FOR MORE INFORMATION

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

There are no reported cases in Washington D.C. evaluating the admissibility of crash prevention determinations. As a general statement, "[o]rdinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if: (i) they are otherwise discoverable under Rule 26(b)(1); and (ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means." D.C. Super. Ct. R. Civ. P. 26.

The pretrial disclosure requirement of Rule 26(b)(4) applies only to facts and opinions that the expert "acquired or developed in anticipation of litigation or for trial. *See Adkins v. Morton*, 494 A.2d 652, 657 (D.C.1985) ("[T]he crucial inquiry is whether the facts and opinions possessed by the expert were obtained for the specific purpose of preparing for the litigation in question; if so, Rule 26(b)(4) governs their discovery.") The Rule imposes no obligation to disclose where the "information was not acquired in preparation for trial but rather because [the expert] was an actor or viewer with respect to transactions or occurrences that are part of the subject matter of the lawsuit." *Adkins*, 494 A.2d at 657

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 have been no cases on-point in Washington D.C. on the issue of third-party litigation financing.

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 Washington, D.C., the procedure for the resolution of a claim for injuries to a minor generally involves court approval of any settlements or judgments reached on behalf of the minor.

A minor's age can affect the statute of limitations for a personal injury claim in Washington, D.C. Generally, the statute of limitations for personal injury claims in D.C. is three years from the date of the injury, as stated in D.C. Code § 12-301(8). However, if the injured person is a minor at the time of the injury, the statute of limitations is tolled, or suspended, until the minor reaches the age of 18. Once the minor reaches 18, they have three years to bring a personal injury claim before the statute of limitations expires.

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?

In Washington, D.C., "an action for negligent supervision and retention requires proof that the employer breached a duty to plaintiff to use reasonable care in the supervision or retention of an employee which proximately caused harm to plaintiff." *Phelan v. City of Mount Rainier*, 805 A.2d 930, 940 (D.C. 2002)

In Hackett v. Washington Metro. Area Transit Auth., the U.S. District Court for the District of Columbia found Maryland's rule on admission of vicarious liability persuasive when it ruled that "a plaintiff may not proceed against the owner of a motor vehicle under a theory of negligent hiring or retention where the owner admits that the driver was operating the vehicle within the scope of his employment." 736 F. Supp. 8, 10 (D.D.C. 1990). Note that "Where there is no D.C. common law on point, the courts of this jurisdiction are instructed to 'look to the law of Maryland for guidance' because D.C. common law is based on Maryland common law." *Smith v. Summers*, 334 F. Supp. 3d 339, 342 (D.D.C. 2018). The same Federal Court upheld using the Maryland rule in *Green v. Grams*, 384 F.Supp.3d 100 (D.D.C. 2019).

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

A party "who has notice that a document is relevant to litigation" is required to preserve the document for future litigation. *See Battocchi v. Washington Hosp. Ctr.*, 581 A.2d 759, 766 (D.C. 1990) (quoting *Nation-wide Check Corp. v. Forest Hills Distributors,* 692 F.2d 214, 218 (1st Cir. 1982)). The spoliation doctrine is split into two categories: (1) intentional or reckless destruction of evidence; and (2) negligent failure to preserve evidence. *Id.* Where the Court finds that the destruction of evidence was intentional or reckless, it must give an instruction to the jury informing it that it may draw an adverse inference from the destruction of the evidence. *Id.* Where the Court finds that the destruction was merely negligent, however, the Court has discretion regarding whether to give an adverse inference instruction. *Id.*

Negligent or reckless spoliation of evidence is an independent and actionable tort in the District of Columbia. Under District of Columbia law, a plaintiff may recover against a defendant who has negligently or recklessly destroyed or allowed to be destroyed evidence that would have assisted the plaintiff in pursuing a claim against a third party. To prevail under an independent action for negligent or reckless spoliation of evidence, a plaintiff must show: (1) the existence of a potential civil action; (2) a legal or contractual duty to preserve evidence which is relevant to that action; (3) destruction of that evidence by the duty-bound defendant; (4) a significant impairment in the ability to prove the potential civil action; (5) a proximate relationship between the impairment of the underlying suit and the unavailability of the destroyed evidence; (6) a significant possibility of success of the potential civil action if the evidence were available; and (7) damages adjusted for the estimated likelihood of success in the potential civil action. *Id.* at 854.

