NEW YORK

Edward D. Laird, Jr.
Brian D. Carr
Brienna L. Christiano
CARTER, CONBOY, CASE, BLACKMORE, MALONEY & LAIRD, P.C.
20 Corporate Woods Boulevard
Albany, NY 12211-2350
Tel: (518) 465-3484
Fax: (518) 465-1843
E-Mail: elaird@carterconboy.com
E-Mail: bcarr@carterconboy.com
E-Mail: bchristiano@carterconboy.com

Robert J. Mullins, II
Michael P. Sullivan
Rochelle K. Lawless
Jenna E. McDonnell
GIBSON, MCASKILL & CROSBY, LLP
69 Delaware Avenue, Suite 900
Buffalo, NY 14202
Phone: (716) 856-4200
Fax: (716) 856-4013
E-Mail: rmullins@gmclaw.com
E-Mail: msullivan@gmclaw.com
E-Mail: rlawless@gmclaw.com
E-Mail: jmcdonnell@gmclaw.com

Felice J. Cotignola
LESTER SCHWAB KATZ & DWYER, LLP
100 Wall Street
New York, New York 10005
Phone: (212) 964-6611
Fax: (212) 267-5916
E-Mail: fcontignola@lskdnylaw.com

Timothy P. Murphy
HANCOCK ESTABROOK, LLP
1500 AXA Tower 1
100 Madison Street
Syracuse, NY 13202
Phone: (315) 565-4500
Fax: (315) 565-4600
E-Mail: tmurphy@hancocklaw.com

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

   A. Liberal venues

      1. New York County - First Judicial District
      2. Kings County - Second Judicial District
      3. Albany County - Third Judicial District
      4. Ulster County - Third Judicial District
      5. Schenectady County - Fourth Judicial District
      6. Onondaga County - Fifth Judicial District
      7. Tompkins County - Sixth Judicial District
      8. Monroe County - Seventh Judicial District
      9. Erie County - Eighth Judicial District
      10. Dutchess County – Ninth Judicial District
      11. Rockland County - Ninth Judicial District
      12. Westchester County – Ninth Judicial District
      13. Nassau County - Tenth Judicial District
      14. Queens County - Eleventh Judicial District
      15. Bronx County - Twelfth Judicial District

   B. Dangerous venues

      The most dangerous venues to the transportation industry are the jurisdictions located within New York City. These venues include: the First Judicial District – New York County, the Second Judicial District – Kings County, the Eleventh Judicial District – Queens County, the Twelfth Judicial District – Bronx County and the Thirteenth Judicial District - Richmond County. Additionally, the Tenth Judicial District, consisting of Nassau and Suffolk Counties, are similarly dangerous to the venues within New York City. Venues typically become less dangerous as you move north from New York City and Long Island. However, while counties such as Dutchess County and Westchester County, both in the Ninth Judicial District and immediately north of New York City, have proven to

be less dangerous than the New York City and Long Island venues, they are still significantly dangerous to the transportation industry. It is important to note that some jurisdictions containing large metropolitan areas in Western New York, for example Monroe County in the Seventh Judicial District, have been shown to have higher verdicts than other Northern and Western New York jurisdictions.

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

Fang. v. Werner (2019); Defense Verdict

Plaintiff was proceeding northbound on an upstate NY interstate highway, and alleged to have been sideswiped by a tractor-trailer. The case proceeded to trial in United States District Court, Northern District of New York in January 2019. Defendant argued that plaintiff's vehicle came into the tractor-trailer's lane of travel leading to the accident.

The plaintiff alleged significant psychological injuries, PTSD and conversion disorder, leading to permanent paralysis of the right leg. Plaintiff also claimed loss of a fetus, but that claim was successfully dismissed based upon pre-trial urogynecologic proof that established that the loss of the fetus was not causally related to the accident.

After five days of proof the jury returned a no-cause verdict.

Martinez v. Premium Laundry Corp. (2018); $10,600,000 Verdict

Decedent, 79, was crossing a city street in the crosswalk when she was struck by a laundry van and dragged several car lengths. The decedent sustained fractures to her ribs, spine, pelvis, and left tibia and fibula; a lung concussion; and a facial laceration. She died from respiratory and cardiac arrest within the hour.

Plaintiff, decedent's husband, alleged that the defendant failed to pay proper attention to his driving and yield to a pedestrian in the crosswalk. Plaintiff asserted that decedent had a walk signal when she entered the crosswalk.

