LOUISIANA

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1. Requirements for use of hands free devices in each state

Except for novice drivers and bus drivers, there is generally no prohibition on cell phone use (hands free or otherwise) while driving in Louisiana. One limited exception is all drivers are restricted from use of a cell phone while driving in a school zone during posted hours.

2. Discovery and admissibility of preventability determinations

In Brossette v. Swift Transportation, Co., Inc., et al., the federal district court held that a transportation company’s determination that the accident was preventable was admissible to counter the company expert’s arguments that Plaintiff was at fault for the accident. Brossette v. Swift Transportation, Co., Inc., et al. 2008 U.S. Dist. Lexis 112907, 2008 WL 4809651 (W.D. La. 2008). However, see also Rader v. Regional Transit Authority, 595 So.2d 644 (1992) wherein the Supreme Court held that the trial court correctly denied discovery of a common carrier’s internal evaluation as to whether an accident was preventable and any post-accident disciplinary action taken.

3. Spoliation of evidence, specifically related to electronic data and whether there is a duty to preserve evidence absent a specific demand

Louisiana applies the “adverse inference rule.” Pursuant to this rule, “when a litigant destroys, conceals, or fails to produce evidence within his or her control, it gives rise to an adverse presumption that had the evidence been produced, it would have been detrimental to the litigants case.” Allstate Ins. Co. v. Ford Motor Co., 772 So.2d 339, 342-343 (La. App. 3 Cir. 2000). Nevertheless, this inference is not appropriate when a reasonable explanation exists for failure to produce the evidence. Id.

4. Broker exposure or liability for motor carrier negligence
The Fifth Circuit has not yet ruled on whether 49 U.S.C. § 14704(a)(2) (2006) expressly or impliedly provides a private right of action for personal injury claims. Section 14704(a)(2) provides for the rights and remedies of persons injured by carriers or brokers and provides that "[a] carrier or broker . . . is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part [49 USCS §§ 13101 et seq.]." The court in Marrier stated that by its terms, "the plain meaning of the statute...creates a private right of action for personal injury" but that interpretation has been specifically rejected in Louisiana. Lipscomb v. Zurich American Insurance Company et al., 2012 U.S. Dist. LEXIS 72955 (May 24, 2012) citing Marrier v. New Penn Motor Express, Inc., 140 F. Supp. 2d 326, 329 (D. Vt. 2001).

In another case, the court used general Louisiana principles to determine that there was no broker liability for motor carrier negligence based upon the contract for transport. See Dragna v. A&Z Transp., Inc., 2015 U.S. Dist. LEXIS 19766 (M.D. La. Feb. 19, 2015). In that case, the court noted that the Broker-Carrier Transportation Agreement expressly provided that [the motor carrier] "shall be an independent for-hire contract carrier and shall not be or acts as an agent or employee of Broker." Based on the express terms of the parties' Agreement, the Court found the broker’s' relationship with the motor carrier was governed by the law of independent contractors and undertook an analysis to determine if the broker exercised operational control over the carrier, such that would warrant an imposition of liability.

Finally, LSA R.S. 9:2780.1 became effective in January 2011. This statute provides in pertinent part that any provision, clause or agreement contained in a motor carrier transportation contract which purports to indemnify, defend, or hold harmless the indemnitee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the indemnitee, an agent or employee of the indemnitee, or a third party over which the indemnitor has no control is contrary to the public policy of Louisiana and is unenforceable.

A motor transportation contract is defined to include any contract or agreement covering the transportation of property for compensation or hire by a motor carrier, entrance upon property of the motor carrier for the purpose of loading, unloading or transporting property, or a service incidental to any such activity. Specific exclusions are agricultural products as defined by R.S. 9:3306, timber without limitation and/or a Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other agreements providing for the interchange, use, or possession of intermodal chassis, containers or other intermodal equipment.

The statute does not apply to any contract entered into prior to January 1, 2011. For contracts entered into prior to January 1, 2011, a shipper could contractually require a third-party logistics provider to indemnify them for their own acts of negligence. However, the intention to indemnify an indemnitee against the consequences of their own negligence must be expressed in unequivocal terms. Polozola v. Garlock, Inc., 343 So.2d 1000 (La. 1977). General words such as “any and all liability” are insufficient to make an indemnitor liable to an indemnitee for damages occasioned by the negligence of the indemnitee. Adams v. Falcon Equipment Corporation, 30-754 (La.App. 2 Cir. 8/12/98), 717 So.2d 282.
5. **Logo or placard liability - whether motor carrier is liable for any vehicle bearing its Department of Transportation identification placard, company name, or business logo**

