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Law Articles

For our recent law articles, go to bermansimmons.com/law-articles.

Maine Statutes of Limitations (2017)	
TIME ALLOWED	ACTION REQUIRED*
2 years ¹	14 M.R.S. § 753
6 years from act of negligence ² 6 years from discovery, but no more than 20 years from act or omission ³	14 M.R.S. § 6, 752, 753-8(1) 14 M.R.S. § 753-8(2)
6 years from discovery ⁴	14 M.R.S. § 753-8(3)
6 years	14 M.R.S. § 752
4 years	11 M.R.S. § 2-725
5 years - physical injury	11 M.R.S. § 2-752(2)
2 years ⁵	14 M.R.S. § 753
300 days from act of discrimination	Filing of complaint with M.A.R.C. - § 9A-B, § 4011
2 years from act of discrimination or 90 days (whichever is later) From: (1) dismissal of the case under section 40-1221; (2) failure, within 90 days after finding reasonable grounds to believe that unlawful discrimination occurred, to enter into a conciliation agreement to which the plaintiff was a party; (3) issuance of a right-to sue letter under section 40-1202; or (4) erroneous dismissal of case	5 M.R.S. § 4613(2)(C) 5 M.R.S. § 46201(A)-(D)
2 years ⁶	14 M.R.S. § 753
6 years	14 M.R.S. § 752 (limit analogous state statute of limitations) (State law having non-applicable)
2 years ⁷ - Written denial by agency or failure of agency to act within 6 months of filing is a prerequisite to commencement of action (subject to equitable tolling)	Notice of Claims to Federal Agency - 28 U.S.C. § 2401(b)

2017 Maine Statutes of Limitations

To download a copy of our updated Maine Statutes of Limitations document, go to bermansimmons.com/attorney-referrals.



Boating Collision Cases in Maine

■ Attorney James E. O'Connell, Esq.

With the summer season finally here, many of us are enjoying time out on Maine's lakes, rivers and coastal waters. Boating and fishing enthusiasts live throughout Maine, and with the long-awaited arrival of warm weather, they are getting out on the water with family and friends as often as possible. And while our short and busy boating season certainly provides many enjoyable experiences, an unfortunate aspect of the activity is that serious boating accidents and collisions inevitably happen every year.

Boating Accidents May Cause Catastrophic Injuries or Death

Experienced boaters know that almost anything can happen on the water, including collisions on overcrowded waterways, groundings, unexpected bad weather, sinkings, fires, explosions, launching and docking mishaps, equipment failures, falls on board and overboard, altercations, lacerations, etc. These types of problems occur far too often, because of operator inexperience, alcohol, distraction, and general lack of knowledge about safety rules. And as with other motor vehicle accidents, the more serious incidents can involve catastrophic injuries or death. Injuries can have devastating impacts on people's lives, causing physical and emotional trauma, severe and chronic pain, and permanent disability and disfigurement. Such injuries can result in the need for hospitalizations, surgeries, prolonged medical treatment, accumulating medical bills, and lost employment income.

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Maximizing Results in Maine Trucking Cases

■ Attorney Timothy M. Kenlan, Esq.

Promoting Safer Trucking in Maine

Maine's unique geography and geopolitical boundaries necessitate heavy reliance on trucking to keep our economy moving and to keep food and other goods available and in our stores. However, because of their massive size and limited maneuverability, trucks pose special risks on the roadways. Every year, there are over 1,000 crashes involving commercial vehicles on Maine's roads. With increasing economic pressures and competition, this number is likely to increase. In addition, regulations that help promote a safer trucking industry are being threatened in the current political environment. We cannot prevent all crashes. But by litigating cases involving injury caused by the operation of large trucks, we have the ability as trial lawyers to help enforce and extend necessary safety rules and to see that victims of drivers who violate these rules, as well as victims of other dangerous industry practices, are fairly compensated.

Keys to Preparing a Case

To successfully litigate trucking cases, it is necessary to understand all applicable rules and regulations and how violations of these may have contributed to a particular crash. These cases typically involve complex sets of federal and state trucking regulations, codified by the Federal Motor Carrier Safety Administration, and as promulgated by Maine's Department of Transportation. The more "common sense" rules of the road (some of which have been codified in Maine law, or in federal rules) also come into play. Identifying the case-relevant

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Firm News

■ Victories Against Insurance Companies

Attorney **James O'Connell** won significant jury verdicts recently, both involving cases in which insurance companies refused to offer fair compensation to victims of accidents.

