FOR MORE INFORMATION

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Louisiana

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

Yes. Even though litigation may already be suspected, the requirement of production of internal reports and/or preventability assessments is contingent on the purpose for generating the document at the time it was created. Any preventability determinations and/or internal incident reports are only entitled to work product protection if "the primary motivating purpose behind the creation of the document was to aid in possible future litigation." *Canter v. Cleco Corp.*, No. CIV.A. 08-0343, 2009 WL 902435, at *3 (E.D. La. Mar. 30, 2009).

In a practical application, a defendant may object in discovery to producing certain documents by asserting that it is protected by work-product privilege and/or self-critical analysis. However, if the form and/or assessment was done within the ordinary course of business, it is discoverable on that basis alone. As such, if pressed by opposing counsel, a defendant should realize that a Court may reject the objections and order production.

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?

Yes. In most state courts, the litigation funding documents are discoverable. However, most often, securing the funding documents requires overcoming numerous objections from the funding companies, plaintiff's counsel, and the doctors who have contracted with the companies.

Rules and Regulations Governing the Discovery of Third-Party Funding Discovery

Before issuing an order for the production of the funding agreements and/or files, the courts look to the purpose upon which the information is sought and what it is to be used for. Generally, there are a few broad reasons the court will allow the production of these documents:

1. Impeachment, Causation, & Bias

The Louisiana First Circuit Court of Appeal held in *Dantzler v. Delacerda*, 2020-1108 (La. App. 1 Cir. 12/30/20) 2020 WL 786443 that "evidence of the financial arrangement between [a funding company] and the plaintiff's health care providers [is admissible] for the purpose of impeaching the credibility of the plaintiff's treating physicians."

Most courts in the Federal Fifth Circuit are in accord, noting not only that the evidence was discoverable but also that it was admissible. The United States

District Court in *Thomas v. Chambers*, No. CV 18-4373, 2019 WL 8888169, at *4 (E.D. La. Apr. 26, 2019) noted:

> [T]he financial arrangement between plaintiffs' healthcare providers and the third-party funding companies could create an incentive for plaintiffs' treating physicians to want plaintiffs to win their case, because a victory could result in more referrals from [the finance companies]. That incentive could lead a jury to question the treating physicians' testimony regarding causation. This evidence is thus relevant under Rule 401 because it is probative of whether a witness at trial is biased.

Further, the Eastern District of Louisiana has determined that these documents are relevant and admissible Despite this opinion on admissibility, one Federal Court, after reviewing the documents in an in-camera inspection, found that the funding documents were not subject to discovery. *See Dupont v. Costco Wholesale Corp*., No. CV 17-4469, 2019 WL 5959564, at *2 (E.D. La. Nov. 13, 2019)(affirming the Magistrate Judge's ruling that neither the funding agreement nor the actual amounts received were relevant nor probative of any claim in the case and thus were not subject to production). The Dupont opinion is an outlier. *See e.g. Collins v. Benton*, No. CV 18-7465, 209 WL 6769636, at *6 (E.D. La. Dec. 12, 2019)(applying the rationale of Thomas and rejecting the comparison to Dupont). Yet, Dupont is frequently the cited authority Plaintiffs rely on to support their position as to why a litigation finance contract and file should not be discoverable.

The court in *Robert v. Maurice*, relying on *Thomas*, held that the documentation was not only discoverable, but also admissible. The rationale is that if the plaintiff is allowed to introduce evidence of the full amount charged to the plaintiff by a third-party funding company, then the financial arrangement between the plaintiff's treating physicians and the third-party funding companies are relevant and admissible to the issues of causation, bias, and credibility. *Robert v. Maurice,* No. CV 18-11632, 2020 WL 9074826, at *8 (E.D. La. Sept. 30, 2020). The rationale follows that of *Thomas* wherein the credibility of the claimed injuries and the incentive for treatment is motivated by the potential for increased profits.

