Texas

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

Yes, they are discoverable because they are normally prepared in the ordinary course of business and not in anticipation of litigation. Texas Rule of Civil Procedure 192.5(a)(1) defines Work Product as "material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents." Parties may assert that material or information is work product and therefore privileged from being discoverable. *See* Texas Rule of Civil Procedure 192.5(d). This privilege, by definition, does not include these determinations and reports, and thus they are discoverable.

In addition, attempts to argue that these types of reports and determinations are privileged based on a self-critical analysis privilege, have not been successful.

This was attempted recently in *In Re Fisher & Paykel Appliances, Inc.*, a wrongful death and products liability action, where Defendant Fisher & Paykel Appliances, Inc. ("Fisher") filed three post-accident reports with the U.S. Consumer Product Safety Commission regarding incidents related to the clothes dryer that caused the death and was compelled to produce them.[i] Fisher objected on grounds that production was privileged under self-critical analysis.[ii] The Court held that it would not recognize the privilege and "decline[d] to write into existence a common law self-critical analysis privilege that both the Congress[ ]and the Texas Legislature have declined to create."[iii]

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?

There is no rule requiring the disclosure of a party's funded status. However, some federal courts in Texas have concluded that litigation funding information should be protected as work product.

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 the resolution of personal injury claims for injuries to a minor in Texas requires an adult to stand in the shoes of the minor as "next friend" and requires a court to approve of the settlement.

The adult who stands in as next friend is usually one of the minor's parents, but any adult may assume the role as next friend to pursue the minor's claim.

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If the claim is settled pre-litigation, the plaintiff files a "friendly suit" (usually in the county in which the incident occurred) to have a court approve the settlement. After the suit is filed, the parties will submit an agreed motion to appoint a guardian ad litem to represent the minor. The guardian ad litem is usually a licensed attorney who helps the judge to determine whether the settlement is in the minor's best interest by reviewing the file for the case, such as the minor's medical bills and records, and the proposed settlement. Finally, the court will approve of the settlement either upon a hearing or on submission (a review of the filings only).

If the claim is settled post-litigation, the parties will go through essentially the same process, but without having to initiate a friendly suit. Rather, the parties will file motions to approve the settlement and to appoint a guardian ad litem. Then, the court will, upon a hearing or submission, approve or deny the settlement.

Once the settlement is approved by the court, the plaintiff has the option of depositing the funds with the court registry, to be paid to the minor when the minor turns 18, or in an annuity, which can be paid out at various times after the minor turns 18. *See* Tex. Prop. Code § 142.008. This process ensures that the funds go straight to the minor rather than his or her parents.

The minor's age does affect the statute of limitations for a personal injury claim. The two-year statute of limitations on personal injury cases is tolled for minors until the minor turns 18. Accordingly, when a minor sustains an injury, their statute of limitations generally does not run until their 20th birthday. There are some restrictions however, for claims involving medical malpractice, and this tolling provision does not apply if a minor dies as a result of an injury. The purpose of this tolling provision is to afford the minor with protection, since minors are generally unable to make legal decisions for themselves. *See* Tex. Civ. Prac. & Rem. Code § 16.001.

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?

Tex. Civ. Prac. & Rem. Code §72.051, codified Texas House Bill 19, a new law enacted September 1, 2021, that provides significant procedural changes to motor carrier cases filed on or after that date. Tex. Civ. Prac. & Rem. Code §72.051. This law covers motor vehicle accidents involving "commercial motor vehicles". "Commercial motor vehicle" means a motor vehicle being used for commercial purposes in interstate or intrastate commerce to transport property or passengers, deliver or transport goods, or provide services. Tex. Civ. Prac. & Rem. Code 72.051(4).

Tex. Civ. Prac. & Rem. Code §72.051 allows a motor carrier, under certain conditions, to request a bifurcated trial. Generally, in the first phase, a jury would determine any liability issues amongst the drivers and determine the amount of compensatory damages. In the second phase, assuming a fact issue exists on gross negligence, a jury will determine the amount of exemplary damages, if any.

