

IDAHO

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1. What are the venues/areas in Idaho that are considered dangerous or liberal?

The counties traversed by interstate 84 in Southern Idaho will tend to have more liberal jury pools. Those include: Canyon, Ada, Boise, and Bannock counties.

2. Identify any significant trucking verdicts in your State during 2017-2018, both favorable and unfavorable from the trucking company's perspective.

We identified no significant trucking verdicts during 2017-2018.

3. Are accident animations and/or computer-generated evidence admissible in your State?

Animated video is admissible for illustrative purposes when it is illustrative of the expert's testimony and its probative value outweighs any prejudicial effect of the video. *State v. Stevens*, 146 Idaho 139, 191 P.3d 217 (2008); Rule 401 and Rule 403.

4. Identify any significant decisions or trends in your State in the past two (2) years regarding (a) retention and spoliation of in-cab videos and (b) admissibility of in-cab videos.

The spoliation doctrine is a general principle of civil litigation which provides that upon a showing of intentional destruction of evidence by an opposing party, an inference arises that the missing evidence was adverse to the party's position." *Stuart v. State*, 127 Idaho 806, 816, 907 P.2d 783, 793 (1995). "[W]e recognized the spoliation doctrine as a form of admission by conduct [in that] ... the party is said to provide a basis for believing that he or she thinks the case is weak and not to be won by fair means....Accordingly, the following are considered under this general category of admission by conduct:...destruction or concealment of relevant documents or objects." *Courtney v. Big O Tires, Inc.*, 139 Idaho 821, 824, 87 P.3d 930, 933 (2003). The application of spoliation doctrine is within the discretion of the trial court.

5. What is your State's applicable law and/or regulation regarding the retention of telematics data, including but not limited to, any identification of the time frames and/or scope for retention of telematics data and any requirement that third party vendors be placed on notice of spoliation/retention letters.

Idaho law does not create a duty to preserve evidence. However, spoliation occurs where evidence is destroyed or significantly altered, or where a party fails to preserve property for another's use of evidence in pending or reasonably foreseeable litigation. *Patton v. Ackerman*,

CV 2013 6249, WL 3614601 at *7. Before imposing a sanction, four factors must be satisfied: 1) the evidence was within the party's control; 2) there was an actual suppression or withholding of evidence; 3) the evidence that was destroyed or withheld was relevant to the claims or defenses; and 4) it was reasonably foreseeable that the evidence would be discoverable. Idaho courts have granted sanctions based on the spoliation of evidence requested through discovery. See *Fleming v. Escort, Inc*, CV 2015 WL 561156, *3-*6 (D. Idaho 2015). Conversely, courts have declined to impose sanctions where there was no duty to preserve and no discovery request for the information. See *Patton v. Ackerman*, supra.

6. Is a positive post-accident toxicology result admissible in a civil action?

Post accident toxicology would be subject to discovery. *Davis v. Nevarez, et al.*, 307CV00427, 2008 WL 3888405 (D. Idaho 2008). It would be relevant in a plaintiff's motion to remove the cap on non-economic damages. Driving under the influence is a felony in Idaho and the cap on non-economic damages does not apply to felonies or reckless conduct. I.C. §6-1603(4). The information would also be relevant to a negligent supervision/negligent hiring claim. Finally, the results of a post-accident toxicology test would also be admissible to determine the applicability of punitive damages. I.C. §6-1604.

7. Is post-accident investigation discoverable by adverse counsel?

These investigations may be discoverable but should not be admissible at trial. FMCSA dictates that reports required by FMCSA may not be admitted to the evidence. 49 USC § 504(f).

8. Describe any laws in your State which regulate automated driving systems (autonomous vehicles) or platooning.

No state law is currently in place governing these systems. A task force has been created to consider this issue.

9. Describe any laws or Court decisions in your State which would preclude a commercial driver from using a hands-free device to have a conversation over a cell phone.

State law prohibits texting currently there is no prohibition against using a cell phone while driving. Some municipalities have passed ordinances prohibiting cell phone use while driving.

10. Identify any Court decisions in your State precluding Golden Rule and/or Reptile style arguments by Plaintiffs' counsel.

This argument is prohibited in Idaho. *Lopez v. Langer*, 761 P2d 1225 (1988).

11. Compare and contrast the advantage and disadvantages of Federal Court versus State Court in your State.

Lawsuits filed in federal courts tend to be much more expensive to defend or prosecute. Federal judges are very strict in requiring compliance with local and federal rules.

12. How does your State handle the admissibility of traffic citations (guilty plea, pleas of no contest, etc.) in subsequent civil litigation?

The issuance of a traffic citation is not admissible in court. However, payment of a citation can constitute an admission of guilt and is admissible. *Kuhn v. Proctor*, 111 P3d 144 (2005).

13. Describe the laws in your State which regulate whether medical bills stemming from an accident are recoupable. In other words, can a plaintiff seek to recover the amount charged by the medical provider or the amount paid to the medical provider? Is there a basis for post-verdict reductions or offsets?

Idaho Code §6-1606 directs the trial judge to reduce a plaintiff's judgment by the amount received from a collateral source, e.g. Medicare Write Down.

14. Describe any statutory caps in your State dealing with damage awards.

Idaho Code (I.C.) § 6-1603 – Limitation on noneconomic damages: Noneconomic damages are capped at \$250,000 adjusted up or down based on the average annual wage. The adjusted amount through June 2019 is \$357,210. The limitation applies to the sum of noneconomic damages sustained by a claimant who incurred personal injury or who is asserting a wrongful death; and noneconomic damages sustained by a claimant, regardless of the number of persons responsible for the damages or the number of actions filed. The jury in a trial is not informed of the limitation. The limitation does *not* apply to causes of action arising out of willful or reckless conduct; or causes of action arising out of an act or acts which the trier of fact finds beyond a reasonable doubt would constitute a felony under state or federal law.

Punitive damages are capped at \$250,000 or 3 x compensatory damages, whichever is greater. The jury is not informed of the limitation. Idaho Code § 6-1604.