Defendant argued that the decedent was not in the crosswalk but attempting to cross the street a few car lengths down the block and may have done so between parked cars, citing the driver's testimony that he never saw the decedent until he felt a big bump. Defendant also argued that the decedent's overall low score on the Glasgow Coma Scale meant that she was unable to experience conscious pain and suffering within minutes of being struck and the ambulance arriving.

The jury found the defendant to be 100 percent liable and included damages for conscious predeath pain and suffering in its $10.6 million award.

Morace v. Ardito, et al. (2018); $8,328,000 Verdict

Plaintiff was negotiating a turn in an intersection when defendant, driving a box truck, passed the red light controlling the traffic in his direction and collided with the plaintiff's driver side.

Plaintiff sustained a herniation at her cervical intervertebral disc C6-7 and a spinal cord impingement. Plaintiff underwent a radical total discectomy and replacement, and later developed chronic pain syndrome. Plaintiff sought future medical expenses, future lost earnings and past and future pain and suffering.

At trial, plaintiff alleged that defendant had sole liability for the collision, arguing that she had a green turning arrow when she started to negotiate the left hand turn. Plaintiff argued that she returned to work after the accident but had to take time off to recuperate from surgery and she was terminated during that period. She was unable to successfully go back to work part-time due to pain and complications with her pain medication.

DeLeon-Berrera v. Bartlett Dairy, Inc. (2018); $5,990,676 Verdict

Plaintiff, a trucker, approached and stopped behind a car at a red traffic light when a trailing truck driven by defendant struck plaintiff's truck and propelled it into the preceding vehicle. Plaintiff alleged a tear in the glenoid labrum in each shoulder, herniations of the C3-4, C4-5 and C5-6 intervertebral discs, bulges in the L4-5 and L5-S1 discs and an impingement of the left shoulder. Plaintiff further alleged an impingement of thecal sac and effusion in her shoulders.

Plaintiff underwent decompressive arthroscopic surgery, including a debridement of damaged tissue, on the left shoulder and a discectomy and fusion of the C5-6 disc. Plaintiff sought recovery of past medical expenses, future medical expenses, damages for past and future pain and suffering.

Defendant argued that plaintiff's injuries were degenerative conditions stemming from manual labor, noting medical records that documented prior injuries to her back and shoulders.

Bort v. Knope and Advanced Chimney, Inc. (2018); $1,650,000 Verdict

Plaintiff, a salesperson, was bicycling on the southbound side of Eighth Avenue when his head collided with the side-view mirror of an oncoming box truck. Plaintiff alleged that he was bicycling only a few feet inside the roadway's center line when the defendant veered around a double-parked truck, strayed across the center line and collided with plaintiff. Plaintiff's cousin, who was bicycling with plaintiff at the time of the accident, corroborated plaintiff's claims.

Plaintiff alleged fractures to his nose, left orbit, sinuses and a zygomatic arch. Plaintiff further alleged a derangement of his left knee, a tear of the left anterior cruciate ligament, herniations of the C6-7, L4-5 and L5-S1 intervertebral discs, sprains and strains of the cervical and lumbar regions and bulges of the C3-4, C4-5 and C5-6 discs. He claimed that the C6-7 and L5-S1 discs produced an impingement of spinal nerves and the resultant radiculopathy. Finally,

plaintiff claimed damage to his brain that impaired his verbal fluency, executive functions, memory and other elements of his cognition.

Plaintiff underwent internal fixation of the left orbit fracture, arthroscopic surgery on the left knee and months of chiropractic manipulation and physical therapy. Plaintiff's neurosurgeon opined that he required fusion of a portion of his lumbar region. Plaintiff further alleged that he had residual pain and cognitive limitations.

Defense counsel contended that plaintiff did not require the majority of his treatment and that he achieved a good recovery that did not require spinal surgery. Defendant's expert neuropsychologist opined that the plaintiff did not suffer impairment of his cognition and was functioning at his baseline.

Reed v. G.J.C. Trucking, LLC (2018); Defense Verdict

Plaintiff alleged that as she was proceeding in the left lane of a two lane exit ramp, the defendant tractor-trailer driver, who was in the right lane, cut her off as the right lane ended, causing the vehicles to collide. Defendant asserted that the left lane that the plaintiff was traveling in was gradually closing by cones due to road construction. He claimed that as the plaintiff's lane was the land that ended, it was the plaintiff who cut him off.