2. Collateral Source

In Louisiana, where a plaintiff's patrimony has been diminished to obtain collateral source payments, as is the case with private insurance or Medicare, then a plaintiff is entitled to recover the full value of the medical services, including the write off amounts. However, in instances where it is undetermined whether the plaintiff is responsible for the full amount billed, the agreements and funding documentation are discoverable even if the plaintiff is not a party to the funding agreement. The rationale is that it speaks to whether the collateral source rule applies and whether defendants are entitled to discount the medical specials. It should be noted that if the plaintiff is responsible for the full amount billed by the third-party funding company, the contractual agreements and discounted rates cannot be used to reduce the recovery of past medical expenses. *Smith-Jordan v. Love*, No. CV 19-14699, 2022 WL 226513, at *6 (E.D. La. Jan. 26, 2022)

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?

An unemancipated minor has no legal capacity; he may neither enforce nor relinquish rights and may only act through his parents, if both are alive and not legally separated or divorced, or through a court-appointed guardian. La. C.C.P. arts. 683, 732; *Coleman v. Argonaut Insurance Co*., 187 So.2d 495 (La.App.1966). If the minor is born of the marriage and one parent is deceased, then the surviving parent may settle claims per La. C.C. art. 250. If the minor's parents are divorced, and the minor was born during the parent's marriage, then the parent under whose care the child is placed may settle the claim, unless there is a joint custody arrangement, in which

case either parent has equal authority to settle unless modified by court order or agreement of the parties approved by court awarding joint custody.

A mother can settle the claim by herself if the child is born outside of marriage and not acknowledged by the father or acknowledged by him alone without the mother's concurrence. If the parents have joint custody of an acknowledged child born outside of marriage, then both parents have equal authority to settle, unless modified by the court order or agreement between the parents approved by the court awarding joint custody.

We would recommend having both parents, if they are active in the child's life, to sign off on any releases or settlement agreements to avoid any future litigation.

Additionally, settlements of claims involving minors must be approved by a court, except in some situations when the amount is less than $10,000.00. La. R.S. 9:196; LA. C.C.P. art 4373

In approving any proposal by which a minor is to be paid funds as the result of a judgment or settlement, the court may order:

1. That the funds be paid directly into the registry of the court for the minor's account, to be withdrawn only upon approval of the court. Withdrawn funds shall be invested directly in an interest-bearing investment as approved by the court unless the court for good cause approves another disposition.
2. That the funds be invested directly in an interest-bearing investment approved by the court, unless the court for good cause approves another disposition.
3. That the funds be placed in trust in accordance with the Louisiana Trust Code to be administered by an individual or corporate trustee as determined by the court. However, the court shall not order funds which will be paid to an unemancipated minor who is in the legal custody of the Department of Children and Family Services to be placed in trust if the amount of the judgment or settlement is less than fifty thousand dollars.
4. That the funds be paid under a structured settlement agreement as approved by the court that provides for periodic payments and is underwritten by a financially responsible entity that assumes responsibility for future payments.

See La. C.C.P. art 4521.

Statute of Limitations

The one-year statute of limitations applies to the personal injury claims of minors. *See* La. C.C. art 3492.

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?

As of June of 2022, the Louisiana Supreme Court held that a plaintiff could maintain claims of vicarious liability as well as claims of independent negligence against an employer even if the employer stipulated that the employee was within the course and scope of employment. *Martin v. Thomas*, No. 2021-01490 (La. 6/29/22). In *Martin,* the issue before the Court was whether a plaintiff could assert direct claims against a company/employer for negligent hiring, training, supervision, and entrustment (i.e. claims of independent negligence) when an employer stipulated to vicarious liability for any potential negligence of its driver.

