

MONTANA

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1. Requirements for use of hands free devices in each state

Montana has no statewide laws prohibiting cell phone use or texting while driving. However, several municipalities and counties have implemented their own bans on distracted driving including Billings, Helena, Missoula, Bozeman, Great Falls, Butte-Silver Bow and Anaconda-Deer Lodge.

2. Discovery and admissibility of preventability determinations

Montana has no statutes or case law specifically addressing the discovery and admissibility of preventability determinations, nor does Montana recognize a blanket privilege self-critical analysis. In *Parrick v. FedEx Grounds Package Sys.*, 2010 U.S. Dist. LEXIS 72814, 2010 WL 2854314 (D. Mont. 2010), the U.S. District Court compelled production of internal safety audit documents, declining to extend to the transportation law realm Montana's statutory privilege for health care facility quality assurance and peer review reports.

While evidence of subsequent remedial measures is not admissible to prove negligence, such evidence is discoverable and admissible for other purposes such as feasibility, if controverted. See Mont. R. Evid. 407. Similarly, evidence of prior accidents is inadmissible to prove negligence, but admissible for the purpose of showing the existence and notice of a danger or defect, provided that the circumstances of the prior accidents are substantially similar to the one in question. *Richardson v. State*, 2006 MT 43, 331 Mont. 231, 130 P.3d 634.

3. Spoliation of evidence, specifically related to electronic data and whether there is a duty to preserve evidence absent a specific demand

Montana's trial judges are equipped under the Rules of Civil Procedure to address allegations of spoliation of evidence by a party and may impose sanctions for the same, including default in egregious cases. See *Harris v. State*, 2013 MT 16, ¶ 34, 368 Mont.

276, 294 P.3d 282. Montana courts have previously imposed severe sanctions for the spoliation of electronic and video evidence, reasoning that such evidence is the best evidence available to resolve factual disputes. See *Peschel v. City of Missoula*, 664 F.Supp. 2d 1137 (D. Mont. 2009). A duty to preserve such evidence arises when the prospect of a civil suit is reasonably foreseeable. *Id.*, at 1141. Montana does not recognize the torts of intentional and negligent spoliation of evidence as independent causes of action against a direct party to an action.

4. Broker exposure or liability for motor carrier negligence

Montana courts have not addressed this issue. However, Montana has long recognized the tort of negligent selection/hiring of independent contractors, and has been willing to extend traditional common law rights and duties in various contexts. See *Brookins v. Mote*, 2012 MT 283, ¶ 59, 367 Mont. 193, 292 P.3d 347 (recognizing tort of negligent credentialing by hospitals as a “natural extension” of common law tort of negligent hiring).

5. Logo or placard liability - whether motor carrier is liable for any vehicle bearing its Department of Transportation identification placard, company name, or business logo

There are no Montana cases addressing this issue. The Ninth Circuit Court of Appeals has adopted a broad view of motor carrier liability under the FMCSA and ICC regulations, and has rejected the view that strict compliance with the regulations is necessary to impose logo or placard liability on a carrier for the acts of an independent owner-operator. See *Planet Insurance v. Transport Indemnity*, 823 F.2d 285, 286-87 (9th Cir. 1987)(carrier deemed liable pursuant to lease that had become effective despite the fact that driver had not yet affixed carrier’s placards to the truck and load had not yet been picked up).

6. Offers of Judgment

Offers of judgment are permitted under Rule 68, Mont. R. Civ. P. A party defending against a claim may serve on an opposing party at least 14 days prior to trial an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after service of the offer, the opposing party serves written notice accepting the offer, either party may file the offer and notice of acceptance, and the clerk shall then enter judgment. If the offeree rejects the offer of judgment and the judgment obtained at trial is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

7. Punitive Damages

a. Are punitive damages insurable?

Insurance coverage in Montana does not extend to punitive or exemplary damages unless expressly included in the contract of insurance. Mont. Code Ann. § 33-15-317.

b. Any limitations or how much may be awarded as punitive 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(3). This limit does not apply to punitive damages that may be awarded in class action lawsuits. Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. Mont. Code Ann. § 27-1-221(7)(a). When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined by the jury in an immediate, separate proceeding, during which the defendant's financial affairs, financial condition, and net worth must be considered.