Plaintiff claimed that she suffered cervical and lumbar herniations that required surgery and a knee injury that required a knee replacement. Defendant countered that the plaintiff was already treating for knee and neck pain at the time of the accident and she failed to inform her treating physicians of her previous history.

Defendant provided a biomechanical engineer who testified that the force of the collision was insufficient to cause the claimed injuries. The jury determined that the defendant was not negligent.

Horn v. D&A Sand & Gravel, Inc. (2018); Defense Verdict

Plaintiff, a court officer, was rear ended by a trailing truck as she approached an intersection. Plaintiff claimed that the collision occurred while she was stopped at a red light at the entrance of the intersection. Defendant argued that the collision occurred in the intersection after plaintiff proceeded into the intersection and abruptly and unnecessarily stopped.

Plaintiff's motion for summary judgment was granted and the trial proceeded to determine damages.

Plaintiff claimed that she tore her left supraspinatus tendon and the trauma produced an impingement of the shoulder. Plaintiff alleged that she suffered herniations of her C3-4, C5-6 and C6-7 intervertebral discs and bulges in her C2-3 and C4-5 discs. Plaintiff claimed that she will require surgical fusion of a portion of her spine's cervical region and surgery on the left shoulder. Plaintiff claimed that she could not work the week after the accident and had residual effects that hinder her performance of her household chores.

Defendant argued that plaintiff did not suffer a serious injury as defined by the no-fault law. Defendant's expert radiologist opined that the results of MRI scans did not depict evidence of an injury related to the accident but rather to degenerative conditions.

The jury returned a verdict for the defense, finding that the plaintiff did not suffer a serious injury. Specifically, the jury found that the plaintiff did not suffer permanent consequential limitation of use of a body organ or member, and it determined that she did not suffer significant limitation of use of a body function or system.

During pretrial motions, the trial judge found that the plaintiff did not meet the Insurance Law § 5102(d) qualifier of having suffered a medically determined, nonpermanent injury or impairment that prevented her performance of substantially all of the material acts that would have constituted the usual and customary daily activities of 90 or more of the first 180 days that followed the accident.

Lavado v. Phantom Asset Recovery, Inc. (2018); Defense Verdict

Plaintiff, a limousine driver, was driving southbound along the Hutchinson River Parkway when a tire dislodged from defendant's truck that was traveling northbound on the parkway. The tire sailed into the southbound side of the parkway and struck the limousine. Plaintiff alleged that the accident was the result of improper maintenance by the defendants.

Plaintiff claimed that he suffered a herniation of his L2-3 intervertebral disc, derangement of his spine's cervical region, and bulges in his L3-4, L4-5 and L5-S1 discs. Plaintiff further claimed that the L2-3 herniation caused an impingement of a spinal nerve and the C6-7 and L3-4 levels developed stenosis.

Plaintiff claimed residual pain and limitations that prevented him from returning to work since the accident. He sought recovery of past lost earnings, future lost earnings, damages for past and future pain and suffering.

Defendants argued that the plaintiff did not suffer a serious injury and his injuries were actually degenerative conditions that predated the accident.

The jury returned a verdict for the defense, finding that the plaintiff did not suffer a serious injury. Specifically, the jury found that the plaintiff did not suffer permanent consequential limitation of use of a body organ or member, that he did not suffer significant limitation of use of a body function or system, and that he did not suffer a medically determined, nonpermanent injury or impairment that prevented his performance of substantially all of the material acts that would have constituted the usual and customary daily activities of 90 or more of the first 180 days that followed the accident.

McMillan v. City of New York Department of Sanitation (2017); $19,850,000 Verdict

Plaintiff was a 41 year-old male paraprofessional who was a passenger in a van that was struck on the side by defendant's truck while it was proceeding through an intersection. The van was propelled across the roadway and struck a concrete barrier.

Plaintiff claimed that he sustained disc herniations of the C4-5, C5-6 and C6-7 intervertebral discs, as well as aggravation of a pre-existing disc herniation at L5-S1. Plaintiff underwent lumber surgery, which included excision of the L5-S1 vertebrae, a laminectomy, facectomy, fusion and insertion of hardware. Plaintiff also underwent surgery on his cervical spine which involved excision of the C6 vertebrae, excision of the C5-6 and C6-7 discs, fusion and insertion of hardware. Plaintiff claimed that he would require additional cervical and lumbar surgeries in the future. He alleged that the residual effects of his injuries were permanent and would prevent his performance of manual labor.