In the past, defendants successfully argued that any potential negligence of the employee is imputed onto the

employer by the very nature of the vicarious liability claim. The Louisiana Supreme Court ultimately held that a plaintiff can now maintain both a negligence cause of action against an employee and a direct claim against the employer for negligent hiring, supervision, and entrustment. This is true even when an employer admits that the employee was in the course and scope of his employment.

The *Martin* case left several unanswered questions that could create some serious disadvantages to companies such as:

1. How does stipulating to fault, on the part of the driver, impact the claims of direct negligence against the company (i.e. will stipulating to the driver's fault bar the claims of liability for the employer's direct negligence?)
2. Will meager evidence be sufficient to create a "genuine issue of material fact" sufficient enough to defeat a Motion for Summary and ultimately subject companies to a full trial on the issue of negligent hiring, training, supervision, and entrustment?
3. Whether the courts will allow the scope of discovery to be broadened to include extensive and overly broad fishing expeditions for private and/or proprietary information under the guise that they are trying to uncover any relevant evidence to substantiate their claims of direct negligence against the company?

Thus far, what we have seen is plaintiff attorneys sending (1) preservation letters which request the preservation of training materials, retention policies, employee qualification and HR files, corporate safety policies, correspondence with the FMCSA or other entities affiliated with the federal or local department of transportation, (2) overly-broad discovery for similar documents that were requested in the preservation letter, (3) request for adverse inferences under the theory of spoliation for failure to maintain such documentation and requests for the deposition(s) of corporate representatives.

In light of *Martin*, there are fewer advantages to immediately admitting that the driver was in the course and scope of his/her employment. We recommend that all factors be considered before admitting that an employee was in the course and scope of his/her employment.

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

"[S]poliation of evidence refers to the intentional destruction of the evidence for the purpose of depriving the opposing party of its use at trial." *Herster v. Bd. of Supervisors of Louisiana State Univ.,* 221 F. Supp. 3d 791, 796 (M.D. La. 2016), aff'd in part, 887 F.3d 177 (5th Cir. 2018) "The party having control over the evidence must have had an obligation to preserve it at the time it was destroyed." *Id.* Such a duty "arises when the party has notice that the evidence is relevant to the litigation." *Id.* If the court finds that a party had an obligation to preserve the evidence, then the court must determine whether the party intentionally destroyed the evidence and their likely contents because Louisiana law does not recognize a claim for negligent spoliation.

The intention of the party alleged to have spoliated evidence is the crux of the claim. The standard is greater than the general negligence standard." *Id.* Intent is rarely proved by direct evidence, and a district court has substantial leeway to determine intent through consideration of circumstantial evidence, witness credibility, motives of the witnesses in a particular case, and other factors." *Rogers v. Averitt Express, Inc.*, 215 F. Supp. 3d 510, 517 (M.D. La. 2017).

Louisiana law provides three remedies for spoliation: (1) exclusion of the spoiled evidence, (2) allowing an adverse

inference, and/or (3) imposing sanctions. The ultimate focus for imposing sanctions for spoliation of evidence is the intentional destruction of evidence indicating a desire to suppress the truth, not the prospect of litigation.

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

Yes. According to Louisiana's Supreme Court, the Collateral Source Rule is a rule of evidence and damages. *Kadlec Med. Center v. Lakeview Anesthesia Associates*, 527 F.3d 412, 425 (5 Cir 2008). In *Louisiana Dept. of Transp. & Dev. V. Kansas City Southern Railway Co*., 02-2349, p. 6 (La. 5/20/03), 846 So.2d 734, 739, the Louisiana Supreme Court held:

> Under the collateral source rule, a tortfeasor may not benefit, and an injured plaintiff's tort recovery may not be reduced, because of monies received by the plaintiff from sources independent of the tortfeasor's procuration or contribution. Under this well-established doctrine, the payments received from the independent source are not deducted from the award the aggrieved party would otherwise receive from the wrongdoer.

