars (\$200,000.00). The parties will be given 60 days within which to agree to a periodic payment plan for that portion of the verdict in excess of two hundred thousand dollars (\$200,000.00). In the absence of such agreement the court shall enter a lump sum judgment for the remaining portion of the verdict.

A VERDICT FOR DAMAGES MAYBE SET ASIDE if it so shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, mistake, or corruption. Trial court may order additur or remittitur if verdict is unreasonably inadequate or excessive. See Connecticut General Statute §52-216a.

ATTORNEY'S FEES AND LITIGATION EXPENSES are generally not recoverable unless such recovery is allowed specifically by statute or within a written contract.

5. UNINSURED MOTORIST CLAIMS

Physical contact or independent corroboration is generally not required for an uninsured motorist claim. Uninsured motorist coverage is generally considered excess but where multiple carriers exposed may be considered pro ratta.

On UIM claims, an off set is given from coverage for claimant carrier's limits.

6. PUNITIVE DAMAGES

Pursuant to Connecticut General Statute §14-295, claimant who specifically pleads §14-295 in their complaint and alludes to one of the specific statutes listed in §14-295 can make a claim for double or treble damages. However, the award of double or treble damages is at the discretion of the court and more than mere negligence must be found from the evidence presented.

7. LITIGATION HANDLING

SERVICE OF PROCESS:

Civil actions are commenced by legal process consisting of *Writ, Summons, and Complaint*. Plaintiff's documents must be actually, physically returned to court within six (6) days prior to the return date.

Service of Process upon individuals within the state is usually effectuated by the sheriff leaving a copy of the summons and complaint with the defendant or at the usual place of abode. Service may also be made by the sheriff reading a summons and complaint within the hearing of the defendant.

Service of Process upon a private cooperation established under laws of the State of Connecticut must be made upon the President, Vice-President, Assistant Vice-President, General Managing Agent, Manager, or Director Resident in the State of Connecticut.

Service of Process upon a private cooperation established outside the State of Connecticut may be made upon the agent for service within the state or upon the

Secretary of State within the State of Connecticut if the corporation has "minimum contacts" within Connecticut.

SERVICE OF PROCESS IN AUTOMOBILE ACCIDENTS FOR NON-RESIDENTS.

Any non-resident of Connecticut who uses or operates a motor vehicle upon a public highway or elsewhere in Connecticut is deemed to have appointed the Commissioner of Motor Vehicles as attorney and to have agreed that process in civil actions brought and claimed for damages resulting from alleged negligence of the non-resident may be served upon the Commissioner and shall have the same validity as if served upon the non-resident personally, per §52-62a.

Death of such non-resident does not operate to revoke the appointment of the Commissioner of Motor Vehicles as attorney for service of process.

Service Of Process upon motor vehicle operator or owner not found at the last known address shall have deemed to have appointed the Commissioner of Motor Vehicles as his attorney and to have agreed that process in civil actions against him for damages resulting from his alleged negligence in operating a motor vehicle may be served upon the Commissioner shall have the same validity as if served upon the owner or operator personally even though the person may have left the state prior to the commencement of the action or his present whereabouts may be unknown, Connecticut General Statute §52-63a.

Appearance by defense counsel must be made within two (2) days of the return date. Answer to the complaint does not have to be made immediately once Appearance has been filed. If Appearance is not filed within two (2) days of the return date the plaintiff may file *Default For Failure To Appear* against the defendant. Generally speaking, defense counsel has at least thirty (30) days after filing an Appearance to answer the Complaint or file other motions or requests attacking the significance of the Complaint.

STATE OF CONNECTICUT IS EXPERIMENTING WITH ALTERNATIVE DISPUTE RESOLUTION MECHANISMS:

- a. Cases with addendum claims under fifteen thousand dollars (\$15,000.00) can be referred to mandatory arbitration by the court with a right of full trial de novo appeal from the arbitration;
- b. Procedures have been set forth for fast track simple cases under seventy-five thousand dollars (\$75,000.00) in value. However, actual use by plaintiff's bar is minimal to date and it is not mandatory.
- c. An agreement to arbitrate any issue is permitted; however, caution should

be taken to assure court approval for matters already in litigation.

JURISDICTIONAL QUIRKS

1. Release by parent of minor under the age of eighteen (18) is valid only if the settlement value is under five thousand dollars (\$5000.00). See §45a-631 Connecticut General Statutes; if five thousand dollars (\$5000.00) or more Probate approval required;
2. Vehicle operations in Connecticut must comply with size and weight limitations as set forth in Connecticut General Statute §14-261, §14-262, §14-264, §14-267a, and §14-270. Connecticut has adopted the Commercial Driver's License Program, per Connecticut General Statute §14-260n(10);
3. The doctrines of last clear chance and assumption of risk have been abolished by statute §52-572h(1);
4. Agency and imputed negligence: There is a rebuttal presumption that the operator of a motor vehicle acts as the agent of the owner. See Connecticut General Statute §52-183. The owner of a rented vehicle is liable for damages by the operator if the operator would have been liable, per Connecticut General Statute §14-154a; however, if the operator of the rented vehicle does not have general permission to operate the vehicle, the owner may not be liable. The owner of the trailer portion of a tractor-trailer may be vicariously liable for the negligence of the operator of the tractor portion. See Connecticut General Statute §52-183.
5. Compulsory Insurance Coverage: Owners or operators of a private passenger vehicle must insure liability for personal injury or death up to twenty thousand dollars (\$20,000.00) per person, forty thousand dollars (\$40,000.00) per accident, ten thousand dollars (\$10,000.00) for property damage, per Connecticut General Statute §14-112a. Owners or operators of motorcycles must also insure liability up to the same limits, but the policy may also include an exclusion for personal injury coverage for passengers. Amounts vary for buses, taxi cabs, and livery vehicles based upon seating capacity. The owner or lessee of a public service vehicle must insure liability up to three hundred thousand dollars (\$300,000.00) per vehicle depending upon seating capacity and for property damage of ten thousand dollars (\$10,000.00).
6. Driving while intoxicated: A person is guilty of driving while intoxicated when he operates a motor vehicle with blood alcohol content of .10 or greater, per Connecticut General Statute §14-227a.