

## Wyoming

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

Generally, internal accident reports and determinations of preventability are discoverable in Wyoming. An internal accident report will probably be admissible if shown to be kept in the regular practice of business activity. See Wyoming Rule of Evidence 803(6). Wyoming law on the admissibility of preventability findings or opinions is not well developed. The Wyoming Supreme Court has held that a professional driver is not held to a higher standard of care, see *Cervelli v. Graves*, 661 P.2d 1032 (Wyo. 1983), which cuts against allowing evidence of preventability. However, the United States District Court for the District of Wyoming has allowed experts to discuss the preventability of an accident in the context of industry practices. See *Calahan v. May Trucking Co.*, 2012 U.S. Dist. LEXIS 189853 (D.Wyo. August 28, 2012, *Order Denying Motion to Strike Expert and Granting, in Part, Motion to Exclude Expert Testimony*).

### 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 currently no precedent in Wyoming for discovery of 3<sup>rd</sup> party litigation funding, and approaches may vary from venue to venue. Wyoming Courts may allow discovery of 3<sup>rd</sup> party litigation funding if it finds it to be proportional to the needs of the case. See W.R.C.P. 26(b)(1).

### 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?

Only a conservator validly appointed by a Wyoming district has authority to settle a case on behalf of a minor, subject to court approval. See Wyo. Stat. Ann. § 3-3-607(a)(ii) (LexisNexis 2022). The statute of limitations does not generally expire against a minor until three years after his/her eighteenth birthday. See Wyo. Stat. Ann. § 1-3-114 (LexisNexis 2022).

### 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?

A plaintiff is generally barred from pursuing claims of negligent retention, supervision or training against an employer that admits vicarious liability for the acts of an employee. *Bogdanski v. Budzik*, 2018 WY 7, 408 P.3d 1156 (Wyo. 2018). The Wyoming Supreme Court has left open the possibility that a plaintiff can pursue claims for willful and wanton failure to train to recover punitive damages against an employer. *Id.* at ¶ 22, p. 1162 FN. 10.

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

Spoliation occurs when a party withholds, destroys or alters evidence in bad faith. *Abraham v. Great Western Energy, LLC*, 2004 WY 145, ¶ 20, 101 P.3d 446, 455 (Wyo. 2004). Spoliation of evidence gives rise to a presumption or inference at trial that the evidence would have been unfavorable to the party responsible for its nonproduction, destruction, or alternation. *Id.* Where the loss or destruction of evidence was not intentional or reckless, the court may, in its discretion, admit or exclude testimony relating to the missing evidence. *Id.*

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

The amount paid by an insurer is usually discoverable. However, Wyoming strictly follows the collateral source rule, and the amount paid by the insurance company is generally inadmissible at trial. *See Prager v. Campbell County Memorial Hospital*, 1013 U.S.App.LEXIS 17806, 29-30 (10<sup>th</sup> Cir. 2013). As a result, at trial, the jury will generally only be presented with the amount billed for medical expenses – subject to the requirement that the bills must be shown to be “reasonable and necessary.” As a result, even though the amount paid may not be admissible, defendants can generally challenge whether the amount billed was reasonable and necessary.

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

There is no set legal procedure for exchanging EDR data after an accident. Parties are generally cooperative to allow joint downloads in the aftermath of an accident. Nevertheless, there is no requirement that a party to an accident share EDR data before a lawsuit is filed. However, a party that fails to preserve EDR data when litigation is reasonably anticipated may be subject to a claim of spoliation. (See answer to No. 5 above.) After a lawsuit is filed, EDR data may be obtained through the usual discovery requests.