In *Bozeman v. State*, 03-1016 (La. 7/2/04), 879 So.2d 692, the Louisiana Supreme Court considered whether the collateral source rule applied to medical expenses which were "written off" under the Medicaid program. In analyzing this issue, the court noted that the plaintiff paid no consideration for the "written off' amount. The court provided:

> [W]here the plaintiff pays no enrollment fee, has no wages deducted, and otherwise provides no consideration for the collateral source benefits he received, we hold that the plaintiff is unable to recover the "written off" amount. This position is consistent with the often-cited statement in *Gordon v. Forsyth County Hospital Authority, I*nc., 409 F. Supp. 708 (M.D.N.C. 1975), *affirmed in part and vacated in part*, 544 F.2d 748 (4th Cir. 1976), that "it would be unconscionable to permit the taxpayers to bear the expense of providing free medical care to a person and then allow that person to recover damages for medical expenses from a tortfeasor and pocket the windfall." (emphasis by the court).
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> After a careful review, we conclude that Medicaid is a free medical service, and that no consideration is given by the patient to obtain Medicaid benefits. His patrimony is not diminished, and therefore, a plaintiff who is a Medicaid recipient is unable to recover the "write off" amounts.

The Louisiana Supreme Court in Bozeman "embrace[d]" the reasoning of courts that have awarded for plaintiffs "the full value of their medical expenses, including the 'write-off' amount, where the plaintiff has paid some consideration for the benefit of the 'write-off' amounts." Id. at 703-04 (*citing Griffin v. The Louisiana Sheriff's Auto Risk Assoc.,* 1999 CA 2944 (La. App. 1 Cir. 6/22/01), 802 So.2d 691, 715; *Acuar v. Letourneau*, 260 Va. 180, 531 S.E.2d 316, 322–323 (Va. 2000); *Helfend v. S. California Rapid Transit District*, 2 Cal.3d 1, 84 Cal.Rptr. 173, 465 P.2d 61, 66–67 (Ca. 1970)).

More recently, the Supreme Court discussed the issue in *Hoffman v. 21st Century North American Ins. Co*., 14-2279 (La. 10/2/15), 209 So.3d 702. The justices declined applying the collateral source rule to an attorney-negotiated medical discount. The court cited several reasons for not applying the collateral source rule:

> "We decline to extend the collateral source rule to attorney-negotiated medical discounts

> obtained through the litigation process. We hold that such a discount is not a payment or a benefit that falls within the ambit of the collateral source rule. First, allowing the plaintiff to recover an amount for which he has not paid, and for which he has no obligation to pay, is at cross purposes with the basic principles of tort recovery in our Civil Code. The wrongdoer is responsible only for the damages he or she has caused. La. Civ. Code. art. 2315. The plaintiff has suffered no diminution of his patrimony to obtain the write-off, and therefore, the defendant in this case cannot be held responsible for any medical bills or services that plaintiff did not actually incur and which the plaintiff need not repay. Because the evidence before the trial court was that Mr. Hoffman paid $950.00 for the MRIs, he is not entitled to recover any additional amount. Any recovery above $950.00 for the MRIs would amount to a windfall and force the defendant to compensate the plaintiff for medical expenses the plaintiff has neither incurred nor is obligated to pay.
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> Second, we reject plaintiff's argument that consideration for the benefit is given for attorney-negotiated medical discounts by virtue of the contractual obligation of the plaintiff to pay attorney fees, albeit only in the event of a recovery. This argument is based on the assumption that the payment of an attorney's fee is additional damage suffered by the tort victim. However, "[i]t is … well recognized in the jurisprudence of this state that as a general rule attorney fees are not allowed except when authorized by statute or contract." Killebrew v. Abbot Laboratories, 359 So.2d 1275, 1278 (La. 1978). Because the tortfeasor is not liable for, and the tort victim has no right to recover attorney's fees, the payment of an attorney fee is not additional damage to the plaintiff's patrimony so as to justify the "windfall" or "double recovery" represented by the attorney-negotiate discount."

