

Arizona

Are preventability determinations and internal accident reports discoverable or admissible in your state? What factors determine discoverability or admissibility?

Arizona has no formally established privilege for preventability determinations and internal accident reports for accidents. However, Arizona courts have limited the scope of discoverability of accident investigations. The Arizona's Supreme Court, in *Jolly v. Superior Court of Pinal County*, 112 Ariz. 186, 540 P.2d 65 (1975) held that factual findings from an internal accident investigation are discoverable, but subjective findings, which should include preventability determinations, are not discoverable.

A separate issue which can also determine discoverability is whether discovery is opposed on the basis that the report was prepared in anticipation of litigation, and if counsel, external or in-house, was involved in an investigation. Statements of witnesses taken as part of an investigation may be discoverable. However, reports created in anticipation of litigation are not discoverable. See *Long's Drug Stores v. Howe*, 134 Ariz. 424, 657 P.2d 412 (1983)

Does your state permit discovery of 3rd party litigation funding files and, if so, what are the rules and regulations governing 3rd party litigation funding?

There is no known Arizona caselaw addressing discoverability of 3rd party litigation funding files. Federal District Court in Arizona has ruled that it may be discoverable but that may be limited to special circumstances. For example, in *Nelson v. Millineum Labs*, No. 2:12-cv-01301-SLG, 2013 WL 11687684, at *5–6 (D. Ariz. May 17, 2013), the District Court allowed in-camera review of funding records when a party to suit alleged that a competitor was funding a suit against it.

What is the procedure for the resolution of a claim for injuries to a minor in your state? Does the minor's age affect the statute of limitations for a personal injury claim?

Suit may be brought by a parent or guardian on behalf of a minor. If the matter is settled, as part of a lawsuit or pre-suit, the settlement must be approved by the Court. A claim may be brought on the minor's behalf at any time from the date of incident until the minor's 18th birthday. Following the minor's 18th birthday, the now-adult still has time to file individually under Arizona's two-year statute of limitations. See Rule 16.3, Arizona Rules of Civil Procedure, Probate Rule 53, A.R.S. 12-542

What are the advantages or disadvantages in your State of admitting that a motor carrier is vicariously liable for the fault of its driver in the context of direct negligence claims?

Generally, for an employer to be held vicariously liable for an employee's negligent acts,

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the employee must be (1) subject to the employer's control or right of control, and (2) acting in furtherance of the employer's business interests. *Engler v. Gulf Interstate Engineering, Inc.*, 227 Ariz. 486, 258 P.3d 304 (App.2011). If reasonable minds could differ as to the existence of control or furtherance of business at the time of the accident, it would be disadvantageous and likely a waiver to admit vicarious liability. Otherwise, there is no material disadvantage.

What is the standard applied for spoliation of physical and/or documentary evidence in your state?

There is no bright-line standard in Arizona. Spoliation is determined on a case-by-case basis, considering a number of factors.

Generally, an innocent failure to preserve evidence does not warrant the sanction of dismissal when no evidence shows intentional or bad faith destruction of evidence, particularly when there were other means to establish the evidence allegedly lost by an alleged spoliation. Other considerations are whether the party asserting spoliation sought the information at issue through discovery. Inaction of the accusing party is a factor in itself. Also, as peripherally referenced above, prejudice to the accusing party is a consideration, whether the party is rendered incapable of mounting a defense or irreparably prejudiced in its ability to defend. For example, a consideration may be whether an expert would be unable or unwilling to offer opinions on mechanical or causation issues or to refute opinions of an expert. *See Souza v. Fred Carries Contracts, Inc.*, 191 Ariz. 247, 252 (App.1997).

Arizona does not recognize a cause of action for spoliation. Instead, spoliation is a basis for discretionary sanctions, most frequently a jury instruction acknowledging spoliation and that the jury may infer that the absence of evidence is to be held against the spoliating party. Sanctions can be as severe as dismissal of a claim or striking of an Answer, but a dispositive sanction is extremely rare.

Is the amount of medical expenses actually paid by insurance or others (as opposed the amounts billed) discoverable or admissible in your State?

