

NEVADA

- 1. What are the legal considerations in your State governing the admissibility or preventability in utilizing the self-critical analysis privilege and how successful have those efforts been?**

The self-critical analysis privilege protects self-evaluative materials and results of candid assessments of compliance with laws and regulations from discovery when the public interest in preserving the internal evaluations of organizations outweighs a plaintiff's right to the evidence. Currently, Nevada does not recognize the self-critical analysis privilege, with the limited exception of medical review committees. *See Nev. Rev. Stat. § 49.117.*

- 2. 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?**

Currently, there are no specific rules or regulations regarding third-party litigation funding; however, a lawyer and law firm must still comply with Nevada Rules of Professional Conduct Rule 1.8(f), which states, "a lawyer shall not accept compensation for representing a client from one other than the client unless: (1) the client gives informed consent; (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and (3) information relating to representation of a client is protected as required by the duty of confidentiality.

- 3. Who travels in your State with respect to a Rule 30(b)(6) witness deposition; the witness or the attorney and why?**

With respect to a Rule 30(b)(6) witness deposition, it is customary for the attorney to travel to the witness' place of business to conduct the deposition.

- 4. What are the benefits or detriments in your State by admitting a driver was in the "course and scope" of employment for direct negligence claims?**

In Nevada, a plaintiff can hold an employer liable under the theory of *respondeat superior* when the employee was under the control of the employer and when the act was within the scope of employment. *Molino v. Asher*, 96 Nev. 814, 817 (1980); *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1223 (1996). By admitting a driver was in the "course and scope" of employment, the company is acknowledging that it is liable for any negligence that may be attributable to the driver. Admitting vicarious liability can, however, render moot or duplicative the claims for negligent hiring, training, and supervision. In *Wright v. Watkins and Shepard Trucking, Inc.*, 968 F.Supp.2d 1092, the U.S. District Court for the District of Nevada, interpreting Nevada law, held that a plaintiff cannot recover under theories of *respondeat superior* and negligent hiring if the negligent hiring claim would not impose additional liability on the defendant because the company had

admitted vicarious liability

5. Please describe any noteworthy nuclear verdicts in your State?

A decedent's parents alleged that their 51-year-old intellectually disabled son choked on a sandwich while riding on a paratransit bus. The decedent passed as a result of the incident, alleging that the defendants were negligent, and the driver failed to act or intervene. The jury awarded the plaintiffs \$15 million, including \$7.5 million for the decedent's pain and suffering and \$7.5 million for the parents' grief, sorrow, and loss of companionship. The verdict was appealed to the Nevada Supreme Court and initially reversed and remanded based on alleged defects in the jury instructions. After a lengthy appeal process and request for rehearing, the verdict was ultimately affirmed on appeal in 2020. *First Transit v. Chernikoff*, 476 P.3d 860 (Nev. 2020)

6. What are the current legal considerations in terms of obtaining discovery of the amounts actually billed or paid?

Nevada allows evidence of the amount billed to be entered into evidence at trial. See *Proctor v. Castelletti*, 112 Nev. 88 (1996). The only exception is worker's compensation benefits. See NRS § 616C.215(10). In *Tri-County Equip. & Leasing v. Klinke*, the Nevada Supreme Court also concluded that "evidence of the actual amount of workers' compensation benefits paid should have been admitted and that a clarifying jury instruction provided by statute should have been given." *Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 353, 286 P.3d 593, 594 (2012).

7. How successful have efforts been to obtain the amounts actually charged and accepted by a healthcare provider for certain procedures outside of a personal injury? (e.g. insurance contracts with major providers)

Efforts to introduce amounts actually charged for specific procedures outside the context of personal injury have not been successful in that evidence relies on insurance rates or information that could be considered collateral source. Defendants are permitted to assert that the amounts charged are not reasonable or customary for the community but have seen limited success

8. What legal considerations does your State have in determining which jurisdiction applies when an employee is injured in your State?

The benefits provided in the Nevada Industrial Insurance Act or similar laws of another state are the exclusive remedy against an out-of-state employer for any injury sustained while working for that employer in Nevada, provided that the employer has furnished industrial insurance pursuant to the Nevada Industrial Insurance Act or similar laws of another state to cover the employment while in the State of Nevada. See Nev. Rev. Stat. § 616B.600.