Most recently, the Civil Justice Reform Act of 2020 ("CJRA") was passed. This Act limits a plaintiff's recoverable medical expenses where the amount paid by a collateral source is less than the amount billed by the healthcare provider. See La. Rev. Stat. § 9:2800.27. Prior to the new law, a plaintiff could recover the total amount billed by his health provider regardless of any discounts or write offs. Under the CJRA, a plaintiff may only recover the amount paid by his private health insurer or Medicare. Id. As a result, the plaintiff is unable to recover any amounts that were discounted or written off between the health provider and the payor. Id. The write-offs and discounted rates are admissible evidence. It should also be noted that the judge has the discretion to award up to 40% of the difference between the amount billed and the amount paid by insurance to compensate the plaintiff for the cost of procurement. Id.

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

Regardless of ownership, any party has the right to request the EDR data. The question then becomes whether the vehicle is still within the possession of the client or has the vehicle been returned to its owner. When the vehicle is within the possession of the client, the plaintiff, at any time, can request to do a download of the vehicle's event data. Alternatively, they can request a copy of the EDR. If the vehicle has been returned to the owner, plaintiff would have to subpoena the EDR records and/or a production of the vehicle for inspection and download.

If the client or its third-party administrator are served with a preservation letter, they are obligated to retain the EDR irrespective of ownership. Further, even without a proper notice or letter request preservation, when a party knows or should know that certain evidence is relevant to pending or future litigation, they have an obligation to preserve the evidence. *Pelas v. EAN Holdings, L.L.C.,* No. CIV.A. 11-2876, 2012 WL 2339685, at *5 (E.D. La. June

19, 2012). The failure to do so could result in a spoliation claim being asserted and an adverse inference being asserted at trial regarding the destroyed evidence.

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?

Louisiana does not cap the amount of recoverable punitive or exemplary damages, but there are very limited situations in which these damages may be awarded. The Supreme Court of Louisiana has not specifically decided whether a plaintiff can recover punitive damages under article 2315.4 against a vicariously liable employer. However, a review of the jurisprudence indicates that Louisiana courts are reluctant to levy punitive damages against the employer of an intoxicated driver under the theory of vicarious liability.

Louisiana is against punitive damages as general public policy. *See Chauvin v. Exxon Mobil Corp.,* 2014-0808, p. 10 (La. 12/9/14); 158 So.3d 761, 768 (*citing Ross v. Conoco, Inc*., 2002-0299, p. 14 (La. 10/15/02); 828 So.2d 546, 555). Punitive or other penalty damages are not permitted in Louisiana unless expressly authorized by statute. Id. Any statute which authorizes the imposition of punitive damages is subject to strict construction. Id.

With respect to transportation cases, there is currently only one scenario upon which punitive damages may be potentially assessed against a company: when the driver/employee is driving under the influence. Louisiana Civil Code Article 2315.4 provides:

> In addition to general and special damages, exemplary damages may be awarded upon proof that the injuries on which the action is based were caused by a wanton or reckless disregard for the rights and safety of others by a defendant whose intoxication while operating a motor vehicle was a cause in fact of the resulting injuries.

In 2001, the Supreme Court of *Louisiana in Berg v. Zummo, 7*86 So.2d 708 (La. 2011) found that Louisiana Civil Code article 2315.4 cannot be applied to award exemplary damages to persons who have contributed to the driver's intoxication since Louisiana Civil Code article 2315.4 does not target the conduct of anyone except the intoxicated driver. *See Berg v. Zummo,* 786 So.2d 708 (La. 2011).