## 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?

Punitive damages are generally allowed for willful and wanton misconduct. Willful and wanton misconduct is “the intentional doing of an act, or an intentional failure to act, in reckless disregard of the consequences and under circumstances and conditions that a reasonable person would know, or have reason to know that such conduct would, in a high degree of probability, result in harm to another.” *Lovato v. Case*, 520 P.3d 1144, 1148, 2022 WY 151, ¶ 9, (Wyo. 2022) A master (i.e. employer) is only vicariously liable for punitive misconduct of its agent (i.e. employee) if: a) the principal or managerial agent authorized the doing and the manner of the act, b) the agent was unfit and the principal or managerial agent was reckless in employing or retaining him, c) the agent was employed in a managerial capacity and was acting the scope of employment, or d) the principal or a managerial agent of the principal ratified or approved the act. *Campen v. Stone*, 635 P.2d 1121, 1125-26 (Wyo. 1981)(adopting Restatement, Torts ed, § 909). There is no statutory “cap” on punitive damages in Wyoming. However, the 10th Circuit Court of Appeals has ruled that Constitutional Due Process generally only allows a punitive damages ratio of 1:1 when compared to compensatory damages, where the latter are already substantial. *See Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041 (10<sup>th</sup> Cir. 2016).

### 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?

To our knowledge, there has not been a significant punitive damages award in a personal injury case in Wyoming for several years.

### 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?

Industry experts are generally allowed to testify about the FMCSRs. In addition, courts in Wyoming will generally allow industry experts to testify that a defendant violated federal regulations or state statutes. *See, e.g., Popovski v. Titan Transfer, Inc.*, 2022 U.S. Dist. LEXIS 213154 (D.Wyo. Jan. 25, 2022, *Order Granting in Part and Denying in Part Defendant's Partial Motion to Strike Testimony*). However, Wyoming courts often limit experts from testifying that a violation of a federal regulation constitutes liability or negligence. *Id.*

### 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?

The law in this area is not well developed in Wyoming. However, the United State District Court for the District of Wyoming has ruled that a broker was not an agent for purposes of *respondeat superior*, nor was it otherwise liable, in a wrongful death claim arising from a fatal tractor-trailer accident on Interstate 80 in Unita County, WY. *See Fox v. Vladimir Makarchuk, Eez Trucking, Inc.*, 2021 U.S. Dist. Lexis 261702 (D.Wyo. June 3, 2021, *Order Granting Defendant United Shippers Associates, Inc.'s Motion for Summary Judgment.*)

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

A plaintiff may recover so long as his/her contributory fault is not more than fifty percent (50%). Wyo. Stat. Ann. § 1-1-109(b) (LexisNexis 2022). Any damages allowed shall be diminished in proportion to the amount of fault attributed to the plaintiff. *Id.* In addition, each defendant is only liable to the extent of their total fault as found by the judge in a bench trial, or by the jury in a jury trial. Wyo. Stat. § 1-1-109(e).

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

Most personal injury actions must be brought within four years from the date that the action accrued. *See* Wyo. Stat. Ann. §§ 1-3-105(a)(iv) (LexisNexis 2022). A wrongful death claim must be commenced within two years of the death of the decedent. Wyo. Stat. Ann. § 1-38-102(d) (LexisNexis 2022).

### 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?

Only a wrongful death personal representative appointed by a Wyoming district court has authority to enter a binding settlement on behalf of the wrongful death estate. *See* Wyo. Stat. Ann. § 1-38-102(e) (LexisNexis 2022). The court must appoint a wrongful death personal representative who will best represent the interests of the potential beneficiaries in the action as a whole. Wyo. Stat. Ann. 1-38-104(a) (LexisNexis 2022). Family members will generally have precedent. W.S. § 1-38-104(b)(i).

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

The failure to wear a seatbelt is generally not admissible in any civil action. See Wyo. Stat. Ann. § 31-5-1402(f) (LexisNexis 2022).

### **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.**

There are no such limitations in Wyoming.

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

Wyoming follows the principle of *lex loci delicti*, meaning the law of the place where the tort or wrong was committed will govern with respect to all substantive phases in tort cases. See *Boutelle v. Boutelle*, 2014 WY 147, ¶ 12, 338 P.3d 1148, 1153 (Wyo. 2014).