

## WYOMING

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

The current sitting District Court Judge in Judicial District 9 in Lander, Wyoming insists on simultaneous expert designations in personal injury cases. He has also admitted publicly that he is not inclined to grant defense motions for summary judgment because he “feels” they deprive the plaintiff of his/her day in court. He is currently scheduled to retire later this year.

There have been reports of a District Court Judge in the 3<sup>rd</sup> Judicial District in Sweetwater County, Wyoming making inappropriate negative comments about health care providers in front of a jury. Recently, there was a \$10.2 million-dollar medical negligence trial verdict in his courtroom attributed to the judge’s comments during trial.

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

There were no significant trucking verdicts in Wyoming during 2017-2018.

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

Computer-generated animation is admissible in Wyoming so long as it “does not offend the rules of evidence.” *Mintun v. State*, 966 P.2d 954, 959 (Wyo. 1998). In other words, it should be authenticated, relevant, and not subject to an exclusionary rule. *Id.*

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 Wyoming state or federal court decision has specifically addressed spoliation as to the retention and spoliation or the admissibility of in-cab videos in the past two years.

There are no specific recent decisions or trends in Wyoming regarding spoliation or admissibility of in-cab videos.

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.

Wyoming does not have a specific rule, regulation, or law regarding the retention of telematics data, therefore, the general rules of spoliation apply. In Wyoming, a claim of spoliation may be premised upon intentional, fraudulent or negligent loss or destruction of evidence. *Hay v. Peterson*, 45 P. 1073 (Wyo. 1896); *Abraham v. Great Western Energy, LLC*, 101 P.3d 446 (Wyo. 2004); *Walters v. Walters*, 249 P.3d 214 (Wyo. 2011).

On the federal level, the Tenth Circuit Court of Appeals has stated that, “[a]s a general rule, spoliation sanctions are proper when (1) a party has a duty to preserve evidence because it knew, or should have known, that litigation was imminent, and (2) the adverse party was prejudiced by the destruction of the evidence.” *EEOC v. JetStream Ground Servs.*, 878 F.3d 960, 964 (10th Cir. 2017 (Colorado) (internal quotation marks omitted).

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

Wyoming has no specific rules or law regarding the admissibility of post-accident toxicology results. Therefore, the general rules of evidence apply. Questions of admissibility of evidence are within the sound discretion of the trial court. *Buckles v. State*, 830 P.2d 702, 705 (Wyo. 1992). All relevant evidence is admissible, except as otherwise provided by statute, by these rules, or by other rules prescribed by the Supreme Court. Evidence which is not relevant is not admissible. WYO. R. EVID. 402; *Buckles*, 830 P.2d at 706. Evidence is relevant if it tends to make any fact of consequence more or less probable than it would be without that evidence. WYO. R. EVID. 401; *Buckles*, 830 P.2d at 706. Assuming that proper foundation can be established, including reliability of the test and temporal proximity the accident, courts in Wyoming are likely to admit post-accident toxicology results.

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

Whether post-accident investigations are discoverable by adverse counsel in Wyoming depends upon who is conducting the investigation, and the circumstances under which the investigation is performed, and the Court in which the case is filed. Routine post-accident investigation performed by a trucking company are discoverable pursuant to Wyo. Rule Civ. Pro. 26(b)(3)(A). Internal investigations may be withheld if conducted in anticipation of litigation, but the exceptions to this rule are liberally applied by Wyoming courts. *See*, W.R.C.P. 26(b)(3). Investigations by law enforcement are discoverable, but the “Wyoming Investigator’s Crash Report” is otherwise inadmissible at trial.

Investigations performed and directed by outside counsel are the least likely to be discoverable by opposing counsel. The Wyoming Supreme Court held in *Thomas v. Harrison* a report or other communication made by an insured to his liability insurance company, concerning an event which may be made the basis of a claim against him covered by the policy, is a privileged communication, as being between attorney and client, if the policy requires the

company to defend him through its attorney, and the communication is intended for the information or assistance of the attorney in so defending him." *Thomas*, 634 P.2d 328, 334 (Wyo. 1981).

