

MINNESOTA

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

Please see the map located beneath the answer to Question #14. The most liberal, in respect to jury awards are Hennepin County, Ramsey County, Dakota County, and St. Louis County. Please see the map for more complete information.

2. Identify any significant trucking verdicts in your State during 2017-2018, both favorable and unfavorable from the trucking company's perspective.
 - *Lien v Veit & Co.*: 31CV-2015-1958 (2017): \$12,656,074 plaintiff verdict – reduced to \$4,809,308 (32-year-old male that became permanently unable to work as a result of his injuries when a rock weighing more than five pounds came off the dump truck and struck Lien in the head);
 - *Fish v Ramler Trucking*: 73CV-2015-10792 (2017): \$527,281 plaintiff verdict (53-year-old male injured while he was standing on a semi-truck trailer when it unexpectedly moved throwing him from the trailer);
 - *Pitsch v Johnson*: 27 cv- 2015-18271 (2017): \$12,000 plaintiff verdict (38-year-old male, reportedly suffered a right shoulder labrum tear, unspecified injuries to his neck and upper back, and emotional distress as a result of a public roadway, rear-end collision between the back of a stopped Fed Ex truck);
 - *McGovern v Hedtke, Delzotto Products of Minnesota*: 02CV-2014-2631 (2017): \$194,759 plaintiff verdict (injuries sustained by 53-year old court reporter when rear-end collision occurred);
 - *Pulse v. Jeckell Enters.*: 64-CV-2015-000888 (2017) \$0 defense verdict (41-year-old male, drove his truck and observed a slow moving tractor-trailer ahead of him that did not have its brake lights or turn signal activated, as he moved his truck into the left lane to pass, it began a left turn that caused a collision between the vehicles);
 - *Simondet v. Enga; M & K Repair*: 71-CV-2017-000006 (2018): \$0 defense verdict, also no award for spouse's loss of consortium claim. (54-year-old male sustained injuries when his motor vehicle collided with a semi-truck and trailer that failed to stop for a stop sign at an intersection and failed to yield the right-of-way);

- *Rose, as Trustee for the Heirs of Webster v. WM Mueller & Sons*: 72-CV-2017-000245 (2018): \$0 defense verdict (51-year-old male died as a result of a public roadway collision between the bicycle he was riding and a dump truck);
- *Barnett v. Sam Saide And Co.; Saide*: 62-CV-2016-005433 (2018): \$0 defense verdict (46-year-old male was allegedly injured when helping to unload items from a commercial truck and defendants unexpectedly lowered the rear lift and he fell off the back of the truck);
- *Pettibone v. Strommen; Central Specialties*: 59-CV-2017-000077 (2018): \$0 defense verdict (58-year-old male reportedly suffered injuries as a result of a public highway, motor vehicle collision between the vehicle he was driving and a semi-truck that attempted a left-turn immediately before the collision and impacted his vehicle on its passenger side);
- *Grinsell v. Postal Fleet Services*: 27-CV-2017-006209 (2018): \$0 defense verdict (25-year-old male, reportedly suffered a permanent TBI and other injuries, when, while he was a pedestrian crossing a public roadway, he was struck by a semi-truck);
- *Branch v. Johnson; Master Transfer Co. Inc.*: 27-CV-2017-006754 (2018) \$362,000 plaintiff verdict (16-year-old female, reportedly suffered a TBI and other injuries as a result of a motor vehicle collision between her vehicle and a tractor-trailer that had attempted to switch lanes and caused an impact with the rear passenger side of her vehicle).

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

The standard for admissibility of computer-generated animations is identical to that for demonstrative exhibits and visual aids. An animation must be “relevant and accurate and assist . . . the jury in understanding the testimony of a witness” in order to be admissible. *State v. Stewart*, 643 N.W.2d 281 (Minn. 2002). But “[b]ecause of its dramatic power, proposed animations must be carefully scrutinized for proper foundation, relevancy, accuracy, and the potential for undue prejudice.” *Id.* Additionally, Minnesota law recommends that cautionary instruction be given prior to presenting the animation to a jury. *Id.*

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.

A. Significant Minnesota Court decisions regarding spoliation of in-cab videos in the last two years.

- Minnesota courts have not addressed the issue of spoliation of in-cab videos in the past two years. Our experience is that courts treat in-cab videos the same way as any other onboard equipment, and we recommend to our clients that such evidence be preserved after an accident. In general, Minnesota courts have

considerable discretion to grant sanctions when, regardless of intent, a party disposes of evidence that it knows, or should know, should be preserved for pending or future litigation. *See Patton v. Newmar*, 538 N.W.2d 116, 118-19 (Minn. 1995).