State Rep. Jeff Leach, R-Plano, authored this bill. The intended goal of the bill, he said, is to protect commercial vehicle operators from "unjust and excessive lawsuits." Leach said in the bill analysis that in the past decade, the number of lawsuits stemming from motor vehicle crashes in Texas has increased by 118%, while the number of crashes involving severe injury or death have decreased or only slightly increased. "This bill installs a legal and procedural framework that will protect Texas businesses of all sizes from abuses in our justice system, from abuse of lawsuits that are threatening the very existence of many of our small businesses," Leach said.

In application, the first phase of trial will adjudicate negligence issues amongst drivers, including the commercial driver. In this phase, pursuant to Tex. Civ. Prac. & Rem. Code §72.051, evidence of negligence is to be limited to

acts and/or omissions of the commercial driver (e.g. speeding, running a stop sign, unsafe lane change), versus any evidence of independent negligent acts and/or omissions on the part of the motor carrier/ employer (e.g. negligent hiring, training, supervision, retention, past USDOT violations, past accidents/lawsuits, net worth), including past practices and policies of the motor carrier. Any focus on the motor carrier will be reserved for the second phase of the trial.

Tex. Civ. Prac. & Rem. Code §72.052, entitled "Bifurcated Trial in Certain Commercial Motor Vehicle Accident Actions", controls the bifurcation procedure. Bifurcation will apply if (1) a plaintiff alleges vicarious liability claims against a company for a driver's negligence; and (2) the plaintiff alleges punitive damages against the company. Tex. Civ. Prac. & Rem. Code 72.052. Therefore, unless Plaintiff pleads gross negligence, it is conceivable that plaintiff attorneys will continue to try to adjudicate cases against motor carriers and their drivers with mixed presentation of evidence against the driver and independent negligence against the motor carrier.

If Plaintiff's suit alleges both vicarious liability and punitive damages, the motor carrier can move for a bifurcated trial by a motion to be made on or before the later of (1) the 120th day after the date the defendant bringing the motion files the defendant's original answer; or (2) the 30th day after the date a claimant files a pleading adding a claim or cause of action against the defendant bringing the motion. Tex. Civ. Prac. & Rem. Code 72.052.

Tex. Civ. Prac. & Rem. Code §72.054, entitled "Liability For Employee Negligence In Operating Commercial Motor Vehicle", provides an exception for claims like negligent maintenance of the vehicle, which does not first require a finding that the employee was negligent to impose liability on the company. If there is evidence of negligent maintenance, that claim could be heard in the first phase. See Tex. Civ. Prac. & Rem. Code 72.054(f)(1).

If the motor carrier fails to timely stipulate to vicarious liability, the law appears to permit plaintiffs to present in evidence in the first phase of the trial the "second phase" type of evidence that otherwise would be reserved directly against the defendant company for the second phase, like negligent hiring, training, supervision, retention, past USDOT violations, past accidents/lawsuits. Tex. Civ. Prac. & Rem. Code 72.054(b).

Certainly, it may be advantageous to a motor carrier to seek a bifurcation trial when: (1) the commercial driver has a potential liability defense (sudden dust storm, black ice) and/or has a good driving history, yet the motor carrier has a spotty reputation with many USDOT violations, past accidents/lawsuits, etc. In this situation, a combined trial may inflame the jury against a driver who potentially can beat liability; (2) notwithstanding the liability of the driver, when the motor carrier has a spotty reputation with many USDOT violations, past accidents/lawsuits, etc. In this situation, a driver may have a good chance at limiting damages of the plaintiff. This may allow the plaintiff and defendants to attempt settlement before the second phase of the trial; (3) when you bifurcate due to a pleading of punitive damages, yet the claim for gross negligence/ punitive damages lacks merit, and you will file a no-evidence summary judgment. If not granted, the motor carrier may have grounds for appeal, and a bifurcation may allow for error only with regard to the second phase of the trial.

