FOR MORE INFORMATION

HAIGHT BROWN & BONESTEEL LLP
Los Angeles, CA
www.hbblaw.com

Peter A. Dubrawski
pdubrawski@hbblaw.com

Annette Mijanovic
amijanovic@hbblaw.com

Patrick F. McIntyre
pmcintyre@hbblaw.com

MATHENY SEARS LINKERT & JAIME LLP
Sacramento, CA
www.mathenysears.com

Richard S. Linkert
rlinkert@mathenysears.com

Matthew Jaime
mjaime@mathenysears.com

Jeff Levine
jlevine@mathenysears.com

HIGGS FLETCHER & MACK, LLP
San Diego, CA
www.higgslaw.com

Peter S. Doody
doody@higgslaw.com

Nicholas D. Brauns
braunsn@higgslaw.com

Molly H. Teas
mhteas@higgslaw.com

California

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

In California, incident reports are privileged and confidential pursuant to California Evidence Code sections 952 and 954, which codify the privileges applicable to communications between attorneys and their clients. If a report is required to be written with the purpose of eventual transmission to attorneys, the report is typically protected from disclosure by the attorney client privilege. (*Scripps Health v. Superior Court* (2003) 109 Cal.App.4th 529, 534 (2003) ("Scripps Health"); *Payless Drug Stores v. Superior Court*, (1976) 54 Cal.App.4th 529, 534.)

In addition, the Attorney Work Product doctrine provides absolute protection to any "writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories." (Cal. Code Civ. Prov. § 2018.030, subd. (a).) This includes writings made in anticipation of litigation. (*State Comp. Ins. Fund v. Superior Court* (2001) 91 Cal.App.4th 1080, 1091.) However, other general work product of an attorney is only subject to qualified privilege. (Cal. Code Civ. Prov. § 2018.030, subd. (b).)

As such, witness statements from attorney-directed interviews are entitled to at least qualified work product protection in California. (*Coito v. Superior Court* (2012) 54 Cal. 4th 480, 499.) Such statements are entitled to absolute work product protection if their disclosure would reveal the attorney's mental processes. (*Id*. at 495.) However, witness statements prepared independently by witnesses are not entitled to qualified or absolute work product protection – even if subsequently provided to counsel. (*Id*. at 500-501.)

In *D.I. Chadbourne, Inc. v. Superior Court* (1964) 60 Cal.2d 723, 736-738 (1964), the Court observed that when a corporation requires that its employees make a report, the privilege of that report is determined by the employer's primary purpose in requiring the report. If the primary purpose is to gather information to be used by attorneys to assist in the evaluation of potential future litigation, the information should be protected by privilege. (*Id*.) When the corporate employer has more than one purpose in requiring the report, the dominant purpose controls. (*Id*. at p. 737.)

Applying *D.I. Chadbourne*, the court in *Sierra Vista Hospital v. Superior Court* (1967) 248 Cal.App.2d 359, 365 found that the attorney-client privilege extended to an incident report when the hospital's insurance company instructed a hospital administrator to use a form to report all incidents that might result in litigation against the hospital and to send the incident report to the insurance company for use by the attorney representing the hospital in the event of litigation.

In *Scripps Health v. Superior Court*, *supra*, the court extended the *Sierra Vista Hospital* ruling to protect documents generated by a self-insured hospital as part of the

hospital's internal risk management program. (*Scripps Health*, *supra*, 109 Cal.App.4th 529.) Scripps maintained in-house counsel, required completion of confidential occurrence reports for the purpose of attorney review, and intended the reports to be confidential. (*Id*. at p. 534.) The occurrence reports are used by Scripps attorneys and designed to be an internal risk and claim assessment profile for Scripps' in-house counsel. (*Id*. at p. 535.) Scripps admitted that its reports serve a dual purpose—attorney review in anticipation of possible litigation and quality assurance/peer review. (*Id*. at 536.) Nevertheless, the Scripps Health court found that Scripps' occurrence reports were "primarily created for the purpose of attorney review whether or not litigation is actually threatened at the time a report is made." (*Ibid*.)