- In a Superior Court case, a jury unanimously awarded a Wilton resident nearly twice as much as the insurance company's best offer after she suffered serious injuries in a collision.
- In a claim against a landlord, a Mechanic Falls resident was awarded \$75,000 to cover medical expenses after being injured in a fall due to an unsafe stairway.

■ Readfield Crash Victim Awarded \$131K

After a two-day civil trial, a jury awarded \$131,000 in damages to a Readfield resident who was seriously injured in a 2014 rear-end crash. Attorney **Daniel Kagan** represented the plaintiff.

■ Chambers USA Recognition

Berman & Simmons has once again been ranked as the best law firm in Maine for representing plaintiffs in personal injury cases. The firm was the only one in the state to be ranked in the 'Litigation: Mainly Plaintiff' practice area by Chambers, in its 2017 Chambers USA directory.

Attorneys selected for being among Maine's best plaintiff's lawyers for personal injury and medical malpractice include **Steven Silin**, **Julian Sweet**, **Jodi Nofsinger**, and **Benjamin Gideon**.

■ Attorney Jodi Nofsinger Featured in Trial Magazine

Attorney **Jodi Nofsinger** was featured in Trial Magazine, the national magazine of the American Association for Justice. The edition focused on issues of diversity in the law.

■ Attorney Susan Faunce Appointed as AAJ State Delegate

Attorney **Susan Faunce** has been appointed by the American Association for Justice (AAJ) to serve as state delegate for Maine. Faunce will serve a three-year term replacing Attorney **Benjamin Gideon**. Attorneys **Michael Bigos** and **Daniel Kagan** also serve on the AAJ as Governors.

Boating Collision Cases in Maine, continued from page 1.



Boat accident cases in Maine require an experienced lawyer who understands how to defeat insurance companies and knows how to maximize case values.

corporations understand that by frustrating and confusing injury victims, they will discourage claims and, as a result, their businesses will become more profitable as claimants increasingly cave in and capitulate.

Injured Mainers Just Want to be Treated Fairly

Although we know most Mainers are not too comfortable with the legal system—not wanting to sue or be sued—lawyers and lawsuits are necessary for recovering fair compensation. Insurance adjusters often ignore and mislead claimants who do not have lawyers. Claims are typically not taken seriously until a skilled lawyer appears. In boating accident cases, the tactics of evasion utilized by insurance companies are particularly plentiful given the obscure and arcane “rules of the road” that have evolved and been enacted by mariners over the centuries. And while we all enjoy the recreational freedoms available in Maine, this freedom culture can be complicated in legal matters, given that neither boating licenses nor boat insurance are required in Maine. The lack of insurance requirements can necessitate creative and aggressive legal maneuvering to recover fair compensation.

Injured claimants do not want to take part in long, drawn-out processes. Most Mainers are not greedy and do not have unrealistic expectations of the legal system. But they want to be treated fairly and have their claims resolved efficiently. When medical bills are mounting, lost time from work is extending, and the collectors are calling, injury victims cannot afford to wait out unfair delays. Again, insurance companies and their lawyers know this and will use delaying tactics and high costs to their advantage.

The Importance of an Effective Boating Lawyer

A boating accident victim needs a lawyer who is experienced in handling boating cases; one who understands how to defeat these tactics of delay and denial; one who sees the entire course of a case before it even begins. Effective lawyers, like good sailors, anticipate the winds, currents, and angles. They know and can afford the right private investigators and maritime experts to serve as liability witnesses, when needed. In turn, they must know how to debunk and defeat the wide-ranging theories of opposing experts hired by the insurance company. To maximize case values, lawyers must also be able to understand and know how best to develop the medical and economic damage claims. And, perhaps most importantly, effective lawyers are those who are widely known and respected in the legal and insurance communities for their ability, determination, and financial wherewithal to do whatever is necessary to achieve success. Lawyers who have earned this reputation are often able to settle cases favorably, avoiding expensive and time-consuming court fights.

