OHIO

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

The following venues are anecdotally considered liberal: Cuyahoga County, Franklin County, Hamilton County, Summit County, Mahoning County, and Lucas County. The following venues were considered liberal in 2017-2018 according to US Law: Lucas County, Erie County, Lorain County, Cuyahoga County, Mahoning County, Jefferson County, Franklin County, Montgomery County, and Hamilton County.

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

A significant settlement occurred in the case of *Bobby R. Smith, et al. v. Raad Logistics, et al.*, No. 16 CV 001310 in the Franklin County Court of Common Pleas on May 10, 2017. A 61-year-old man, Bobby Smith, driving a sedan with his 81-year-old mother-in-law, Mary Ruth Bradford, 60-year-old wife, Terry Smith, and 60-year-old brother, Michael Smith, as passengers, were rear-ended by a tractor/trailer. Bobby Smith suffered a right shoulder injury, a ruptured bicep tendon, and neck and back strains. He underwent arthroscopic shoulder surgery, had two injections and physical therapy, and was likely to undergo another shoulder surgery. His medical bills amounted to $105,000, and his past and future lost earnings amounted to $200,000. Terry Smith claimed neck and back sprains with $10,000 in medical bills. Mary Ruth Bradford suffered bruises to her face and a possible concussion, with lingering headaches and lower back pain. She stayed overnight in the hospital and received a few injections. Lastly, Michael Smith had bilateral neck and shoulder strains. His medical bills were $9,000. In the end, all claims settled for a total of $553,000, with $460,000 to Bobby Smith, $21,000 to Michael Smith,

$47,000 to Mary Ruth Bradford, and $25,000 to Terry Smith. The policy limits were $1,000,000.

A significant defense verdict occurred in the case of *Lisa M. Baldwin v. Ohio Dep't of Transportation, et al.*, No. 2016-00156, in the Court of Claims. Plaintiff was a 41-year-old woman who was driving an SUV on a highway at 65 miles per hour while it was raining and sleeting. A truck operated by the Ohio Department of Transportation ("ODOT") was salting the road. Plaintiff said the truck abruptly entered her lane of travel and was going at a speed of 20-25 miles per hour. Plaintiff also claimed that the truck's lights did not work properly. Plaintiff had to be extracted from her vehicle and had surgery that same day for hip, thigh, and bilateral wrist fractures, and other surgeries that week. She was in inpatient rehab for several weeks. The Magistrate returned a complete defense verdict, believing the defense expert that Plaintiff could have observed the ODOT truck for 24 seconds before impact and likely was not paying attention to the road.

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

Accident animations and/or computer-generated evidence are generally admissible in Ohio. *Deffinbaugh v. Ohio Turnpike Com.*, 67 Ohio App.3d 692, 700, 588 N.E.2d 189 (8th Dist. 1990) (court allowed computer simulation as to how accident involving tractor/trailer occurred).

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 are no decisions or trends in Ohio in the past two years regarding retention and spoliation of in-cab videos and admissibility of in-cab videos. Ohio recognizes a cause of action in tort for interference with or destruction of evidence. The elements are:

(1) pending or probable litigation involving plaintiff;
(2) knowledge on the part of defendant that litigation exists or is probable;
(3) willful destruction of evidence by defendant designed to disrupt the plaintiff's case;
(4) disruption of the plaintiff's case; and
(5) damages proximately cause by the defendant's acts.

See Smith v. Howard Johnson Co., 1993-Ohio-229, 67 Ohio St. 3d 28, 29, 615 N.E.2d 1037, 1038. A defendant is under a duty to preserve evidence that it knows or reasonably should know is relevant to an action. *Foradis v. Marc Glassman, Inc.*, 2016 Ohio App. LEXIS 3119, 2016-Ohio-5235, ¶ 29 (8th Dist.). Destroying evidence after receiving a preservation of evidence letter could potentially lead to punitive damages. *Baker v. Swift Transp. Co. of Arizona, LLC*, No. 2:17-cv-909, 2018 U.S. Dist. LEXIS 75961, at *18 (S.D. Ohio May 4, 2018).

As for admissibility of videos "motion pictures are admissible in evidence under a proper exercise of discretion by the trial court, where their relevancy, authenticity and accuracy of portrayal are established by an adequate foundation." *Estate of Alma Rutherford, v. Fluhart*, No.

76AP-71, 1976 Ohio App. LEXIS 8004, at *4 (10th Dist. Nov. 30, 1976); *Rehab Project, Inc. v. Sarno*, 80 Ohio App.3d 265, 272, 608 N.E.2d 1188 (3d Dist. 1992) (holding that the trial court erred in completely excluding a video showing theft of the plaintiff's product by defendant).

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.