It may be a disadvantage to bifurcate, when: (1) there is egregious conduct by the driver in causing the accident, and there is evidence that carrier knew of same past egregious conduct by the driver. Here, a jury may be afforded multiple bites at the apple; (2) when actual damages are nuclear, then a bifurcated trial may serve to astronomically increase those damages.

For more specificity, please see the following article authored by attorney Ryan Cantu with Doyle & Seelbach PLLC, published February 10, 2022, entitled, "Understanding HB 19 - A Guide to Texas's Landmark New Trucking Law".

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

In Texas, spoliation is considered as the negligent or intentional loss or destruction of relevant evidence, and is an evidentiary consideration, and not a separate cause of action. The trial court must determine whether a party spoliated evidence and what remedy is appropriate. In considering a claim of spoliation claim, the Texas trial court uses a two-pronged determination: (1) the trial court determines as a question of law whether a party spoliated evidence; and (2) if so, the trial court determines an appropriate remedy. To determine the spoliation issue, the trial court must find that (1) the party had a duty to preserve the evidence and (2) the party breached that duty by not preserving the evidence. The party alleging spoliation has the burden of proof to show:

(a) The producing party had a duty to preserve the evidence. A duty to preserve evidence arises when a party knows or reasonably should know the following:

1. There is a substantial chance a claim will be filed. A party can anticipate a claim will likely be filed and fall under a duty to preserve, despite not receiving actual notice of a suit.

2. Evidence in the party's possession or control will be material and relevant to the claim.

(b) The producing party breached the duty to preserve material and relevant evidence. Breach of this duty to preserve evidence is shown if the party does not exercise reasonable care, which can be either intentional or negligent.

To rebut a spoliation claim, a party may provide a reasonable explanation accounting for the loss or destruction of evidence – e.g., the loss or destruction was beyond its control, or that the destruction was in the ordinary course of business.

If the trial court determines that a party has spoliated evidence, the court must decide culpability of the party. Intentional spoliation, also referred to as bad-faith or willful spoliation, happens when a party acts with a subjective purpose to conceal or destroy discoverable evidence. Negligent spoliation can occur when a party destroys or conceals discoverable evidence, but does not deliberately do so. Also, before imposing a remedy, the trial court must evaluate if any prejudice was suffered by the requesting party. The trial court must look at: (1) the relevance of the missing evidence to key issues in the case, and (2) whether the missing evidence is harmful to the other party's case or whether it would have been helpful. The trial court must also consider whether there is other competent evidence available to replace the missing evidence. The court must then impose an appropriate remedy. The standard is that the remedy must be directly related to the spoliation and not be excessive. The trial court can impose sanctions on the producing party, including a spoliation jury instruction, allowing the jury to presume that the missing evidence is relevant and harmful to the producing party.

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

Yes. Texas Civil Practice & Remedies Code § 41.0105 directs that "recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant." The Texas Supreme Court has held that § 41.0105 "limits recovery, and consequently the evidence at trial, to expenses that the provider has a legal right to be paid." *Haygood v. De Escabedo*, 356 S.W.3d 390 (Tex. 2011). The Texas Supreme Court has since expanded on *De Escabedo* to allow defendants to discover evidence of providers' negotiated rates and contractual agreements between a plaintiff's healthcare provider and private insurance companies and public

payors, regardless of whether the plaintiff is insured by any of those companies or is a Medicare/Medicaid recipient, to challenge the reasonableness of the amounts charged to the plaintiff. *See In re K & L Auto Crushers, LLC*, 627 S.W.3d 239 (Tex. 2021); *In re N. Cypress Med. Ctr. Operating Co.*, 559 S.W.3d 128, 129 (Tex. 2018).