- The propriety of a sanction for the spoliation of evidence is determined by the prejudice resulting to the opposing party. *See Hoffman v. Ford Motor Co.*, 587 N.W.2d 66, 71 (Minn. Ct. App. 1998). Prejudice is determined by considering the nature of the item lost in the context of the claims asserted and the potential for correcting the prejudice. *Patton*, 538 N.W.2d at 119. Potential sanctions include: (1) adverse inference jury instructions, *see Litchfield Precision Components*, 456 N.W.2d at 436; (2) monetary sanctions, *see Multifeeder Tech., Inc. v. British Confectionery Co.*, No. 09-1090 (JRT/TNL), 2012 U.S. Dist. LEXIS 132619, at *34 (D. Minn., Sep. 18, 2012); *Capellupo v. FMC Corp.*, 126 F.R.D. 545, 552 (D. Minn. 1989); (3) a finding of civil contempt, *see Multifeeder Tech., Inc.*, 2012 U.S. Dist. LEXIS 132619, at *34; and (4) exclusion of evidence related to the spoliated evidence, *see Patton*, 538 N.W.2d at 117; *Hoffman*, 587 N.W.2d at 71. Dismissal of a claim or defense may be warranted in extreme circumstances, but is seldom invoked as a spoliation sanction. *See Capellupo*, 126 F.R.D. at 552.

B. Admissibility of in-cab videos.

- There are no Minnesota court opinions addressing in-cab videos in particular. However, dash-camera footage in criminal cases has been admitted. The traditional evidentiary criteria would need to be satisfied in order for in-cab videos to be admissible. In most instances the decision whether evidence is relevant, and if so, whether it should be received, rests within the broad but sound discretion of the trial court. *State v. Swain*, 269 N.W.2d 707 (Minn. 1978). Minn. R. Evid. 403 vests the court with discretion to exclude relevant evidence if its probative value is substantially outweighed by the danger of causing unfair prejudice, confusing the issues, or misleading the jury, or by considerations of undue delay, waste of time, or the needless presentation of cumulative 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.

Minnesota does not have a specific law or regulation regarding the retention of telematics data. However, Minnesota's rules pertaining to discovery of electronically stored information are substantively identical to the federal rules. *See, e.g.*, Minn. R. Civ. P. 16.02(d), 26.02(b)(2).

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

There are no Minnesota court opinions or statutes regarding the admissibility of drug or toxicology tests as it relates to illicit or prescription drug use. However, according to Minnesota Statute § 634.16, the results of an approved breath test are admissible in evidence without

foundational expert testimony. The statute provides: “In any civil or criminal hearing or trial, the results of a breath test, when performed by a person who has been fully trained in the use of an infrared or other approved breath-testing instrument. . . are admissible in evidence without antecedent expert testimony that an infrared or other approved breath-testing instrument provides a trustworthy and reliable measure of the alcohol in the breath.” *Id.* It is likely that a toxicology test would be treated similarly in Minnesota courts.

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

Minnesota Rule of Civil Procedure 26.02 describes the scope and limits of discovery. “Discovery must be limited to matters that would enable a party to prove or disprove a claim or defense or impeach a witness and must comport with the factors of proportionality,” including “the importance of the discovery in resolving the issues.” Minn. R. Civ. P. 26.02 (b). Generally, “parties may obtain discovery regarding any matter, not privileged, that is relevant to a claim or defense of any party.” *Id.* “Relevant information sought need not be admissible at the trial if discovery appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.*

Investigation files or information or insurance company claim files can be considered work product privileged in Minnesota when created in anticipation of litigation. On the other hand, documents prepared “in the ordinary course of business” may not be found to have been prepared in anticipation of litigation. *City Pages v. State of Minnesota*, 655 N.W.2d 839, 846 (Minn. Ct. App. 2003). Whether documents were prepared in anticipation of litigation is a factual determination. *Bieter Co. v. Blomquist*, 156 F.R.D. 173, 180 (D.Minn.1994). The test is whether, in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation. *Id.* “In determining whether a document was prepared for litigation, a district court must consider when and by whom the [document] was made and the purpose of the [document].” *In re Child of Simon*, 662 N.W.2d 155, 161 (Minn. Ct. App. 2003).

A party may obtain discovery of documents prepared in anticipation of litigation or for purposes of trial based on a showing of substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Minn. R. Civ. P. 26.02(c); *State ex rel. Humphrey v. Philip Morris Inc.*, 606 N.W.2d 676, 690 (Minn. Ct. App. 2000).

Unlike some courts that have a bright line rule on whether an insurance adjuster’s claim file is discoverable, Minnesota looks at this issue on a case by case basis depending on whether the court reasonably believes litigation is anticipated citing *Carver v. Allstate Ins. Co.* that “not all documents prepared by an insurance company in investigating a claim meet [the] prerequisite[s]” of the work product doctrine. *Kleven v. American Family Mut. Ins. Co.*, 2012 WL 3792833 (Minn. Ct App. 2012) citing *Carver*, 94 F.R.D. 131, 134 (S.D. Ga. 1982).

