

New Jersey

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

Preventability determinations and internal accident reports are discoverable, but may be excluded from evidence due to specific rules of evidence. In 2021, the New Jersey Appellate Division held that a trucking company's preventability determination and its employees' post-accident statements regarding a driver violating company safety protocols were admissible at trial. *Hassan v. Williams*, 2021 N.J. Super. (App. Div. 2021). Specifically, the *Hassan* court held that the preventability determination and statements from the employer's safety department were admissible at trial, as such constituted statements by a party opponent pursuant to the relevant Rules of Evidence.

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?

The U.S. District Court for the District of New Jersey has recently adopted Local Civil Rule 7.1.1, which requires the disclosure of information regarding the use of third-party litigation funding within thirty (30) days of the opening of a new matter in federal court. Under the Rule, parties must file a statement with information relating to any non-party who provides funding for some or all of the attorneys' fees and expenses for the litigation on a non-recourse basis in exchange for either a contingent financial interest based upon the results of the litigation, or a non-monetary result that is not in the nature of a personal or bank loan, or insurance. Specifically, parties must reveal the funder's name and address, whether the funder's approval is "necessary for litigation decisions or settlement decisions," and a "brief description of the nature of the financial interest." This has not been specifically addressed in New Jersey state court, which would handle discovery of such under traditional discovery and evidence rules.

3. 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?

The court must approve a settlement involving a minor. This hearing for approval is known as a "friendly hearing." Pursuant to New Jersey Court Rule 4:44-2, medical testimony as to the minor is required for the approval of a settlement that "shall be that

of the attending or consulting physician and may be submitted by the affidavit unless the court, for good cause shown, permits the testimony of other medical experts or in its discretion requires the physician's personal appearance." The court will review this material to ensure that the settlement is reasonable and fair for the minor. Additionally, Rule 4:44-3 requires that the settlement amount, legal expenses, medical bills, and attorneys' fee be reviewed. Minors have two (2) years within the date of the minor's eighteen (18th) birthday to bring a personal injury lawsuit. See N.J. Stat. § 2A-14-2(a).

4. 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?

New Jersey courts have dismissed negligent entrustment and training claims when the employer has admitted that its employee was acting within the course and scope of his/her employment at the time of an accident. Specifically, the New Jersey Court of Appeals has ruled that direct negligence claims "had no significance" because the employer was liable whether they were negligent or not. *Rodriguez v. Midpoint Health Care Services, Inc.*, 2010 WL 2010886 (N.J. Super. App. Div. 2010). This has the advantage of removing the corporate defendant from a verdict sheet, thus tending to reduce a jury's potential inclination to "punish" a company.

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

Spoliation of evidence occurs when evidence pertinent to the action is destroyed. A duty to preserve evidence arises when there is: (1) pending or probable litigation involving the defendants; (2) knowledge by the plaintiff of the existence or likelihood of litigation; (3) foreseeability of harm to the defendants, or in other words, discarding the evidence would be prejudicial to defendants; and (4) evidence relevant to the litigation. *Aetna Life and Cas. Co. v. Imet Mason Contractors*, 309 N.J. Super. 358, 366–367 (N.J. App. Div. 1998). If the spoliation of evidence is discovered during the course of litigation, the offended party can receive an adverse inference jury charge and also potentially assert a separate cause of action for fraudulent concealment of evidence. *Tartaglia v. UBS PaineWebber, Inc.*, 197 N.J. 81 (N.J. 2008).

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

On August 15, 2019, the Governor of New Jersey signed a bill which allows plaintiffs injured in motor vehicle accidents to recover at trial for their medical bills that are unpaid and exceed their PIP insurance coverage limits. The bill permits an injured plaintiff who has less than \$250,000.00 in PIP coverage to recover for medical expenses that are not paid through PIP insurance coverage because the plaintiff selected a lower PIP limit. In a companion

bill signed the same day, New Jersey limited recovery of unpaid medical bills to the amounts payable pursuant to the PIP fee schedule. Thus, while this legislation permits injured persons to recover all unreimbursed medical expenses not covered by his/her PIP coverage, it also subjects unreimbursed medical expenses in excess of a driver's PIP limits to the automobile medical fee schedules.

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

Information from an EDR can be extracted with the owner's consent or for the discovery phase of a civil action in accordance with traditional rules of discovery. Given that the custodian of the sought-after material may not be a party to litigation, a proper preservation notices is suggested to avoid potential spoliation.

8. 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?

The New Jersey Punitive Damages Act allows plaintiffs to receive punitive damages of up to five (5) times their compensatory damages or \$350,000.00, whichever is greater. Per this statute, the plaintiff must provide “clear and convincing evidence” that the defendant's actions were reckless; without regard for people's safety; or that they were malicious.

9. 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?

Given the high threshold for punitive damages in New Jersey, punitive damages for motor vehicle accident matters are not often awarded in New Jersey, are typically applied in non-motor vehicle accidents. There have not been any recent noteworthy punitive damages verdicts in the context of trucking litigation.