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

Pursuant to the Texas Transportation Code, information recorded or transmitted by a recording device may not be retrieved by a person other than the owner of the motor vehicle in which the recording device is installed, except: (1) upon court order; (2) with the consent of the owner for any purpose, including for the purpose of diagnosing, servicing, or repairing the motor vehicle; (3) for the purpose of improving motor vehicle safety, if the identity of the owner or driver of the vehicle is not disclosed in connection with the retrieved information; or (4) for the purpose of determining the need for or facilitating emergency medical response in the event of a motor vehicle accident.

In the case of a third-party vehicle located at a tow yard or wrecker (and assuming that one of the above exceptions applies) in order to retrieve EDR data, the party must fill out a VSF012 Affidavit Form, which is required and provided by the Texas Department of Licensing and Registration at its website. The VSF2012 Affidavit has checklists to select which of the above exceptions applies (e.g., consent of the owner of the third-party vehicle or its insurer) and is ordinarily completed and provided to the wrecker prior to being allowed to download the data. It is important to note that if the owner of the vehicle is looking to obtain EDR data, they must also fill out a VSF013 Affidavit From which can be found at that website.

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 standard required to provide punitive or exemplary damages and the cap on such damages are controlled by Chapter 41 of the Texas Civil Practice and Remedies Code. Exemplary damages mean any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages are neither economic nor noneconomic damages. Exemplary damages include punitive damages. Tex. Civ. Prac. & Rem. Code §41.001(5). Exemplary damages may only be awarded if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from fraud, malice or gross negligence. Tex. Civ. Prac. & Rem. Code §41.003(a). Exemplary damages may be awarded only if the jury was unanimous in regard to finding liability for and the amount of exemplary damages. Tex. Civ. Prac. & Rem. Code §41.003(d). The Court is required to instruct the jury that their answer must be unanimous. Tex. Civ. Prac. & Rem. Code §41.003(e).

The terms fraud, malice and gross negligence are defined by the statute. See, Tex. Civ. Prac. & Rem. Code §41.001(6)(7) and (11). In transportation cases, usually only gross negligence and or malice are asserted by Plaintiffs. Gross negligence is defined as: "Gross Negligence means an act or omission (A)which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of the risk, considering the probability and magnitude of the potential harm to others; and (B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others." Tex. Civ. Prac. & Rem. Code §41,001(11)(A) and (B). Malice means a specific intent by the defendant to cause substantial injury or harm to the claimant. Tex. Civ. Prac. & Rem. Code § 41.001(7).

Evidentiary standards relating to the amount of exemplary damages are controlled by Tex. Civ. Prac. & Rem. Code §41.011. The trier of fact is instructed to consider evidence, if any, of the nature of the wrong, the character of

the conduct involved, the degree of culpability of the wrongdoer, the situation and sensibilities of the parties concerned, the extent to which such conduct offends a public sense of justice and propriety, and the net worth of the defendant.

Damage Cap: Exemplary damages awarded against a defendant may not exceed an amount equal to the greater of two times the amount of economic damages plus an amount equal to any noneconomic damages found by the jury, not to exceed $750,000.00, or $200,000.00. Tex. Civ. Prac. & Rem. Code §41.008(b)(1)(A) and (B). Economic damages are defined as compensatory damages intended to compensate a claimant for actual economic or pecuniary loss. Tex. Civ. Prac. & Rem. Code §41.001(4). Non-economic damages are defined as damages awarded for physical pain and suffering, mental or emotional pain or anguish, or anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, and all other nonpecuniary losses of any kind other than exemplary damages. Tex. Civ. Prac. & Rem. Code §41.001(12).

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 February 2023, a jury in Houston, Texas awarded **$500,000,000.00 in punitive damages** against Union Pacific. The actual damages awarded were in the total amount of $57,000,000.00. The jury found that Union Pacific was 80% negligent compared to the plaintiff's 20%. (*See Mary Johnson v. Union Pacific Railroad Company*, Cause. No. 2016-809901 (2023).[iv] It is believed that Union Pacific will appeal the punitive damages verdict.[v]

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, Texas permits an expert to testify as to the content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts in the context of establishing the reasonable standard of care.

