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Ohio

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

In Ohio, for preventability determinations and internal accident reports to be discoverable, they must not be privileged and must be relevant and proportional to the needs of the case. Civ.R. 26(B)(1). The Southern District of Ohio has found that preventability determinations and internal accident reports generated in the ordinary course of business are not privileged under the attorney-client privilege. *See Laws v. Stevens Transport, Inc.*, S.D.Ohio No. 2:12-cv-544, 2013 U.S. Dist. LEXIS 32221, * 10–15 (Mar. 8, 2013).

Whether preventability determinations and internal accident reports are admissible depends on whether they are permitted under Ohio's Rule of Evidence. An Ohio court *in Estate of Foreman v. U.S. Express, Inc.*, C.P. No. 09 CVC-02-1602, 2010 Ohio Misc. LEXIS 21640 (June 9, 2010) found that preventability determinations and internal accidents do not constitute remedial measures which would prevent their admission under Ohio Rule of Evidence 407 because these reports are not created to decrease the risk of similar accidents in the future. *Id*. at * 17–18. However, other admissibility considerations such as hearsay, business record, and authentication still need to be analyzed. *Id.*

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?

This issue has not been litigated in Ohio state court. However, at least one Ohio trial court has suggested that parties engaged in third-party litigation funding may need to disclose this engagement in pretrial discovery. *See Zwegat v. Bd. of Trustees*, C.P. No. 18CV-10593, 2019 Ohio Misc. LEXIS 228, at *11 (July 25, 2019) ("Any third-party funding needs careful study by counsel invited to participate in it; and may deserve full disclosure to a court in camera, or to other parties in pretrial discovery."). Generally, to be discoverable, documents sought must not be privileged and must be relevant and proportional to the needs of the case. Civ.R. 26(B)(1).

In Ohio federal courts, the Northern District of Ohio has held that "[a]bsent extraordinary circumstances, the Court will not allow discovery into 3PCL financing." *In re Natl. Prescription Opiate Litigation*, No. 1:17-MD-2804, 2018 U.S. Dist. LEXIS 84819, at *46 (N.D.Ohio May 7, 2018). It is not clear what "extraordinary circumstances" would permit the discoverability of such files. However, the Court ordered in-camera submissions relating to financing terms and affidavits from counsel and the funders to certify that there were no conflicts of interest or control by the funders.

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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?

Ohio Civil Rule 17(B) requires that a minor have a representative "such as a guardian or other like fiduciary." If the minor does not have a duly appointed representative, then the minor "may sue by a next friend or defend by a guardian ad litem." If a minor is not otherwise represented in an action, then a court will appoint the minor a representative. Civ.R. 17(B).

Ohio Rev. Code 2305.10 provides that actions for bodily injury shall be brought within two years after the cause of actions accrues. Ohio Rev. Code 2305.16 tolls the two-year statute of limitations for bodily injuries until after the minor reaches the age or majority. *See also Cook v. Matvejs*, 56 Ohio St.2d 234, 383 N.E.2d 601 (1978).

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?

Ohio permits direct negligence claims regardless of whether vicarious liability for an employee's negligent actions has been admitted. *See Clark v. Stewart*, 126 Ohio St. 263, 263, 185 N.E. 71 (1933); *see also Rojas v. Concrete Designs, Inc.,* 2017-Ohio-379, 83 N.E.3d 339 (8th Dist.) ("[c]auses of action for negligence and negligent entrustment exist independently, regardless of whether their damages are one and the same."); *but see Nichols v. Coast Distrib. Sys.*, 86 Ohio App.3d 612, 619, 621 N.E.2d 738 (9th Dist. 1993) (following *Clark* even though it found no fault with the defendant-employer's arguments that the direct negligence claim should have been dismissed because the employer admitted that the employee was in the course and scope of his employment when the accident occurred). Accordingly, there is no advantage for a motor carrier to admit they are vicariously liable for the fault of its driver in the context of direct negligence claims.

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

In Ohio, spoliation of evidence occurs when (1) the evidence is relevant, (2) the offending party had the opportunity to examine the unaltered evidence, and (3) the evidence was intentionally or negligently altered without providing an opportunity for inspection to the nonoffending party, even though the offending party was on notice of the impending litigation.

In Ohio, spoliation of evidence can occur when evidence is negligently destroyed, and the nonoffending party is disadvantaged by the loss.

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

The Ohio Supreme Court has held, and reaffirmed, that "R.C. 2317.421 makes. . . bills prima facie evidence of the reasonable value of charges for medical services." *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, 857 N.E.2d 1195, ¶ 9; *Jaques v. Manton*, 125 Ohio St.3d 342, 2010-Ohio-1838, 928 N.E.2d 434, ¶ 11 (holding that *Robinson* applies regardless of the collateral-source rule because that evidence is still inadmissible); *Moretz v. Muakkassa*, 137 Ohio St.3d 171, 2013-Ohio-4656, 998 N.E.2d 479, ¶ 92 (holding that expert testimony is not necessary for the admission of evidence of write-offs from medical bills). So, not only is the amount paid of medical bills discoverable, but it is also admissible evidence.

