

Oklahoma

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

Reports made in compliance with federal regulations are privileged under federal statute. 49 U.S.C. § 504(f). Section 504(f) is absolutely clear that “[n]o part of a report of an accident occurring in operations of a motor carrier...and required by the Secretary [of Transportation] ...may be admitted into evidence or used in a civil action for damages related to a matter mentioned in the report or investigation.” Section 2501 of the Oklahoma Evidence Code recognizes federal statutes and Constitutional provisions as a basis for privilege under state law. Furthermore, the statute’s language “any civil action” indicates that Congress intended the statute to be applied in state court. See, e.g., *City of Atlanta v. Watson*, 267 Ga. 185, 475 S.E.2d 896, 903-04 (1996) (recognizing that the phrase “any civil action” in a federal statute was meant to include state courts; also, “when a statute that has evidentiary implications is part of a larger federal statutory scheme, the Supremacy Clause demands that states adhere to the statute. To hold otherwise defeats a significant purpose of the federal act and cannot be justified in light of the Supremacy Clause.”)

Federal District Courts in Oklahoma have recognized that these reports are not discoverable, but they have declined to extend the privilege to extra information in accident reporting that is added to “fill in the gaps” for information required by 49 U.S.C. § 504(f). *Sykes v. Bergerhouse*, No. CIV-20-333-G, 2021 WL 5098291 (W.D. Okla. Nov. 1, 2021).

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?

Oklahoma does not have any specific rules and regulations either permitting or excluding discovery of 3rd party litigation financing. The statute guiding what information is discoverable in Oklahoma is 12 O.S. § 3226. Pursuant to 3226 “Parties may obtain discovery regarding any matter, not privileged, which is relevant to any party’s claim or defense, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.” 12 O.S. § 3226(B)(1).

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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?

The procedure for settling a claim for injuries to a minor in Oklahoma is outlined in 12 O.S. § 86.1. Under in 12 O.S. § 86.1 a person with legal custody of the minor may enter into a settlement agreement with a party against whom the minor has a claim if:

1. A conservator or guardian ad litem has not been appointed for the minor;
2. The total amount of the settlement, not including reimbursement of medical expenses, liens, reasonable attorney fees, and costs of suit, is Twenty-five Thousand Dollars (\$25,000.00) or less if paid in cash, check, draft, or if paid by the purchase of a premium for an annuity;
3. The monies paid under the settlement agreement will be paid as set forth in subsections C and D of this section; and
4. The person entering into the settlement agreement on behalf of the minor completes an affidavit or verified statement that attests that the person has made a reasonable inquiry and that:
 - a. to the best of the person's knowledge, the minor will be fully compensated by the settlement, or
 - b. there is no practical way to obtain additional amounts from the party entering into the settlement agreement with the minor.

Subsections C and D of 12 O.S. §86.1 provide the procedure for how the money must be handled by the minor's guardian or attorney once the matter is settled. The age of the minor does not affect the statute of limitations in personal injury claims in Oklahoma.

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?

In Oklahoma there are many disadvantages for admitting vicarious liability as a motor carrier for the acts of a driver. In Oklahoma admitting liability through vicarious liability does not bar the Plaintiff from asserting direct liability claims such as negligent entrustment. *Fox v. Mize*, 2018 OK 75, ¶ 16, 428 P.3d 314, 323, as corrected (Oct. 2, 2018). The Oklahoma Supreme Court has held that “[e]mployers employing unfit and unqualified drivers cannot insulate themselves from a negligent entrustment claim simply by stipulating that the employee driver was acting in the course and scope of employment. *Id.*”

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

Spoliation of evidence in Oklahoma is defined as the “destruction or material alteration of evidence or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation.” *Barnett v. Simmons*, 197 P.3d 12 (Okla. 2008). “Spoliation occurs when evidence relevant to prospective civil litigation is destroyed, adversely affecting the ability of a litigant to prove his or her claim.” *Id.* “Spoliation includes the intentional or negligent destruction or loss of tangible and relevant evidence which impairs a party's ability to prove or defend a claim.” *Id.*

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

12 O.S. § 3009.1 provides that the amount paid by insurance or others is admissible rather than the amount billed.

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

Unlike several states, Oklahoma does not have a statute or procedure that specifically deals with obtaining EDR data from other vehicles. EDR data can be obtained from vehicles through requests for production of documents in discovery. The standard for determining discoverability in Oklahoma is found in 12 O.S. § 3226. It states that information obtained through discovery must be “relevant to any party’s claim or defense” and “reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case.” 12 O.S. § 3226.

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?

Oklahoma has three categories for awarding punitive damages. 23 O.S. § 9.1.

Category I punitive damages are awarded where the jury finds by clear and convincing evidence that (1) the defendant has been guilty of reckless disregard for the rights of others; or (2) an insurer has recklessly disregarded its duty to deal fairly and act in good faith with its insured.” Punitive awards against an insurer in this category are limited to One Hundred Thousand Dollars (\$100,000) or the amount of the actual damages awarded. 23 O.S. § 9.1(B)

Category II punitive damages are awarded where the jury finds by clear and convincing evidence that (1) the defendant acted intentionally and with malice towards other; or (2) an insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured. Punitive awards in category II are determined in a separate proceeding after such finding of actual damages and are limited to (1) Five Hundred Thousand Dollars (\$500,000), (2) twice the amount of actual damages, or (3) “the increased financial benefit derived by the defendant or insurer as a direct result of the conduct causing the injury to the plaintiff and other persons or entities.” For category II punitive awards, the trial court shall reduce any award for punitive damages by the amount it finds the defendant or insurer has previously paid as a result of all punitive damage verdicts entered in any Oklahoma state court for the same conduct by the defendant or insurer. 23 O.S. § 9.1(C)

Category III punitive damages are awarded where the jury finds by clear and convincing evidence that (1) the defendant has acted intentionally and with malice towards others; or (2) an insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured; and the court finds, on the record and out of the presence of the jury, that there is evidence beyond a reasonable doubt that the defendant or insurer acted intentionally and with malice and engaged in conduct life-threatening to humans. Similar to category II, category III awards are found in a separate proceeding following the finding of actual damages, however there is no cap on category III punitive awards. The jury may award punitive damages in any amount they deem appropriate, without regard to the limitations in category I and II. 23 O.S. § 9.1(D).

