

2012

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I. S.C. State Courts

Cases involving \$7,500 or less may be filed in Magistrates Court; all others filed in Circuit Court. Appeals process: Magistrates Court -> Circuit Court -> S.C. Court of Appeals -> S.C. Supreme Court.

II. Statute of Limitations

(See generally S.C. Code Ann. §15-3-20 et seq.) For personal injury cases, the Statute of Limitations is three years. See S.C. Code Ann. §15-3-530(5). Note: No minimum monetary thresholds exist for either property damage or bodily injury before suit can be brought. Pursuant to §15-3-550 there is a two-year statute of limitations for intentional torts such as libel, slander, assault, battery and false imprisonment.

III. Statute of Repose

For causes of action arising before July 1, 2005, the Statute of Repose is thirteen years. For causes of action arising after that date, the Statute of Repose is eight years. See S.C. Code Ann. §15-3-640.

IV. Time to Answer

State Court: Defendant shall serve his answer within 30 days after Complaint served. See Rule 12, SCRPC. Federal Court: Defendant shall serve his answer within 21 days after Complaint served. See Rule 12, FRCP.

V. Removal to Federal Court

Generally, a civil action notice of removal must be filed within 30 days after receipt by the Defendant of the initial pleading. The time to remove begins when the first Defendant is served in actions with more than one Defendant. If the Defendant who is first served fails to timely remove, later-served Defendants are barred. Absent specific circumstances, all served Defendants must join in or consent to the removal within 30 days of service for the case to be removed. See 28 U.S.C. §1446.

Note: an extension to answer does not extend the time for removal.

VI. Extensions to Answer Complaint

In state court, counsel can agree in writing to one extension that does not exceed 30 additional days. Federal courts essentially provide for the same relief for up to 21 days. However, an extension to answer does not extend the time for removal. See Rule 6, SCRPC; Rule 6.01 and Rule 12.01, Local Civil Rules for the District Court of South Carolina.

VII. Docketing

State Court: Twelve months after filing, a case is automatically transferred to the jury trial docket. Federal Court: Cases are assigned to a judge who immediately issues a scheduling order.

VIII. Venue

For causes of action arising after July 1, 2005, venue is proper in the county where:

- 1) the most substantial part of the act/omission giving rise to the cause of action occurred;
- 2) the defendant resides or maintains its principal place of business at the time the cause of action arose; or
- 3) the plaintiff resides at the time the cause of action arose if the defendant is a non-resident or lacks authority to do business in South Carolina. S.C. Code Ann. §15-7-10 et seq.

IX. Offers of Judgment

State court: Any party may file an offer of judgment. If a timely offer is rejected and the offering party obtains a verdict at least as favorable as the rejected offer, the offeror shall be allowed to recover:

- 1) administrative, filing or other court costs from the date of the offer until judgment; and
- 2) for plaintiffs, 8% interest compounded on the amount of verdict from the date of the offer until the date of the verdict; or
- 3) for defendants, a reduction in the amount of the judgment or award of 8% interest compounded from the date of the offer until the date of the verdict. See Rule 68, SCRPC.

Federal court: Substantially the same as state court, but there is no increase or decrease in the judgment.

X. Mediation

As of January 1, 2011, mediation is required for state civil actions filed in circuit court in Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Richland, Union, Williamsburg and York Counties. Mediation is required in specific S.C. counties for magistrate level civil actions. Generally, all federal civil actions are subject to mediation.

XI. Wrongful Death and Survival Actions

Wrongful death and survival actions are brought by the administrator or executor of the estate and may be tried in one action by consent of the parties. Settlement must be approved by either a probate court, circuit court or U.S. District Court, where appropriate.

XII. Minor Settlements

All settlements with a net amount to the minor over \$25,000

must have circuit court approval. Unless a conservator has been appointed, settlements with a net amount to the minor over \$2,500 require court approval, either probate or circuit. The "net amount" is the total the minor actually receives from the settlement after all expenses, such as attorney fees, costs and medical liens, are considered. S.C. Code Ann §62-5-433. A conservator must be appointed in probate court if the minor is to receive more than \$10,000 in any given calendar year prior to age 18.

XIII. Modified Comparative Negligence

Modified comparative negligence: the plaintiff is barred from recovery if his negligence is greater than 50%. Otherwise, the plaintiff's damages are reduced in proportion to his comparative negligence.