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 direct Texas case law on the issue as it pertains to brokers or shippers. So, theoretically, it is possible that either brokers or shippers could be considered to be in a joint venture with a motor carrier if the elements of a joint venture or joint enterprise are established. *See First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 225 (Tex. 2017) (providing that the elements of a joint venture are an express or implied agreement to engage in a joint venture, a community of interest in the venture, an agreement to share profits and losses from the enterprise, and a mutual right of control or management of the enterprise); and *Hicks v. Grp. & Pension Adm'rs, Inc.*, 473 S.W.3d 518, 533 (Tex. App.—Corpus Christi 2015, no pet.) (providing that the elements of a joint enterprise are an agreement (express or implied) among the members of the group, a common purpose to be carried out by the group, a community of pecuniary interest among the members in that common purpose, and an equal right to direct and control the enterprise.).

However, with respect to shippers, there is established case law doctrine on when a shipper is liable for personal injuries as opposed to the motor carrier. Under what is known as the *Savage* rule, motor carriers are liable for injuries caused by a shipper's negligent loading of cargo except in certain circumstances.

Under federal regulations, motor carriers are "solely responsible for distributing and loading cargo." *Tex. Specialty Trailers, Inc. v. Jackson & Simmen Drilling Co.*, 2009 Tex. App. LEXIS 6318, at *25–26 (Tex. App.—Fort Worth Aug. 13, 2009, pet. denied) (citing 49 C.F.R. § 392.9). The Texas Transportation Code directs that "the duties and liabilities of a carrier in this state and the remedies against the carrier are the same as prescribed by the common law" unless otherwise provided by law. *Id.* at *26 (quoting Tex. Transp. Code Ann. § 5.001(a)(1)).

At common law, carriers are "fully" liable for any loss or injury to property occurring during transport. *Common Carrier Motor Freight Ass'n v. NCH Corp.*, 788 S.W.2d 207, 209 (Tex. App.—Austin 1990, writ denied); *see Savage Truck Line*, 209 F.2d at 445–47. Carriers may avoid this liability by affirmatively showing that the loss or injury at issue was caused solely by the fault of the shipper. *Mo. Pac. R.R. Co. v. Elmore & Stahl*, 368 S.W.2d 99, 101 (Tex.1963), *aff'd*, 377 U.S. 134, 84 S. Ct. 1142, 12 L. Ed. 2d 194 (1964); *see also Cent. Freight Lines, Inc. v. Naztec, Inc.*, 790 S.W.2d 733, 735 (Tex. App.—El Paso 1990, no writ); *Utils. Pipeline Co. v. Am. Petrofina Mktg.*, 760 S.W.2d 719, 723 (Tex. App.—Dallas 1988, no writ). This exception to carrier liability, however, only applies when the shipper assumes the carrier's responsibility for loading and securing the cargo. *Savage Truck Line*, 209 F.2d at 445–47.

Even when a shipper assumes the responsibility of loading, "the general rule is that [the shipper] becomes liable for the defects which are latent and concealed and cannot be discerned by ordinary observation by the agents of the carrier." *Savage Truck Line*, 209 F.2d at 445. If a loading defect is apparent, the carrier is liable regardless of the shipper's negligence. *Id.*; *Decker v. New England Pub. Warehouse, Inc.*, 749 A.2d 762 (Me. 2000) (adopting *Savage*). Moreover, a shipper will not ordinarily be liable unless it retains exclusive control over loading the cargo. *Rector v. General Motors Corp.*, 963 F.2d 144, 147 (6th Cir. 1992). "The carrier, therefore, bears the primary duty to see that cargo is loaded safely." *Whiteside v. United States*, 2013 WL 2355522, 2013 U.S. Dist. LEXIS 74850, at *19 (E. D. Tex. May 28, 2013) (applying Texas substantive law). This comports with federal regulations that "impose a nondelegable duty upon a carrier to secure all loads safely." *Id.*, at *20 (citing 49 C.F.R. § 392.9).

