

## WASHINGTON

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**1. Provide an update on current black box technology and simulations in your State and the legal issues surrounding these advancements.**

Imaging and preserving heavy truck and bus event data recorders (“black boxes”) has become common in heavy truck and bus crash cases. Specifically, the Engine Control Module (ECM), which monitors and controls engine operations, can record and store data surrounding an event. The event recorded may be a crash, a change in speed, a stopping event, and/or a diagnostic fault code monitored by an engine and/or chassis1000 sensor. Data may include vehicle speed, engine speed, braking and clutch status, engine load, and more. This data can be useful in a crash reconstruction.

This type of evidence needs to be introduced through an expert who is forensically trained to image (download) and interpret the data. Failure to retain a qualified expert may result in exclusion of this evidence at trial. We typically retain a qualified accident investigator as soon as possible given that there are only a handful of experts in the northwest who are trained to do this work.

**2. Besides black box data, what other sources of technological evidence can be used in evaluating accidents and describe the legal issues in your State involving the use of such evidence.**

In addition to black box data, other sources of possible technological evidence on a commercial vehicle include:

- Anti-lock brake systems (ABS)
- Transmission control modules
- GPS units
- Cell phones
- Infotainment systems
- Dash cameras
- Electronic logs

These electronic control units and devices may also have the ability to record data associated with a crash. As with black box technology, the available data and its sources will depend on the truck or bus model year, engine manufacture or, alternatively, the manufacturer of external devices (*e.g.*, a Garmin GPS unit or dash camera).

Like black box technology, we recommend retaining a forensic expert with proper training and expertise to discuss this evidence at trial.

3. **Describe the legal issues in your State involving the handling of post-accident claims with an emphasis on preservation / spoliation of evidence, claims documents, dealing with law enforcement early and social media?**

We typically move to inspect all involved vehicles (including downloading any onboard data) as quickly as possible and to obtain a complete copy of the law enforcement file (typically not available until their investigation has concluded). If a vehicle is going to be repaired or is a total loss, a letter is sent out to all involved parties providing a timeline for inspecting the vehicle to prevent spoliation of evidence related to the accident. Social media for potential plaintiffs is checked periodically and saved in PDF format. If useful evidence is found on social media, a third-party vendor should be retained to collect that data and preserve it in a manner which ensures admissibility at trial.

4. **Describe the legal considerations in your State when defending an action involving truck drivers who may be considered Independent Contractors, Borrowed Servants or Additional Insureds?**

In Washington, a driver who is an independent contractor is typically covered by the company's policy, and defense of the driver is generally in lockstep with the company. Typically, plaintiffs will challenge an independent contractor designation and argue that an owner/operator is an agent and his/her employer and, thus, the contractor's negligence can be imputed to the employer.

5. **What is the legal standard in your state for allowing expert testimony on mild traumatic brain injury (mTBI) claims and in what instances have you had success striking experts or claims?**

The Washington Rules of Evidence are similar to the federal rules. The courts will typically allow expert testimony on mTBI if the expert is qualified and there are facts which support the expert's opinion. There are no special rules pertaining to mTBI.

6. **Is a positive post-accident toxicology result admissible in a civil action in your State?**

Yes, generally this evidence would be admissible in a civil action.

7. **What are some considerations for federally-mandated testing when drivers are Independent Contractors, Borrowed Servants, or Additional Insureds?**

Even if a driver is an independent owner/operator, they still must undergo the same drug testing (pre-employment, post-accident, etc.) as an employee of the trucking company.

8. **Is there a mandatory ADR requirement in your State and are any local jurisdictions mandating cases to binding or non-binding arbitration?**

Yes, cases in Washington up to \$100,000 are subject to mandatory arbitration if one of the parties files a statement of arbitrability (depending on the county). The following counties

have adopted the \$100,000 threshold: Benton, Yakima, Chelan, Spokane, Clark, Skamania, Cowlitz, Grant, Klickitat, Kitsap, Mason, Okanogan, Thurston, King, Pierce, Snohomish, Lewis, Clallam, and Whatcom. Certain jurisdictions also require parties to mediate, if the case is not subject to mandatory arbitration.

**9. Can corporate deposition testimony be used in support of a motion for summary judgment or other dispositive motion?**

Yes.

**10. What are the rules in your State for contribution claims and does the doctrine of joint and several liability apply?**

The right of contribution exists between or among two or more persons who are jointly and severally liable for same loss, whether judgment has been recovered against all or any of them. It may be enforced in the original action or by a separate action. Contribution is available to a person who settles only if: (a) liability of the person against whom contribution is sought has been extinguished by settlement and (b) to the extent that the amount paid in settlement was reasonable at the time of settlement. RCW § 4.22.040. If the comparative fault of the parties to a claim for contribution has been established previously by the court in the original action, a party paying over that party's equitable share of the obligation, upon motion, may recover judgment for contribution. If it hasn't been established in the original action, contribution may be enforced in a separate action, whether a judgment has been rendered against the person seeking contribution or person from whom contribution is being sought. RCW § 4.22.050; *Mazon v. Krafchick*, 144 P.3d 1168 (Wash. 2006).

**11. What are the most dangerous/plaintiff-friendly venues in your State?**

The venues of Pierce, King and Snohomish tend to have liberal jury pools. The same is true in Clark County on the border with Oregon and, to some extent, Spokane County on the border with Idaho. Apart from those, we see fairly conservative damage awards in the more rural areas of the state.

**12. Is there a cap on punitive damages in your State?**

Punitive damages are not recoverable under Washington law unless expressly authorized by statute. *Grays Harbor County v. Bay City Lumber Co.*, 47 Wn.2d 879, 289 P.2d 975 (1955); *Anderson v. Dalton*, 40 Wn.2d 894, 898, 246 P.2d 853, 35 A.L.R.2d 302 (1952). One such example is Washington's Consumer Protection Act, which allows for treble damages up to \$25,000 in addition to reasonable attorney's fees.

**13. Admissible evidence regarding medical damages – can the plaintiff seek to recover the amount charged or the amount paid?**

In Washington, plaintiffs may seek to recover the reasonable value of medical services received. *Patterson v. Horton*, 84 Wn. App. 531, 929 P.2d 1125 (1997). Plaintiffs will typically offer the full amount of the bills rendered by the provider. This amount is generally accepted by the defense. If the defense contests the reasonableness of the billing, this must be based upon expert testimony from the defense. *See Hayes v. Wieber Enterprises, Inc.*, 105 Wn. App. 611, 20 P.3d 596 (2001) (Testimony regarding discrepancy between amount physician billed and amount he accepted as payment in full was properly excluded in trial of personal injury claim by restaurant patron who fell down restaurant stairs, as amount physician accepted as payment was not determining factor in calculating reasonable value of medical services patient received).