Plaintiff sought recovery of future medical expenses, past and future lost earnings, and damages for past and future pain and suffering. Defense counsel argued that plaintiff's cervical and lumbar injuries were not caused by the accident.

Vasquez v. Alcivar (2017); $6,200,000 Verdict

Plaintiff was a 55 year-old female home-care attendant whose vehicle was involved in a sideswipe collision with a truck as both vehicles were executing a left turn. Plaintiff claimed that the truck was making the turn from a lane where left turns were not permitted.

Plaintiff alleged that she sustained a disc herniation at the C5-6 intervertebral disc; a tear of the meniscus of the left knee; and a tear of the rotator cuff of her non-dominant arm. Plaintiff underwent fusion surgery at C5-6 and arthroscopic surgeries on her left knee and left shoulder. Plaintiff had worked continuously for two months after the accident, and then resigned from her job. Plaintiff claimed that she was unable to return to work as a result of her injuries. Plaintiff further claimed that her residual pain prevented her from performing basic physical activities, such as cooking and shopping.

The defendant argued that plaintiff's injuries were degenerative conditions and not related to the accident. The defense also argued that plaintiff worked immediately after the accident occurred and did not seek medical treatment until 7 days after the accident.

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

In New York, the trial court has sound discretion in determining the admissibility of computer-generated animation videos and still images depending on the facts and circumstances of the case. *Kane v. Triborough & Tunnel Auth.*, 8 A.D.3d 239, 241 (2d Dept. 2004); *Aitcheson v. Lowe*, 144 A.D.3d 848, 848-49 (2d Dept. 2016). Where "there is 'any tendency to exaggerate any of the true features which are sought to be proved' the trial court may reject" the computer-generated evidence. *Kane*, 8 A.D.3d at 241 (citing *Boyarsky v. Zimmerman Corp.*, 240 A.D. 361, 367 (1st Dept. 1934)). In *Kane*, the Second Department held that a computer-generated animation video, which included still photographs, that depicted circumstances that were

sufficiently different from the circumstances that existed at the time of the accident had a high potential for prejudice and the admission of such was an error. *Id.* at 241-42.

Further, "an accident reconstruction animation video is not proof of how the accident happened; it is admissible only if it will aid the jury in understanding expert testimony regarding the theory of reconstruction." *People v. Demetsenare*, 14 A.D.3d 792, 795 (3d Dept. 2005). As such, a trial court shall instruct a jury that a computer-generated animation is "being admitted for the limited purpose of illustrating the expert's opinion as to the cause of the accident" and they are "not to consider the computer-generated animation itself in determining what actually caused the accident." *Kane*, 8 A.D.3d at 242.

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 decisions related to in-cab videos used by commercial fleets. This often comes up in the context of dashboard cameras located in police vehicles. Such videos are typically admissible subject to the rules 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.

New York State has not enacted a law and/or regulation specifically regarding time-frame or scope for the retention of telematics data. However, often times, onboard equipment such as DriveCam footage, engine control module, GPS, and/or Qualcomm data will be included in a notice to preserve evidence, as well as requested in written discovery. Best practices would be to preserve evidence, as a matter of course, in the event of an accident or possible claim at least through the three (3) year statute of limitations for commencement of a personal injury action.

In New York, spoliation sanctions may be imposed even if destruction occurred through negligence rather than willfulness, and even if the evidence was destroyed before the spoliator became a party, provided the party was on notice that the evidence might be needed for future litigation. *Simoneit v. Mark Cerrone, Inc.*, 122 A.D.3d 1246, 1247 (4th Dept., 2014). In a recent New York case, plaintiff was entitled to an adverse inference charge against defendant tractor trailer company for failing to download and preserve EDR data even though the data was destroyed before the action was commenced or any demand had been made for preservation or production of such information. *Gitman v. Martinez*, 2019 N.Y. Slip. Op. 01464 (3d Dept., February 28, 2019). The Court held that the, "[tractor trailer company] should have reasonably anticipated that a multi-vehicle accident resulting in personal injuries would likely result in litigation", and thus the adverse inference charge was reasonable. *Id*. at *2.

