FOR MORE INFORMATION

HALL & EVANS, LLC
Denver, CO
https://www.hallevans.com/

Lance G. Eberhart, Esq.
eberhartl@hallevans.com

Paul T. Yarbrough, Esq.
yarbroughp@hallevans.com

Colorado

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

Both preventability determinations and internal accident reports are both discoverable and potentially admissible in Colorado. Colorado has very liberal discovery rules and any information that could be potentially relevant is discoverable. While we often attempt to assert a self-critical analysis privilege to these documents, such a privilege has not been established under Colorado law. They are otherwise admissible under a relevance standard, and are often admitted.

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?

Colorado previously allowed for substantial discovery into 3rd party litigation funding files. We were successful in introducing such information at trial, although some more pro-plaintiff Judges would prohibit the admission on the theory of it being a collateral source. The plaintiffs' bar eradicated this liberal discovery by funding legislation creating an absolute bar to discovery and use at trial, akin to our policies on medical insurance.

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 order to bring suit for injuries to a minor the minor, parent, or guardian may commence proceedings. *Rudnicki v. Bianco*, 2021 CO 80, 501 P.3d 776. Furthermore, a minor, not just the minor's parents, are able to recover tort damages. *Id*.

Under C.R.S. § 13-80-101, the statute of limitations for a civil action regarding the operation of a motor vehicle is three years. However, the applicable three-year period for a minor at the time of the accident does not begin until the plaintiff turns 18 when no legal representation has been appointed. *Mohammadi v. Kinslow*, 2022 COA 103, 521 P.3d 1057.

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?

Previously, the advantage of admitting that a motor carrier is vicariously liable was that when an employer acknowledges vicarious liability for its employee's negligence, a plaintiff's direct negligence claims against the employer are barred. *Ferrer v. Okbamicael*, 2017 CO 14M, 390 P.3d 836. When an employer has already conceded that the act was performed by an employee within the scope of their employment, there can no longer be a direct negligence claim. *Id*. Again, however, the plaintiffs' bar funded legislation

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overruling the Colorado Supreme Court's finding in *Ferrer* and allows for both vicarious and direct negligence claims. As a result, there is little advantage in admitting vicarious liability.

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

Trial courts enjoy broad discretion to impose sanctions for spoliation of evidence, even if the evidence was not subject to a discovery order permitting sanctions. C.R.C.P. 37

Trial courts may impose sanctions both to punish a party that has spoiled evidence and to remediate the harm to the injured party from absence of that evidence. *Rodriguez v. Schutt*, 896 P.2d 881 (Colo. App. 1994)

No Colorado case has addressed whether the inherent power to impose punitive sanctions extends to spoliation that is more serious than negligence, but less serious than willful or intentional. Nevertheless, we are persuaded by Colorado cases involving discovery violations, as well as by more recent federal precedent, that conduct between negligent and intentional which results in spoliation of evidence may warrant a punitive sanction as a discretionary exercise of inherent power. *Pfantz v. Kmart Corp.*, 85 P.3d 564 (Colo. App. 2003)

If the spoiling party is merely negligent, an adverse inference nevertheless may be imposed to remediate harm when the inference is "reasonably likely to have been contained in the destroyed evidence." *Rodriguez v. Schutt*, supra, 896 P.2d at 884

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

Although there does not seem to be a firm ruling by a high court on whether the amount of medical expenses paid by the insurance is discoverable, there are lower court rulings that state it can be. As long as the medical expenses paid satisfy F.R.E. 401, 402, and 403 it is likely that this would be discoverable. *Folden v. Schnitker*, 2018 Colo. Dist. LEXIS 4735. Another district court had a similar ruling that allowed medical expenses paid to be discoverable as long as the information is relevant and proportional to the needs of the case. *Ortiviz v. Follin*, Civil Action No. 16-cv-02559-MSK-MEH, 2017 U.S. Dist. LEXIS 113143 (D. Colo. July 19, 2017).

The Colorado Supreme Court has held that the amount of medical expenses paid by the insurance or others is not admissible. *Wal-Mart Stores, Inc. v. Crossgrove*, 2012 CO 31, 276 P.3d 562. Colorado follows the collateral source rule which means that this evidence would be a collateral source benefit which is not allowed. *Id*. Therefore any amount paid by a third party that is independent of the tortfeasor is inadmissible.