The *Savage* rule has been extended to personal injury cases and applies regardless of whether the accident occurs at the shipper's premises or while the carrier is in transit. *Malovanyi v. N. Am. Pipe Corp.*, 2017 U.S. Dist. LEXIS 107348, at *19 (W.D. Wisc. 2017). Furthermore, shippers generally do not owe a duty to a carrier after it has delivered its goods to the carrier. *MAN Roland, Inc. v. Kreitz Motor Express, Inc.*, 438 F.3d 476, 482, fn.9 (5th Cir. 2006) (citing *Conair Corp. v. Old Dominion Freight Line, Inc.*, 22 F.3d 529, 533 (3d Cir. 1994) (finding that the shipper had no duty to the carrier once it had delivered the goods to the carrier)).

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

Texas Civil Practice and Remedies Code, Chapter 33, entitled "Proportionate Responsibility", governs the jury's or court's assessment of responsibility in tort cases. Tex. Civ. Prac. & Rem. Code §33.002(a)(1). Texas is a modified comparative negligence jurisdiction. If the Plaintiff is more than 50% at fault, the Plaintiff receives no damages Tex. Civ. Prac. & Rem. Code §33.001. A defendant that is assessed more than 50% of the responsibility is jointly and severally liable for the damages recoverable by the claimant. Tex. Civ. Prac. & Rem. Code §33.013(b) (1). Also, if a Defendant, with the specific intent to do harm to others, acted in concert with another person to engage in the conduct described by certain provisions of the Texas Penal Code, that Defendant will be assessed joint and several liability for the damages recoverable by the claimant. Tex. Civ. Prac. & Rem. Code §33.013 (b) (2). The Texas Penal Code provisions are outlined in Tex. Civ. Prac. & Rem. Code §33.013 (b)(2)(A) – (N), the Penal Code provisions identified primarily involve assaultive offenses.

If the evidence supports it, the trier of fact determines the percentage of fault/responsibility of each claimant,

each defendant, each settling person, and each designated responsible third party. Tex. Civ. Prac. & Rem. Code §33.003 (a). This Section does not allow a submission to the Jury of a question regarding conduct by any person without sufficient evidence to support the submission. Tex. Civ. Prac. & Rem. Code §33.003(b). Technically, Texas no longer utilizes the nomenclature of "contributory negligence" in the context of any responsibility on the part of the Plaintiff. Rather, such negligence of Plaintiff is subsumed by statute as "comparative negligence." Nevertheless, the courts do not always observe this distinction of nomenclature, sometimes referring to Plaintiff's percentage of responsibility as "contributory negligence."

Defendants may seek designation of responsible third parties by providing a motion for leave to designate a person as a responsible third party on before the 60th day before trial. Tex. Civ. Prac. & Rem. Code §33.004. Defendants are also permitted to allege in an answer that an unknown person committed a criminal act that was the cause of the Plaintiff's loss or injury. That allegation in the answer must be filed not later than 60 days after the filing of the Defendant's original answer. If appropriate facts are plead, the Court must grant the Motion to Designate the unknown person as a third-party Defendant. Tex. Civ. Prac. & Rem. Code §33.004(j). A Defendant may not file a Motion for Leave to Designate a Responsible Third Party after the applicable statute of limitations period has expired if the Defendant has failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure. Tex. Civ. Prac. & Rem. Code §33.004 (d). A responsible third party is required to be disclosed in the mandatory disclosure responses required by the Texas Rules of Civil Procedure. Responsible third party is defined by Tex. Civ. Prac. & Rem. Code §33.011(6), as any person who is alleged to have caused or contributed to causing in any way the harm for which recovery is sought. The term responsible third party does not include a seller eligible for indemnity under Tex. Civ. Prac. & Rem. Code §82.00. (Manufacturer required to indemnify innocent seller of defective product.). Accordingly, Chapter 33 allows the Defendant to designate, without joining, responsible third parties and allows the fact finder to allocate responsibility among all responsible persons, even if the responsible person is a bankrupt, a criminal, a person beyond the Court's jurisdiction, or a party afforded immunity such as a Texas employer who is a subscriber to workers' compensation insurance or a governmental entity that is provided immunity from suit.

