

DISTRICT OF COLUMBIA

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

The District of Columbia has only a single jurisdiction. It is known to be a fairly liberal jurisdiction.

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

In October of 2018, in *Michael Williams v. Elite Hauling Group, Inc.*, a District of Columbia jury awarded \$100,000 to a plaintiff injured in a sideswipe collision with a dump truck. The plaintiff complained of lower back pain, and specifically the aggravation of a pre-existing lumbar condition. He underwent physical therapy and had three epidural injections. The plaintiff was also allegedly an avid bicyclist and claimed he could not return to his prior level of physical activity due to his injuries. Plaintiff's medical bills totaled \$26,000, and his lost wages totaled \$10,500.

In August of 2018, in *Joshua Short v. Washington Metropolitan Area Transit Authority*, a District of Columbia jury awarded \$4,321,258.21 to a plaintiff injured when he was struck by a bus as a pedestrian in the crosswalk. The defendant argued that the plaintiff was contributorily negligent because he was: (1) actually outside of the crosswalk; (2) wearing dark clothes while it was raining and dark; and (3) using an umbrella that blocked the bus driver's view of the road. The jury rejected the defendant's argument. The plaintiff's medical treatment resulted in extremely extensive treatment, and his medical bills totaled well over \$150,000. Moreover, the plaintiff was a pastry chef, and as a result of the accident he allegedly was unable to return to his career. The jury's award was as follows: (1) \$159,596 in past medical costs; (2) \$31,662 for past lost earnings capability; (3) \$900,000 for future lost earnings capability; and (4) \$3,230,000 for emotional distress.

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

District of Columbia law does not prohibit the admission of accident animation and/or computer-generated evidence. Although no District of Columbia Court has directly addressed this question, we do note that the District of Columbia Rules of Evidence are substantially similar to the Federal Rules of Evidence, and District of Columbia Courts routinely rely on

federal precedent in interpreting their own Rules of Evidence. Federal courts generally do not prohibit the admission of computer-generated evidence and/or accident animations, and we expect state level courts in the District of Columbia would reach the same conclusion. *See, e.g., United States v. Slough*, 22 F. Supp. 3d 1, 8 (D.D.C. 2014) (acknowledging that demonstrative event reconstruction/simulation evidence would be admissible at trial).

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 not been any significant recent trends specifically regarding in-cab videos in the District of Columbia. In general, however, “[a] litigant ‘is under a duty to preserve what it knows, or reasonably should know, is relevant in the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery, and/or is the subject of a pending discovery request.’” *Mahaffey v. Marriott Int’l, Inc.*, 898 F. Supp. 2d 54, 60 (D.D.C. 2012) (quoting *Arista Records, Inc. v. Sakfield Holding Co.*, 314 F. Supp. 2d 27, 33 n. 3 (D.D.C. 2004)). Stated otherwise, a party “who has notice that a document is relevant to litigation” is required to preserve the document for future litigation. *See Battocchi v. Washington Hosp. Ctr.*, 581 A.2d 759, 766 (D.C. 1990) (quoting *Nation-wide Check Corp. v. Forest Hills Distributors*, 692 F.2d 214, 218 (1st Cir. 1982)). Consequently, the failure to preserve video footage of an accident could plausibly constitute spoliation. The spoliation doctrine is split into two categories: (1) intentional or reckless destruction of evidence; and (2) negligent failure to preserve evidence. *Id.* Where the Court finds that the destruction of evidence was intentional or reckless, it must give an instruction to the jury informing it that it may draw an adverse inference from the destruction of the evidence. *Id.* Where the Court finds that the destruction was merely negligent, however, the Court has discretion regarding whether to give an adverse inference instruction. *Id.*

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.

The District of Columbia has not adopted any specific laws, rules, or regulations regarding the retention of telematics data. As a result, the general rules regarding spoliation of evidence described above are applicable.

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

Toxicology reports are generally admissible in civil litigation in the District of Columbia as long as they are supported by an adequate evidentiary foundation. *See, e.g., Jarrett v. Woodward Bros.*, 751 A.2d 972, 975 (D.C. 2000). In general, the admission of such evidence might require expert testimony to provide an adequate foundation. *See Carrington v. D.C.*, 77 A.3d 999, 1007 (D.C. 2013).

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

Post-accident investigation materials are generally discoverable in the District of Columbia unless they are privileged. However, we typically assert the work product privilege over such materials, arguing that they were prepared in anticipation of litigation.

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

District of Columbia Code Ann. § 50-2352 provides as follows:

An autonomous vehicle may operate on a public roadway; provided, that the vehicle:

- (1) Has a manual override feature that allows a driver to assume control of the autonomous vehicle at any time;
- (2) Has a driver seated in the control seat of the vehicle while in operation who is prepared to take control of the autonomous vehicle at any moment; and
- (3) Is capable of operating in compliance with the District's applicable traffic laws and motor vehicle laws and traffic control devices.