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

Under New York law, toxicology reports showing the results of a blood test following a motor vehicle accident are properly admissible as a business record. *See* N.Y. C.P.L.R. Rule

4518(c). For example, a motorist's positive post-accident blood alcohol test results, as set forth in a certified hospital record, are admissible as *prima facie* evidence of intoxication in personal-injury actions arising from a motor vehicle accident. *Rodriguez v. Triborough Bridge Tunnel Auth.,* 276 A.D.2d 769, 769 (2d Dept. 2000); *see also Westchester Med. Ctr. v. Progressive Casualty Ins. Co.,* 51 A.D.3d 1014, 1018 (2d Dept. 2008); *Cleary v. City of New York,* 234 A.D.2d 411, 411 (2d Dept. 1996); *Laduke v. State Farm Ins. Co.,* 158 A.D.2d 137, 138 (4th Dept. 1990). Evidence attacking the qualifications and procedures employed by hospital personnel in administering the test may create an issue as to reliability of the report, but do not impact the admissibility in the first instance. *See Maxcy v. County of Putnam,* 178 A.D.2d 729, 730 (3d Dept. 1991). In addition, hospital notes stating a patient is intoxicated at the time of admission have been held admissible when pertinent to diagnosis and treatment. *Campbell v. Manhattan & Bronx Surface Transit Operating Auth.,* 81 A.D.2d 529, 529-30 (1st Dept. 1981).

New York Courts have, however, deemed it proper to grant defendant's motion to exclude evidence of intoxication in civil actions where the defendant driver has admitted liability [*Obercon v. Glebatis*, 89 A.D. 762 (3rd Dept. 1982)] and prejudicial [*People v. Rosado*, 273 A.D.2d 325, 709 N.Y.S.2d 197 (2nd Dept. 2000)], and leading cases that exclude alcohol evidence where there is no foundational showing of relevance or causation.

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

CPLR 3101 requires "full disclosure of any films, photographs, video tapes or audio tapes, including transcripts or memoranda thereof, involving a [party]" less those items protected by the attorney work product exemption.

The exemption from disclosure regarding an attorney's work product is not applicable to certain items, including the discovery of witnesses, even though it is the result of the attorney's zeal and investigative efforts, since that exemption should be limited to those materials which are uniquely the product of an attorney's learning and professional skills, and the names of the witnesses do not qualify for an exemption from disclosure as material prepared for litigation inasmuch as the existence of a witness to an event, or to conditions bearing upon an event, is independent of and precedes any work done by an attorney. *Bombard v. Albany County*, 94 A.D.2d 910, 463 N.Y.S.2d 633 (3d Dep't 1983); *Hoffman v. Ro-San Manor*, 73 A.D.2d 207, 425 N.Y.S.2d 619 (1st Dep't 1980).

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

New York State has not enacted legislation legalizing the open use of autonomous vehicles. However, this is a developing area in New York State. New York passed a law commissioning an "autonomous vehicle technology demonstration/testing" program wherein manufacturers or others could apply to test autonomous vehicle technology on NYS Highways under State Trooper supervision through April 1, 2018. *See* NYS Senate Bill S0025C/Assembly Bill A3005C (2017-2018 Legislative Session). New York State also commissioned a Truck Platooning Policy Barriers Study which issued a report in January 2018. *See Truck Platooning Policy Barriers Study*, Final Report, Report No. 18-01, NYSDOT Task Assignment C-15-10 (January 2018), https://www.nyserda.ny.gov/-/media/.../18-01-Truck-Platooning-Barriers/pdf.

The study noted that two existing New York State laws negatively impact the potential use of heavy-duty truck platooning in New York which are: (1) the requirement that one hand remain on the steering wheel at all times (N.Y. Veh. & Traf. L. § 1226), and (2) the minimum following distance regulations (there must be sufficient space to enter and occupy without danger) (N.Y. Veh. & Traf. L. § 1129). This is an evolving area as the technology continues to develop and there will be required amendments to the New York State Vehicle & Traffic law to facilitate this technology in the future.

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.

Under New York law, drivers are required to use a hands-free device while driving. N.Y. Veh. & Traf. L. § 1225-c(3)(c). There are designated "Texting Zone" locations along the New York State thruway where any driver can stop to use their cell phone. There are no additional regulations prohibiting a commercial driver from the use of a hands-free cell phone. However, motor carriers are not permitted to allow or require their drivers to use a cell phone or text while driving. *See* https://dmv.ny.gov/tickets/cell-phone-use-texting. If the driver of a commercial motor vehicle presses more than a single button to dial or answer the phone while driving, the cell phone is no longer deemed a "hands-free mobile telephone." *See id.* These restrictions governing the use or handling of a cell phone also apply when the vehicle is temporarily stationed (*e.g.* stopped in traffic or at a traffic signal). *See id.*

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

Under long-standing New York law, Courts have held that arguments creating a "tendency to unduly create sympathy for the plaintiff," or "arouse the passions and prejudices of the jury" are inappropriate and may constitute reversible error depending on the gravity. *Rost v. Brooklyn Heights R. Co.,* 41 N.Y.S. 1069 1070 (1896).