After *Berg*, Louisiana appellate courts have generally found that an employer cannot be held vicariously liable for exemplary damages under article 2315.4. *See Romero v. Clarendon America Insurance Co*., 54 So.3d 789 (La. App. 3d Cir. 2010), *rehearing denied, writ denied* 62 So.3d 96 (La. 2011); and *Darby v. Sentry Ins. Auto Mut. Co*., 960 So.2d 226 (La. App. 1st Cir. 2007). Recently, federal district courts examining this issue under Louisiana law have additionally all found that a plaintiff cannot recover exemplary damages against a vicariously liable employer under Louisiana Civil Code article 2315.4. *See Spiker v. Salter*, 3:20-CV-00517, 2022 WL 214344, at *3 (W.D. La. Jan. 24, 2022*); see also Thompson v. Travelers Indem. Co.,* CV 19-11221, 2020 WL 6888280, at *4 (E.D. La. Oct. 16, 2020).

However, in 2019, the Louisiana Fifth Circuit Court of Appeal, in *Landry v. Nat'l Union Fire Ins. Co. of Pittsburg*, 19-337 (La. App. 5 Cir. 12/30/19), found "that an employer may be held liable for exemplary damages awarded against an employee under La. C.C. art. 2315.4, particularly, where the evidence shows that the employer contributed to or might have prevented the employee from driving while intoxicated." *Landry v. Nat'l Union Fire Ins. Co. of Pittsburg*, 19- 337 (La. App. 5 Cir. 12/30/19), 289 So. 3d 177, 184, *writ denied sub nom., Landry v. Nat'l Union Fire Ins. Co. of Pittsburgh*, PA, 2020-00188 (La. 5/1/20); 295 So. 3d 945. The court predicated its decision upon specifically asserted facts in the pleadings that presented genuine issues of material fact as to whether the employer may have prevented the employee from driving while intoxicated (i.e., the defendant-employer failed

to carry out appropriate screening and training; that the employee had a history of drug use; and that this employee had a deteriorating driving performance). Id.

The *Landry* decision has been considered an "outlier" in the applicable jurisprudence that some courts have declined to follow. *See Spiker*, 2022 WL 214344 at *3. It should be noted that there was a new verdict issued in March 2023 wherein the driver was assessed over $4,000,000 in punitive damages - *Grantham v. Stuart Petroleum Testers, Inc*. 154,777 (26th JDC 03/10/23). The appeal time delays are ongoing as of the drafting of this compendium. As such, it is possible that the plaintiffs may seek clarity from the appeals court as to whether the motor carrier is responsible for any portion of the punitive damages under the same rationale as *Landry.*

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?

Grantham v. Stuart Petroleum Testers, Inc. *154,777 (26th JDC 03/10/23).* A jury awarded each parent $200,000,000 damages for the wrongful death of their 4 year-old daughter, Katie "Bug" Grantham. The verdict also includes $5,000,000 personal injury damages to the mother, and $4,122,013 punitive damages against the driver who was never drug tested. According to the court documents, the driver quit his job at the scene to avoid employer testing. This is the first trial where we have seen the major impact of the Louisiana Supreme Court ruling in *Martin v. Thomas*, 2021-C-01490 (La. 06/29/22), 346 So.3d 238 - allowing claims of independent negligence claims against vicariously liable employers. In this case, the plaintiffs were able to introduce evidence about the driver's history of employment misconduct as well as possession and use of methamphetamine, some of which would likely have been excluded absent theories of negligent hiring and supervision. Additionally, plaintiffs introduced experts in the field of substance addiction as well as trucking and fleet safety. The jury assigned 90% fault to the employer and 10% fault to the employee driver.

Lirette v. Adams, 2016-05383 (Civil District Court 11/07/22) – In this case, the plaintiffs alleged that their daughter, Kristi Lirette, was killed in a car accident while a passenger in the defendant's car. It was alleged that the defendant was driving while intoxicated at an estimated speed of 118 miles when he crashed the vehicle into a concrete flood wall on Tchoupitoulas Street. Ms. Lirette died as a result of injuries sustained in the crash. The following evidence was submitted: (1) defendant's Blood and Alcohol Test Results, (2) defendant's deposition testimony, and (3) the police body camera footage of defendant. Plaintiffs were awarded $25,000,000 in punitive damages. Defendants filed a Motion for a Judgment Notwithstanding the Verdict or Alternatively, a Motion for New Trial. This motion is currently pending.