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?

In California, if a plaintiff attorney secures third- party litigation funding on behalf of a client any information and communication regarding third- party litigation funding is considered confidential and non-discoverable.

California has no law against champerty which would invalidate a third-party litigation loan (*Estate of Cohen* (1944) 66 Cal. App. 2d 450,458). In a recent opinion of the Standing Committee on Professional Responsibility and Competence (Formal Opinion No. 202-204), the State Bar of California advises that litigation-funding loans are permitted, so long as the attorney maintains client confidentiality. Communications as between plaintiff's counsel and the third-party litigation loan originator fall under the protection of Evidence Code section 952. Section 952 renders confidential any communication necessary to advance the client's interests, even when third parties are part of the communication. (*De Los Santos v. Superior Ct*. (1980) 27 Cal. 3d 677,683.)

Regarding factoring companies, there is a growing trend in California whereby a surgeon and surgery center will perform surgery on a plaintiff-patient on a medical-legal lien basis. These lien based medical bills are always far in excess of medical community standards. A financial factoring company will then purchase the medical-legal lien at a steep discount from the surgeon and surgery center. In exchange, the surgeon and surgery center will then "assign" the lien to the factoring company. The factoring company then stands in the shoes of the surgeon and surgery center for the full amount of the lien and usually will not compromise the lien. The defense is not permitted to discover the amount paid by the factoring company to the surgeon and surgery center. At trial plaintiff's counsel will "black-board" the full amount of the medical lien before the jury, and any reference to the factoring company is inadmissible. (*Katiuzhinsky v. Perry* (2007) 152 Cal.App. 4th 1288.)

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?

In California, parties may not resolve claims involving minors without court approval. (Cal. Code Civ. Proc. § 372; *see also* Cal. Rules of Court, Rules 3.1384, 7.101, and 7.950-7.955.) Specifically, the court must approve not only the amount of settlement, but also the attorney's fees, litigation costs, and other expenses, as well as how the settlement proceeds are to be invested. To obtain court approval, the party seeking approval must obtain a hearing date and file a Petition for an Approval of Compromise of Claim or Action or Disposition of Proceeds of Judgment for Minor or Person with Disability. If there is an existing civil case, the Petition should be filed in that pending case. If there is no pending civil action (i.e., a claim resolves pre-litigation), then the petition must be filed as a new civil action in the appropriate court location.

The Judicial Council of California has approved Form MC-350 for the Petition. The contents of the Petition must include: the address and date of birth of the minor; the civil case number and trial date (if applicable); the date and nature of the incident, the resulting injuries and treatment; the extent of injuries and recovery; the amount and terms of the settlement (including amounts to other plaintiffs and the apportionment); information relating to medical expenses (including totals, payments, reductions, reimbursements, and statutory or contractual liens);

the amount of Medi-Cal payments, if any; all lien information, if any; the amount of attorney's fees and all other non-medical expenses; the net balance of the settlement proceeds to the minor; information regarding the disposition of the balance for the minor; and information regarding the disposition of the balance of the proceeds of settlement or judgment. In addition to filing the Petition, the moving party must also file a Proposed Order for signature by the judge at the conclusion of the hearing.

In California, the statute of limitation for a personal injury claim brought by a minor is tolled until the minor's 18th birthday. (Cal. Code Civ. Proc. § 352.)

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?