XIV. Codefendant Liability

For causes of action arising on or after July 1, 2005: Joint and several liability does not apply to any defendant whose conduct is determined to be less than 50% of the total fault as compared with the total of (i) the fault of all defendants, and (ii) the comparative negligence of plaintiff, if any. A defendant with less than 50% of the total fault shall only be responsible for the percentage of the damages determined by the jury or trier of fact. See S.C. Code Ann. §15-38-15.

XV. Judgment Interest

The legal rate of interest for a judgment is 7.25% from 1/15/12-1/14/13.

XVI. Mandatory BI & PD Auto Insurance Limits

25/50/25. See S.C. Code Ann. §38-77-140.

XVII. UM/UIM

UM is mandatory for the minimum limits; UIM is not mandatory. Both UM and UIM must be offered in limits up to the liability coverage elected by the insured. If an insurer does not make a meaningful offer of UM or UIM coverage, the policy will be reformed to include UM or UIM in the amount of the liability coverage. UIM coverage is not subrogable. UIM coverage is generally personable and portable, but not portable from an insured vehicle to an uninsured vehicle owned by the same person. Out-of-state motorists with policy limits less than the S.C. minimum limits are considered uninsured.

Stacking: Class I insureds (Named insured, spouse, and resident relatives) can stack UM or UIM benefits in amounts up to the limits of UM or UIM coverage on the vehicle involved in the accident. S.C. Code Ann. §38-77-150 et seq.

XVIII. Unfair Claims Practices Act

Any of the following acts committed by an insurer without just cause and performed with such frequency as to indicate a general business practice constitute improper claim practices:

- 1) knowingly misrepresenting pertinent facts or policy provisions relating to coverages
- 2) failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies
- 3) failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims
- 4) not attempting in good faith to effect prompt, fair, and equitable settlement of claims, when liability has become reasonably clear
- 5) compelling policyholders or claimants to institute suits to recover amounts reasonably due or payable with respect to claims arising under its policies by offering substantially less than the amounts ultimately recovered through litigation. S.C. Code Ann. §38-59-20.

XIX. Punitive Damages

Generally, no award of punitive damages may exceed the greater of three times the compensatory damages awarded to the plaintiff or \$500,000. The cap is increased to the greater of four times the plaintiff's compensatory damages or \$2 million if the court determines the defendant's conduct was motivated by financial gain, the likelihood that the injury would result was known, or the conduct subjects the defendant to a felony conviction. The cap is eliminated if the defendant's conduct was intentional, the defendant is convicted of a felony, or the defendant was intoxicated.

XX. Disclosure of Automobile Insurance

Every automobile insurer shall provide, within 30 days after receiving a written request from any claimant's attorney, under oath, the name of each insured, the name of the insurer and the limits of coverage with regard to each known policy of non-fleet private passenger insurance issued by it, or the insurer may provide a copy of the declaration page of each such policy instead.

XXI. Building Code Violations

"A violation of a building code is not per se fraud, gross negligence, or recklessness but is admissible as evidence of fraud, negligence, gross negligence, or recklessness."

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I. Contributory Negligence

North Carolina is a contributory negligence state. If the plaintiff's negligence is a proximate cause of Plaintiff's injuries or damages, the plaintiff cannot recover. Defendant has the burden of proving Plaintiff's contributory negligence. Contributory negligence is not a defense to willful, wanton or grossly negligent conduct.

II. Minors

- A. Minor under the age of 7 - incapable of contributory negligence.
- B. Minor between the age of 7 and 14 - is presumed to be incapable of contributory negligence but this presumption may be rebutted. The degree of care a minor must exercise varies with the child's age, discretion, knowledge, experience and capacity.
- C. Minor 14 years or older - presumed to have the sufficient capacity to be sensible of danger; treated like an adult.
- D. Settling with a Minor - A settlement with a person under 18 years of age must be approved by a Court to be valid. The settlement of a minor's tort claim becomes effective and binding only upon judicial examination and adjudication. *Payseur v. Rudisill*, 15 N.C. App. 57 (1972). N.C. Gen. Stat. §1-402.

III. Time to Answer

- A. Answers – 30 days after service of the pleading (40 days if the defendant was served by publication).
- B. Interrogatories and Request for Production – 30 days of service unless discovery served with the Complaint – 45 days.
- C. Requests for Admissions – 30 days unless Requests are served with the Complaint – 60 days.

