FOR MORE INFORMATION

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Minnesota

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

Minnesota Rule of Civil Procedure 26.02 describes the scope and limits of discovery. "Discovery must be limited to matters that would enable a party to prove or disprove a claim or defense or impeach a witness and must comport with the factors of proportionality," including "the importance of the discovery in resolving the issues." Minn. R. Civ. P. 26.02 (b). Generally, "parties may obtain discovery regarding any matter, not privileged, that is relevant to a claim or defense of any party." *Id*. "Relevant information sought need not be admissible at the trial if discovery appears reasonably calculated to lead to the discovery of admissible evidence." *Id*.

There are no Minnesota court opinions addressing the discoverability or admissibility of preventability determinations. Moreover, the applicability of the self-critical analysis privilege is an open question in Minnesota state courts. In the case of *In re Parkway Manor Healthcare Ctr.*, 448 N.W.2d 116 (Minn. Ct. App. 1989), the Minnesota Court of Appeals declined to recognize a self-critical analysis privilege. *See id.* at 121. In the case of *State v. Larson*, 453 N.W.2d 42 (Minn. 1990), however, the Minnesota Supreme Court repudiated the premise underlying the *Parkway* Court's holding, *i.e.*, that the power to promulgate evidentiary privileges rested exclusively with the Minnesota Legislature. *See id.* at 46, n.3. As a consequence, whether Minnesota state courts would adopt the privilege remains an open question.

In *Stabnow v. Consolidated Freightways Corp. of Delaware*, the court recognized the elements necessary to utilize the self-critical analysis privilege. No. CIV. 99-641MJDRLE, 2000 WL 1336645, at *4 (D. Minn. Aug. 15, 2000).

> [F]irst, the information must result from a self-critical analysis undertaken by the party seeking protection, second, the public must have a strong interest in preserving the free flow of the type of information sought . . . the information must be of the type whose flow would be curtailed if discovery were allowed" and, in any event, "no document will be accorded a privilege unless it was prepared with the expectation that it would be kept confidential, and has in fact been kept confidential.

Id. at *5 (citing *Spencer Savings Bank v. Excell Mortgage Corp.,* 960 F.Supp. 835, 836 n. 2 (D.N.J.1997) (internal quotations omitted). The court in the *Stabnow* case did not find the materials attempting to be protected to actually be self-critical and in the interest of public policy. *Id.* Additionally, the court questioned whether the self-critical analysis privilege was even still in existence in Minnesota but left that issue open. *Id.* at *6. Following the *Stabnow* decision, Minnesota courts have yet to address its use.

Internal accident reports can be considered work product privileged in Minnesota when created in anticipation of litigation. On the other hand, documents prepared "in

the ordinary course of business" may not be found to have been prepared in anticipation of litigation. *City Pages v. State of Minnesota,* 655 N.W.2d 839, 846 (Minn. Ct. App. 2003). Whether documents were prepared in anticipation of litigation is a factual determination. *Bieter Co. v. Blomquist*, 156 F.R.D. 173, 180 (D.Minn.1994). The test is whether, in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation. *Id*. "In determining whether a document was prepared for litigation, a district court must consider when and by whom the [document] was made and the purpose of the [document]." *In re Child of Simon*, 662 N.W.2d 155, 161 (Minn. Ct. App. 2003).

A party may obtain discovery of documents prepared in anticipation of litigation or for purposes of trial based on a showing of substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Minn. R. Civ. P. 26.02(c); *State ex rel. Humphrey v. Philip Morris Inc.*, 606 N.W.2d 676, 690 (Minn. Ct. App. 2000).

If outside counsel has not yet been retained, it can be challenging to prevent discovery of company's internal accident report. As a result, we recommend clients retain counsel immediately after any serious trucking accident and be in communication with the claims adjuster which maximizes the opportunity to claim privilege for both work product and attorney-client privileges.

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?