10. 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. N.J.S.A § 13:60 was specifically enacted in the state in order to maintain compliance with Federal Motor Carrier Safety Administration (FMCSA) regulations. Thus, New Jersey enforces the FMCSRs and to participate in the Federal safety-enforcement programs and to receive Federal aid for doing so.

11. 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?

Generally, a party who employs an independent contractor is not liable for the harm caused by the negligence of the independent contractor or its servants, as the party who hires an independent contractor has no right to control the manner in which the work is done because it is regarded as the contractor's own enterprise. *See Puckrein v. ATI Transport, Inc.*, 186 N.J. 563, 574 (N.J. 2006). Exceptions to this rule exist, however, in situations in which the principal is directly negligent, such as where the principal hires an incompetent contractor, or where it retains control of the manner and means of doing the work that is the subject of the contract. *Id.*

A joint venture is not created simply by reason of joint participation towards a stated end. *See Sullivan v. Jefferson*, 400 A.2d 836 (N.J. Super. 1979). Rather, a joint venture is "an undertaking usually in a single instance to engage in a transaction of profit where the parties agree to share profits and losses." *See Notarao v. Impac Logistic Services*, 2014 WL 3407081 (N.J. App. Div. 2004). A joint venture ordinarily has some or all of the following elements: (1) a contribution by the parties of money, property, effort, knowledge, skill or other assets to a common undertaking; (2) a joint property interest in the subject matter of the venture; (3) a right of mutual control or management of the enterprise; (4) an expectation of profit; (5) the right to participate in profits; and (6) limitation of the objective to a single undertaking. To create a joint venture, the parties must agree upon essential terms because a "basic criterion" for the establishment of a joint venture is "the voluntary agreement of the parties to form a relationship with the intent to create a joint venture." *Sullivan v. Jefferson*, 400 A.2d 836 (N.J. App. Div. 1979). Thus, in the context of motor carriers, a broker or shipper is not considered to be in a joint venture to the a broker or shipper unless there is some contractual evidence to the contrary. *See, e.g., Direct Coast to Coast, LLC v. Door to Door Courier Service, LLC*, 2018 WL 1748076 (N.J. Super. 2018).

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

Under New Jersey's Comparative Negligence Act, an individual's fault for an accident cannot exceed that of the individual from whom damages are sought. If found to also be at fault, the amount of damages paid to a plaintiff is reduced by the percentage he/she is considered at fault. N.J.S.A. 2A:15-5.1, *et seq.* Further, the law allows a recovering plaintiff to obtain the full damage award from any party found to be at least 60% at fault by the jury. Parties who are found less than 60% at fault can only be held accountable for their percentage share of the total damage award. N.J.S.A. 2A:15-5.3.

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

Pursuant to N.J.S.A. § 2A:14-2, "[e]very action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be commenced within two years next after the cause of any such action shall have accrued." For wrongful death claims, such must be commenced within two (2) years of the death. N.J.S.A. § 2A:31-3.

14. 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 New Jersey, the personal representative (i.e. executor/executrix) of the deceased's estate must bring a wrongful

death claim. If the decedent died without a will naming a personal representative, the court will appoint someone to act as an administrator who can file the lawsuit, following state probate rules. N.J.S.A. § 2A:31-2.

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

The "seat belt defense" is a viable theory for personal injury matters. See *Dunn v. Durso*, 530 A.2d 387 (N.J. Super. App. Div. 1986). Specifically, seat belt non-use can be used to reduce a plaintiff's recovery, but only for those damages avoidable by the use of a seat belt. See, e.g., *Waterson v. General Motors Corp.*, 544 A.2d 357 (N.J. 1988).

16. 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.

Under N.J.S.A. § 39:6A-4.5(a), any person who, at the time of the accident is operating an uninsured vehicle, loses his/her right to sue for his economic and noneconomic loss while operating the uninsured vehicle, pursuant to policy objectives of incentivizing uninsured drivers to buy insurance or lose his/her right to sue for injuries suffered in an automobile accident in New Jersey.

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

New Jersey has adopted the "most significant relationship" test to determine the choice-of-law applicable in personal injury cases. *P.V. v. Camp Jaycee*, 197 N.J. 132, 136 (N.J. 2008). This analysis begins with a presumption that the local law of the state of the injury will apply, and is applicable unless another state has a more significant relationship to the parties and issues. Once a conflict of laws is established, it is presumed that the local law of the state where the injury occurred will govern, as the state in which the injury occurs is likely to have the predominant, if not exclusive, relationship to the parties and the issues in the litigation. The next step is to determine whether New Jersey has a more significant relationship. "When both conduct and injury occur in a single jurisdiction, with only 'rare exceptions, the local law of the state where the conduct and injury occurred will be applied' to determine an actor's liability. That is so because 'a state has an obvious interest in regulating conduct of persons within its territory and providing redress for injuries that occurred there.'" *Fu v. Fu*, 160 N.J. 108, 125-26 (1999). Factors relevant to this analysis include: (1) the interests of interstate comity; (2) the interests of the parties; (3) the interests underlying the field of tort law; (4) the interests of judicial administration; and (5) the competing interests of the states.