Ohio does not have any laws or regulations regarding retention of telematics data. Retention of such data may be governed by company policy and/or Ohio law regarding spoliation. Again, a defendant is under a duty to preserve evidence that it knows or reasonably should know is relevant to an action. *Foradis v. Marc Glassman, Inc.*, 2016 Ohio App. LEXIS 3119, 2016-Ohio-5235, ¶ 29 (8th Dist.). And, destroying evidence after receiving a preservation of evidence letter could potentially lead to punitive damages. *Baker v. Swift Transp. Co. of Arizona, LLC*, No. 2:17-cv-909, 2018 U.S. Dist. LEXIS 75961, at *18 (S.D. Ohio May 4, 2018).

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

A toxicology report is only admissible in a civil action with accompanying expert testimony to explain the significance of the percentage of the substance found in the person's body. *Clark v. Curnutte*, 9th Dist. Lorain No. 05CA008732, 2006-Ohio-1545, ¶ 7; *Am. Select Ins. Co. v. Sunnycalb*, 12th Dist. Warren No. CA2005-02-018, 2005-Ohio-6275, ¶ 7; *Parton v. Weilnau*, 169 Ohio St. 145, 151, 158 N.E.2d 719 (1959). This rule affirms the requirements that a toxicology report must be properly authenticated and not violate the rule against hearsay. *In re H.D.D.*, 10th Dist. Franklin Nos. 12AP-134, 12AP-135, 12AP-136, 12AP-137, 12AP-146, 12AP-147, 12AP-148, 12AP-149, 2012-Ohio-6160, ¶ 37; *Belcher v. Ohio State Racing Comm.*, 10th Dist. Franklin No. 03AP-786, 2004-Ohio-1278, ¶ 12.

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

Such documents are under the purview of the work-product doctrine. In Ohio, the work-product doctrine has been codified at Civil Rule 26(B)(3):

Subject to the provisions of subdivision (B)(5) of this rule [relating to retained experts], a party may obtain discovery of documents, electronically stored information and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing of good cause therefor.

This requires a fact-intensive inquiry and depends on whether the investigation occurred after there was a "real and substantial possibility of litigation." *Perfection Corp. v. Travelers Cas. & Sur.*, 153 Ohio App.3d 28, 2003-Ohio-3358, 790 N.E.2d 817, ¶ 27 (8th Dist.) (holding that a general belief that there may be litigation is not enough to justify this standard). A court will look at when the activities shift from the "ordinary course of business to anticipating litigation." *Nationwide Agribusiness Ins. Co. v. Heidler*, 12th Dist. Clinton No. CA2015-07-013,

2016-Ohio-455, ¶ 16; *Roggelin v. Auto-Owners Ins.*, 6th Dist. Lucas No. L-02-1038, 2002-Ohio-7310, ¶ 16.

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

Ohio has not enacted any laws regulating automated driving systems or autonomous vehicles. However, Ohio is one of ten states whose governor has issued a relevant executive order on the issue of autonomous vehicles. Governor John Kasich signed Executive Order 2018-01K on January 18, 2018. The order created DriveOhio to, in part, "bring together those who are responsible for building infrastructure in Ohio with those who are developing the advanced mobility technologies needed to allow our transportation system to reach its full potential by reducing serious and fatal crashes and improving traffic flow." Ohio Governor Kasich signed Executive Order 2018-O4K in May of 2018, allowing autonomous vehicles testing and pilot programs in the state. In order to do so, companies must register with DriveOhio (created by the January 2018 EO) and submit information on their companies, intended areas and conditions to test in and other requirements. Autonomous vehicles tested in the state must have a designated operator, although they are not required to be inside the vehicle. Ohio's new Governor Mike DeWine was elected in November 2018. Governor DeWine has not indicated whether he will revoke or enforce the Executive Orders.

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.

The Federal Motor Carrier Safety Administration (FMCSA) prohibits the use of all hand-held mobile devices by divers of commercial motor vehicles (CMVs). However, the FMCSA allows drivers of CMVs to use hands-free phones located in close proximity. In Ohio, hands-free use of mobile devices is generally permitted. However, effective October 29, 2018, drivers who commit any specific moving violation while "distracted" and the distracting activity is a contributing factor to the commission of the violation, the person is subject to a fine of $100 in addition to any applicable penalty for the underlying violation. H.B. 95. Additionally, localities in Ohio have an option to enact a handheld ban on the use of mobile devices while driving. The use of cell phones while driving by drivers younger than 18 is prohibited. O.R. C. § 4511.205. All drivers in Ohio are banned from texting while driving. O.R.C. § 4511.204.

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

There have been no Ohio decisions prohibiting or limiting the use of the reptile theory at trial. However, the reptile theory may be attacked through the use of Ohio Rules of Evidence. Otherwise relevant evidence may be excluded if the "probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." Ohio Evidence Rule 403(A). Evidence is relevant is if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ohio Evidence Rule 401. The opposing party can argue that the evidence is not relevant and that the evidence is unfairly prejudicial.