The Minnesota Supreme Court approved 3rd party litigation funding in June 2020 reversing the 120-year prohibition against champerty. *See Maslowski v. Prospect Funding Partners LLC*, 944 N.W.2d 235 (Minn. 2020). Because of the relative recency of the approval of 3rd Party Litigation Funding, the courts have not directly addressed the discovery of 3rd Party Litigation Funding.

Although the court in *Maslowski* abolished the prohibition against champerty, it did not take away all of the court's authority to review such agreements, stating that the "district courts may still scrutinize litigation financing agreements to determine whether equity allows their enforcement." *Id*. at 241; *see e.g.*, *Osprey, Inc. v. Cabana Ltd. P'ship*, 340 S.C. 367, 532 S.E.2d 269, 278 (2000) ("Our abolition of champerty as a defense does not mean that all such agreements are enforceable as written."). "Parties . . . retain the common law defense of unconscionability." *Id*.; *see Abernethy v. Halk*, 139 Minn. 252, 166 N.W. 218, 220 (Minn.1918) (observing that a court "may decline to enforce an unconscionable contract"). Courts should continue to carefully review uncounseled agreements, particularly between parties of unequal bargaining power or agreements involving an unsophisticated party. *Id*. "Courts and attorneys should likewise be careful to ensure that litigation financiers do not attempt to control the course of the underlying litigation, similar to the "intermeddling" that we described in our early champerty precedent." *Id.; see Huber v. Johnson*, 68 Minn. 74, 70 N.W. 806, 808 (Minn. 1897) (stating that "it is difficult to conceive of any stipulation more against public policy" than a contract term requiring the litigation financier's permission to settle the underlying litigation). This language seems to indicate that there may be circumstances where the courts may need to review 3rd party litigation funding agreements and opens the door to discovery on these issues.

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?

No part of the proceeds of any settlement on behalf of a minor shall be paid until approved by the Court. Minn. Stat. § 540.08; Minnesota General Rule of Practice 145.

In order to obtain court approval, a petition verified by the parent or guardian shall be submitted to the court setting forth: (a) The name and birth date of the minor or other incompetent person; (b) A brief description of the nature of the claim if a complaint has not been filed; (c) An attached affidavit, letter or records of a health care provider showing the nature of the injuries, the extent of recovery, and the prognosis if the court has not already heard testimony covering these matters; (d) Whether the parent, or the minor or incompetent person, has collateral sources covering any part of the principal and derivative claims, including expenses and attorneys fees, and whether subrogation rights have been asserted by any collateral source; (e) In cases involving proposed structured settlements, a statement from the parties disclosing the cost of the annuity or structured settlement to the tortfeasor. Minn. Gen. R. P. 145.02. The Petitioner and the minor must appear for a hearing to approve the settlement. Minn. Gen. R. P. 145.04. The Court's Order will specify the disposition of the funds. Minn. Gen. R. P. 145.05.

The statute of limitations for a personal injury claim is tolled under a minor turns 18 years old. Minn. Stat. § 541.15.

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?

Minnesota does not follow the majority view that once an employer has admitted to an agency relationship with an employee, it is no longer proper to allow a plaintiff to pursue other theories of derivative or dependent liability. In Minnesota, courts will allow an injured party to proceed under other theories of liability beyond vicarious liability. *Lim v. Interstate Sys, Steel Div Inc.*, 435 N.W.2d 830, 832-33 (Minn. Ct. App. 1989) (holding evidence of negligent entrustment was admissible even though vicarious liability was conceded); *See also, Jones v. Fleischhaker*, 325 N.W.2d 633, 640 (Minn. 1982) (entrustor found both causally negligent and vicariously liable for entrustee's negligence). Thus, there is no advantage in admitting vicarious liability as it relates to direct negligence claims.