Landry v.. Nat'l Union Fire Ins. Co. of Pittsburg, et al - 81003 (29th JDC 06/01/22), - please note that this is the same case as *Landry v. Nat'l Union Fire Ins. Co. of Pittsburg*, 19- 337 (La. App. 5 Cir. 12/30/19) we discussed in the preceding question. The jury awarded plaintiff $10,000,000 in punitive damages. This award was assessed to both CEVA, the employer, and Jeremiah Rodney, the employee, jointly. According to the jury form, the jury believed that CEVA could have prevented Rodney from driving under the influence. We believe this ties back to the now allowable claims of independent negligence under the *Matin* case. We can only assume that the pre-trial discovery provided that CEVA may have failed to properly screen Mr. Rodney as he had a history of poor driving performance and substance abuse. We did not see any pending appeals or motions on this matter related to the assessment of punitive damages. Further, we do not have access to the court records to see what evidence was submitted as evidence.

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?

The Fifth Circuit has held that general background testimony on federal regulations by an expert is admissible as long as the expert is not stating ultimate legal conclusions based upon those background facts. *See Van Winkle v. Rogers*, No. 6:19-CV-01264, 2022 WL 4231013, at *4 (W.D. La. Sept. 13, 2022) Experts may quote and refer to relevant safety regulations from the FMCSR as this testimony may assist the jury in understanding the standard of care in the trucking industry. However, expert testimony regarding the meaning and applicability of the FMCSRs to a company and whether the company complied with these regulations is inadmissible. The rationale is that "[t]he meaning of federal regulations is not a question of fact, to be resolved by the jury after a battle of experts. It is a question of law, to be resolved by the court.". *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?

Under Louisiana state law, brokers and shippers are not generally in a joint venture or agency relationship with a motor carrier for the purposes of personal injury or wrongful death claims. Specifically, when the broker or shipper's relationship with the motor carrier is synonymous to an independent contractor rather than an employee-employer relationship. *See generally Lagrange v. Boone*, 2021-560 (La. App. 3 Cir. 4/6/22), 337 So. 3d 921, writ denied, 2022-00738 (La. 6/22/22), 339 So. 3d 1185.

Courts have found that an independent contractor relationship exists when the following can be established according to these factors:

1. There is a valid contract between the parties;
2. The work being done is of an independent nature such that the contractor may employ non-exclusive means in accomplishing it;
3. The contract calls for specific piecework as a unit to be done according to the independent contractor's own methods without being subject to the control and direction of the principal, except as to the result of the services to be rendered;
4. There is a specific price for the overall undertaking; and
5. Specific time or duration is agreed upon and not subject to termination at the will of either side without liability for breach.

"The most important test involves the employer's control over the work." *Bertram v. Progressive Se. Ins. Co.*, No. 2:19-CV-01478, 2023 WL 417438, at *4 (W.D. La. Jan. 25, 2023) It is not whether the principal/employer exercises control or supervision, but whether the right to exercise control exists. T*ardo v. New Orleans Public Service Inc.*, 353 So.2d 409 (La. App. 4th Cir. 1977).

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

Louisiana follows a pure "comparative fault" regime, whereby a plaintiff's recoverable damages are reduced in proportion to his degree of negligence. See La. C. C. art. 2323(A). The fault of all actors, including the plaintiff, immune parties, and absent parties, is considered when determining the plaintiff's degree of fault. Id.

