

Massachusetts

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

Generally, preventability determinations and internal accident reports are discoverable. Whether or not these are admissible into evidence is up to the discretion of the judge. It is likely that an internal accident report would be admissible.

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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?

Third-party litigation funding is not prohibited or regulated. There are no laws, rules or regulations governing third-party funding in Massachusetts.

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?

Where suit has been filed, minor settlements must be approved by the Court. Although not mandatory, a "Friendly Complaint" can be filed where there is a pre-suit settlement. Statute of limitation for minors are tolled until the minor reaches 18 years of age.

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?

If the defendant carrier admits that it is vicariously liable for the acts of its driver, the company will be in a better position to argue that claims of negligent hiring, training or supervision and applicable evidence should be excluded from trial.

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

The harmed party may file a motion for sanctions due to spoliation. The court will consider many factors when ruling on the motion, including control over the evidence and whether, and to what degree, the moving party was harmed by the spoliation.

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

The amount of medical expenses actually paid is NOT admissible. The plaintiff can enter into evidence the amount actually billed and the defendant may offer evidence concerning the amount usually accepted by the providers for the services rendered.

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

A party has no right to obtain EDR data from another’s vehicle, absent seeking injunctive relief. A party wanting to obtain such data should send a correspondence requesting an opportunity to download the data and demanding that the owner and anyone in control or possession of the vehicle preserve the data.

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?

Absent gross negligence, punitive and exemplary damages are not available.

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?

No.

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, experts are permitted to testify as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts. This is a discretionary issue for the trial judge depending on the qualifications of the expert and the facts of the underlying incident.

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.

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

If the plaintiff is more negligent than that of the combined negligence of the defendants, the plaintiff recovers nothing. If a court determines that the plaintiff’s percentage of negligence is less than that of the defendants, the plaintiff’s recovery is reduced by his percentage of negligence.

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

Three years.

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 Personal Representative of an Estate as determined by Probate Court.

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

Failure to wear a seatbelt is not admissible to show negligence.

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.

No.

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

Generally, the court would utilize the substantive law for the jurisdiction where the accident took place, and the procedural law of the jurisdiction of the court.