

MAINE

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1. Identify the venues/areas in your State that are considered dangerous or liberal.

Oxford County and Washington County tend to produce verdicts that are higher than the state average.

2. Identify any significant trucking verdicts in your State during 2017-2018, both favorable and unfavorable from the trucking company's perspective.

None.

3. Are accident animations and/or computer-generated evidence admissible in you State?

If proper foundation is laid animations and/or computer-generated evidence *may* be admitted. Such evidence is subject to Maine Rule of Evidence 403 which weights the probative value of such evidence against the danger of unfair prejudice. Maine Rule of Evidence 616 sets forth the parameters of illustrative aids used during a trial. That rule provides that "otherwise inadmissible objects or depictions may be used to illustrate witness testimony or counsel's arguments." The Rule further provides that the court may "limit or prohibit the use of illustrative aids as necessary to avoid unfair prejudice, surprise, confusion, or waste of time" and opposing counsel must be given a reasonable opportunity to object to the use of any illustrative aid prepared for trial. Finally, Rule 616 provides that a jury may use an illustrative aid during deliberations only if the parties consent to such use, or a court orders such use after the proponent has shown good cause.

4. Identify any significant decisions or trends in your State in the past two (2) years regarding (a) retention and spoliation of in-cab videos and (b) admissibility of in-cab videos.

None. It should be noted that there are no cases that support an independent tort based on alleged spoliation of evidence.

5. What is your State's applicable law and/or regulation regarding the retention of telematics data, including but not limited to, any identification of the time frames and/or

scope for retention of telematics data and any requirement that third party vendors be placed on notice of spoliation/retention letters.

There are no specific laws or regulations on point. To the extent the data is relevant and not retained or preserved a potential spoliation of evidence argument could be advanced.

Given that there is limited state court case law on a party's duty to preserve evidence, Maine state courts are likely to look to the federal courts in determining when a duty to preserve applies. As noted by the First Circuit, there is a duty to preserve evidence, including electronic evidence (1) once the parties know that there is litigation or that litigation is reasonably foreseeable and (2) they know the potential relevance of the missing evidence. *Jimenez-Sanchez v. Caribbean Restaurants, LLC*, 483 F. Supp. 2d 140, 143 (D. P.R. 2007); *Blinzler v. Marriott International, Inc.* 81 F.3d 1148, 1159 (1st Cir.1996).

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

If it is relevant to the claims asserted then such evidence is likely admissible. For example, if a toxicology report is advanced to show that a defendant was operating a vehicle while over the legal limit and was therefore under the influence at the time of an alleged accident, such evidence is likely admissible on a claim of negligence. If, however, the toxicology report is advanced to show that some substance was present in the defendant's system that is not relevant to a defendant's ability to operate a vehicle, such evidence would be inadmissible on a claim of negligence.

7. Is post-accident investigation discoverable by adverse counsel?

Adjuster file materials, once an accident is being investigated, are presumptively material prepared in anticipation of litigation. The plaintiff needs to show a specialized need in order to access that information. *See Harriman v. Maddocks*, 518 A.2d 1027, 1034 (Me. 1986).

8. Describe any laws in your State which regulate automated driving systems (autonomous vehicles) or platooning.

None.

9. Describe any laws or Court decisions in your State which would preclude a commercial driver from using a hands-free device to have a conversation over a cell phone.

There are no decisions addressing this issue.

10. Identify any Court decisions in your State precluding Golden Rule and/or Reptile style arguments by Plaintiffs' counsel.

The Maine Law Court has stated that "[i]t is impermissible for a party to encourage[] the jury to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence." *Seabury-Peterson v. Jhamb*, 2011 ME 35, ¶ 15, 15 A.3d 746

(quotation marks omitted). “The use of such arguments, commonly called Golden Rule arguments, is universally condemned because it threatens the essence of a fair trial.” *Id.* (quotation marks omitted). There are no Maine cases specifically addressing Reptile style arguments except those that would qualify as “Golden Rule” arguments as discussed above.