We Have the Expertise, Experience, and Resources

Through our extensive experience in handling a wide variety of accident cases, including boating accidents, we are honored to have earned our reputation as Maine's most effective litigators and trial lawyers. We have the lawyers, professional support staff, and resources to utilize a wide variety of legal techniques to achieve success, whether it be by early and aggressive settlement negotiations, obtaining and executing on orders of attachment of defendants' property and financial assets, complex multi-party mediations, or advanced jury trial skills. ■

Insurance Companies Deny, Delay, and Minimize Claims

When accidents are wrongly caused, and injuries and financial losses are suffered as a result, people find themselves reluctantly thrust into the confusing world of liability insurance and legal claims. Those with the misfortune of having experienced these understand the complexities and challenges that invariably confront seriously injured claimants. The reality of the modern, data-driven, and profit-maximizing insurance industry is that the entire claims system is designed with corporate sophistication to deny, delay, and minimize all claims. Insurance

Maximizing Results in Maine Trucking Cases, continued from page 1.

rules early on, through the help of investigators and appropriate experts, is key to countering an expected aggressive defense. Being able to neutralize what the Defense may perceive as a strength—or even affirmatively weaponizing it—can turn a presumptively difficult case into a winning case.

Crash with a Logging Truck

Recently we represented a woman who was seriously injured in a crash with a logging truck. The trucker was on his way home, hauling an empty logging trailer behind his tractor, both of which he would park at his home. He lived in a rural area on a two-lane, straight stretch of road with a speed limit of 45 miles per hour. It was well after dark and there were no streetlights. The trucker pulled past his driveway, which was on the other side of the roadway, and with his trailer across the lane of oncoming traffic he began to back into his driveway. As he proceeded, the trailer, illuminated by reflectors, was perpendicular across the road and blocking the oncoming lane of traffic. The tractor, with its headlights on, was facing toward the traffic in the oncoming lane. As this was happening, our client was approaching in the oncoming lane. Unable to see the trailer or appreciate the hazard ahead, she continued on her way and, without taking any evasive action, crashed into the side of the trailer. It took first responders over an hour and a half to extricate her from her vehicle.

Trucker Negligence

From the outset, the Defense considered this a frivolous case and offered no money prior to our filing a lawsuit. After all, the trailer was supposedly there to be seen and it was, they maintained, our client who had crashed into the trailer. The Defense's response to our lawsuit was predictable: our client must have been driving too fast; she must have been distracted; she must have seen the trailer; and thus her claim is barred by her own fault. Relying on what we had learned from both the police investigation and our private investigation, we initially hired an accident reconstructionist and a trucking expert to better understand what had happened in an effort to confirm our initial analysis of the truck driver's negligence. He made an improper lefthand turn while backing, in violation of 29-A M.R.S.A. § 2060(2); and he failed to yield the right-of-way to my client, in violation of 29-A M.R.S.A. § 2053(1), thus blocking the oncoming lane with his trailer.



Retaining a national expert in human factors who specializes in the operation of motor vehicles and drivers' night vision helped us win our case.

It is because of this type of hazard that Maine's Commercial Driver License manual and safety classes caution drivers about backing their rigs and recommend that they do so only when absolutely necessary. We argued that there was no justification for his doing so in nighttime conditions, particularly without any clear warnings on his part, such as reflective cones, signage, flares, or someone to "flag." We were able to determine that there was ample room in the trucker's own driveway to perform the maneuver safely, away from other vehicles on the road. The only reason for him to back in was to make it easier for him to get back on the road again.

Responding to Allegations of Comparative Fault

The more difficult issue that we had to confront was the defense of our client's comparative fault. Why didn't our client see the trailer in time to avoid it? Why shouldn't her comparative fault be a bar to any right of recovery? To answer these questions, we retained a nationally

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Firm News

■ Attorney Daniel Kagan Featured in Takata Airbag Segment

Attorney **Daniel Kagan** was interviewed recently by Jon Chrisos of WGME TV's I-Team for a segment about the hazards posed by defective Takata airbags.

■ Firm Involvement with MTLA Spring Seminar

Lawyers from Berman & Simmons once again played key roles in the Annual Meeting and Spring Seminar of the Maine Trial Lawyers Association (MTLA). **Jodi Nofsinger** organized the event, **Michael Bigos** was selected as president-elect, and **Craig Bramley** was one of the featured presenters.

■ Firm Involvement with the University of Maine School of Law

Attorney **Susan Faunce** participated in a panel discussion for prospective law students as part of the law school's summer PLUS Program.

Attorney **Jodi Nofsinger** gave a presentation with Nicole Maines and her father, Dr. Wayne Maines, to law students and the public. Nicole Maines has earned a national reputation for fighting for the rights of transgender students in Maine and nationwide. Nofsinger played a key role as part of Nicole's legal team.

Berman & Simmons hosted a reception this spring for students, staff, and faculty from the law school. The firm announced its new 10-week Summer Associate Program, which will start in the summer of 2018.