In *Watson v. State Farm Fire & Cas. Ins. Co.*, 469 So.2d 967, 974 (La. 1985), the Supreme Court of Louisiana outlined several factors to be considered when assigning fault for purposes of comparative fault. Those factors

include:

1. Whether the conduct resulted from inadvertence or involved an awareness of the danger;
2. How great a risk was created by the conduct;
3. The significance of what was sought by the conduct;
4. The capacities of the actor, whether superior or inferior;
5. Extenuating circumstances which might require the actor to proceed in haste, without proper thought; and
6. The relationship between the fault/negligent conduct and the harm to the plaintiff.

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

Liberative prescription is Louisiana's version of the common law statute-of-limitations. The liberative prescriptive periods for transportation related tort and contractual claims are outlined below:

> Personal Injury: The liberative prescriptive period for most torts in Louisiana is one year. *See* La. C. C. art. 3492. For personal injury and property damage claims, the one-year period prescribes 1 year from the date of the subject accident. Id. However, if the claim arises under and/or related to an uninsured motorist claim against the plaintiff's owner carrier, there is a 2-year perspective period. *See* La. R.S. 9:5639
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> Wrongful Death: For wrongful death claims, the one-year period prescribes 1 year from the death of the deceased. *See* La. C. C. art. 2315.2.

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?

Louisiana has created four groups or classes of individuals who can bring a wrongful death claim. These groups are as follows:

1. The children or surviving spouse of the deceased person.
2. If there are no surviving spouse or children, the surviving parents or parent can file.
3. If there are no surviving parents; the surviving siblings can file.
4. If there are no surviving siblings, surviving grandparents of the deceased person can file.

See La. C. C. art. 2315.2.

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

Yes. Under the Civil Justice Reform Act of 2020, which became effective on January 1, 2021, evidence that a plaintiff failed to wear his or her seatbelt is admissible at trial for all relevant purposes, including comparative fault and failure to mitigate his or her damages.

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. Every Louisiana licensed individual driving a motor vehicle in the State of Louisiana must maintain a minimum insurance policy of $15,000 for bodily injury and $25,000 in property damage. If someone fails to maintain the insurance minimums they are barred from recovering the first $15,000 for any bodily injury claim and $25,000 for

any property damage. This is called the "No Pay, No Play" rule. However, there are several exceptions where this rule does not apply.

Exceptions

- The insured driver/employee driver is cited for a violation of R.S. 14:98 (DWI) as a result of the accident and is subsequently convicted of or pleads *nolo contendere* to such offense;
- The insured driver/employee driver intentionally causes the accident;
- The insured driver/employee driver flees from the scene of the accident;
- At the time of the accident, the insured driver/employee driver is in furtherance of the commission of a felony offense under the law;
- The claimant is a passenger in the vehicle;
- The claimant driver is a licensed driver from another state with different requirements for insurance; and
- The claimant's vehicle is hit while parked in legal parking spaces.

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

Louisiana courts generally apply the choice of law clauses to substantive issues and the law of the forum to procedural issues. Louisiana choice-of-law rules are set out in the Civil Code, starting with La. C.C. art. 3515—the overarching, general residual rule. For tort suits, the Civil Code includes a parallel, residual rule in La. C.C. art. 3542. The Civil Code also includes several specific sub-rules for tort suits, including a sub-rule for "standards of conduct and safety" in La. C.C. art. 3543, and a sub-rule for "loss distribution and financial protection" in La. C.C. art. 3544. Being more specific, the sub-rules in La. C.C. arts. 3543 and 3544, when applicable, prevail over the general rules in La. C.C. arts. 3515 and 3542. Louisiana's choice-of-law rules recognize the concept of "dépeçage"—issue-by-issue analysis—by using, in both La. C.C. arts. 3515 and 3542, the term "issue." *Rigdon v. Pittsburgh Tank & Tower Co., Inc.,* 95-2611, p. 7 (La. App. 1 Cir. 11/8/96), 682 So.2d 1303, 1306. Under the dépeçage concept, "courts must utilize an issue-by-issue analysis which may result in laws of different states being applied to different issues in the same dispute." *Id.*