

NORTH DAKOTA

Robert S. Stock
VOGEL LAW FIRM

218 NP Ave

Fargo, ND 58102

Phone: (701) 237-6983

Fax: (701) 237-0847

E-Mail: rstock@vogellaw.com

1. Identify the venues/areas in your State that are considered dangerous or liberal.

No particular venue in North Dakota is considered especially “dangerous” or “liberal” in terms of jurisprudence. The Northwestern counties tend to be more transient due to the oilfield workers.

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

None.

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

The North Dakota Supreme Court has not directly addressed the question of admissibility of a computer-generated animation or simulation in a case, but North Dakota courts have admitted evidence created by or modified by a computer, which has been upheld on appeal. *See, e.g., State v. Hinojosa*, 798 N.W.2d 634, 640 (N.D. 2011) (permitting the use of a photographic map prepared with use of a computer mapping program).

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.

No recent North Dakota case has specifically addressed in-cab videos. In general, North Dakota courts have the authority to sanction a party whenever spoliation is at-issue, and key evidence is not retained, “even where the party has not violated a court order and even when there has been a no finding of bad faith.” *Bacheier v. Wallwork Truck Ctrs.*, 544 N.W.2d 122, 124 (N.D. 1996). A party may even be sanctioned for failure to retain evidence absent a specific demand, if sufficient notice of possible litigation is present. Relevant videos offered with proper foundation are admissible in civil or criminal trials, within the discretion of the trial court. *See, e.g. State v. Schlickemayer*, 334 N.W.2d 196, 199 (N.D. 1983).

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.

North Dakota does not have any statute or regulation requiring the retention of telematics data. State law prohibits a person from downloading telematics data from an event data recorder unless they are the owner of the vehicle, or other limited circumstances apply. *See* N.D.C.C. § 51-07-28.

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

Yes. In general, a toxicology result is admissible in a civil action, presuming the evidence is relevant and has proper foundation. *See, e.g. Forster v. W. Dakota Veterinary Clinic, Inc.*, 2004 ND 207, ¶ 47, 689 N.W.2d 366, 383.

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

In general, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. *Marmon v. Hodny*, 287 N.W.2d 470, 475 (N.D. 1980). In certain circumstances, a party may also obtain discovery of documents and tangible things prepared in anticipation of litigation (e.g. work product) or for trial by, or for, another party or by or for that other party's representative. This includes the other party's attorney, consultant, surety, indemnitor, insurer, or agent, as noted in the rule. However, the party seeking discovery must show substantial need of the materials in the preparation of the party's case, and that the party is unable without undue hardship to obtain a substantial equivalent of the materials by other means. *See, e.g. Reems on Behalf of Reems v. Hunke*, 509 N.W.2d 45, 47 (N.D. 1993); N.D.R.Civ.P. 26.

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

North Dakota laws pertaining to autonomous vehicles are in their infancy. In 2017, North Dakota enacted House Bill 1202, which required the North Dakota Department of Transportation (NDDOT) to study the use of vehicles equipped with automated driving systems (ADS) and data gathered by the use of those vehicles. The act also requires that the study include a review of current laws dealing with licensing, registration, insurance, data ownership and use, and inspection and how they should apply to ADS-equipped vehicles.

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.

While commercial drivers are not specifically prohibited from using hands-free devices, North Dakota statute does prohibit distracted driving. *See* N.D.C.C. § 39-08-25. The statute prohibits the operation of a motor vehicle by an individual who, while operating the vehicle, is engaged in an activity that (a) is not necessary to the operation of the vehicle; and (b) actually impairs, or would reasonably be expected to impair, the ability to safely operate the vehicle. The NDDOT discourages the use of hands-free devices by commercial drivers, and notes that "hands-free devices are no less likely than hand-held cell phones to cause you to become distracted." ND CDL Manual for 2017-2019, § 2.9.4.

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

In North Dakota, "Golden Rule" arguments are generally improper and should be avoided. However, such arguments are not reversible error without a timely objection and a ruling from the trial court. *See, e.g. State v. Clark*, 2004 ND 85, ¶ 21, 678 N.W.2d 765, 772; *Glatt v. Bank of Kirkwood Plaza*, 383 N.W.2d 473, 480 (N.D. 1986).

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

Aside from rule-based and statute-based differences, the major difference between Federal Court and State Court in North Dakota are the docket times and general accessibility of the calendar. In North Dakota, there are currently only two Federal judge positions for the entire state. North Dakota State court, by contrast, generally has at least one judge serving each county courthouse, even if remotely. North Dakota is in the process of replacing one Federal District Court Judge and the second Federal Judge plans on going to senior status by January 2020. Furthermore, state court allows a party to serve a lawsuit without filing the case with the Court. This allows the parties to proceed with the litigation through discovery informally without any formal deadlines imposed by the Court.

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

Generally, a traffic citation or testimony on the issuance of a citation is not admissible in civil litigation, because it is not only irrelevant, but also potentially unfairly prejudicial against a party in civil action. *See, e.g. Chewakin v. St. Vincent*, 275 N.W.2d 300 (N.D. 1979). The entry of a guilty plea in a criminal case is admissible in a subsequent civil case as an admission against interest. *Dahlen v. Landis*, 314 N.W.2d 63, 72 (N.D. 1981). However, such evidence is not dispositive or conclusive of a civil case, and the admission may be explained by the party to whom it is attributed. *Id.*

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?

North Dakota law uses the Collateral Source Rule. Under N.D.C.C. § 32-03.2-06, after an award of economic damages, the party responsible for the payment thereof is entitled to and may apply to the court for a reduction of the economic damages to the extent that the economic losses presented to the trier of fact are covered by payment from a collateral source. This includes any source paid or to be paid to cover an economic loss which need not be repaid by the party recovering economic damages. However, it does not include life insurance, other death or retirement benefits, or any insurance or benefit purchased by the party recovering economic

damages. Whether a plaintiff can recoup the amount charged by a medical provider versus the amount paid is a matter of discretion for the trial court.

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

North Dakota law provides very few limitations on damages. Most notably, non-economic damages from medical malpractice claims are limited to \$500,000. *See* N.D.C.C. § 32-42-02. However, any party responsible for the payment of damages may request a review of the reasonableness of the award by the court for awards in excess of \$250,000 before reduction for contributory fault and collateral source payments. N.D.C.C. § 32-03.2-08. The burden is on the moving party to establish that the amount of economic damage awarded was not reasonable in that it does not bear a reasonable relation to the economic damage incurred and to be incurred as proven by the party recovering the award. If the court finds that the jury award of economic damages is unreasonable, the court must reduce the award to a reasonable amount. *Id.*