

RHODE ISLAND

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1. What Venues or Areas in Rhode Island are Considered Dangerous or Liberal?

Rhode Island has four counties: Providence and Bristol County (“Providence County”), Kent County, Newport County, and Washington County. Providence County and Newport County tend to be moderate, while Kent County and Washington County tend to be moderate-to-conservative. Rhode Island Superior Court has exclusive jurisdiction of matters greater than \$10,000.00. All counties also have a District Court with exclusive jurisdiction up to \$5,000.00 and concurrent jurisdiction with Superior Court from \$5,000.00 - \$10,000.00.

- a. United States District Court: The United States District Court for the District of Rhode Island encompasses the entire state and draws its jury from all four counties. The venue is moderate-to-conservative.
- b. Providence County: The venue is moderate. Providence County Superior Court juries are made up of residents from both Providence and Bristol counties. Providence county residents have a median household income of \$50,637 and 83.2% have a high school degree or higher. Bristol County has a median household income of \$73,096 and 46.4% of residents have a Bachelor’s degree or higher.
- c. Kent County: The venue is moderate-to-conservative. Kent County has a population of 163,760. The median household income is \$65,592. 91.4% of the population has a high school degree or higher, and 31.8% have a bachelor’s degree or higher.
- d. Washington County: The venue is moderate-to-conservative. The median household income is \$77,862 and 94% have a high school degree or higher.
- e. Newport County: The venue is moderate. The median household income is \$75,463 and 93.3% have a high school education or higher.

2. What Were the Significant Trucking Verdicts in Rhode Island During 2017-2018, Both Favorable and Unfavorable from the Trucking Company’s Perspective?

There have been no significant trucking verdicts between 2017 and 2018; however, a national trucking industry trade group filed a lawsuit in federal court over Rhode Island’s new truck tolls claiming the tolls violate the Commerce Clause by imposing discriminatory and

disproportionate burdens on out of state operators. *American Trucking Associations, Inc., et al v. Alviti*, 1:18CV00378 (filed 07/01/2018).

The most recent trucking verdict was in 2015. *Erin Chionchio v. William Correia Salem Leasing Corporation, et al.*, 2015 WL 12981801 (D.R.I. 2015). A motorist and a tractor trailer driver collided. The motorist's estate sued the driver and trucking company claiming the driver was negligent. Jurors returned a defense verdict.

Since there are no recent verdicts regarding trucking, below are verdicts regarding the Rhode Island Public Transit Authority ("RIPTA").

Guzman v. Rhode Island Public Transit Auth., 2017 WL 9604894 (R.I. Super. Dec. 6, 2017).

A motorist and transit authority driver collided at an intersection. The motorist sued RIPTA claiming the driver was negligent. Jurors returned a defense verdict and found that the plaintiff failed to prove negligence and proximate causation.

Giarusso v. Rhode Island Public Transit Auth., 2017 WL 9672532 (R.I. Super. Sept. 27, 2017)

A motorist collided with a RIPTA vehicle causing injuries to a passenger in the RIPTA vehicle. The passenger brought a negligence claim against RIPTA. The jurors returned a verdict in favor of RIPTA.

3. Are Accident Animations and/or Computer-Generated Evidence Admissible in Rhode Island?

While computer-generated animations and simulations are now common place, Rhode Island has not addressed the issue of their use during trial. Accident reconstruction data however is admissible. *Frias v. Jurczyk*, 633 A.2d 679, 683 (R.I. 1993) (holding that a trial justice had not abused his discretion to admit the testimony of an accident reconstructionist where he believed such evidence would be helpful to the jury).

Federal district courts within the First Circuit have allowed the admission of computer animations if "authenticated by testimony of a witness with personal knowledge of their content of the animation, upon a showing that it fairly and adequately portrays the facts and that it will help to illustrate the testimony given in the case." *Insight Tech., Inc. v. Surefire, LLC*, 2007 U.S. Dist. LEXIS 83632, at *7 (D.N.H. Nov. 01, 2007) (quoting *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 559 (D. Md. 2007)). Computer animations must be authenticated by independent evidence or be self-authenticated to be admissible. *Insight Tech., Inc.*, 2007 U.S. Dist. LEXIS 83632, at *3.

4. What are the Significant Decisions or Trends in Rhode Island in the Past Two (2) Years Regarding (a) