

## MONTANA TRUCKING AND TRANSPORTATION LAW

**Frederick P. Landers**  
**Janna Wittenberg**  
**AXILON LAW GROUP, PLLC**  
**115 N. Broadway, Ste. 310**  
**Billings, MT 59101**  
**Phone: (406) 294-9466**  
**Fax: (406) 294-9468**  
**E-Mail: [rlanders@axilonlaw.com](mailto:rlanders@axilonlaw.com)**  
**[jwittenberg@axilonlaw.com](mailto:jwittenberg@axilonlaw.com)**

### 1. Minimum liability limits

Montana limits for minimum liability are \$25,000 because of bodily injury to or death of one person in any one accident and subject to the limit for one person, \$50,000 because of bodily injury to or death of two or more persons in any one accident, and \$20,000 because of injury to or destruction of property of others in any one accident. Mont. Code Ann. § 61-6-103(1)(b).

The legislative intent behind the statute is to shield the public from reckless and irresponsible drivers and is expressed under the “each motor vehicle” limitation under § 61-6-103(2)(b), MCA, meaning each vehicle, regardless of ownership, *must* be covered by the mandatory liability limits when in use on the roadways of Montana. The \$50,000-per-accident limit has remained unchanged since 1975. *Infinity Ins. Co. v. Dodson*, 2000 MT 287, ¶¶ 50-51, 302 Mont. 209, 225, 14 P.3d 487, 497.

### 2. Negligence laws (Is the jurisdiction a pure contributory negligence state; what type of comparative fault is applicable, etc.?)

In Montana, a plaintiff's contributory negligence is a defense to a charge of negligence, but “[c]ontributory negligence does not bar recovery in an action by a person” unless that person's contributory negligence was “greater than the negligence of the person or the combined negligence of all persons against whom recovery is sought.” Therefore, Montana's comparative negligence scheme employs the “greater-than” version of comparative negligence. A plaintiff may not recover if the plaintiff is found to be greater than fifty percent negligent. Mont. Code Ann. § 27-1-702; *Giambra v. Kelsey*, 2007 MT 158, 338 Mont. 19, 162 P.3d 134.

### 3. Bodily Injury Statute of Limitations

The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years, except when the wrongful death is the result of a homicide, in which case, the period is within 10 years. The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years. Mont. Code Ann. § 27-2-204.

4. Property Damage Statute of Limitations

Within two years is the period prescribed for the commencement of an action for injury to or waste or trespass on real or personal property; taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property; or killing or injuring stock by a railroad corporation or company. Mont. Code Ann. § 27-2-207.

5. Are punitive damages insurable in the jurisdiction?

The Montana Supreme Court has held that providing insurance coverage of punitive damages is not contrary to public policy. *First Bank (N.A.)-Billings v. Transamerica Ins. Co.*, 209 Mont. 93, 103, 679 P.2d 1217, 1223 (1984).

6. Is there an intra-family immunity defense?

Intra-family or inter-spousal tort immunity has been abolished as a defense in Montana. A family member passenger may pursue a claim against the driver of a motor vehicle. *Noone v. Fink*, 222 Mont. 273, 274-75, 721 P.2d 1275, 1276 (1986).

7. Is there a bodily injury damage threshold? If so, what is it?

No.

8. What are the quick rules on Subrogation MP/PIP?

Insurers are generally entitled to reimbursement rights based on the policy provisions. This is subject to the “made whole” doctrine under which a claimant must recover all damages, including legal fees and costs. PIP is not applicable in Montana. See, e.g., *Van Orden v. United Servs. Auto. Ass'n*, 2014 MT 45, 374 Mont. 62, 318 P.3d 1042.

9. Are there no fault laws in the jurisdiction?

Montana is not a “no fault” state but may allow recovery on an out-of-state vehicle carrying no fault coverage. *Kemp v. Allstate Ins. Co.*, 183 Mont. 526, 538, 601 P.2d 20, 27 (1979) (There is thus no prohibited “double-recovery” here in allowing plaintiff the limits of uninsured motorist coverage together with whatever sums are due for the enumerated items provided for under the New York policy’s VB “no-fault” provisions).

10. Is the customer’s insurance primary?

Yes.

11. Is there a seat belt defense?

Evidence of seat belt usage is not admissible in any civil action for personal injury or property damage resulting from the use or operation of a motor vehicle, and failure to comply with Mont.

Code Ann. § 61-13-103 (requiring seat belt use) does not constitute negligence. Mont. Code Ann. § 61-13-106. (Note: Proposed legislation 2011 MT S.B.235 (NS) failed to reverse this rule.)

12. Is there a last clear chance defense?

As a defense, last clear chance has not been asserted since Montana adopted comparative liability. However, plaintiffs apparently still may argue that contributory negligence is not a defense if the action is brought upon the theory that notwithstanding such negligence, the defendant had the last opportunity to avoid the injury and failed to exercise it. See, e.g., *Gustafson v. N. Pac. Ry. Co.*, 137 Mont. 154, 351 P.2d 212 (1960).

13. Is there an assumption of risk defense?

Assumption of risk is no longer available as a separate affirmative defense in negligence cases. Instead, having adopted a system of comparative negligence, the affirmative defense of assumption of risk merges into the general scheme of liability assessment in which the conduct of the parties must be compared based on evidence of negligence and contributory negligence, as established by reasonable and prudent person standards. *Lewis v. Puget Sound Power & Light Co.*, 2001 MT 145, 306 Mont. 37, 42, 29 P.3d 1028, 1032.

Assumption of risk is available in products liability cases but is analyzed under a subjective standard rather than under the objective “reasonable person” standard. The standard is what the particular plaintiff sees, knows, understands and appreciates. In this, it differs from the objective standard which is applied to contributory negligence... If by reason of age, or lack of information, experience, intelligence or judgment, the plaintiff does not understand the risk involved in a known situation, he will not be taken to assume the risk, although it may be found that his conduct is contributory [comparative] negligence because it does not conform to the community standard of the reasonable man. *Lutz v. Nat'l Crane Corp.*, 267 Mont. 368, 378, 884 P.2d 455, 461 (1994).

14. Is there a UM requirement?

No. Underinsured motorist coverage is optional. Mont. Code Ann. § 61-6-103(8). Uninsured motorist coverage is mandatory for all motor vehicle liability insurance policies issued in Montana *unless* the named insured rejects such coverage. Mont. Code Ann. § 33-23-201.

15. Is there a physical contact requirement?

No. The burden of proof is on the claimant to show the accident was caused by an unidentified driver, but recovery cannot be denied simply because there was no physical contact with the offending car. *McGlynn v. Safeco Companies of Am.*, 216 Mont. 379, 384, 701 P.2d 735, 738 (1985).

16. Is there a mandatory ADR requirement?

While not mandated by any rule, most district courts require mediation prior to trial. Mediation is required on appeal to the Montana Supreme Court.

17. Are agreements reached at a mediation enforceable?

Some documents and information from mediation remain inadmissible in later proceedings, sometimes creating proof problems. A signed, written agreement created during the mediation is admissible. Mont. Code Ann. § 26-1-813(3). On the other hand, communications that took place during the course of the mediation proceeding are inadmissible, while conversations regarding the mediation that occurred at a later time and place are admissible. See *In re Estate of Stukey*, 2004 MT 279, ¶ 71, 323 Mont. 241, 100 P.3d 114 (determining that because a letter referencing mediation was written post-mediation, it was, “thus, not a part of the mediation process, [and] § 26-1-813, MCA, is inapplicable.”).

Similarly, “the mediator's report, if any, and the information or recommendations contained in it” are inadmissible. Mont. Code Ann. § 26-1-813(3). The Montana Supreme Court recognizes that the Uniform Mediation Act, as well as some jurisdictions, created an exception to the inadmissibility of mediator reports to allow mediators to disclose to the court whether a settlement was reached at mediation. Our Legislature, however, has not written this exception into the statute, and until it decides to do so, all mediator reports are confidential. *Kluver v. PPL Mont., LLC*, 2012 MT 321, ¶ 55, 368 Mont. 101, 118-19, 293 P.3d 817, 828.

18. What is the standard of review for a new trial?

The standard of review of a trial court’s denial of a motion for a new trial depends on the basis of the motion. When the basis of the motion is insufficiency of the evidence, review is de novo and, like the district court, the appellate court must determine whether there was substantial evidence to support the verdict. Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion; it may be less than a preponderance of the evidence but must be more than a “mere scintilla.” When the basis of the motion for a new trial is alleged juror misconduct, a district court's decision will stand absent a manifest abuse of discretion. *Fish v. Harris*, 2008 MT 302, 345 Mont. 527, 528-29, 192 P.3d 238, 240. A district court’s evidentiary rulings, including rulings on the admissibility of expert testimony, are reviewed for abuse of discretion. *Beehler v. Eastern Radiological Associates, P.C.*, 2012 MT 260, ¶ 17, 367 Mont. 21, 289 P.3d 131.