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

The statute of limitations for personal injury and wrongful death claims in Texas is two years from the date of the cause of action arises.

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?

Under Civil Practice & Remedies Code § 71.004 – Benefitting from and bringing action:

> (a) An action to recover damages as provided by this subchapter is for the exclusive benefit of the surviving spouse, children, and parents of the deceased.
>
> (b) The surviving spouse, children, and parents of the deceased may bring the action or one or more of those individuals may bring the action for the benefit of all.
>
> (c) If none of the individuals entitled to bring an action have begun the action within three calendar months after the death of the injured individual, his executor or administrator shall bring and prosecute the action unless requested not to by all those individuals.

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

Yes, it is admissible, but this was not the case until recently. In 2015 the Texas Supreme Court held "relevant evidence of use or nonuse of seat belts, and relevant evidence of a plaintiff's pre-occurrence, injury-causing conduct generally, is admissible for the purpose of apportioning responsibility under our proportionate-responsibility statute, provided that the plaintiff's conduct caused or was a cause of his damages."[vi]

This evidence is admissible to prove a plaintiff's actions before the occurrence exacerbated or caused the damages and/or injuries, not the occurrence itself. The Texas Supreme Court made this distinction and held that because Texas follows comparative negligence under Texas Civil Practice & Remedies Code Chapter 33, the use or nonuse of a seatbelt is admissible to show that a party's "causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission."[vii]

Therefore, as the statute allows evidence that shows a plaintiff contributed "in any way" the Court held that this includes using or not using a seat belt prior to the accident.

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. Lack of insurance coverage on the vehicle is not a limitation on recovery under Texas law.

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

In *Gutierrez v. Collins*, Texas adopted the most-significant-relationship test as its choice of law rule.[viii] It comprises seven factors, set out in section 6 of the Restatement (Second) and applies to torts, and described below:

- the needs of the interstate and international system;
- the relevant policies of the forum;
- the relevant policies of other interested states and the relative interests of those states;
- the protection of justified expectations;
- the basic policies underlying the particular field of law;
- certainty, predictability, and uniformity of result;
- ease in the determination and application of law.

If no express, statutory choice of law rule exists between the states, Texas' courts will decide choice of law/applicable law through the above method. Texas courts apply the presumption that a certain state's law will apply (the situs of the tort) unless another state has a more significant relationship under the factors above.

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[i] *See In re Fisher & Paykel Appliances, Inc.,* 420 S.W.3d 842 (Tex. App. 2014)
[ii] *Id*. at 847-48.
[iii] *Id*. at 848.
[iv] *See* "Union Pacific Hit with $557 Million Verdict Over Train Collision", Bloomberg Law, (March 6, 2023), https://news.bloomberglaw.com/litigation/union-pacific-hit-with-557-million-verdict-over-train-collision.

[v] *Id*.
[vi] *Nabors Well Servs., Ltd. v. Romero*, 456 S.W.3d 553, 566-67 (Tex. 2015).
[vii] Texas Civil Practice & Remedies Code § 33.003(a).
[viii] *See Gutierrez v. Collins,* 583 S.W.2d 312 (Tex. 1979) ("[W]e abandoned *lex loci delecti* and replaced it with the most significant relationship approach set forth in §§ 65 and 145 of the Restatement (Second) of Conflict of Laws.").