

**MASSACHUSETTS**

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

Suffolk County, which contains the City of Boston, and Middlesex County, which contains the City of Cambridge and suburbs north of Cambridge.

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

There have been not significant recent verdicts against transportation companies.

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

Yes, within the discretion of the trial judge.

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 not significant decisions on these issues.

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 retention of telematics data.

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

Yes, within the discretion of the trial judge.

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

Yes. However, if performed by counsel, much of the investigation can be protected by the attorney client privilege.

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

There are no specific laws or regulation regulating automated driving systems or platooning.

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 specific laws, regulations or Court decisions restricting a commercial driver from using a hands-free device in Massachusetts to have a cell phone call.

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

Massachusetts courts have collectively condemned the use of "Golden Rule" tactics, in which a party asks the jury to put themselves in the shoes of that party and decide the case based on personal interest and bias, rather than reason. *See, e.g., Commonwealth v. McLaughlin*, 431 Mass. 506, 510, 729 N.E.2d 252 (2000) (a prosecutor cannot appeal to the jurors' sympathies and fears by asking them to imagine themselves in the place of the victim); *Commonwealth v. Harris*, 11 Mass. App. Ct. 165, 176 (1981) (the invitation to the jury to put themselves in the position of the victim is usually improper); *Commonwealth v. Sevieri*, 21 Mass. App. Ct. 745, 755, (1986) (error where jury was told to approach their deliberations 'from the victim's point of view'); *Fitzpatrick vs. Wendy's Old Fashioned Hamburgers of New York, Inc.*, No. 2013-3045-F (Suffolk Sup. Ct., July 7, 2017) (Defendants' Motion for Mistrial granted given numerous reptilian tactics utilized by Plaintiff's counsel). In the Superior Court case *Wahlstrom v. LAZ Parking Ltd., LLC*, No. SUCV20101022, 2016 WL 3919503 (Mass. Super. May 19, 2016), the trial judge granted a new trial on the grounds that the plaintiff's attorney used the reptile theory during closing arguments.

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

Federal Court is preferable for defendants for several reasons. First, the pace of litigation is much faster Federal Court. Second, the rule of evidence and rules governing disclosure of expert witnesses are enforced more rigidly and predictably in Federal Court. Third, defendants are much more likely, in general, to be awarded Summary Judgment in Federal Court.

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

Moving violations are generally not admissible in a civil personal injury suit unless the violator actively disputed or appealed the violation. Typically, a guilty plea or verdict would be admissible in a civil suit, as would any plea colloquies.

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 plaintiff can seek to recover for the amount charged. There are no post-verdict reductions or offsets. With an expert witness, usually a billing consultant, the defendant can seek to admit into evidence the amount the provider would ordinarily receive for the care or the treatment, which is generally less than the amount billed. *Law v. Griffith*, 457 Mass. 349, 360-61, 930 N.E.2d 126, 135-36 (2010), *superseding* 73 Mass.App.Ct. 1127, 902 N.E.2d 433 (2009).

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

In Massachusetts, there are only statutory caps for public employers under M.G.L. c. 258 and for charitable organizations under M.G.L. c. 85K. There are no statutory caps applicable to the transportation industry.