8. Citations or criminal convictions resulting from a motor vehicle accident

a. Are citations admissible in the civil litigation?

The Montana Supreme Court has upheld the exclusion of evidence of traffic citations in civil cases when it is unclear whether the cited driver pleaded guilty to the offense. See *Spinler v. Allen*, 1999 MT 160, ¶ 32, 295 Mont. 139, 983 P.2d 348 (mere forfeiture of bond and failure to contest citation did not establish a guilty plea); and *Hall v. Big Sky Lumber & Supply, Inc.* 261 Mont. 328, 337, 863 P.2d 389, 395 (citation not necessarily determinative of the cause of an accident). The Court has also upheld the exclusion of evidence of a deferred prosecution agreement, in which the defendant had accepted financial responsibility, based on trial court's conclusion that injecting a criminal case document into a civil case may cause confusion and speculation on the part of the jury. *Bracha v. Estate of Hanley*, 2015 MT 35, ¶ 9, 378 Mont. 539, 348 P.3d 671.

b. How does a guilty plea or verdict impact civil litigation? Plea of no contest?

Although the Supreme Court has not yet directly addressed whether a guilty plea to a citation is admissible in a civil case, some Montana district courts have admitted evidence of a guilty pleas in accident cases. The Supreme Court has upheld the exclusion of evidence of a plea of no contest to a traffic citation. *Spinler v. Allen*, 1999 MT 160, ¶ 32, 295 Mont. 139, 983 P.2d 348.

9. Recent, significant trucking or transportation verdicts in each state

There are no recent reported cases involving significant developments in Montana transportation law or significant verdicts. Recent significant settlements include a \$26 million policy-limits settlement, the largest single-plaintiff personal injury recovery in Montana history, for a college student who became a brain damaged quadriplegic as a result of a rollover crash while on a missionary trip sponsored by an arm of the Southern

Baptist Convention. The settlement was reached following a trial court ruling that the driver of the vehicle was acting within the course and scope of his association with the mission group when the accident occurred.

10. Admissible evidence regarding medical damages - can plaintiff seek to recover the amount charged by the medical providers or the amount actually paid, and is there a basis for post-verdict reductions or off-sets

The Montana Supreme Court decided this issue in the recent case of *Meek v. Mont. Eight Judicial Dist. Ct.*, 2015 Mont. 130, 379 Mont. 150, 349 P.3d 493. In *Meek* the defendants moved in *limine* to restrict the plaintiff's medical expense recovery to the amounts actually paid by Medicare and insurance, and prohibit the plaintiff from presenting evidence of the "inflated" amounts actually billed by the providers. The Supreme Court noted that Mont. Code Ann. § 27-1-302 requires that damages be reasonable and that it is for the jury to determine what is reasonable under the circumstances. The Court then noted that this statute must be construed along with Montana's collateral source statute to as to give effect to both.

The Court held that if the plaintiff introduces evidence of the actual medical bills then the defendants may contest the reasonableness of the bills as a measure of damages, in which case the amount that Medicare or other insurance pays to other health care providers for the same or similar services would be relevant to that issue. However, the defendants would still be prohibited from offering any evidence or argument that the plaintiff herself was covered by Medicare or other insurance, or that Medicare or other insurance paid any part of her medical expenses. Under Mont. Code Ann. § 27-1-308, Montana's collateral source statute, those matters may be considered only by the trial court following the jury's verdict.

11. Driver criminal history and how it affects negligent hiring and supervision claims

There are no reported Montana cases on this particular issue. As a general proposition of Montana law negligent hiring or retention may occur when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his [or her] unfitness, and the employer fails to take further action such as investigating, discharge, or reassignment. *Peschel v. City of Missoula*, 664 F.Supp. 1149, 1169 (D. Mont. 2009). Although under Mont. Rule of Evid. 403 driver criminal history would generally be inadmissible to prove negligence for causing the accident in question, it may be admissible for other purposes including establishing prior notice or knowledge. Therefore it is conceivable that Montana courts would allow such evidence for the purpose of establishing a negligent hiring and supervision claim.