Attorney **Michael Bigos** gave a presentation to law students titled "Jury Presentations: Planning to Win." In it, he explained the importance of framing a case, trial choreography, storytelling, exhibits, and focus groups.

■ Attorney Esther Yoo joins YMCA Board

Attorney **Esther Yoo** has joined the board of directors of the YWCA Central Maine.

■ SeniorsPlus Sponsor

Berman & Simmons is a proud corporate sponsor of "Fill the Plate Breakfast" benefiting the SeniorsPlus "Meals on Wheels" program.

About the Firm

Berman & Simmons, P.A., is a firm of 17 attorneys with offices in Portland, Lewiston, and Bangor, Maine. The firm has represented the people of Maine in a wide range of plaintiffs' cases for over 100 years and has obtained some of the largest personal injury verdicts ever awarded in Maine courts. Berman & Simmons has been listed under all litigation headings in Best Lawyers since its first publication and has been cited in Chambers USA as "the best plaintiffs' personal injury and medical malpractice firm in Maine."

Refer Your Clients with Confidence*

We have a long history of working with Maine lawyers as referral counsel to help obtain fair compensation for their injured clients. If you have a complex personal injury, medical malpractice, or dangerous drug or medical device case in which our experience, expertise, and resources could make a difference, let us provide the support you need. Your client's success is our shared goal.

**To refer a case,
please call us at
800-244-3576**

* We share fees consistent with the Maine Rules of Professional Conduct adopted by the Maine Supreme Judicial Court.

Maximizing Results in Maine Trucking Cases, continued from page 3.

renowned expert in human factors who specializes in the operation of motor vehicles with a particular focus on drivers' night vision. We asked this expert to help us counter the defense of comparative fault and turn it into our own affirmative narrative.

Because conspicuity issues are particularly important in nighttime conditions, Federal regulations require trailers to be equipped with side marker amps and retro-reflective taping to increase conspicuity. See 49 U.S.C. § 571.108(S5.7.1.4.2), 49 CFR § 393.11. Post-crash inspection of the trailer revealed that it was in compliance with these regulations. But what we learned from our human factors expert was that, given the angle of the trailer's position across the road (approximately 45 degrees), the retro-reflective taping would not have been illuminated by our client's headlights until she was about 100 feet away. Even at the lawful speed that she was driving, there would not have been enough time for her to perceive a hazard in the road, react to it, and avoid it. At the posted speed limit of 45 miles per hour, our client would have been traveling at 66 feet per second, and would have had just over 1.5 seconds to perceive the hazard, react to the hazard, and apply the brakes or take other evasive action. The stopping distance alone at that speed, even if she could instantly react, would not have stopped her in time to avoid the crash.

What the Client Saw

On the backdrop of this nighttime event, the small amber lights on the trailer would have appeared as random points of light that might have been anything. In contrast, the bright headlights of the jackknifed tractor appeared to be lights from a vehicle in the oncoming lane, leaving our client with the impression that the truck was just another approaching vehicle. The relative brightness of the truck's headlights would have overpowered the limited lighting from the trailer, overcoming any other visual cues or warnings of the hazard. The human factors expert further explained that because of our client's normal expectancy interest that vehicles would not be stopped in the middle of the roadway, by the time her closing speed would have led her to realize that the truck was not moving, it would have been too late to make any evasive action.

During the daytime, the trailer would, of course, have been clearly visible from quite a substantial distance and it then would have been incumbent upon our client to take steps to avoid it. However, at nighttime the variables are different and visibility issues increase the amount of time it takes to perceive and react to a hazard on the roadway, particularly when the situation is at odds with the driver's expectancy interest.

Reconstructing and Understanding the Crash

Litigating trucking cases can be a challenging and difficult endeavor that requires clear understanding of the issues and the use of all necessary resources. Having command of the rules and regulations is a big step toward identifying and establishing negligence and overcoming the defense of comparative fault. Associating with the right experts, which may be expensive, and synthesizing the information into a coherent, compelling narrative for demand negotiations or trial presentation are key steps to help ensure that safety rules can be articulated clearly and concisely. This helps judges and juries understand the issues so that those operating trucks in an unsafe and dangerous manner are held accountable, and that people hurt because of such behavior are fairly compensated.

In the end, our approach and strategy led to the Defense's decision to avoid trial, and to settle favorably for our client. Through the litigation process, our client's rights were protected and we took a big step in holding others accountable by reinforcing the safety rules in Maine. ■