Juries use seven (7) factors for determining whether to award punitive damages, and determining the amount. Those factors are:

1. The seriousness of the hazard to the public arising from the defendant's misconduct;
2. The profitability of the misconduct to the defendant;
3. The duration of the misconduct and any concealment of it;
4. The degree of the defendant's awareness of the hazard and of its excessiveness;
5. The attitude and conduct of the defendant upon discovery of the misconduct or hazard;
6. In the case of a defendant which is a corporation or other entity, the number and level of employees involved in causing or concealing the misconduct; and
7. The financial condition of the defendant.

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?

In *Progressive Direct Ins. Co. v. Pope*, the Oklahoma Supreme Court held that statutory treble damages pursuant to 47 O.S. 2011 § 10-103 are punitive in nature and excluded by a clause in an insurance contract excluding punitive damages. *Progressive Direct Ins. Co. v. Pope*, 507 P.3d 688 (Okla. 2022). Defendant Pope was involved in an automobile accident while operating a vehicle insured by Progressive. Pope fled the scene of the collision. The opposing party involved in the accident made bodily injury and property claims with Progressive and alleged she was entitled to treble damages pursuant to Oklahoma statute 47 O.S. 2011 § 10-103. The statute provides that when there is a hit and run “[i]n addition to the criminal penalties imposed . . . any person violating the provisions of this section shall be subject to liability for damages in an amount equal to three times the value of the damage caused by the accident. Said damages shall be recoverable in a civil action.” 47 O.S. 2011 § 10-103. Progressive argued that treble damages should be excluded from coverage pursuant to a clause in the insurance contract excluding punitive damages. The court found in favor of Progressive and found that treble damages under the statute are punitive in nature because it intends to punish the wrongdoer and act as a deterrent for future hit and runs. The court looked at the language of the excluding clause and found that it unambiguously excludes damages that are punitive in nature. Going forward the case can be used as a framework for identifying other statutory damages and penalties that may be deemed punitive and excluded from coverage under a punitive damages exclusion clause.

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?

Oklahoma law does not expressly permit or deny expert testimony as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts.

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?

Oklahoma courts define a joint venture as “a special combination of two or more persons where in some specific venture a profit is jointly sought without any partnership or corporate designation.” *Le v. Total Quality Logistics*,

LLC, 431 P.3d 366 (Ok. Civ. App. 2018). There are three necessary elements to establish a joint venture,

1. A joint interest in property (the contributions need not be equal or of the same character),
2. An express or implied agreement to share profits and losses of the venture,
3. Action or conduct showing cooperation in the venture.

Oklahoma courts have found that though a joint venture may exist between a broker and carrier, not all broker/carrier relationships constitute a joint venture, and whether a joint venture exists between the two is a question for the trier of fact.

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

Oklahoma uses a modified comparative negligence standard. If plaintiff is found to be over 50% negligent, recovery is barred. Contributory Negligence is a recognized defense against "ordinary negligence but not against gross negligence or willful or wanton misconduct." *Myers v. Lashley*, 44 P.2d 553 (Okla. 2002).

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

The statute of limitations for personal injury cases in Oklahoma is two years from the date of the injury. The statute of limitations for wrongful death cases in Oklahoma is two years from the date of death.

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 Oklahoma a wrongful death claim must be brought by the personal representative of the estate, the surviving spouse if no personal representative has been appointed, or the next of kin if there is no surviving spouse. *Beal v. McCann*, 1995 OK CIV APP 118, 910 P.2d 1099 (Ok. Civ. App. 1995), *citing* 12 O.S. § 1053, and 12 O.S. § 1054.

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

Under 47 O.S. § 12-420, evidence of non-use of seatbelts is admissible in any civil lawsuit unless the plaintiff of that lawsuit is a child under the age of sixteen (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.

In *Montgomery v. Potter*, the Oklahoma Supreme Court found that a statute barring uninsured motorists from recovering certain non-economic damages in automobile accident cases is an unconstitutional special law. *Montgomery v. Potter*, 341 P.3d 660 (Okla. 2014). The original statute, 23 O.S.2011 § 7-116, precluded uninsured Plaintiffs from claiming damages for pain in suffering from car accidents. The Court held that the statute was a "special law" under Article 5 § 46 of the Oklahoma constitution because it "targets for different treatment less than an entire class of similarly situated persons or things." *Montgomery v. Potter*, 341 P.3d 660 (Okla. 2014).

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

Oklahoma determines choice of law questions in motor vehicle cases by looking at which state has the most **significant relationship** to the occurrence and the parties. *Brickner v. Gooden*, 525 P.2d 632 (Okla. 1974). The factors the Court looks at to determine which state has the most significant relationship include;

- (1) the place where the injury occurred,
- (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, and
- (4) the place where the relationship, if any, between the parties occurred.