Although there is no authority directly on point, it is likely that the foregoing rules would apply with equal force in the realm of social media evidence. If the social media evidence is relevant to an issue at trial, it is both discoverable and admissible. Therefore, the destruction of such evidence would likely constitute spoliation.

With respect to claims documents, it should be noted that the discoverability of such documents may be limited. *See, e.g., Brown v. U.S. Elevator Corp.*, 102 F.R.D. 526, 529 (D.D.C. 1984). If such documents were prepared in anticipation of litigation—as they typically are—claims documents may not be discoverable under the District of Columbia's work product doctrine. *See Wallace v. Eckert, Seamans, Cherin & Mellott, LLC*, 57 A.3d 943, 959 (D.C. 2012) (work product doctrine "protects an attorney's mental impressions, opinions and theories, protects materials

prepared for *any* litigation or trial as long as they were prepared by or for a party to the subsequent litigation.'") (quoting *Fed. Trade Comm'n v. Grolier, Inc.,* 462 U.S. 19, 25, 103 S.Ct. 2209, 76 L.Ed.2d 387 (1983)). If, however, a Court adjudicates that claims documents are in fact discoverable in a particular case, the destruction of those documents could substantiate a spoliation claim.

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

A plaintiff may seek, and present evidence of, the entire amount charged by his or her medical providers, even if a portion of the amount charged is written off. *Hardi v. Mezzanotte*, 818 A.2d 974, 985 (D.C. 2003). The written off amount is not a basis for a post-verdict reduction or offset. *See id.*

Medical bills, paid or unpaid, can form the basis of a plaintiff's special damages and serve as evidence of damages. *See Worjloh v. Stephens*, 835 A.2d 1093, 1095 (D.C. 2003); *Hawthorne v. Canavan*, 756 A.2d 397, 399–400 (D.C. 2000). D.C. law recognizes the "collateral source rule," under which an injured party may recover full compensatory damages from a tortfeasor regardless of the payment of any amount of those damages by an independent party, such as an insurance carrier. *Bushong v. Par*k, 837 A.2d 49, 57 (D.C. 2003). Accordingly, there are no offsets or reductions in damages awarded based upon whether particular bills are paid. *See Hardi v. Mezzanotte*, supra, 818 A.2d at 985.

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

Washington DC has not adopted a statute regarding obtaining event data recorder information from a vehicle not owned by a client.

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?

Washington D.C. law disfavors punitive damages. *See Wanis v. Zwennes*, 364 A.2d 1193, 1195 (D.C. 1976). Punitive damages are available only for "tortious acts aggravated by evil motive, actual malice, deliberate violence or oppression, or for outrageous conduct ... in willful disregard for another's rights." *Robinson v. Sarisky*, 535 A.2d 901, 906 (D.C. 1988).

D.C. does not have any caps on non-economic of punitive damages. Punitive damages are, however, subject to *de novo* review to determine if they are excessive. *Howard Univ. v. Wilkins*, 22 A.3d 774, 781-82 (D.C. 2011).

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?

While the District of Columbia controls the imposition of punitive damages, the "Due Process Clause of the Fifth Amendment prohibits District of Columbia from imposing a grossly excessive civil punishment upon a tortfeasor." U.S.C.A. Const.Amend. 5. *Howard Univ. v. Wilkins*, 22 A.3d 774 (D.C. 2011). Indeed, as the District of Columbia is not a state, the analysis of punitive damages is under the Due Process Clause of the 5th Amendment. See *Cooper Indus., Inc. v. Leatherman Tool Group*, 532 U.S. 424, 433 (2001). There are three criteria for courts to follow in evaluating punitive damages award's consistency with the Due Process Clause of the Fifth Amendment, which are "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual and

potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." U.S.C.A. Const.Amend. 5. *Wilkins*, 22 A.3d 774 (D.C. 2011).

The latest noteworthy punitive damages award verdict in the District of Columbia occurred in 2011, when a jury awarded a plaintiff $42,677.50 in punitive damages on her retaliation claim against her former employer under the District of Columbia Human Rights Act (DCHRA). The jury considered testimony presented and documents introduced at trial by both parties. Making this case unique, is the fact that the jury rendered a verdict in favor of plaintiff on her retaliation claim for $1.00 in compensatory damages and $42,677.50 in punitive damages after "find[ing] by clear and convincing evidence that [former employer's] actions in terminating [plaintiff] were undertaken recklessly, maliciously, wantonly, and/or in reckless disregard to [plaintiff's] rights under the District of Columbia Human Rights Act ["the DCHRA"]." *Id*. Thus, the Court found that the ratio of 42,677:1 was warranted because of the miniscule compensatory damages award, and the District of Columbia's "strong interest in deterring [D.C. Human Rights Act] violations . . ." *Id*. at 783-784.