9. What is your State's current position and standard in regards to taking pre-suit depositions?

Pre-suit depositions are governed by Rule 27 of the Nevada Rules of Civil Procedure. NRCPC 27(a)(1) states that a person who desires to perpetuate testimony regarding any matter that may be cognizable in any court of the State may file a verified petition in a district court. The petition must show: (1) that the petitioner expects to be a party to an action cognizable in a court of the State but is presently unable to bring it or cause it to be brought; (2) the subject matter of the expected action and the petitioner's interest therein; (3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it; (4) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known; and (5) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for

the purpose of perpetuating their testimony.

NRCP 27 is designed to perpetuate deposition testimony, not to permit a party to engage in pre-suit discovery to determine whether a cause of action is viable. “Perpetuation of testimony pursuant to NRCP 27 is not intended as a substitution for discovery. The purpose...is to provide an ancillary proceeding to prevent a failure of justice by preserving testimony which otherwise would be lost before the matter to which it relates is ripe for judicial determination.” *Sunrise Hosp. v. Dist. Ct.*, 110 Nev. 52m 55 (1994). NRCP 27 is available in special circumstances to preserve testimony which could otherwise be lost due to some occurrence other than the mere passage of time. *Id.* Nevada courts have concluded that if the petitioner fails to show a substantial danger of the loss of evidence, the petitioner cannot take advantage of Rule 27 merely for the purpose of obtaining facts on which to base a complaint. *Id.*

10. Does your State have any legal considerations regarding how long a vehicle/tractor-trailer must be held prior to release?

Nevada state courts adhere to the common law duty to preserve documents, tangible items, and information relevant to litigation that are “reasonably calculated to lead to the discovery of admissible evidence.” *Bass-Davis v. Davis*, 122 Nev. 442, 450 (2006). The pre-litigation duty is triggered “once a party is on notice of a potential legal claim” and a party is on notice “when litigation is reasonably foreseeable.” As a matter of practice, an adverse party should be given notice of the preservation of the evidence and permitted a reasonable amount of time to inspect the vehicle/tractor-trailer before the vehicle is repaired and/or returned to service.

11. What is your state’s current standard to prove punitive or exemplary damages and is there any cap on same?

Punitive damages are governed by NRS § 42.005 which provide that exemplary damages may be awarded where the defendant has acted fraudulently, maliciously, oppressively or with the intent to injure the plaintiff.

The limit on punitive damages is based on the award of compensatory damages. If the compensatory damages exceed \$100,000, the plaintiff is entitled to punitive damages totaling three times his compensatory damages. If the compensatory damages are less than \$100,000, the punitive damages are limited to \$300,000. These limits or caps do not apply in cases involving alleged defective products, insurance bad faith, discriminatory housing practices, harm caused by toxic/hazardous substances, and defamation.

12. Has your state mandated Zoom trials? If so, what have the results been and have there been any appeals.

Nevada has not mandated Zoom trials. Jury trials have been stayed throughout the COVID-19 pandemic, including trials in the U.S. District Court. The most recent Order for the Eighth Judicial District Court in Clark County, Nevada, permits trial to resume as of February 2021, provided that social distancing and other health standards and requirements can be maintained.

13. Has your state had any noteworthy verdicts premised on punitive damages? If so, what kind of evidence has been used to establish the need for punitive damages? Finally, are any such verdicts currently up on appeal?

In 2010, Plaintiffs Henry Chanin and Lorraine Chanin sued Teva Parenteral Medicines and Baxter Healthcare Corporation in Nevada state court. Plaintiffs asserted claims for negligence and products liability alleging that Mr. Chanin contracted hepatitis C as a direct result of product misuse related to unsafe clinical practices from reuse of vials of the anesthetic propofol. Teva manufactured and distributed propofol used by local endoscopy clinics, including Desert Shadow Endoscopy Center where Mr. Chanin underwent a procedure. Plaintiffs claimed that syringes were reused on multiple patients or that vials labeled for single use were reused multiple times on multiple patients. At least nine patients were infected with the disease. Ultimately, the jury returned a verdict for Plaintiffs for \$5.1 million in compensatory damages plus \$356 million in

punitive damages against Teva Parenteral Medicines and \$144 million in punitive damages against Baxter Healthcare Corporation. The \$500 million was the largest punitive damages award in Nevada. *See Chanin v. Teva Parenteral Medicines, Inc.*, 2010 WL 2470245..