

COLORADO

1. What are the legal considerations in your State governing the admissibility or preventability in utilizing the self-critical analysis privilege and how successful have those efforts been?

There is no self-critical analysis privilege in Colorado. Many attempts in both state and federal court to advance the theory have not been successful. See *Gordon v. Sunrise Senior Living Mgmt.*, 2009 WL 2959213 (D. Colo. 2009)

2. 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?

Litigation funding is discoverable. It is, however, subject to the trial court's discretion on whether it is admissible at trial. Some courts have allowed such information, and the actual amounts paid, while others treat it similarly to medical insurance and find it to be a collateral source.

3. Who travels in your State with respect to a Rule 30(b)(6) witness deposition; the witness or the attorney and why?

This also appears to be subject to the discretion of the trial court. The determination is often based on the cost involved, i.e., if there are multiple designees for the 30(b)(6), the attorneys will travel; if only one, the Court may order the party to travel.

4. What are the benefits or detriments in your State by admitting a driver was in the "course and scope" of employment for direct negligence claims?

The benefit of admitting course and scope in direct negligence claims is that it removes the negligent hiring, training, supervision claims in general, and therefore it may limit the discovery the plaintiff can conduct on these issues. See *Ferrer v. Okbamicael*, 2017 CO 14M. There is some leeway in that the plaintiff can avoid bringing the respondeat superior claim and be entitled to pursue this claim. Similarly, they can argue the information is necessary for a potential exemplary damages claim, however there can be no freestanding claim on which to base exemplary damages. *Id.* at P46, P54.

5. Please describe any noteworthy nuclear verdicts in your State?

In 2019, the verdict in *Suydam v. LFI Fort Pierce, Inc.* was one of the largest personal injury judgments in Colorado. According to the complaint, Plaintiff was riding his bike and was struck by an LFI employee and another individual vehicle, resulting in Plaintiff becoming a quadriplegic and requiring assistance with his activities of daily living for the remainder of his life. The jury rendered a \$54 million verdict in favor of Plaintiff, including \$32 million in physical impairment/disfigurement; the jury found LFI liable for 90% and the other driver liable for 10% of Plaintiff's damages.

In 2020, this case was appealed to the Colorado Court of Appeals, where the

appellate court affirmed the lower court's decision, finding that the LFI employee operating the vehicle that struck Plaintiff was

acting in the scope of her employment while she was operating the vehicle and that the damages awarded to Plaintiff were appropriate given Plaintiff's serious injuries. *Suydam v. LFI Fort Pierce, Inc.*, 2020 COA 144M, 1, 2020 Colo. App. LEXIS 1850, *2.

6. What are the current legal considerations in terms of obtaining discovery of the amounts actually billed or paid?

We are a billed state and are only entitled to information on the billed amount, unless we can argue the paid amounts when a third-party funding medical financing company is involved.

7. How successful have efforts been to obtain the amounts actually charged and accepted by a healthcare provider for certain procedures outside of a personal injury? (e.g. insurance contracts with major providers)

We can sometimes obtain such information, but we are still controlled by what is billed.

8. What legal considerations does your State have in determining which jurisdiction applies when an employee is injured in your State?

Colorado will follow the Worker's Compensation Act. Under WC Act: 8-41-204, if an employee who has been hired or is regularly employed in this state receives personal injuries in an accident or an occupational disease arising out of and in the course of such employment outside of this state, the employee shall be entitled to compensation according to the law of this state. The provision applies only to those injuries received by the employee within six (6) months after leaving this state, unless, prior to the expiration of such six-month period, the employer has filed with the division notice that the employer has elected to extend such coverage for a greater period of time.

If the employee is considered a "traveling employee" (such as a flight attendant), that employee should file a claim in their home state, regardless of what state that employee was injured in. The claim would be adjudicated in their home state and the home state laws would apply.

9. What is your State's current position and standard in regards to taking pre-suit depositions?

In both Colorado state and federal courts, pre-suit depositions are allowed in very limited circumstances pursuant to C.R.C.P. 27 and F.R.C.P 27.

10. Does your State have any legal considerations regarding how long a vehicle/tractor-trailer must be held prior to release?

In both Colorado state and federal courts, pre-suit depositions are allowed in very limited circumstances pursuant to C.R.C.P. 27 and F.R.C.P 27.

11. What is your state's current standard to prove punitive or exemplary damages and is there any cap on same?

Colorado effectively caps the amount of punitive damages that a jury can award. *See* C.R.S. § 13-21-102. Punitive damages, in excess of actual damages, may be awarded by the jury when the injury is attended by circumstances of fraud, malice or willful and wanton conduct beyond a reasonable doubt. *Id.* However, the amount of reasonable exemplary damages may not exceed the amount awarded by the jury for actual damages. *Id.*; *see also Lira v. Davis*, 832 P.2d 240 (Colo. 1992). For instance, if a jury were to award \$300,000 in punitive damages and award \$100,000 in actual damages, the punitive award will be reduced by the court to \$100,000. *See id.* (detailing that the amount of punitive damages awarded may not exceed the amount awarded for actual damages). Even still, the court may increase any award of punitive damages, up to three

times the amount of actual damages if it is shown that: (1) the defendant has continued the behavior and repeated the action which is the subject of the claim against the defendant in a willful and wanton manner, either against the plaintiff or another person or persons, during the pendency of the case, or (2) the defendant has acted in a willful and wanton manner during the pendency of the action in a manner which has further aggravated the damages of the plaintiff when the defendant knew or should have known such action would produce aggravation. C.R.S. § 13-21-102(3)(a)-(b).

Further, Colorado courts can reduce exemplary damage awards if they are deemed excessive. *Malandris v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 703 F.2d 1152 (10th Cir. 1981). If the award is so excessive that it “shocks the judicial conscience” or supports “an inescapable inference that [the award] resulted from improper passion or prejudice on the part of the jury,” the Court can order the award reduced. *Malandris*, 703 F.2d 1152; *Wegner v. Rodeo Cowboys Ass’n*, 290 F.Supp. 269 (D. Colo. 1968). Finally, plaintiffs are not entitled to prejudgment interest on any exemplary damage award. *Seward Const. Co. v. Bradley*, 817 P.2d 971 (Colo. 1991).

12. Has your state mandated Zoom trials? If so, what have the results been and have there been any appeals.

We are not aware of any mandated Zoom trials. Bench trials, however, and appellate arguments are occurring remotely.

13. Has your state had any noteworthy verdicts premised on punitive damages? If so, what kind of evidence has been used to establish the need for punitive damages? Finally, are any such verdicts currently up on appeal?

No