19. Is pre-judgment interest collectable? If so, at what rate?

Yes. In an action for recovery on an injury, a prevailing claimant is entitled to interest at a rate of 10% on any claim for damages awarded that are capable of being made certain by calculation, beginning from the date 30 days after the claimant presented a written statement to the opposing party or the party’s agent stating the claim and how the specific sum was calculated. Mont. Code Ann. § 27-1-210. Each person who is entitled to recover damages certain or capable of being made certain by calculation and the right to recover that is vested in the person upon a particular day is entitled also to recover interest on the damages from that day, except during the time that the debtor is prevented by law or by the act of the creditor from paying the debt. Mont. Code Ann. § 27-1-211.

20. Is post judgment interest collectable? If so, at what rate?

Yes. Post-judgment interest is allowed from the date of entry of judgment at a rate of 10%.  
Mont. Code Ann. §§ 25-9-204 and 25-9-205.

21. Is there a workers compensation exclusive remedy defense?

For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under this chapter, the provisions of this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatsoever for the death of or personal injury to an employee covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of the injuries or death. The Workers' Compensation Act binds the employee and, in case of death, binds the employee's personal representative and all persons having any right or claim to compensation for the employee's injury or death, as well as the employer and the servants and employees of the employer and those conducting the employer's business during liquidation, bankruptcy, or insolvency. Mont. Code Ann. § 39-71-411. Employee defenses to exclusivity arise in cases of intentional acts, spoliation of evidence, and uninsured employers.

22. Is the doctrine of joint and several liability applicable?

(1) Except as provided in subsections (2) and (3), if the negligence of a party to an action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the percentage of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the percentage attributable to the claimant and to any person with whom the claimant has settled or whom the plaintiff has released from liability.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

Mont. Code Ann. § 27-1-703.

23. Is there a self-critical analysis privilege?

No.

24. Is accident reconstruction data admissible?

Yes. Generally, accident reconstruction is not a novel science and has been commonly recognized and used in the courts. *Wheaton v. Bradford*, 2013 MT 121, ¶ 17, 370 Mont. 93, 300 P.3d 1162.

25. What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?

No definitive rule has been established.

26. What is the jurisdiction's rule on offers of judgment?

Montana Code Annotated § 25-7-105 and Montana Rule of Civil Procedure 68 govern offers of judgment/settlement in Montana. The statute and the rule both allow for offers of judgment. The Rule allows a party to make an offer of judgment at any time more than 10 days before trial. The offeree then has 10 days from the time of service of the offer to accept and file the offer. Mont.R.Civ.P. 68. Either party may file the offer and notice of acceptance with proof of service, and judgment will be entered at that time. *Id.* If an offer of judgment is not accepted, it is deemed withdrawn and evidence of it is inadmissible at trial. *Id.*

Similarly, if one party is adjudged liable but the extent of damages has yet to be determined through further proceedings, the liable party may make an offer of judgment any time not less than 10 days prior to commencement of the proceedings to determine the extent of liability. Mont.R.Civ.P. 68.

Any ambiguity in Rule 68 must be construed against the offeror. *Montana Fair Hous, Inc., v. Barnes*, 2002 MT 353, ¶ 18, 313 Mont. 409, 61 P.3d 170 (Mont. 2002).

The statute allows a party to make an offer of settlement at any time more than 60 days after service of the complaint and more than 30 days before the trial begins in cases arising from contract (other than insurance) or involving real property. Mont. Code Ann. § 25-7-105(4). The statute only applies in claims where the amount of damages plead is \$50,000 or less.

If an offer of judgment is not accepted and the judgment obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the offer was made. Mont.R.Civ.P. 68. For offers of settlement under the statute, costs include reasonable attorney's fees. Mont. Code Ann. § 25-7-105(3).

27. What is the jurisdiction's rule on spoliation of evidence?

Montana has recognized the tort of negligent spoliation of evidence as an independent cause of action, which consists of the following elements:

- (1) existence of a potential civil action;
- (2) a legal or contractual duty to preserve evidence relevant to that action;
- (3) destruction of that evidence;
- (4) significant impairment of the ability to prove the potential civil action;

- (5) a causal connection between the destruction of the evidence and the inability to prove the lawsuit;
- (6) a significant possibility of success of the potential civil action if the evidence were available; and
- (7) damages.