The California Supreme Court held that when an employer admits that its driver was acting within the course and scope of his employment, the employer may only be held vicariously liable for the driver's actions. The employer may not be held liable for its own negligence in hiring, training, or retaining the driver. (*Diaz v. Carcamo* (2011) 51 Cal.4th 1148). On the one hand, the advantages are: (1) causes of action against the employer individually are limited; (2) the employee's personnel file becomes inadmissible at the time of trial; and (3) the trial itself can then be limited to only damages, possibly preventing the introduction of certain evidence related to the subject incident. On the other hand, the disadvantage is the employer waives any right to assert the driver was outside the course and scope of his or her employment. If punitive damages are alleged by the plaintiff regarding the driver's conduct, the *Diaz* rule will not apply, and the driver's personnel file can be admissible at trial, and plaintiff's counsel can argue negligent hiring or negligent supervision against the employer trucking company

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

Under California law, every party has a general duty to preserve relevant evidence if litigation is reasonably anticipated. This duty ensures that potentially relevant evidence is not lost or destroyed. (Cal. Code Civ. Proc. § 2023.010; *Cedars-Sinai Med. Ctr. v. Sup. Ct*. (1998) 18 Cal. 4th 1, 12.) Spoliation of evidence is not an independent cause of action in California, but is an issue that the jury will be instructed upon at the time of trial, and which is sanctionable under the California Code of Civil Procedure.

As presently set forth in Evidence Code section 413, an inference arises is as follows: "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's willful suppression of evidence relating thereto." In addition to the evidentiary inference, California discovery laws provide a broad range of sanctions for conduct that amounts to a "misuse of the discovery process." (Cal. Code Civ. Proc. § 2023, subd. (b).) Section 2023 of the Code of Civil Procedure gives examples of misuses of discovery, including "[f]ailing to respond or to submit to an authorized method of discovery." (*Id*., subd. (a)(4)) or "[m]aking an evasive response to discovery." (*Id*., subd. (a)(6).) Destroying evidence in response to a discovery request after litigation has commenced would surely be a misuse of discovery within the meaning of section 2023, as would such destruction in anticipation of a discovery request.

The sanctions under Code of Civil Procedure section 2023 are potent. They include monetary sanctions, contempt sanctions, issue sanctions ordering that designated facts be taken as established or precluding the offending party from supporting or opposing designated claims or defenses, evidence sanctions prohibiting the offending party from introducing designated matters into evidence, and terminating sanctions that include striking part or all of the pleadings, dismissing part or all of the action, or granting a default judgment against the offending party.

In *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 12, the Supreme Court observed that trial courts are free to adapt standard jury instructions on willful suppression to fit the circumstances of the case, "including the egregiousness of the spoliation and the strength and nature of the inference arising from the spoliation."

Accordingly, California juries can receive two back-to-back instructions regarding failure to preserve evidence at the time of trial. First, under Civil Jury Instruction 203 (Party Having Power to Produce Better Evidence), the Court instructs:

> *"You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence."*

Next, under Civil Jury Instruction 204 (Willful Suppression of Evidence), if the facts permit, the Court will instruct:

> *"You may consider whether one party intentionally concealed or destroyed evidence. If you decide that a party did so, you may decide that the evidence would have been unfavorable to that party."*

Finally, California Penal Code section 135 creates criminal penalties for spoliation. The code section provides, "Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor."

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

Yes. In California, under the leading case *Howell v. Hamilton Meats*, a plaintiff is only entitled to recover the amount of medical expenses actually paid as opposed to the amounts billed. (*Howell v. Hamilton Meats & Provisions, Inc*. (2011) 52 Cal.App.4th 541.) As necessary background, California's delineation of what medical expenses are recoverable stems from the collateral source rule, which states that a tortfeasor may not benefit from the fact that a claimant has insurance. The California Court of Appeal's decision in *Hanif v. Housing Authority* stands for the proposition that an injured plaintiff is to be compensated for the loss or injury sustained as a result of the tortfeasor's action. (*Hanif v. Housing Authority*, (1988) 200 Cal.App.3d 635.) However, for the injured plaintiff with medical insurance, she cannot recover more than the amount actually paid by her insurer (or others) on her behalf. (*Howell v. Hamilton Meats & Provisions, Inc*. (2011) 52 Cal.App.4th 541.)

