

CALIFORNIA

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1. What are the venues/areas in California that are considered dangerous or liberal?

The vast majority of California is composed of liberal jurisdictions, particularly counties that contain large metropolitan areas such as Los Angeles and the San Francisco Bay Area. There are pockets of conservative areas in the state, most of which are found in inland rural areas.

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

Jason Lo et. al. v. Dominick Consolazio et. al., Superior Court, Los Angeles County, BC653464; Oct. 19, 2018. \$46,000,000 Settlement. This case involved a motorcyclist who was run over, and then dragged by a truck for four hundred feet. Plaintiff suffered significant injuries to his lower body. The jury entered a verdict for \$41,864,102 for Plaintiff and the case was settled for \$46,000,000.

Lennig et al. v. CRST Inc. et al., Superior Court, Los Angeles County, MC025288; February 21, 2018. \$53,648,974 Verdict. This case involves two brothers who were hit by a truck head-on. One plaintiff suffered injuries to his head and left arm, which was partially severed. The other plaintiff suffered injuries to his head and back. Defendants stipulated to liability. A Los

Angeles County jury, awarded a \$52,700,000 verdict and the case settled on confidential terms thereafter.

Esparza et al. v. Win Distribution Inc. et al., Superior Court, Riverside County, RIC1512318; April 13, 2018. \$11,779,155 Verdict. This case involved a rear end collision between a vehicle and a box-truck. Plaintiff suffered a cervical spine injury and a traumatic brain injury. After five weeks of trial, the jury returned with a verdict for plaintiff.

Alan Casillas v. Landstar Ranger Inc. et al., Superior Court, Los Angeles County, BC6500485; January 1, 2017. \$34,000,000 Verdict. This case involved a tractor-trailer that drove over part of a sidewalk during a right turn and crushed plaintiff's leg, which was subsequently amputated.

Handrop v. Romero-Acosta et al., Superior Court, San Diego County, 37-2015-00039181-CU-PA-CTL, December 11, 2017. Defense Verdict. Plaintiff suffered an amputation of his leg and other injuries from an accident he claims was caused by defendant driving dangerously slow. Plaintiff was behind defendant and rear-ended him. Plaintiff's claimed special damages exceeded \$7,000,000.

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

As a general matter, computer animations and simulations are admissible if the foundation is properly laid. The California Supreme Court, in *People v. Duenas* (2012) 281 P.3d 887, 900, explained that "a computer animation is demonstrative evidence offered to help a jury understand expert testimony or other substantive evidence" and "is admissible if it is a fair and accurate representation of the evidence to which it relates..." In contrast, a computer simulation "is itself substantive evidence" and is "admissible only after a preliminary showing that any 'new scientific technique' used to develop the simulation has gained 'general acceptance ... in the relevant scientific community.'"

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.

There have been no specific decisions with respect to the retention and spoliation of in-cab videos. California law does not generally serve as a significant deterrent to spoliation as the only sanctions are a jury instruction, allowing the jury to make a negative inference from the missing evidence, and discovery sanctions under Cal. Civ. Proc. Code § 2023.030. As for admissibility, in-cab videos are subject to the same authentication requirements as any other writing under Cal. Evid. Code § 1400 et seq. prior to a video being found admissible. A video's admissibility may also be attacked under Cal. Evid. Code § 352 as being more prejudicial than probative.

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?

California does not have specific statutory or regulatory requirements regarding the retention of telematics data and is therefore subject to the normal discovery rules. As noted above, should a party fail to retain discoverable information, that party is subject to sanction, either by way of a jury instruction or discovery sanctions under Cal. Civ. Proc. Code § 2023.030. Non-parties may be subpoenaed for deposition testimony or the production of documents Cal. Civ. Proc. Code § 2020.010. Parties are responsible for all information within their possession, custody or control and may be asked to produce information as to who may possess information and documents the party does not possess itself. There is no formal requirement that third-party vendors be placed on notice, but should a party believe that such a non-party may possess discoverable information, it is advisable that they be put on notice.

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

A positive post-accident toxicology report is more likely than not to be admissible. An intermediate appeals court decision, *Shannon v. Gourley*, (2002) 103 Cal.App.4th 60, 64-65 held that “the foundational showing necessary for the admission of blood-alcohol test results consists of evidence demonstrating the testing device was working properly and a qualified operator correctly administered the test. ([Davenport v. Department of Motor Vehicles \(1992\) 6 Cal.App.4th 133, 140.](#)) One way to meet these requirements is to show the test results were obtained by following the standards prescribed for forensic alcohol analysis in title 17. ‘Compliance with the regulations establishes both a foundation for admission of test results into evidence in any proceeding and a basis for finding such results to be legally sufficient evidence to support the requisite findings in such proceeding.’ ([Id. at p. 142.](#))”

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

Unless the attorney work product or attorney client privileges are established, post-accident investigations will be discoverable. Neither of these privileges attach until counsel has been engaged. Should no privilege be clearly established, there is no protection to shield the investigation from discovery.