Other than requesting this in discovery from the plaintiff, one of the ways to obtain discovery on this issue is to request medical records and bills from the plaintiff's treating provider. Another way is to subpoena or file suit

against the plaintiff's health insurer to obtain explanation of benefit forms which show the amount constituting the write-offs for the applicable medical bills.

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

This issue has not been litigated in Ohio state court. However, to be generally discoverable, the documents sought must not be privileged and must be relevant and proportional to the needs of the case. Civ.R. 26(B)(1). Additionally, Ohio Civ.R. 45 permits parties to issue subpoenas to third-parties for documents or electronically stored information so long as the sought information does not disclose privileged or protected information, does not disclose information a fact known or opinion held by an expert not retained or specially employed by any party in anticipation, or subjects the third-party to undue burden. Civ.R. 45(A) & (C).

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?

To be awarded punitive or exemplary damages against a motor carrier or broker in a tort action, the defendant motor carrier or broker must have engaged in actions or omissions that demonstrate malice or aggravated or egregious fraud, or that the motor carrier or broker as principal or master knowingly authorized, participated in, or ratified actions or omissions of an agent or servant that so demonstrate. R.C. 2315.21(C)(1). A motor carrier or broker engages in malice when there was (1) a state of mind under which a person's conduct is characterized by hatred, ill will or a spirit of revenge, or (2) a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm. *Wiegand v. Fabrizi Trucking & Paving Co*., 2017-Ohio-363, 83 N.E.3d 247, ¶ 39 (9th Dist.). Simple negligence is not sufficient to justify an award of punitive damages. *Baker v. Swift Transp. Co. of Arizona, LLC*, S.D.Ohio No. 2:17-cv-909, 2018 U.S. Dist. LEXIS 75961, * 15 (May 4, 2018) (applying Ohio law). At least one Ohio court has held that evidence of a motor carrier failing to follow Federal Motor Carrier Safety regulations does not automatically give rise to punitive or exemplary damages. *See Wiegand*, 2017-Ohio-363, at ¶ 40.

Punitive or exemplary damages for tort actions in Ohio are capped by statute to two times the amount of the compensatory damages awarded to the plaintiff from that defendant. R.C. 2315.21(D)(2)(a). If the defendant is a small employer or an individual, then punitive or exemplary damages cannot exceed two times the amount of the compensatory damages awarded to the plaintiff from the defendant or ten per cent of the employer's or individual's net worth when the tort was committed up to a maximum of three hundred fifty thousand dollars. R.C. 2315.21(D)(2)(b).

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?

There have not been any recent Ohio cases premised on punitive damages in regard to truck transportation. However, in prior years, courts have evaluated punitive damages claims and provided noteworthy analysis. For example, in *Parker v. Miller*, No. 2:16-CV-1143, 2017 WL 3642372 (S.D. Ohio Aug. 24, 2017), the court allowed the request for punitive damages to withstand defendant's motion to dismiss. This case involved a tractor-trailer crashing into a state patrol car at nearly 70 mph while plaintiff was seated inside. Id. at 1. The state patrol car had its emergency lights on and road flares. Id. The complaint alleged that the driver of the trailer had enough time to see the police car blocking the right lane, or to stop and change lanes, but instead applied the brakes only two seconds before impact, crashing into the back of the car and causing severe injuries to the plaintiff. Id. The Court

stated that a reasonable factfinder could find a conscious disregard for plaintiff's safety on these facts. Id. at 2.

Additionally, a year later in *Parker v. Miller*, 2018 WL 374981, S.D. Ohio, Eastern Division (August 7, 2018), the court found that the facts could support a finding of malice on the part of the employers in hiring and retaining the driver as well as authorizing and ratifying his conduct. Id. at 11. The complaint alleges that the employers hired the driver having a poor safety record, he faced numerous crashes and violations, and the employers did not provide training or discipline. The court found that plaintiff sufficiently alleged that the employers exhibited a conscious disregard of an almost certain risk of substantial harm. Id. at 11-12.

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 Ohio Supreme Court has yet to address this question, therefore, there are no binding holdings that set precedent. However, the Twelfth District of Ohio permitted an expert's testimony as to the content of the FMCSA regulations in *Davis v. Royal Paper Stock Co.*, Inc., 201 N.E.3d 506 (Ohio Ct. App. 2022). Here, an expert witness who was a commercial transportation specialist, explained that there were no FMCSA regulations that imposed an obligation to use jack stands. The court eventually determined the witness' overall testimony about the cause of the injury to be speculative but did not rule that testimony about the FMCSRs was prohibited.

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?

In Ohio, courts have found that a shipper/broker are not in a joint venture with a motor carrier for purposes of personal injury or wrongful death claims. Here, to establish the existence of a joint venture, a plaintiff must show (1) a joint contract, (2) intent among parties to form a joint venture, (3) a "community of interest and control, including contributions to the joint venture", (4) the "mutual right" among members "to direct and control the purpose of the joint venture", and (5) an agreement among parties to the venture to share its losses and profits.