In Louisiana, “logo liability” is a judicially-created doctrine that can impose statutory employer liability on the lessee of a vehicle if the lessee permits a non-employee to operate the leased equipment and that operator causes damages. See *Simmons v. King*, 478 F.2d 857, 860 (5th Cir. 1973); *Empire Indem. Ins. Co. v. Carolina Casualty Ins. Co.*, 838 F.2d 1428 (5th Cir. 1988); *Jackson v. O'Shields*, 101 F.3d 1083, 1086 (5th Cir. 1996). The Fifth Circuit's application of this doctrine has been limited to cases arising during federally regulated "trip leases" of a tractor-trailer where the logo that appears on the truck is that of the “renting carrier” not the owner. *Id.* The stated purpose of the doctrine is to ensure that the lessee takes responsibility and control of leased equipment during the term of the lease. See *Jackson*, 101 F.3d at 1086.

The Fifth Circuit first utilized this doctrine in *Simmons v. King*, 478 F.2d 857 (5th Cir. 1973), a case in which a tractor-trailer rear ended another vehicle. The tractor-trailer and its driver were leased to a carrier certified by the Interstate Commerce Commission ("ICC"). *Id.* at 862-63. The lease was prepared in accordance with ICC regulations. *Id.* The Court found that carrier was liable for the leased driver's acts as a matter of law under the ICC regulations. *Id.* at 867.

The Fifth Circuit again employed the doctrine in *Empire Indemity Insurance Co. v. Carolina Casualty Insurance Co.*, 838 F.2d 1428 (5th Cir. 1988). In that case, a truck driver leased his vehicle and his driving services to an ICC certified common carrier. *Id.* at 1429-30. The driver collided with an automobile and killed the other driver. *Id.* The Fifth Circuit found that insurers of the truck driver and the common carrier were jointly and equally liable for the accident's damages. *Id.*

The Court reasoned: “Where a leased driver is operating under the permit of a licensed carrier, the driver is considered a 'statutory employee' of the carrier, who is vicariously liable under ICC regulations. ICC regulations require display of the carrier's insignia and permit number. Upon termination of a lease, ICC regulations provide that 'the authorized carrier shall remove all identification showing it as the operating carrier before giving up possession of the equipment.’” 49 C.F.R. 1057.11 (1986).

There is precedent holding that, when a leased driver is making a trip during the term of but outside the scope of his employment and continues to display the required ICC insignia and permit number, that driver continues to be a statutory employee of the carrier during the period he displays the authority, even though he is not actually operating under that authority at the time of the collision. This sometimes is referred to as the "logo liability" rule. *Id.* at 1433.

The Fifth Circuit again addressed logo liability is *Jackson v. O'Shields*, 101 F.3d 1083, 1086 (5th Cir. 1996). In *Jackson*, a 1976 Freightliner tractor-trailer driven by Timothy O'Shields and owned by Larry Wallen collided with an automobile. At the time of the accident the tractor-trailer bore the ICC placard and emblem of J&T Enterprises ("J&T"), an ICC authorized carrier. *Id.* at 1083. The auto passengers sued the driver, the owner, and J&T. The Court discussed the applicability of logo liability stating:
“Under the authority of 49 U.S.C. § 11107, the Interstate Commerce Commission regulates leases of equipment used in interstate commerce. See 49 C.F.R. § 1057.1 et seq. One of the primary purposes of the ICC's leasing regulations is to ensure that carrier-lessees take control of and responsibility for leased equipment during the term of a lease. [citing 49 C.F.R. § 1057.12(c)(1) which required that, under an ICC-regulated lease, the ICC carrier-lessee assume 'exclusive possession, control, and use of the equipment for the duration of the lease' and 'assume complete responsibility for the operation of the equipment for the duration of the lease.'] In line with this purpose, we held in Simmons v. King that if there is an existing lease between an ICC-authorized carrier and an owner of leased equipment and the equipment bears the carrier's ICC placard, then the driver of the equipment will be deemed to be the carrier's statutory employee. Consequently, the carrier will be held vicariously liable for injuries resulting from the use of the leased equipment. Other jurisdictions have also employed a 'statutory employee' analysis to impose liability on carrier-lessees.” Id. at 1086 (internal case citations omitted)

In Tolliver v. Naor, 2001 U.S. Dist. LEXIS 9796 (E.D. La. July 3, 2001), Plaintiffs argued that the "logo liability" doctrine should be expanded because the DOT regulations in effect at the time of the accident amounted to a comprehensive scheme intended to preempt state tort concepts akin to the ICC regulations applicable in the previous "logo liability." (The specific DOT regulation at issue was 49 U.S.C. § 390.21 which governed the marking of commercial motor vehicles.) The district court refused, stating “[t]he Court cannot agree that ‘logo liability’ should be so greatly expanded as to apply to the facts of this case. Circumventing established state tort liability with a federal regulatory scheme is, of course, not the general rule. If the legislature wanted to impose this system of liability, it is free to do so. However, it has not and the Court declines to circumvent Louisiana's well established law.” This case was not appealed.