For the uninsured injured plaintiff, who obtains medical treatment via a lien arrangement, the full billed amount is relevant and admissible as evidence in support of economic and noneconomic damage claims, with the caveat that the plaintiff must present an expert qualified to render an opinion as to the reasonable value of the medical treatment. (*Bermudez v. Ciolek* (2015) 237 Cal.App.4th 1311.) Once a Plaintiff has established the amount of treatment, it is incumbent on the defense to establish through expert testimony that the treatment or charges are unreasonable. To avoid reductions, plaintiffs have begun to seek treatment outside of their insurance plan so that they can present their medical specials at (often inflated) retail rates without subsequent reduction.

The *Pebley* decision allows plaintiffs to go outside their insurance plan to seek treatment. (*Pebley v. Santa Clara Organics, LLC* (2018) 22 Cal.App5th 1566.) In 2021, the California Court of Appeal decided *Qaadir v. Figueroa et al.*, extending the application of *Howell* and *Pebley* to unpaid medical bills, including full amounts of liens, as

evidence of the reasonable value of plaintiff's past medical treatment. (*Qaadir v. Ubaldo Gurrola Figueroa et al.* (2021) 67 Cal.App.5th 790.) On the bright side for defendants, the California Supreme Court held in *Qaadir* that "the referral evidence [between the plaintiff's attorney and the lien-physician] was relevant to the question of the reasonable value of the lien-physicians' medical care because it may show bias or financial incentives on the part of the lien-physicians." (*Id.* at 808.)

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

California Vehicle Code § 9951(c) provides, in relevant part, that EDR data may not be downloaded or otherwise retrieved by a person other than the registered owner of the motor vehicle, except under one of the following circumstances: (1) the registered owner of the motor vehicle consents to the retrieval of the information; (2) In response to an order of a court having jurisdiction to issue the order. In litigation, parties are permitted to notice an inspection of a vehicle involved in the incident and include in the notice of inspection a demand to download available data from the vehicle. If the data has previously been downloaded by a person outside of attorney-work product or expert work, such data may also be discoverable by a Request for Production of Documents..

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?

The right to punitive ("exemplary") damages award in California is strictly statutory. The authority is set forth in California Civil Code section 3294: "In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." (Cal. Civ. Code § 3294, subd.(a).) No claim for punitive damages may specify the amount or amounts of punitive damages sought." (Cal. Civ. Code § 3295, subd.(e).) An employer cannot be held liable for punitive damages for the actions of its employee unless the employer had advance notice of the unfitness of the employee, employed that person with a conscious disregard for the safety of others or ratified the wrongful conduct. The actions of the employer must be undertaken by an officer, director or managing agent of the corporation.

The Eighth Amendment prohibits "excessive fines" imposed by the government; but it does not constrain money damages awards in civil suits when the government neither has prosecuted the action nor has any right to receive a share of the damages awarded. Thus, the "excessive fines" prohibition does not apply to punitive damages awards between purely private parties. (*Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc*. (1989) 492 US 257; Shore v. Gurnett (2004) 122 Cal. App. 4th 166, 172-173.) Although California requires the amount of punitive damages to bear a "reasonable relation" to plaintiff's "actual injury, harm or damages" and frequently examines the ratio of punitive to compensatory damages, California law sets no maximum ratio. (*See State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 US 408, 425; *BMW of North America, Inc. v. Gore* (1996) 517 US 559, 560; *Pacific Mut. Life Ins. Co. v. Haslip* (1991) 499 US 1, 18.)

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?

Owen Diaz v. Tesla, Inc. (N.D. Cal. 2021)- Plaintiff filed a discrimination lawsuit against Tesla, Inc., alleging that he had faced racial harassment and a hostile work environment at Tesla's San Francisco factory. Admitted evidence

supporting issuance of punitive damages included pervasive use of racial slurs, including from Plaintiff's supervisors, and a failure by the company to investigate the allegations. Plaintiff was awarded $6.9 million for emotional distress and $130 million in punitive damages. On Tesla's motion for judgment as a matter of law and remittur, a federal judge upheld the jury finding of Tesla's liability but reduced the total award to $15 million, finding the original awards excessive.