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?

With respect to the District of Columbia, there is no legal authority on point as to whether an expert can testify as to the content of the Federal Motor Carrier Safety Regulations ("FMCSRs") or the applicability of the FMCSRs to a certain set of facts. However, in the District of Columbia, whether an expert is permitted to testify is made on a case-by-case basis. Indeed, in *Motorola Inc. v. Murray*, 147 A.3d 751 (D.C. 2016), an en banc interlocutory appeal, the D.C. Court of Appeals expressly adopted the Daubert Standard for the admissibility of expert testimony, pursuant to Federal Rule of Evidence 702. An expert in the District of Columbia who wishes to opine on the content and applicability of the FMCSRs must be able to survive a Daubert challenge to ensure their testimony will be admissible at trial.

Thus, "a defense attorney in a trucking accident case [in the District of Columbia] must remain vigilant throughout the course of litigation and seize every opportunity to limit unfair or improper testimony offered by plaintiff's experts. First, defense counsel should employ all methods of discovery available to define precisely the testimony that an expert ultimately will offer, the facts that form the foundation of those opinions, and the credentials that qualify the expert to offer the opinions." R. Stickley, *How to Bar Unfair Expert Testimony*; 55 No. 12 DRI For Def. 76. "After identifying the content of the proposed testimony of an expert, every effort should be made to exclude any irrelevant, unfairly prejudicial, or improper legal opinion evidence." *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?

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

The District of Columbia is one of the few jurisdictions which maintains that "[c]ontributory negligence bars a plaintiff's recovery[.]" *Durphy v. Kaiser Found. Health Plan of Mid-Atl. States, Inc*., 698 A.2d 459 (D.C. 1997). Notably, however, a plaintiff's recovery is only barred "if plaintiff's injury or damage was either a direct result or a reasonably probable consequence of plaintiff's own negligent act or omission." *Id*. This means that if the court finds that plaintiff contributed to the accident and plaintiff's damages were a "direct result" or "reasonably probable consequence" of plaintiff's negligence, plaintiff is not entitled to compensation from the defendant.

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

Generally, the statute of limitations for personal injury in the District of Columbia is three years from the date the injury occurred. D.C. Code § 12-301. The statute of limitations for wrongful death is two years. D.C. Code § 16-2702. However, there are exceptions to these general rules which should be carefully analyzed by a District of Columbia licensed attorney on a case-by-case basis.

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 majority of jurisdictions, the decedent's family members are eligible to file a wrongful death lawsuit. In the District of Columbia, however, the personal representative ("executor" or "executrix") of the decedent's estate must file the wrongful death claim. D.C. Code § 16-2702. If the decedent died intestate, without appointing a personal representative, or if the named personal representative cannot serve, the court may appoint one pursuant to the order of priority of appointment in D.C. Code § 20-303. The personal representative may negotiate and settle the wrongful death claim or hire and utilize counsel to negotiate and settle the claim on the personal representative's behalf, and with the personal representative's express authority.

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

All individuals in a vehicle must wear a seat belt. D.C. Code § 50-1802. However, any violation of the seat belt laws does not constitute evidence of contributory negligence, negligence, or a basis for civil actions for damages. D.C. Code § 50-1807.

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.

The "eligibility" requirement in D.C. Code 1981, § 35-2106(d), was repealed by the legislature and there are currently no limitations on damages recoverable for a plaintiff's failure to maintain insurance coverage on the vehicle he or she was operating at the time of the accident.

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

The District of Columbia's choice of law rule for torts follows the substantial interest test articulated by the Restatement (Second) of Conflict of Laws § 145 (1971). See *Jaffe v. Palotta*

Teamworks, 374 F.3d 1227 (D.C. Cir. 2004), (citing *Herbert v. District of Columbia*, 808 A.2d 776, 779 (D.C. 2002)). The contacts a court is to consider are: (1) "the place the injury occurred"; (2) the "place the conduct causing the injury occurred"; (3) "domicile, residence, nationality, place of incorporation and place of business of the parties"; and (4) "the place where the relationship is centered." *Id*. Under a choice of law analysis, the court applies another state's law "when (1) its interest in the litigation is substantial, and (2) application of District of Columbia law would frustrate the clearly articulated public policy of that state." *Id*.