Arizona has a collateral source rule. Medical expenses actually paid are not admissible.

What is the legal standard in your state for obtaining event data recorder (“EDR”) data from a vehicle not owned by your client?

EDR data can be subpoenaed from the holder/source, even if a non-party. The holder of the data can object per Rule 45, ultimately relevance is the issue determined by the Court.

What is your state’s current standard to prove punitive or exemplary damages against a motor carrier or broker and is there any cap on same?

A plaintiff must establish that the defendant knew, or intentionally disregarded, facts that created an unreasonable risk of physical harm—a risk substantially greater than that necessary to make conduct negligent or even grossly negligent—and consciously disregarded that risk. It is enough that the defendant had reason to know of the facts creating a substantial risk, but it is not enough that a defendant had reason to appreciate the severity of the risk; the defendant must have actually appreciated the severity of the risk before consciously disregarding it. Absent proof of the intent to cause harm or that the defendant acted out of spite or ill will, outrageous conduct will always be required to sustain a claim for punitive damages in negligence cases.

The above summary is taken in paraphrase from a trucking case involving speed, weather, passing on the right-

hand lane of a multi-lane road, and hands-free cell phone use, in which the Arizona Supreme Court reversed a finding of punitive damages. The case, *Swift Transp. Co. of Ariz. L.L.C. v. Carman*, 253 Ariz. 499, 515 P.3d 685 (2022), specifically clarified the punitive damage standard in Arizona.

Arizona does not have any cap on a punitive damages award. However, based on the standard, punitive damages verdicts are relatively rare.

Has your state had any noteworthy recent punitive damages verdicts? If so, what evidence was admitted supporting issuance of a punitive damages instruction? Finally, are any such verdicts currently on appeal?

There have been no recent significant verdicts, at least in tort law. See 8, above.

Does your state permit an expert to testify as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

Yes.

Does your state consider a broker or shipper to be in a “joint venture” or similar agency relationship with a motor carrier for purposes of personal injury or wrongful death claims?

No known Arizona case law has made such a determination.

Provide your state’s comparative/contributory/pure negligence rule.

Arizona has adopted UCATA. Arizona is a pure comparative fault state. In a trial, the jury first determines liability. If liability is found, it then determines damages, and after determining damages, it assesses relative percentages of fault among the defendants and named non-parties at fault, if designated.

Provide your state’s statute of limitations for personal injury and wrongful death claims.

Two years. A.R.S. 12-542.

In your state, who has the authority to file, negotiate, and settle a wrongful death claim and what must that person’s relationship to the decedent be?

Arizona’s wrongful death statute A.R.S. 12-612, provides that an action for wrongful death shall be brought by and in the name of the surviving husband or wife, child, parent or guardian, or personal representative of the deceased person for and on behalf of the surviving husband or wife, children or parents, or if none of these survive, on behalf of the decedent's estate. Either parent may maintain the action for the death of a child, and the guardian may maintain the action for the death of the guardian's ward.

A statutory wrongful death plaintiff also has the right to settle a claim without bringing the action at all, but plaintiff would be acting as a statutory trustee for the other beneficiaries and would have to get the consent of any other surviving relatives.

Is a plaintiff’s failure to wear a seatbelt admissible at trial?

Yes. Under Arizona’s adoption of UCATA, nonuse of a seat belt is a factor that the jury may consider and use to reduce damages under the following conditions:

- Where the injured party is of an age and discretion that his or her nonuse could be considered as “fault”;
- When the nonuse was unreasonable under all of the circumstances;
- Where nonuse either causes injuries which would not have occurred had the restraint been used or enhances those injuries that did occur;
- Where the evidence shows with reasonable probability the degree of enhancement.

Law v. Superior Court, 157 Ariz. 147, 755 P.2d 1135 (1988)

In your state, are there any limitations on damages recoverable for plaintiffs who do not have insurance coverage on the vehicle they were operating at the time of the accident? If so, describe the limitation.

No.

How does your state determine applicable law/choice of law questions in motor vehicle accident cases?

For tort law, the law of the location of the accident generally controls.