Martinez and Page v. SoCal Edison, et al. (Los Angeles County Superior Court, 2022)- Plaintiffs filed suit for sexual and racial harassment as well as retaliation in the workplace. Plaintiffs' counsel presented evidence of widespread harassment, and constrictive termination. Jurors awarded Plaintiffs a combined $440 million in punitive damages, in addition to $24.6 million in compensatory damages. The defendant utility companies plan to appeal this award.

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. California Evidence Code section 720, subd.(a) states that a "person is qualified to testify as an expert if (s)he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert." There are not any rules or statutes prohibiting expert witnesses from testifying as to the content of the FMCSRs or their applicability to a case's facts.

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. Ordinarily, a joint venture is created by contract or agreement between the parties, but there need not be any formal written agreement between the parties defining their respective rights and duties. Such a venture may be formed by parole agreement. Such a joint venture may be assumed as a reasonable deduction from the acts and declarations of the parties. (*Rickless v. Temple* (1970) 4 Cal. App. 3d 869, 893.)

In general, brokers and shippers will not be vicariously liable for those who subcontract to carry loads to the destinations except in situations in which the duties are blurred. Each of these parties can be liable in a personal injury or wrongful death claim, but they will not be considered a joint venture. In *Miller v. C.H. Robinson Worldwide, Inc.* (2020) 976 F.3d 1016, the Ninth Circuit held a broker liable for a personal injury claim on the theory of "negligent selection," meaning the broker was careless in choosing the motor carrier that caused the injury.

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

California is a pure comparative fault state. A person injured in an accident can still recover damages even when he or she is partially to blame for the accident. The injured party recovers some damages regardless of what a jury determines their comparative fault is, unless a jury finds that injured party completely at fault for an accident. The injured party's damages are reduced by their percentage of comparative fault. (*Li v. Yellow CabCo*. (1975) 13 Cal.3d 804, 808.)

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

California's Statute of Limitations for personal injury claims is two years. (Cal. Code Civ. Proc. §335.1.) The Statute of Limitations for wrongful death claims is two years from the date of death. (Cal. Code Civ. Proc. §335.1.)

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?

Under California Law, a cause of action for wrongful death can be brought by the following persons:

> *The decedent's surviving spouse, domestic partner, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse or domestic partner, who would be entitled to the property of the decedent by intestate succession. If the parents of the decedent would be entitled to bring an action under this subdivision, and the parents are deceased, then the legal guardians of the decedent, if any, may bring an action under this subdivision as if they were the decedent's parents. (Cal Code Civ. Proc. §377.60(a).)*

Further, whether or not qualified under subdivision (a), the following persons who were dependent on the decedent can also bring a claim for wrongful death:

> *The putative spouse, children of the putative spouse, stepchildren, parents, or the legal guardians of the decedent if the parents are deceased. (Cal. Code Civ. Proc. §377.60(b)(1).)*

Further, a minor, whether or not qualified under subdivision (a) or (b), can bring a claim for wrongful death if, at the time of the decedent's death, the minor resided for the previous 180 days in the decedent's household and was dependent on the decedent for one-half or more of the minor's support. (Cal. Code Civ. Proc. §377.60(c).)

The claims can be brought by either the persons who qualify under the statute or by decedent's personal representative on their behalf. (Cal. Code Civ. Proc. §377.60.)

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

Yes. Evidence of an individual not wearing a seat belt does not establish negligence as a matter of law or negligence per se for comparative fault purposes, but negligence may be proven as a fact without regard to the violation of this statute. (Cal. Veh. Code §27315.) This is relevant for comparative fault purposes.

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.

Yes. In any action to recover damages arising out of the operation or use of a motor vehicle, a person shall not recover non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages if, at the time of the accident, an injured driver of a motor vehicle was not insured. (Cal. Civ. Code. §3333.4.) However, an exception applies if the injured driver was injured by a driver who was driving under the influence. (Cal. Civ. Code §3333.4(c).)