The District of Columbia further has commissioned a study to “evaluate[] and make[] recommendations regarding the effects of autonomous vehicles on the District.” D.C. Code Ann. § 50-2353.01.

District of Columbia law further provides as follows:

The original manufacturer of a vehicle converted by a third party into an autonomous vehicle shall not be liable in any action resulting from a vehicle defect caused by the conversion of the vehicle, or by equipment installed by the converter, unless the alleged defect was present in the vehicle as originally manufactured.

D.C. Code Ann. § 50-2353.

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.

In the District of Columbia, drivers are permitted to talk on their phones while they are driving, but only while using a “hands-free accessory.” D.C. Code Ann. § 50-1731.02. The statute does not define handheld phones, but defines “hands-free accessory” to mean an attachment, add-on, built-in feature, or addition to a mobile telephone, whether or not permanently installed in a motor vehicle, that when used allows the vehicle operator to maintain both hands on the steering wheel. *Id.* at § 50-1731.02(2). The statute also defines “texting” as “using an electronic wireless communications device to compose, send, receive, or read a written message or image using a text-based communication system, including communications referred to as a text message, instant message, or electronic mail.” *Id.* at § 50-1731.02(4A).

The District of Columbia permits drivers to use Bluetooth or other hands-free technology, but it bans any type of texting that requires drivers to use their hands to type messages. *Id.* at § 50-1731.04. Surfing the Internet, while driving, is also covered in the ban. Using any type of handheld electronic device is prohibited when driving in Washington D.C. *Id.*

Drivers using a hand held electronic device or smart phone while they are driving are subject to fines starting at \$100, which increase with subsequent offences. *Id.* at § 50-1731.06.

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

District of Columbia Courts have only addressed "Golden Rule" and/or "Reptile style" arguments in the context of criminal cases. In that regard, the Court of Appeals has held as follows:

In closing argument it is improper for counsel to use "golden rule" arguments in which he asks jurors to place themselves in the plaintiff's position or to "do unto others as you would have them do unto you" in assessing damages. . . . Nevertheless, counsel must always be permitted to argue that his client's case is a serious one and to stress those aspects of the case that contribute to its seriousness. . . . Furthermore, the fairness of counsel's argument must be assessed in the context of all other evidence and proceedings at trial. . . .

D.C. v. Colston, 468 A.2d 954, 957-58 (D.C. 1983). It is unclear whether this analysis would apply with equal force in the civil context, where the stakes are considerably different.

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

If possible, we generally recommend removing cases to the United States District Court for the District of Columbia. The federal court draws from the same, typically liberal jury pool as the state level court, so removing a case does not affect that particular aspect of litigation. Nevertheless, the federal judges in the District of Columbia tend to be more conservative than the state level judges. We have also found that the federal judges are more likely to grant dispositive motions and/or crucial discovery motions. The United States District Court for the District of Columbia is also considered a feeder court for the District of Columbia Circuit, so the federal judges in this jurisdiction tend to be exceptionally well qualified.

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

Citations and the disposition of criminal charges arising out of the same events leading to a civil lawsuit are inadmissible in the civil lawsuit. *Gen. Elec. Co. v. Taalohimoineddin*, 579 A.2d 729, 732 (D.C. 1990). However, "a formal plea of guilty to a traffic offense is admissible in a related civil action" because it constitutes an admission against interest.

Johnson v. Leuthongchak, 772 A.2d 249, 250 (D.C. 2001). Under this standard, we would expect that a plea of no contest would not be admissible, as it is not an admission against interest. *See id.*

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?

Medical bills, paid or unpaid, can form the basis of a plaintiff's special damages and serve as evidence of damages. *See Worjloh v. Stephens*, 835 A.2d 1093, 1095 (D.C. 2003); *Hawthorne v. Canavan*, 756 A.2d 397, 399–400 (D.C. 2000). D.C. law recognizes the "collateral source rule," under which an injured party may recover full compensatory damages from a tortfeasor regardless of the payment of any amount of those damages by an independent party, such as an insurance carrier. *Bushong v. Park*, 837 A.2d 49, 57 (D.C. 2003). Accordingly, there are no offsets or reductions in damages awarded based upon whether particular bills are paid. *See Hardi v. Mezzanotte*, 818 A.2d 974, 985 (D.C. 2003).

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

The District of Columbia does not have any caps on non-economic or punitive damages. Punitive damages are, however, subject to *de novo* review to determine if they are excessive. *Howard Univ. v. Wilkins*, 22 A.3d 774, 781-82 (D.C. 2011).