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

C.R.S. § 12-6-402(2) directly addresses this question. EDR data may only be retrieved by a person who is not the owner of the motor vehicle under multiple exceptions, one being:

The data is subject to discovery pursuant to the rules of civil procedure in a claim arising out of a motor vehicle accident. C.R.S. § 12-6-402(2).

The legal standard is based on the Federal Rules of Evidence 401, 402, and 403. *V. Defendants Bereril*, 2017 Colo. Dist. LEXIS 272. As long as it satisfies the rules of evidence, it may be obtained. *Id*.

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?

When damages are assessed by a jury for a wrong done to a person or property, and that injury is from circumstances of fraud, malice, or willful and wanton conduct. C.R.S. § 13-21-102. Willful and wanton conduct is defined as "conduct purposefully committed which the actor must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others. *Id*.

The amount of exemplary damages shall not exceed an amount which is equal to the amount of the actual damages awarded to the injured party. *Id*.

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?

We are not aware of any significant punitive damages cases. There have been some increasingly large verdicts in Colorado inconsistent with the traditional conservative Colorado verdicts.

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, Colorado does permit an expert to testify to content of the FMCSRs and the applicability of the FMCSRs to a set of facts. *Frederick v. Swift Transp. Co*., 616 F.3d 1074 (10th Cir. 2010). As long as the expert's testimony satisfies F.R.E. 702 and is within the scope of the expert's designation this is permitted. *Id*.

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?

There is no relevant case law or statute that pertains to whether Colorado considers a broker or shipper to be in a joint venture or other similar agency relationship with a motor carrier for purposes of personal injury or wrongful death.

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

For comparative negligence, the Court will reduce the amount of the verdict in proportion to the amount of negligence attributable to the person for whose injury, damage, or death recovery is made. However, if the proportion is equal to or greater than the negligence of the person against whom recovery is sought, the Court shall enter a judgement for the defendant. C.R.S. § 13-21-11.

Contributory negligence does not bar recovery in any action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person. C.R.S. § 13-21-11.

Colorado does not have a pure negligence rule since under comparative negligence you cannot recover if you are more than 50% at fault.

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

The statute of limitations for personal injury claims is three years. C.R.S. § 13-80-101.

The statute of limitations for wrongful death claims is two years. C.R.S. § 13-80-102.

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?

In the first year after such death: by the spouse of the deceased; upon the written election of the spouse, by the spouse and the heir or heirs of the deceased; upon the written election of the spouse, by the heir or heirs of the deceased. C.R.S. § 13-21-201. However, it continues if this is not satisfied.

In the second year after such death: by the spouse of the deceased; by the heir or heirs of the deceased; by the spouse and the heir or heirs of the deceased; or by the designated beneficiary of the deceased, if there is one designated pursuant to article 22 of title 15, C.R.S., with the right to bring an action pursuant to this section, and the heir or heirs of the deceased. *Id*.

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

Yes, pursuant C.R.S. § 42-4-237(6)(b), evidence that the driver removed the safety belts or knowingly drove a vehicle from which the safety belts had been removed is admissible. However, evidence of a plaintiff's failure to wear a seatbelt can only be used to reduce an award of damages for pain and suffering. *Wark v. McClellan*, 68 P.3d 574 (Colo. App. 2003).

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.

There does not seem to be 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 in Colorado.

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

"In resolving choice of law issues, Colorado follows the 'most significant relationship' approach of the Restatement (Second) of Conflict of Laws (1971) for both tort and contract actions." *ITT Specialty Risk Serv. V. Avis Rent A Car*, 985 P.2d 43, 47 (Colo. Ct. App. 1998).

Therefore, when evaluating choice of law Colorado will examine which state has the most significant relationship to the occurrence in a motor vehicle accident case. *Id*. Significant factors include the policies of the interested states and the needs of the interstate and international systems. *Id*. In motor vehicle accident cases, the typically look at where the accident occurred, whether they were Colorado vehicles, the purpose of the travel, and whether the insurance policy that covers the vehicles involved was a Colorado-issued insurance policy.