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

Minnesota courts have considerable discretion to grant sanctions when, regardless of intent, a party disposes of evidence that it knows, or should know, should be preserved for pending or future litigation. *See Patton v. Newmar*, 538 N.W.2d 116, 118-19 (Minn. 1995).

Spoliation of evidence is the "failure to preserve property for another's use as evidence in pending or future litigation." *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 436 (Minn. 1990) (*quoting County of Solano v. Delancy*, 215 Cal. App. 3d 1232, 264 Cal. Rptr. 721, 724 n.4 (Cal. Ct. App. 1989)). The duty to preserve evidence exists "whenever a party knows or should know that litigation is reasonably foreseeable." *Miller v. Lankow*, 801 N.W.2d 120, 127 (Minn. 2011). The Minnesota Supreme Court has adopted the test set forth in *Dillon v. Nissan Motor Co., Ltd.,* 986 F.2d 263, 267 (8th Cir.1993) for evaluating a motion for spoliation sanctions. *Patton v. Newmar Corp.*, 538 N.W.2d 116, 119 (Minn. 1995). Under *Dillon*, spoliation sanctions are available for "the destruction of evidence that a party knew or should have known was relevant to imminent litigation" and when there is prejudice to the opposing party. 986 F.2d at 268.

The propriety of a sanction for the spoliation of evidence is determined by the prejudice resulting to the opposing party. *See Hoffman v. Ford Motor Co.*, 587 N.W.2d 66, 71 (Minn. Ct. App. 1998). Prejudice is determined by considering the nature of the item lost in the context of the claims asserted and the potential for correcting the prejudice. *Patton*, 538 N.W.2d at 119. Potential sanctions include: (1) adverse inference jury instructions, see

Litchfield Precision Components, 456 N.W.2d at 436; (2) monetary sanctions, *see Multifeeder Tech., Inc. v. British Confectionery Co.*, No. 09-1090 (JRT/TNL), 2012 U.S. Dist. LEXIS 132619, at *34 (D. Minn., Sep. 18, 2012); *Capellupo v. FMC Corp.*, 126 F.R.D. 545, 552 (D. Minn. 1989); (3) a finding of civil contempt, *see Multifeeder Tech., Inc.*, 2012 U.S. Dist. LEXIS 132619, at *34; and (4) exclusion of evidence related to the spoliated evidence, *see Patton*, 538 N.W.2d at 117; *Hoffman*, 587 N.W.2d at 71. Dismissal of a claim or defense may be warranted in extreme circumstances but is seldom invoked as a spoliation sanction. *See Capellupo*, 126 F.R.D. at 552.

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

Evidence of medical expenses actually paid by insurance is generally discoverable. Minn. R. Ci. P. 26.02(b). However, evidence of medical expenses billed to the plaintiff are admissible at trial, while evidence of the actual amount of medical expenses paid is not. *See Swanson v. Brewster,* 784 N.W.2d 264, 281-82 (Minn. 2010) (citing Minn. Stat. § 548.251, subd. 5).

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

Neither Minnesota trial courts nor appellate courts have addressed the discoverability of EDR 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?

In Minnesota, punitive damages are allowed "only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights and safety of others." Minn. Stat. § 549.20(1)(a). *See also Burks v. Abbott Laboratories*, 639 F. Supp. 2d 1006 (D. Minn. 2009). Under the "deliberate disregard standard for punitive damages, the court must determine whether evidence is sufficient to allow a jury to conclude that it is highly probably that the defendant acted with deliberate disregard for the rights or safety of others. *Morrow v. Air Methods, Inc.*, 884 F. Supp. 1353 (D. Minn. 1995).