The "Golden Rule" argument asks jurors to placement themselves in the shoes of the plaintiff and do unto him and they would have him do unto them. Such arguments are prohibited in New York, but opposing counsel must object at the time the comments are made in order to preserve the issue. *See Dailey v. Keith,* 306 N.Y.2d 815, 816 (4th Dept. 2003); *Boshnakov v. Bd. of Educ. of Town of Eden,* 277 A.D.2d 996, 996 (4th Dept. 2000). Jury instructions employing this style argument with language to compensate the plaintiff "in such amounts as you jurors feel you, yourselves, would like to be compensated" have been held erroneous and found to constitute reversible error. *Liosi v. Vaccaro,* 35 A.D.2d 790, 790 (1st Dept. 1970); *Weintraub v. Zabotinsky,* 19 A.D.2d 906, 906-07 (2d Dept. 1963).

The "Reptile" theory attempts to convince a jury to find for the plaintiff not necessarily based upon the facts of the case and applicable legal standards, but instead based on appeals to personal interests, biases and a desire to protect their community. The "Reptile"" theory is based on fear and emotion. New York courts have held that comments that the jury must "send a message" to the community can deprive a party of a fair trial. *People v. Espada,* 205 A.D.2d 332, 332 (1st Dept. 1994); *Halftown v. Triple D. Leasing Corp.,* 89 A.D.2d 794. 794 (4th Dept.

1982) (holding that while comments equating the jury to "the conscience of the community" and sending a message to the corporations may be harmless with prompt curative instructions, they may be reversible error where a large, near excessive, verdict is rendered); *People v. Black,* 124 A.D.3d 1365, 1365 (4th Dept. 2015) (holding that "safe streets" argument was impermissible and improper); *People v. Hanright*, 187 A.D.2d 1021, 1021 (4th Dept. 1992) (nothing prosecutor comments to "send a message to this community" were improper).

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

The decision to remain in New York State Court or remove to Federal Court is often a case-specific determination. One of the advantages of Federal Court is that you have will likely receive a tighter scheduling order and stricter deadlines for the early completion of discovery.

Another advantage to Federal Court is that you have earlier expert disclosure and the opportunity to depose experts while in New York State Court expert depositions are not permitted and expert disclosures do not have to be exchanged until thirty days before trial. However, expert depositions come at an increased cost to the client which should be factored into a litigation budget if removing to Federal Court.

A disadvantage to Federal Court is formality. New York State Court is often a more informal venue where attorneys have more familiarity and relationships with the Judges and Court personnel.

The Federal Court pulls from a wider jury pool which may be more representative of the larger community and better educated, but this can come at either an advantage or a disadvantage. In rural venues, the verdicts in New York State Court would likely be more conservative than in the Federal Court. However, in more urban areas the Federal Court verdicts would likely be lower than in State Court.

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

A guilty plea to a traffic citation is admissible evidence in a subsequent civil action. If a guilty plea to a traffic citation is made voluntarily and deliberately, the plea is treated as a statement of guilt, and an admission by the party that she committed the acts charged. *Ando v. Woodberry*, 8 N.Y.2d 165 (1960). The plea of *nolo contendere* or no contest is abolished in the state of New York. *People v. Daiboch*, 265 N.Y. 125 (1934).

13. Describe the laws in New York 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?

Plaintiff can submit medical bills to a jury, even if they have been paid by a collateral source. If the action is tried by a jury, no evidence of collateral source payments should be taken

in the presence of the jury. The jury should determine plaintiff's losses without reference to any reimbursement that plaintiff may have received. CPLR §4545

Pursuant to CPLR §4545, the issue of collateral source payments is resolved in a post-trial hearing before the trial judge. The task of determining the amount, if any, that should be deducted from a plaintiff's damage award is assigned to the trial judge alone. A medical provider's write-off of a balance on medical bills is not an item of damages for which a plaintiff can recover, since the plaintiff incurred no liability for those bills. *Kastick v. U-Haul Company*, 292 A.D.2d 797 (4th Dept. 2002)

14. Describe any statutory caps in New York dealing with damage awards.

There are no statutory caps on compensatory or punitive damages in New York.