IV. Statute of Limitations

Negligence claims (Personal Injury or Property Damage):

3 years (discovery rule exception);
 Medical Malpractice: 3 year statute of limitations as to negligence applies unless injury not discovered. If a latent injury, one year from the date plaintiff discovers or reasonably should have discovered the injury up to 4 years from the date of last negligent act. If object left in body of the plaintiff, one year after date of discovery of object up to 10 years after last negligent act;

Property Damage, Fraud, Contracts; Trespass to Real Property or Chattel; Assault and Battery:

3 years [N.C. Gen. Stat. §1-52];

Libel/Slander/Defamation: 1 year [Gen. Stat. §1-54];

Wrongful Death: 2 years [N.C. Gen. Stat. §1-53]

V. Statute of Repose

6 years as to defective conditions arising from improvement to real property, 6 years as to injury or damage from product liability for an action accruing prior to October 1, 2009; 12 years as to injury or damage from product liability wherein the action accrues on or after October 1, 2009.

VI. UM/UIM

- A. Uninsured motorist coverage (UM)
 - 1) Stacking:
 - a. Intrapolicy (within a single policy) = the insured may not stack the limits by the number of vehicles on a single policy
 - b. Interpolicy (more than one policy) = the insured may combine the highest applicable uninsured motorist limits available under each policy (for accidents after 12/31/03)
- B. Underinsured motorist coverage (UIM)
 - 1) Stacking:
 - a. Intrapolicy stacking of UIM coverage is prohibited
 - b. Interpolicy stacking is allowed

VII. Bad Faith Handling of Insurance Claims (First Party)

Unfair Claims Settlement Practices Act can be found at NCGS § 58-63-15(11), and the Unfair and Deceptive Trade Practice Act can be found at NCGS § 75-1.1.

A single violation may result in an award of treble damages caused by the conduct. *Gray v. NC Ins Underwriting Assn*, 352 N.C. 61 (2000). North Carolina does not recognize a claim for third party bad faith until a judgment is entered against the insured Defendant, and then, only in limited circumstances. *Taylor v. NC Farm Bureau*, 181 N.C. App. 343 (2007).

VIII. Offers of Judgment

- A. NCGS §1A-1, Rule 68 – An offer of judgment can be served any time more than 10 days prior to the date trial begins. The party presenting the offer is offering to accept a judgment against him. The opposing party has 10 days to accept the offer in writing. An offer that is not timely accepted is deemed withdrawn.
- B. If the judgment obtained by the opposing party is not more favorable than the offer of judgment, the opposing party may seek to recover costs incurred after the offer was made, at the court's discretion.

IX. Mediation

Required in all Superior Court cases in North Carolina and all parties and an insurance company representative must attend, unless prior written approval excusing attendance is obtained from all parties.

X. Attorney's Fees - NCGS § 6-21.1

- A. Losses occurring before 10/1/2011– where the judgment for the recovery of damages for personal injury or property damages is \$10,000 or less, upon a finding that there was an unwarranted refusal by the defendant insurance company to pay the claim, the presiding judge may allow a reasonable attorney's fee to plaintiff's attorney.
- B. Losses occurring on or after 10/1/2011, the same rules apply except that:
 - 1. \$10,000 is the most Court can award in attorney's fees;
 - 2. And the fees are recoverable if the personal injury or property damages are \$20,000 or less; and
 - 3. Attorneys fees can only be awarded if the amount of damages recovered exceeds the highest offer made by the defendant no later than 90 days before trial.
 - 4. The presiding judge must issue a written order stating the factual basis for the finding of an unwarranted refusal to negotiate and pay the claim by the insurer as well as the factual basis for the award of attorney's fees.

XI. Bifurcated Trials – N.C. R. Civ. P. 42

- A. If damages sought exceed \$150,000, defendant may seek bifurcation on issues of liability and damages.
- B. If bifurcation allowed, evidence related solely to damages may not be admitted into evidence until jury finds defendant liable.
- C. Applies to any tort action filed after September 30, 2011.

XII. Past Medical Expenses – Only amounts paid to satisfy bills are recoverable

NCGS § 8-58.1 and NC Rule of Evidence 414

- A. Past medical expenses must be proven with evidence of amounts actually paid to satisfy such bills, or are necessary to satisfy unpaid bills, regardless of the source of the payment. Plaintiffs may no longer seek recovery for charges if the bills are reduced by providers based on contracts with private insurers or Medicare.
 - B. The injured party may testify regarding the amount paid or required to be paid in full satisfaction of such charges, provided that records or copies of the charges showing the amount paid or required to be paid accompany the witness's testimony.
 - C. Applies to claims occurring after September 30, 2011.
- XII. NC Adopts Daubert Standard for Admissibility of Expert Testimony**
- A. NCGS § 8C-702 and N.C. Rule of Evidence 414.
 - B. Applies to actions filed after September 30, 2011.