6. Offers of Judgment

La. Civil Code Art. 970 governs offers of judgment. Generally, this offer must be in writing and served on the opposing party more than 30 days prior to trial. If the final judgment awarded to the plaintiff is at least 25% less than the offer made by the defendant or if the judgment obtained against the defendant is at least 25% greater than the amount of the offer made by the plaintiff, the offeree must pay the offeror’s costs, exclusive of attorney fees, incurred after the offer was made.

7. Punitive Damages

a. Are punitive damages insurable?

Louisiana public policy does not preclude coverage for punitive damages. Creech v. Aetna Casualty & Surety Co. 516 So.2d 1168 (La. App. 2 Cir. 1987), writ denied 519 So.2d 128 (La. 1988). Insurance contracts which contain language such as the obligation to pay “all sums” or “all sums which the party is legally responsible to pay” will likely be
construed to require payment of punitive damages, absent limiting language to the contrary. *Id.* at 1171-1172. For example, unless the policy states to the contrary, an insurance carrier may be obligated to pay punitive damages as a result of a drunken driving accident.

b. **Any limitations or how much may be awarded as punitive damages?**

The general rule in Louisiana is against the imposition of punitive damages. Therefore, recovery for this element of damages is only allowed where expressly authorized by statute and, even in the limited circumstances where punitive damages are available, the statute allowing for such is strictly construed. At present, there are five statutory grants to seek punitive damages, one of which involves an alcohol or drug related accident. More specifically, a plaintiff injured by a drunk driver may seek punitive damages if he can meet his burden of proving the following:

1) The defendant was intoxicated or had ingested a sufficient quantity of a controlled dangerous substance to make him lose control of his faculties;
2) The intoxication was a cause in fact of the accident; and
3) The injuries were caused by a wanton and reckless disregard for the rights and safety of others.

Assuming a plaintiff meets his burden of proof, punitive damages are awarded over and above any compensatory damages in order to punish and deter wrongdoers. The emphasis is on the defendant’s conduct. In one highly publicized case, a truck driver allowed his friend and two prostitutes to join him on a delivery for his employer. The driver was drinking, had meth in the cab, and was playing porno videos on his navigation screen when he became distracted and crashed into another vehicle, killing two people. There was evidence that the employer was aware of the driver’s propensity for such unsafe driving but took no measures to prevent him from driving. The jury awarded $15 million in punitives.

Cases such as the one above are the extreme but are useful for understanding what circumstances warrant the imposition of punitive damages. For example, random drug tests, driver training, background checks etc. are all aimed at preventing accidents. One “rogue agent” does not necessarily warrant the imposition of punitive damages even if the damages caused are tremendous.

The calculation of punitive damages is imprecise. The law allows for sufficient damages to penalize the wrongdoer but not so great an award as to offend the fundamental notions of the United States Constitution. While several cases instruct against calculating punitive damages as a multiplier of compensatory damages, the practical reality is that is exactly how they are computed. Because these types of cases are fact sensitive, the ratio of punitive damages to compensatory damages varies; however, there are reported cases as low as 2:1 and as high as 10:1.

8. **Citations or criminal convictions resulting from a motor vehicle accident**
a. Are citations admissible in the civil litigation?

The Louisiana Supreme Court has consistently rejected the doctrine of negligence per se. See Galloway v. State, 94-2747 (La. 5/22/95); 654 So. 2d 1345, 1347 ("The doctrine of negligence per se has been rejected in Louisiana."); Faucheaux v. Terrebonne Consol. Gov't, 615 So. 2d 289, 292 (La. 1993)("The terminology 'negligence per se' has been rejected in Louisiana."); Boyer v. Johnson, 360 So. 2d 1164, 1169 (La. 1978)("A violation of a criminal statute does not automatically create liability in a particular civil case."); Laird v. Travelers Ins. Co., 263 LA. 199, 267 So. 2d 714, 717 (La. 1972)("[A] violation of a criminal statute in combination with some resultant harm does not, in and of itself, impose civil liability."); see also 12 La. Civ. L. Treatise, Tort Law § 14:7 (2d ed.)("Louisiana does not recognize negligence per se as a consequence of the violation of [criminal motor vehicle] statutes."). This rejection has been recognized in civil actions arising from incidents in which the defendant allegedly violated a traffic statute. Despite this rejection, courts in Louisiana look to these statutes as guidance for fixing civil liability. The relevant inquiry is whether the prohibition in the traffic statute is designed to protect from the harm or damage which ensues from its violation. Id.

b. How does a guilty plea or verdict impact civil litigation? Plea of no contest?