11. Compare and contrast the advantage and disadvantages of Federal Court versus State Court in your State.

The advantages of Federal Court include the availability of more resources when compared with State Court, a faster process than provided in State Court, and a unanimous jury verdict requirement that is not present in State Court civil actions. The disadvantage of Federal Court is that in cases where liability is clear the damages awarded tend to be higher than those awarded in State Court on similar facts.

12. How does your State handle the admissibility of traffic citations (guilty plea, pleas of no contest, etc.) in subsequent civil litigation?

Typically, traffic citations are not admissible in the civil litigation. Accident reports created by the state are specifically prohibited from admission into evidence in any trial arising out of the accident. *See* 29-A M.R.S. § 2251(7).

In Maine, if a driver or agent admits to a felony, it may be admissible pursuant to our Rules of Evidence. Further, a guilty plea to a non-felony charge may be admissible in a civil suit that arises out of the same factual scenario. *Hinshaw v. Keith*, 645 F.Supp 180, 184 (D. Me. 1986). Under the Maine Rules of Evidence, the guilty plea is admissible as an admission by a party-opponent as long as its admission does not carry the risk of unfair prejudice. *Id.*; *State v. Fitzgerald*, 37 A.2d 799, 801 (Me. 1944). A plea of nolo-contendere or no-contest, however, is not a party admission and is therefore inadmissible in a subsequent civil suit. *Id.*; M.R. Civ. P. 80F(d)(3).

13. Describe the laws in your State which regulate whether medical bills stemming from an accident are recoupable. In other words, can a plaintiff seek to recover the amount charged by the medical provider or the amount paid to the medical provider? Is there a basis for post-verdict reductions or offsets?

The Maine Law Court, Maine’s highest court, has not addressed the issue specifically. The Court has held, however, that an injured person “is entitled to be compensated for only those medical expenses which are reasonable and necessary, and are related to the accident and injuries complained of.” *Stubbs v. Bartlett*, 478 A.2d 690, 692 (Me. 1984).

Maine’s trial courts are split on the issue. Some have limited admissibility to the amounts actually paid by Medicare or MaineCare (Maine’s government subsidized health insurance). *See e.g., Ricci v. Beverage Mart, Inc.*, Docket No. CV-07-89 (Crowley, J.); *Goddard v. Fowles*, Docket No. CV-06-10 (Hjelm, J.); *Young v. Sauderwald*, Docket CV-05-649 (Crowley, J.); *Pelletier v. Brann & Higgins*, Docket No. CV-02-639 (Crowley, J.); *Roy v. Beaulé*, CV-01-87 (Gorman, J.); *Labrie v. Griffin*, Docket No. CV-01-238 (Gorman, J.);

Eastman v. Eastern Maine Medical Center et al., Docket No. CV-98-210 (Hjelm, J.). While others have admitted evidence of the amounts billed and actually paid leaving it up to the fact finder to determine the fairness and reasonableness of medical expenses. *See e.g., Nuzzu v. Kingsbury*, Docket No. CV-06-38 (Gorman, J.); and *Barday v. Donnelly*, 2006 WL 381876, *3 (Me.Super. 2006) (Cole, J.) (“It is for the factfinder to decide, based on evidence not only of the amount of the payments made [by MaineCare], but also based on evidence of the amounts billed by the medical service providers and any other relevant evidence not implicating the collateral source rule, what the ‘reasonable value’ of those medical services is”).

14. Describe any statutory caps in your State dealing with damage awards.

Maine’s Wrongful Death statute permits a jury to award a maximum of \$500,000.00 for the loss of comfort, society, and companionship of the deceased and claims for emotional distress. *See* 18-C M.R.S. § 2-807(2). Additionally, a jury may award punitive damages in an amount not to exceed \$250,000.00. *Id.*