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

Federal court is the preferred jurisdiction for trucking defendants in several instances. Generally, Ohio's rural counties tend to award more conservative personal injury verdicts whereas its metropolitan counties tend to be more liberal. If a personal injury case is brought in the Ohio county where the accident occurred, and that county generally tends to award higher verdicts to plaintiffs in personal injury cases, the defendant may consider removing the case to federal court where the jury will be made up of Ohio residents of a several different counties. Additionally, if a case is brought in a small, rural Ohio county court, and the defendant not a resident of that county, the defendant may also consider removing the case to federal court to avoid any potential bias the jury may have against the out-of-town defendant.

Federal court is also generally considered to be more adept to handling complex litigation. Therefore, if a case involves a trucking company or manufacturer that does business in many states or more than one defendant is involved, a defendant should consider bringing or removing the case to federal court.

Finally, the Ohio Rules of Evidence and Rules of Civil Procedure differ from the Federal Rules in several respects. A defendant should consider these differences prior to deciding where to bring a case or whether to remove a case to federal court.

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

Traffic citations for a motor vehicle accident are not admissible in the resulting civil litigation. *Mccutcheon v. Yudasz*, 7th Dist. Belmont No. 82-B-32, 1983 WL 6702, *2; *O'Toole v. Lemmerman*, Cuyahoga App. No. 80730, 2002-Ohio-5469, 2002 WL 31261005, ¶ 32; *Waller v. Phipps*, Hamilton App. No. C–000758, 2001 WL 1077942 (Sept. 14, 2001); *Bishop v. Munson Transp., Inc.*, Belmont App. No. 97 BA 62, 2000 WL 309398 (Mar. 27, 2000).

A guilty plea to a traffic violation which resulted in a motor vehicle accident is admissible in a subsequent civil action as an admission against interest. *Wilcox v. Gregory*, 112 Ohio App. 516, 518, 176 N.E.2d 523 (9th Dist. 1960). However, a guilty verdict following a plea of not guilty is not admissible. *Id.* at 521, 176 N.E.2d 523 (9th Dist. 1960). Further, a guilty plea that is later withdrawn is also not admissible. Ohio Evidence Rule 410(A)(1). A plea of no contest resulting from a motor vehicle accident "is not admissible in any civil or criminal proceeding against the defendant who made the plea." Ohio Evidence Rule 410(A)(2); *Edwards v. Bolden*, 8th Dist. Cuyahoga No. 97390, 2012-Ohio-2501, ¶ 10.

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?

Ohio law recognizes that in personal-injury cases, an injured party is entitled to recover necessary and reasonable expenses arising from the injury. *Robinson v. Bates*, 112 Ohio St.3d 17, 857 N.E.2d 1195 (2006). Original medical bills rendered, and the amount accepted as full payment, are both admissible to prove the reasonableness and necessity of charges rendered for medical and hospital care. *Id*. It is for the jury to decide if the reasonable value of medical care is the amount originally billed, the amount the medical provider accepted as payment, or some amount in between. *Id*. Any difference between the original amount of a medical bill and the amount accepted as the bill's full payment that occurred because of an insurance negotiation constitutes a write-off, not a "benefit" paid under the collateral-source rule. *Id.* However, only when the medical provider has accepted a lesser amount as payment in full does *Robinson* permit admission of evidence of the lesser payment on the question of reasonableness. *Miami Valley Hosp. v. Middleton*, No. 24240, 2011 WL 4529770 (Sept. 30, 2011).

Further, in Ohio, there are post-verdict reductions or off-sets for underinsured motorist cases. *Fickes v. Kirk*, 11th Dist. No. 2006-T-0094, 2007-Ohio-6011, ¶ 18 ("[m]otions for setoff of a jury's verdict are routinely considered by courts"); *Leisure v. State Farm Mut. Auto. Ins. Co*., 5th Dist. No. 2002CA00277, 2003-Ohio-2491; *Ruiz v. GEICO*, 10th Dist. No. 08AP-955, 2009-Ohio-2759. Ohio courts consider post-verdict reductions or off-sets in other contexts as well. *Buchman v. Wayne Trace Local School Dist. Bd. of Edn*., 73 Ohio St. 3d 260, 270, 1995 Ohio 136, 652 N.E.2d 952 (1995) (post-verdict deduction of collateral benefits); *Howard v. City Loan & Sav.*, 2d Dist. No. 88-CA-39, 1989 Ohio App. LEXIS 1230 (Mar. 27, 1989) (approving reduction of jury award to amount prayed for in complaint, although reversing judgment for other reasons).

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

In a tort action based on injury or loss to person or property, there are no caps on economic damages. O.R.C. § 2315.18(B)(1). The non-economic loss cannot be greater than $250,000 or 3 times the economic loss, for a maximum of $350,000 per plaintiff or a maximum of $500,000 for each incidence that is the basis for the tort. O.R.C. § 2315.18(B)(2). However, there is no cap on non-economic damages where the plaintiff suffers permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system or where the plaintiff suffers permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life-sustaining activities. O.R.C. § 2315.18(B)(3).

Ohio caps punitive damages at two times the compensatory damages awarded. O.R.C. § 2315.21(D). However, in the case where the defendant is an individual or small employer, punitive damages are also limited to 10% of net worth, up to a maximum of $350,000. *Id*.