Montana also recognizes intentional spoliation of evidence, which consists of the following elements:

- (1) the existence of a potential lawsuit;
- (2) the defendant's knowledge of the potential lawsuit;
- (3) the intentional destruction of evidence designed to disrupt or defeat the potential lawsuit;
- (4) disruption of the potential lawsuit;
- (5) a causal relationship between the act of spoliation and the inability to prove the lawsuit; and
- (6) damages.

The elements with regard to causation and damages for intentional spoliation of evidence are the same as those for negligent spoliation of evidence. A plaintiff bringing a claim for intentional spoliation of evidence is still required to prove a causal relationship between the act of spoliation and the inability to prove the lawsuit and damages. The standard of proof required for causation and the methodology for determining damages is the same for both negligent and intentional spoliation of evidence.

*Oliver v. Stimson Lumber Co.*, 1999 MT 328, 297 Mont. 336, 993 P.2d 11.

28. Are there damages caps in place?

There is no cap for compensatory damages. An award for punitive damages may not exceed \$10 million or 3% of a defendant's net worth, whichever is less. Mont. Code Ann. § 27-1-220.

29. Is CSA 2010 data admissible?

The issue has not yet been raised in Montana. We anticipate the data would be admissible.

30. Briefly, does the jurisdiction have any unique rules on electronic discovery?

No. With regard to electronic discovery, Montana Rules of Civil Procedure 26 and 34 are similar to the Federal Rules.

31. Is the sudden emergency doctrine recognized in the jurisdiction?

It is unclear whether the "sudden emergency" doctrine is still recognized in Montana. In *Simonsen v. White*, 220 Mont. 14, 713 P.2d 983 (1986), the Supreme Court banned the use of the "sudden emergency" jury instruction in ordinary auto accident cases because "it adds nothing to

the established law applicable in any negligence case, that due care under the circumstances must be exercised.” However, in a more recent decision, the Supreme Court declined to decide whether “sudden emergency” is still a viable legal doctrine. *Payne v. Knutson*, 2004 MT 271, ¶ 28, 323 Mont. 165, 99 P.3d 200.

32. Are there any rules prohibiting or limiting the use of the reptile theory at trial?

The only Montana cases that provide any guidance on this issue are criminal cases. Although generally accepted as improper argument in Montana, “Golden Rule” cases are infrequent, require immediate objection, and have been applied somewhat more narrowly than in other jurisdictions.

In *Clausell v. State*, 2005 MT 33, 326 Mont. 63, 106 P.3d 1175, the defendant argued that the prosecutor violated his due process rights by urging jurors to put themselves in the place of the victim. The Supreme Court held that the prosecutor actually asked the jury not to put themselves in the victim’s shoes, but instead asked the jury to follow the evidence trail left by the victim’s body and determine “[W]hat speaks for [the victim]? The evidence, Defendant’s actions, Defendant’s admissions.” The Court held these statements did not constitute prosecutorial misconduct.

The recent decision *State v. Ugalde*, 2013 MT 308, 372 Mont. 234, 311 P.3d 772, involved another closing argument during which the prosecutor spoke in a first-person narrative from the perspective of the alleged victim. The Supreme Court noted that other jurisdictions have permitted such argument if supported by the evidence and reasonable inferences that could be drawn from the evidence. After this discussion, the Court ultimately declined to decide whether first-person argument is proper because the defendant failed to object at trial.

33. What are the jurisdictional limits of the jurisdiction’s civil courts – i.e. Small Claims, District Court, Superior Court?

Montana District Courts are courts of general jurisdiction. District Courts process all felony cases, all probate cases, most civil cases at law and in equity, certain special actions and proceedings, all civil actions that may result in a finding against the state for the payment of money, naturalization proceedings, various writs, and some narrowly-defined ballot issues. The District Courts also have limited appellate jurisdiction over cases arising in the Courts of Limited Jurisdiction in their respective districts as may be prescribed by law and consistent with the Constitution.

The Courts of Limited Jurisdiction in Montana are Justice Courts, City Courts and Municipal Courts. Although the jurisdiction of these courts differs slightly, collectively they address cases involving misdemeanor offenses, civil cases for amounts up to \$12,000, small claims valued up to \$7,000, landlord/tenant disputes, local ordinances, forcible entry and detainer, protection orders, certain issues involving juveniles, and other matters.

34. Are state judges elected or appointed?



Supreme Court justices and District Court judges are chosen in nonpartisan elections. When interim vacancies occur, the governor appoints a candidate from a list submitted by the judicial nomination commission. Appointees must be confirmed by the senate.