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

California originally adopted the rule of "lex loci delicti" or law of the place where the tort occurred and this governed substantive tort liability. If a cause of action arose there, an action could be brought in another state, although under the law of that state no liability would have been recognized. And conversely, if the tort was not recognized in the place where the act was done, no action could be maintained in a state that did recognize the tort. (See *Loranger v. Nadeau* (1932) 215 Cal. 362, 366; *Zinn v. Ex-Cell-O Corp.* (1957) 148 Cal. App. 2d 56, 78.) However, California courts have moved away from "law of the place" and have adopted a "governmental interest" or "comparative impairment" approach to choice of law questions and no longer view the "law of the

place" as determinative on choice of law issues. (*Bernkrant v. Fowler* (1961)55 Cal. 2d 588.)

Under the California test, where a "true conflict" exists, the task of the court, in applying California's governmental interest approach is to determine which state's interest would be more impaired if its policy were subordinated to that of the other state. (*Bernhard v. Harrah's Club* (1976) 16 Cal.3d 313, 320.) When, under the governmental interest approach, an apparent conflict of interest appears, determination of the appropriate law to be applied should be approached under principles of "comparative impairment," i.e., which state interest would be more impaired if its law were not applied. This is not a weighing process. The court does not weigh the conflicting governmental interests in the sense of determining which law manifests the better or worthier social policy on the issue. Rather, the process is an accommodation of conflicting state policies, imposing "limitations on the reach of state policies—as distinguished from evaluating the wisdom of such policies. The emphasis is on the appropriate scope of conflicting state policies rather than on the quality of those policies. (*Id*. at 320, 321.)

California's governmental interest approach in true conflict cases involves three steps: First, the court determines whether the foreign law differs from that of the forum. Second, if there is a difference, the court examines each jurisdiction's interest in the application of its own law to determine whether a true conflict exists. Last, if each jurisdiction has a legitimate interest in the application of its rule of decision, the court analyzes the comparative impairment of the interested jurisdictions. The court applies the law of the state the interest of which would be the more impaired if its law were not applied. (*Tucci v. Club Mediterranee* (2001) 89 Cal. App. 180, 189.)

An illustration of how the test works can be found in *Cable v. Sahara Tahoe Corp.*, (1979) 93 Cal. App. 3d 384.) In *Cable,* a passenger who was injured in a single-vehicle accident in Nevada brought suit in California against a Nevada corporation to recover damages for serious personal injuries, alleging that the driver lost control of the vehicle as a result of having become excessively intoxicated through consumption of alcoholic beverages negligently and carelessly served to him by the Nevada corporation. The Superior Court, Los Angeles County, Robert Weil, J., sustained the Nevada corporation's demurrer on the basis of a conflict of laws ruling that the Nevada law denying liability of tavernkeepers for injury caused by customers was applicable. The passenger appealed, and the Court of Appeal, held that: (1) the imposition on the Nevada corporation of civil liability for injuries sustained by plaintiff, a California citizen, in Nevada as a result of alleged wrongful conduct in Nevada would impair Nevada's interest more significantly than the denial of such liability would impair California's interest and, therefore, Nevada law was applicable, and (2) under Nevada law, the injured passenger had no cause of action.

One nuance with choice of law provisions in California arises in subrogation actions. Under California Law, "Under settled principles, an insurer in its role as subrogee has no greater rights than those possessed by its insured, and its claims are subject to the same defenses. Equitable subrogation allows a 'paying insurer to be placed in the shoes of the insured and to pursue recovery from third parties responsible to the insured for the loss for which the insurer was liable and paid.'" (*Emp'rs Mut. Liab. Ins. Co. v. Tutor-Saliba Corp*., 17 Cal. 4th 632, 639, (1998).) A forum selection clause may also be enforced against a plaintiff who is not a party to the contract in question if the plaintiff is closely related to the contractual relationship. (*Net2Phone, Inc. v. Superior Court* 109 Cal. App. 4th 583, (2003).)

Thus, under these line of cases, a subrogation plaintiff could be subject to choice of law provisions found in contracts between its insured and third parties. Also, a subrogation plaintiff could be subject to forum selection clauses in those same contracts.