Under Minnesota law, punitive damages cannot be sought in the initial complaint. Minn. Stat. § 549.20(1)(a). Therefore, prior to seeking punitive damages, a party must move to amend the pleadings to include the damages, and "if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings. Minn. Stat. § 549.191. A plaintiff seeking punitive damages does not need to demonstrate an entitlement to punitive damages but instead an entitlement to *allege* such damages. *See Popp Telecom, Inc. v. Am. Sharecom, Inc.*, 361 F.3d 482, 491 (8th Cir. 2004) (emphasis added). In this context, "'prima facie' does not refer to a quantum of evidence." *Freeland v. Fin. Recovery Servs., Inc.*, 790 F. Supp. 2d 991, 994 (D. Minn. 2011). Instead "prima facie evidence is that evidence which, if unrebutted, would support a judgment in that party's favor." *Id.* (citing *Olson v. Snap Prod., Inc.*, 29 F. Supp. 2d 1027, 1034 (D. Minn. 1998) (internal quotations omitted). The court is not concerned with credibility determinations at this stage and does not consider any challenges to the evidence presented to support it. *Id.*

Minnesota does not have any damages caps.

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?

Minnesota has had several recent nuclear verdicts. However, it has not had any recent noteworthy verdicts involving punitive damages.

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. No private right of action exists under the FMCSR, but violations of safety regulations may be used as evidence of negligence for plaintiff's other claims. See, e.g., *Russ v. XPO Logistics, LLC,* No. 19-2719(DSD/JFD), 2022 U.S. Dist. LEXIS 145938, at *19 (D. Minn. Aug. 16, 2022).

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 rule which considers a broker or shipper to be in a joint venture or agency relationship with a motor carrier. Rather, there would have to be a specific showing that a broker or shipper was in a joint venture with a motor carrier. A joint venture requires proof of the following four elements: "(1) contribution - combining either money, property, time, or skill in a common undertaking; (2) joint proprietorship and control - the parties having a proprietary interest and a right of control over the subject matter; (3) sharing of profits - but not necessarily of losses; and (4) contract - either express or implied." *Hansen v. St. Paul Metro Treatment Ctr., Inc.*, 609 N.W.2d 625, 628 (Minn. Ct. App. 2000).

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

Minnesota is a modified comparative fault state. A plaintiff cannot recover for his or her percentage of fault. If a plaintiff's fault is greater than the fault of the person against whom recovery is sought, plaintiff may not recover against that person. If plaintiff's fault is more than 50%, plaintiff recovers nothing. *See* Minn. Stat. § 604.01, subd. 1.

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

The statute of limitations for bodily injuries resulting from negligence is six years. Minn. Stat. § 541.05, subd. 1(5). The statute of limitations for wrongful death is three years from the date of death and no later than six years from the wrongful act or omission. Minn. Stat. § 573.02, subd. 1.

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?

A wrongful death claim can only be brought by an individual that has been appointed as the trustee. Minn. Stat. § 573.02. A surviving spouse or next of kin may petition to be appointed as trustee. *Id*., subd. 3.

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

No. Proof of the use or failure to use seat belts or a child passenger restraint system is not admissible in evidence, unless the claim involves a defectively designed, manufactured, installed or operating seat belt. See Minn. Stat. § 169.685, subd. 4.

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. The plaintiff's insurance coverage does not impact the damages recoverable.

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

The five choice-influencing factors are: (1) predictability of result; (2) maintenance of interstate and international order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interest; and (5) application of the better rule of law. *Boatwright v. Budak*, 625 N.W.2d 483, 489 (Minn. Ct. App. 2001). In tort cases, the four factor carries the most weight. *See, e.g., Russ v. XPO Logistics, LLC*, No. 19-2719(DSD/JFD), 2022 U.S. Dist. LEXIS 145938, at *17-18, 32 (D. Minn. Aug. 16, 2022). The state where the accident occurs has a strong interest in compensating victims of tortious conduct that occurs within its borders. *See id*.

Minnesota courts decide choice-of-law questions on an issue-by-issue, and not case-by-case basis. *Russ*, 2022 U.S. Dist. LEXIS 145938, at *18. Meaning, different states' laws could apply to different causes of action arising out of the same motor vehicle accident.