When a defendant pleads guilty to a traffic violation, this admission constitutes competent evidence in a subsequent civil trial, but is not conclusive of negligence. See Shephard v. Scheeler, 96-1690 (La. 10/21/97); 701 So. 2d 1308, 1315("A guilty plea to a traffic offense is admissible to show fault."); Arceneaux v. Domingue, 365 So. 2d 1330, (La. 1978)("A plea of guilty is an admission against interests by the driver, and is admissible as relevant evidence to show fault."); Wall v. Alleman, 519 So. 2d 155, 160 (La. App. 2 Cir. 1987)(concluding that paying a traffic ticket is not conclusive evidence of negligence); Gregorie v. Hartford Accident & Indem. Co., 348 So. 2d 186, 188-89 (La. App. 1977)("However, such an admission, while competent evidence, is not conclusive."). When there is evidence demonstrating that a defendant pled guilty to a traffic violation, not because he or she was guilty, but because it was more convenient and/or expedient to do so, courts have held that the negligence suggested by such plea is vitiated. See e.g. Wall v. Alleman, 519 So. 2d at 160 (finding payment of a traffic ticket inconclusive as to negligence where defendant testified he paid the ticket because he would be out of state on the court date); Gregorie v. Hartford Accident & Idem. Co., 348 So. 2d 186, 189 (La. App. 1977)(recognizing that a party's explanation that he pleaded guilty solely for the sake of convenience and expediency, since it was easier and less expensive to pay the relatively small fine than to contest the charge, vitiated any admission of negligence by that party in pleading); Am. Cas. Co. v. Lennox, 169 So. 2d 707 (La. App. 1964)(affirming decision of trial court finding defendant was not negligent on the basis that the defendant's sworn testimony as to the incident was more credible than the guilty plea arising from the same incident).

9. Recent, significant trucking or transportation verdicts in each state
A Lafayette jury awarded a man $30 million for injuries sustained when an 18-wheeler failed to yield a stop sign, causing the accident. According to a press release from the firm representing the plaintiff, the crash rendered the plaintiff paralyzed from the chest down. He also suffered a broken neck, 19 fractured ribs, a concussion, traumatic brain injury, broken and frozen right shoulder, broken clavicle and broke scapula, among many other injuries. His doctors described him as a functional quadriplegic who requires 24-hour care and his life expectancy has been reduced by the severe and ongoing nature of his injuries. The $30M is the highest in the history of Lafayette Parish.

10. **Admissible evidence regarding medical damages - can plaintiff seek to recover the amount charged by the medical providers or the amount actually paid, and is there a basis for post-verdict reductions or off-sets**

Louisiana uses a “benefit of the bargain” approach to the collateral source rule, meaning evidence of medical expense write-offs is generally inadmissible to reduce a plaintiff’s recovery if the plaintiff has paid some consideration for the benefit of the written off amount. *Bozeman v. State*, 879 So.2d 692, 705-706 (La. 2004); *Griffin v. La. Sheriff’s Auto Risk Ass’n*, 802 So.2d 691, 715 (La. App. 1 Cir. 2001), writ denied, 801 So.2d 376 (La. 2001). Thus, the entire amount of medical bills is recoverable and contractual write-offs obtained by an insurance company are not admissible to reduce the plaintiff’s recovery. Conversely, Medicaid write-offs are admissible to limit recovery as participants do not provide consideration for any benefits. *Bozeman, supra* at 705-706. Also, write-offs or discounts negotiated by an attorney are admissible to limit a plaintiff’s recovery. See *Hoffman v. 21st Cent. No. Amer. Ins. Co. et al.*, 2014 C-2279 (La. 10/15/15).

11. **Driver criminal history and how it affects negligent hiring and supervision claims**

A claim against an employer for the torts of an employee based on the employer’s alleged direct negligence in hiring, retaining and supervising the employee is generally governed by the same duty-risk analysis used for all general negligence cases. *See Griffin v. Kmart Corp.*, 776 So.2d 1226, 1231 (La. App. 5th Cir. 2000). However, when an employer hires an employee who, in the performance of his duties, will have a unique opportunity to commit a tort against a third party, the employer has a duty to exercise reasonable care in the selection of that employee. *See Cote v. City of Shreveport*, 73 So.3d 435 (La. App. 3 Cir. 9/21/11).