In *McCarter v. Ziyar Express, Inc*., the court found that a shipper/broker was not in a joint venture with a motor carrier in a wrongful death case*. McCarter v. Ziyar Express, Inc*., N.D.Ohio No. 3:21 CV 2390, 2023 WL 144844, *5–6. In that case, the plaintiff did not allege facts about the broker's role beyond that of "controlling officer and shareholder" or the purpose of the supposed joint venture other than to "transport the Load." The court held that there were not sufficient facts to show that the broker was involved with the trip that resulted in the crash. *See also Goodwin v. Am. Marine Express, Inc*., N.D.Ohio No. 1:18-CV-01014, 2021 WL 848948, *17 (finding no issue of material fact regarding the existence of a joint venture where plaintiff did not identify any agreement between the defendants to share in the profits and losses of the alleged joint venture).

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

In 1980, Ohio became the 35th state to enact a comparative negligence law. According to section 2315.33 of Ohio's Revised Code, if a plaintiff is contributorily negligent, they are not barred from recovering damages if the plaintiff's contributory negligence is not greater than the combined tortious conduct of all other persons. However, the court shall diminish any compensatory damages recoverable by the plaintiff by an amount that is proportionately equal to the percentage of tortious conduct of the plaintiff as determined pursuant to section 2315.34 of Ohio's Revised Code. *Golembiewski v. Dept. of Transp.*, 91 Ohio Misc.2d 34, 697 N.E.2d 273, 276 (Ohio

Misc.1997).

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

In pertinent part, R.C. § 2305.10 explains that an action for product liability, bodily injury, or injury to personal property shall be brought within two years after the cause of action accrues. However, when a products liability claim is brought against the manufacturer or supplier of a product for injury, it shall be brought no later than ten years from the date that the product was delivered to its first purchaser or lessee who was not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product.

Similarly, R.C. § 2125.02(D)(1) states that a civil action for wrongful death shall be commenced within two years after the decedent's death. However, when a products liability claim is brought against the manufacturer or supplier of a product for wrongful death, it shall be brought no later than ten years from the date that the product was delivered to its first purchaser or lessee who was not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product.

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?

According to R.C. § 2125.02, a civil action for wrongful death may be brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving *spouse, the children, and the parents of the decedent*, and for the exclusive benefit of the other *next of kin* of the decedent. A parent who abandoned a minor child who is the decedent shall not receive a benefit in a civil action for wrongful death brought under this division. A person who is conceived before the decedent's death and who is born alive after the decedent's death is a beneficiary of the action. A personal representative appointed in Ohio, with the consent of the court making the appointment, may settle with the defendant the amount to be paid.

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

No. According to R.C. § 4513.263(F)(1), the failure of a person to have worn a seat belt may not be considered or used as evidence of negligence or contributory negligence. It may not diminish recovery for damages in any civil action involving the person for economic losses. However, a trier of fact may determine based on evidence admitted consistent with the Ohio Rules of Evidence that the failure to wear a seatbelt contributed to the harm alleged in the tort action and may diminish a recovery of compensatory damages that represents noneconomic loss in a tort action that could have been recovered but for the plaintiff's failure to wear all of the available elements of a properly adjusted seatbelt. R.C. § 4513.262(F)(1)

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 R.C. 2315.18(B)(1), there is no limit on economic damages for tort actions. Under (B)(2), the cap for noneconomic damages is $250,000 or three times the amount of economic damages, whichever is greater; subject to a maximum of $350,000 per plaintiff. There is an exception under (B)(3), which states that there is no cap if the injured person suffered a catastrophic injury, such as permanent and substantial physical deformity, loss of the use of a limb, or injury that prevents one from caring for themselves and performing life-sustaining activities.

Next, to recover punitive damages, the defendant must have intended to harm the plaintiff. Punitive damages are meant to punish the defendant for such acts against the plaintiff – rather than to compensate the plaintiff. As such, Ohio Revised Code §2315.21(D) limits punitive damages. Punitive damages are capped at twice the value of compensatory damages. To note, a plaintiff can recover a maximum of $350,000 in punitive damages, even if twice the amount of the compensatory damage award exceeds that. However, if the defendant is an individual or a small employer, the punitive damages are limited to ten percent of net worth up to a maximum of $350,000.

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

Under section 146 of Ohio's Restatement of the Law of Conflicts, there is a presumption that the law of the place of the injury controls unless another jurisdiction has a more significant relationship to the lawsuit. To determine which state has the most significant relationship, courts should consider the factors laid out in section 145.5 of Ohio's Restatement. The factors within this section are: (1) the place of the injury; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation, and place of business of the parties; (4) the place where the relationship between the parties, if any, is located; and (5) any factors under Section 6 which the court may deem relevant to the litigation. Each of these factors is to be evaluated according to their relative importance to the case.

Section 6 factors include: (a) the needs of the interstate and international systems, (b) the relevant policies of the forum, (c) the relevant policies of other interested states and the relative interests of those states in the determination of the issue, (d) the protection of justified expectations, (e) the basic policies underlying the field of law, (f) certainty, predictability, and uniformity of result, and (g) ease in the determination and application of law to be applied.