Wyoming Federal District Courts have declined to follow *Thomas v. Harrison. Logistiques Trans-West, Inc. v. Reynolds*, 2009 U.S. Dist. LEXIS 140262, \*10. Wyoming Federal Courts determine whether post-accident investigations are subject to the attorney's work product protection, using the test set forth in Fed. R. Civ. P. 26(b)(3)(A). *Id.*

Post-accident investigations conducted by retained accident reconstruction experts are likely discoverable, although it is probably possible to withhold disclosure until the expert designation deadlines. *See*, W.R.C.P. 26(b)(4). However, facts known to and opinions held by experts who were retained in anticipation of litigation or to prepare for trial and are not expected to testify at trial may not be discovered. *See*, W.R.C.P. 26(b)(4)(D).

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

There are no preclusions for using a hands-free cellular device to talk or text in Wyoming.

State statutes provide that text-based communication is prohibited, but specifically exclude the use of a cellular device “[t]o write, read, select or enter a telephone number or name in an electronic wireless communications device for the purpose of making or receiving a telephone call” or “when using vice operated or hands free technology.” Wyo. Stat. Ann. § 31-5-237 (LexisNexis 2018). Attempts to amend the statute to prohibit the use of cell phones “in any manner” have failed in the Wyoming legislature.

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.

There are no such laws in Wyoming.

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

Wyoming has long recognized the impropriety of Golden Rule arguments in criminal cases. They are impermissible in criminal cases because they “encourage[] the jurors to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence.” *Buszkiewicz v. State*, 424 P.3d 1272, 1277 (Wyo. 2018).

Following the same theory, there is a “caution” in civil cases against Golden Rule arguments. The Wyoming Supreme Court has recognized “[t]he mischief of such an argument is that it tends to influence jurors to depart from their role of impartiality and step into the shoes of a litigant. As a general rule such a practice is condemned and, depending upon the circumstances, may or may not be prejudicial. The question is not susceptible of a ready answer. Much is left to

the discretion of the trial court.” *Logan v. Pac. Intermountain Express Co.*, 400 P.2d 488, 494 (Wyo. 1965).

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

The largest difference between Federal and State Courts in Wyoming is the speed in which the case will proceed to trial. In non-complex cases, the typical jury trial setting in Federal Court is nine (9) months to one (1) year. In State Court, a non-complex case will take 18 to 24 months to go to trial. In complex cases, an additional six (6) months will be added to the schedule in federal court, while state courts may add up to an additional year.

Wyoming Federal Courts are much more efficient at resolving discovery disputes, as there are two full time magistrates to address such issues. Most discovery disputes are fully resolved within 30 days if briefing is required, and clear majority are in 5 days through informal conferences with the magistrate. Discovery disputes are resolved by the trial judge in Wyoming State Courts. Most discovery disputes take three (3) months or more to resolve, as they must be briefed, and a hearing held.

Wyoming State Court’s jury pools are easier to predict, as they drawn from the county in which the courthouse sits. Federal juries are drawn from a state-wide pool. Federal courthouses are generally much better equipped with technology for use at trial.

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

Generally, evidence regarding traffic citations and/or a conviction is not admissible in a subsequent civil case. *See*, Wyo. Stat. Ann. § 31-5-1208 (LexisNexis 2017); 2015 Wyoming Civil Pattern Jury Instruction 7.04. However, a guilty plea to a traffic citation is admissible in a subsequent civil case as a statement against one’s interest. A nolo contendere plea, on the other hand, is not admissible. *See*, *Haley v. Dreesen*, 532 P.2d 399, 402-404 (Wyo. 1975)(stating: “If the defendant in the civil case wishes to avoid both the effect of an admission against interest and the burden of defending the traffic violation charge he has available the option of persuading the court to consent to a plea of nolo contendere...)

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.

The question of whether plaintiffs can recover the medical expenses billed versus the medical expenses paid by a third-party insurer has not been addressed by the Wyoming Supreme Court. However, Wyoming trial courts have generally held that the only the amount billed can be presented to the jury (i.e. the defense has generally been prohibited from introducing evidence of the amount paid). Recent attempts to introduce legislation that would allow for introduction

of the amount paid to the medical provider, backed by the Defense Lawyers Association of Wyoming, were unsuccessful.

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

The only damage caps in Wyoming are for actions against governmental entities. The Governmental Claims Act provides caps of \$250,000.00 for any one claimant or \$500,000.00 for multiple claimants recovering for certain acts of negligence committed by a governmental entity and/or its public employees while acting within the scope of their employment. W.S. § 1-39-101 *et seq.*