As the District Court for the Southern District of Georgia aptly observed

[i]n the early stages of claims investigation, management is primarily concerned not with the contingency of litigation, but with deciding whether to resist the claim, to reimburse the insured and seek subrogation ... or to reimburse the insured and forget

about the claim shortly thereafter. At some point, however, an insurance company's activity shifts from mere claims evaluation to a strong anticipation of litigation. This is the point where the probability of litigation is substantial and imminent. The point is not fixed, it varies depending on the nature of the claim and the type of investigation.

If outside counsel has not yet been retained, it can be challenging to prevent discovery of company investigation files or insurance claim files. As a result, we recommend clients retain counsel immediately after any serious trucking accident and be in communication with the claims adjuster which maximizes the opportunity to claim privilege for both work product and attorney-client privileges.

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

Former Governor Mark Dayton issued Executive Order 18-04 on March 5, 2018, establishing a Governor's Advisory Council on Connected and Automated Vehicles to study, assess, and prepare for the transformation and opportunities associated with the widespread adoption of automated and connected vehicles.

There are also two proposed bills: MN House Bill 242 (last action 1/22/2019) in the House Finance Committee. It covers vehicle testing, rules for operation on public roadways, establishes micro-transit rideshare pilot program that requires a report, and appropriates money for the pilot program. MN Senate Bill 647 last action (1/30/2019) in the Senate Transportation Finance and Policy Committee. It would prohibit the use of automated driving systems.

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.

Minnesota allows the use of wireless communication devices to make telephone calls. Such devices may not otherwise be used unless they are in a voice-activated or other hands-free mode. Minn. Stat. § 169.475. (NOTE: Federal regulations prohibit drivers of commercial vehicles from using hand-held devices while driving).

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

Although Minnesota Courts have not specifically addressed whether its evidentiary rules prohibit "reptile theory" arguments, they have used them to exclude evidence of public safety violations unrelated to the alleged negligent act. For example, in *Carlson v. Riemenschneider*, No. A06-106, 2007 Minn. App. Unpub. LEXIS, at *9-10 (Minn. Ct. App. Feb. 13, 2007), the Court relied on Rule 403 to exclude evidence that the defendant dentist had violated numerous safety, sanitary and infectious disease control measures during the period at issue. The Court reasoned that "the jury might infer that respondent was negligent in this case based on facts determined by the [Minnesota Board of Dentistry] in other matters." The Court also excluded, pursuant to Rule 404(b), evidence of four prior malpractice lawsuits brought against the defendant because the "jury could wrongfully conclude that if respondent is accused of malpractice in other matters, then he must be liable for malpractice in the present case." *Id.*

Moreover, Minnesota has long disapproved of so-called “Golden Rule” arguments, whereby counsel invites the jurors to place themselves in the plaintiff’s shoes and award such damages as they would wish if they were in the same position. *See, e.g., Colgan v. Raymond*, 275 Minn. 219, 225 (1966). Unless made during the punitive damages phase of trial, arguments that the jury should “send a message” with its verdict also are improper. *Bieber v. Stuart Mgmt. Corp.*, No. C5-94-2272, 1995 Minn. App. LEXIS 671, at *7 (Minn. Ct. App. May 23, 1995).

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

In our experience, it is preferable to be in Federal Court whenever possible in Minnesota. Of course a case can only be removed if there is complete diversity of the parties, which doesn’t occur in all trucking cases. This preference not only applies to trucking cases, but generally to any catastrophic injury case. The reason is that Federal Court tends to have lower verdict values because there are less urban jurors who tend to be more liberal and award more money. The judges in Federal Court also tend to better understand complex issues and more often grant dispositive motions. Minnesota State Court judges tend to be overly representative of criminal practitioners and sometimes they have little to no familiarity with civil cases. As a practical matter, it can be good for the trucking client to get out of the plaintiff’s home town, especially when it is a small, rural town and get to a larger city where there will be less sympathy.

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

“No record of the conviction of any person for any violation of [Minnesota’s Traffic Regulations] shall be admissible as evidence in any court in any civil action.” Minn. Stat. § 169.94. However, non-issuance of a traffic ticket may be admissible to impeach an officer’s testimony concerning the defendant’s driving misconduct. *LeClair v. Sickler*, 275 Minn. 320, 325, 146 N.W.2d 853, 856 (1966).

Guilty pleas or verdicts relating to traffic violations are not admissible in a civil litigation, even if the action involves “the same facts out of which the violation of the traffic act arose.” *Warren v. Marsh*, 11 N.W.2d 528, 531 (Minn. 1943).

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?

Evidence of medical expenses billed to the plaintiff is admissible at trial, while evidence of the actual amount of medical expenses paid is not. *See Swanson v. Brewster*, 784 N.W.2d 264, 281-82 (Minn. 2010) (citing Minn. Stat. § 548.251, subd. 5). However, under Minnesota’s collateral-source statute, a defendant may move for a post-trial reduction of a plaintiff’s award by requesting a determination of collateral sources that have been paid for the plaintiff’s benefit, including negotiated discounts. *See Minn. Stat. § 548.251, subd. 2; Swanson* 784 N.W.2d at 268.

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

Minnesota does not have any damages caps.

