

Connecticut

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

Preventability determinations and internal accident reports are discoverable and admissible unless prepared with counsel which would then protect it from discovery based on attorney client privilege.

The factors that determine discoverability or admissibility are whether it was prepared with counsel, which is not discoverable, if the document was created for the sole purpose of litigation, outside any normal course of business practice, which is not discoverable, or if the document was created within the normal course of business, which is discoverable.

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 Connecticut case which proscribes discovery of Third-Party litigation funding.

The existence and identity of an actual litigation funder will most likely be discoverable.

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?

If the amount of settlement is \$10,000.00 or more the settlement must be approved by Probate Court

In Connecticut the minor's age does not affect 2- year the statute of limitations for personal injury claims.

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?

It would be advantageous for a motor carrier to admit vicarious liability because at common law there is no vicarious liability for punitive damages. Further an argument can be advanced the employer/principal should be removed from the claim as the presence of the employer/principal is redundant.

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

The standard applied for spoliation of physical evidence;

- 1) knowledge of a pending or impending civil action involving the plaintiff, and;
- 2) destruction of relevant evidence;
 - a) in bad faith with the intent to deprive the plaintiff of the cause of action, or;
 - b) results in an inability to establish the elements of that cause of action.

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

Yes, it is discoverable and admissible not during trial but during a post-verdict collateral source hearing.

At trial the plaintiff can board the full medical bill into evidence as proof of reasonable and necessary medical expenses as economic damages. After a plaintiff verdict the defendant at posttrial hearing will reduce the economic damages by medical expenses *paid* on behalf of a carrier with the premium cost added back to the reduction.

If a right of subrogation exists, then reduction of economic damages based upon collateral source payments is precluded.

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

Connecticut General Statute § 14-164aa provides guidelines for accessing Event Data Recorders in vehicles. Generally, data can be harvested with the owner’s consent or by Court order through discovery. Data may not be destroyed or altered after a crash until a reasonable period has passed to allow law enforcement to obtain a warrant.

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?

In Connecticut there is no specific standard to prove punitive or exemplary damages against a motor carrier or broker. There is no per se cap on damages.

Punitive damages are awarded under either specific statutory provisions or the common law. No statute or practice rule, however, establishes a *standard* for punitive damages awards in general. Instead, various civil statutes provide for punitive damages awards in discrete situations. These statutes usually declare the governing standard is; whether the award is mandatory or discretionary with the court or tried of fact; and what the amount should be, including whether it is subject to a maximum dollar figure. For example, for groundless or vexatious civil suits or defenses, CGS § 52-568 provides for mandatory double damages if the suit or defense was without probable cause, and treble damages if additionally, the suit was motivated by “a malicious intent unjustly to vex and trouble another person.”

Where there is no controlling statutory provision, or the provision is silent as to the applicable standard, the courts allow punitive damages “when the evidence shows a reckless indifference to the rights of others or an intentional or wanton violation of those rights” (*Collens v. New Canaan Water Co.*, 155 Conn. 477, 489 (1967) (tort action asserting taking of water privileges), *quoted with approval in Tessman v. Tiger Lee Construction Co.*,

228 Conn. 42, 54 (1993) (CUPTA Action), *see also, e.g., Champagne v. Raybestos-Manhattan, Inc.*, 21 Conn. 509, 532 (1989) (common law strict liability action); *Triangle Sheet Metal Works, Inc. v. Silver*, 154 Conn. 116, 128 (1966) (breach of contract action founded on tortious conduct).

Statutes which provide for punitive damages awards usually specify their amount or establish a maximum dollar figure. Where punitive damages are awarded under the common law, or the applicable statute is silent as to their amount, the general rule is that they are limited to plaintiff's attorney's fees and nontaxable costs (*see Bodner v. United Servs. Auto. Ass'n*, 22 Conn. 480, 492 (1992)). In *Bodner*, the Court observed that this rule provides some punishment and deterrence in addition to compensation of the victim. The Court reiterated the reasoning articulated in *Waterbury Petroleum Products, Inc. v. Canaan Oil and Fuel Co.*, 193 Conn. 208, 237-38 (1984), where it rejected plaintiff's claims that punitive damages should not be limited to the expenses of litigation taxable costs.

Punitive damages awards are limited to the costs of litigation less taxable costs. The rule fulfills the salutary purpose of fully compensating a victim for the harm inflicted on him while avoiding the potential for injustice which may result from the exercise of unfettered discretion by a jury.

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 noteworthy punitive damages verdicts other than one outlier case. In *Lafferty, Erica Et Al v. Jones, Alex Emric Et Al*, the court granted common law punitive damages for attorney's fees for \$321,650,000.00 and costs for \$1,489,555.94, and CUTPA punitive damages for \$150,000,000.00. The defendant is currently in the process of appeals.

After determining that the plaintiffs' retainer agreements were reasonable, the decision to grant common law punitive damages was to compensate the plaintiffs for their financial obligations under their reasonable retainer agreements.

The court determined that the material allegations of the complaints entitle the plaintiffs to an award of CUTPA. The plaintiffs successful supported each *Ulbrich* factor, which required whether the harm caused was physical as opposed to economic, whether the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others, whether the target of the conduct had financial vulnerability, whether the conduct involved repeated actions or was an isolated event, and the harm was the result of intentional malice, trickery, or deceit, or mere accident. *Ulbrich v. Groth*, 310 Conn. 375, 455-56 (2013).

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?

There is no Connecticut case or statute that pertains directly to an expert testifying as to the content or applicability of the FMCSRs. We believe relevance will determine admissibility or preclusion.

Expert testimony is to assist lay people and the presiding judge to understand applicable standard of care and to evaluate the defendant's actions, given that standard. *Osborn v. City of Waterbury*, 333 Conn. 816, 826 (2019). Expert testimony is required when the question involved goes beyond the field of ordinary knowledge and experience of the judges or jurors. *Id.* Expert testimony should be admitted when "(1) the witness has a special skill or knowledge directly applicable to a matter in issue, (2) that skill or knowledge is not common to the average

person, and (3) the testimony would be helpful to the court or jury in considering the issues.” *State v. Williams*, 317 Conn. 691, 702 (2015).

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, Connecticut does not consider there to be a joint venture or similar agency relationship between a motor carrier and a broker or shipper.

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

Connecticut recognizes comparative negligence; recovery is allowed if the claimant negligence is less than (51%). *Connecticut General Statute § 52-572o*.

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

The statute of limitations for personal injury states a claim shall be brought within two (2) years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, and except that no such action may be brought more than three (3) years from the date of the act or omission complained of. *Connecticut General Statute § 52-584*.

The statute of limitations for wrongful death claims states no action shall be brought to recover such damages and disbursements but within two (2) years from the date of death, and except that no such action may be brought more than five (5) years from the date of the act or omission complained of. *Connecticut General Statute § 52-555*.

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?

The Executor(trix) or Administrator(trix) of the deceased estate has the authority to file, negotiate, and settle, with Probate Court approval a wrongful death claim. The Executor(trix) or Administrator(trix) will either be selected by last Will and Testament or by petition to the Probate court.

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

No. Evidence that the plaintiff was not wearing a seatbelt is not admissible. *Connecticut General Statute § 14-100a(3)*.

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.

In Connecticut, there are no limitations on damages recoverable for plaintiffs without insurance cover on the vehicle they were operating at the time of the accident.

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

Connecticut determines choice of law questions using the most significant relationship test. The most significant relationship test is set forth in §6 and 145 of the Restatement (Second). The choice of law is determined

by which state, regarding the issue, has the most significant relationship to the occurrence and the parties.