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

The testing of autonomous vehicles is governed by Division 16.6 of the Cal. Veh. Code, beginning with § 38750. Division 16.6 is further defined and implemented by Cal. Code. Reg. tit 13, §§ 227 et seq. The statutory code and the implementing regulations require various procedures prior to testing autonomous vehicles. A non-exhaustive list includes: applying for and receiving a permit (§§ 227.20-227.22), providing evidence of financial responsibility (§§ 227.06-227.10), various requirements for drivers (§§ 227.34-227.36) and prohibitions on operation on public roads (§ 227.26).

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.

Cal. Veh. Code § 23123 is the general provision banning the use of cellular phones unless a hands-free feature is in use. There are no laws or Court decisions holding that § 23123 has an exception for commercial drivers.

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

In *Regalado v. Callaghan* (2016) 3 Cal.App.5th 582, a Court of Appeals held that plaintiff's argument based on the "Reptile Theory" was improper because that theory attempts to appear to jurors' concerns about their own safety and the safety of the community, rather than the evidence regarding the plaintiff.

A Court of Appeals has held that the basic rule is that an attorney may not "pander to the prejudice, passion or sympathy of the jury." *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 295. Golden Rule arguments were also addressed in *Loth v. Truck-A-Way Corp.* (1998) 60 Cal.App.4th 757, 765, quoting *Neumann v. Bishop* (1976) 59 Cal.App.3d 451, 484-485; see also *Beagle v. Vasold* (1966) 65 Cal.2d 166, 182, fn. 11; *Cassim, supra*, 33 Cal.4th at pp. 797-798.)

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

There are several advantages of litigating in Federal Court versus State Court in California. The Federal Courts operate on a much more predictable and formal schedule, and as a result, Federal Courts rule on motions for summary judgment more quickly. Federal Courts also draw from a larger geographic area when creating juries that the State Courts, and Federal juries are required to come to unanimous verdicts. In addition, parties can challenge expert witnesses under *Daubert* and *Kumho Tire* in Federal Court. The negatives of using Federal Courts are that Federal judges dislike diversity actions and will do all they can to remand the case to State Court. Removal to Federal Court is also not always available in a given case, either because complete diversity does not exist, or the minimum amount in controversy is below \$75,000. Ultimately, there are numerous factors to consider on a case-by case basis as to which forum is most suitable to each case.

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

As a matter of law, only felony convictions that involve moral turpitude or are probative to a witness's veracity are admissible. All other violations of law should not be admissible. However, there are several circumstances where there are arguments that may convince a judge to find citations admissible. Felonies that are a result of acts taken while driving may be admissible. If a person was issued a citation for acts that are the subject of the instant civil action, the citation may be admissible. In addition, if there is a separate cause of action for vicarious

liability, for example a claim for negligent, hiring, training and supervision, a citation may be relevant to prove what the employer knew or should have known about its employee.

A citation would not be admissible if there was a plea of nolo contendere, as that plea is designed to avoid civil liability. A not-guilty plea would also be inadmissible.

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?

All of the law in this area stems from the collateral source rule, which states that a tortfeasor may not benefit from the fact that a claimant has insurance. *Hanif v. Housing Authority*, (1988) 200 Cal.App.3d 635 stands for the proposition that an injured plaintiff is to be compensated for the loss or injury sustained as a result of the tortfeasor's action. However, for the injured plaintiff with medical insurance, she cannot recover more than the amount actually paid by her insurer on her behalf. (*Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.App.4th 541.) For the uninsured injured plaintiff, whom obtains medical treatment via a lien arrangement, the full billed amount is relevant and admissible as evidence in support of economic and noneconomic damage claims, with the caveat that the plaintiff must present an expert qualified to render an opinion as to the reasonable value of the medical treatment. (*Bermudez v. Ciolek* (2015) 237 Cal.App.4th 1311.) Once a Plaintiff has established the amount of treatment, it is incumbent on the defense to establish through expert testimony that the treatment or charges are unreasonable.

Mechanically, all reductions take place after the jury has awarded damages. The jury is presented with the full medical specials, which the judge subsequently reduces to what was actually paid by the plaintiff's insurance carrier.

To avoid reductions, plaintiffs have begun to seek treatment outside of their insurance plan so that they can present their medical specials at retail rates without subsequent reduction. *Pebley v. Santa Clara Organics, LLC* (2018) 22 Cal.App5th 1566, allows plaintiffs to go outside their insurance plan to seek treatment.

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

Other than in medical-malpractice cases, California does not cap any type of damages that may be awarded.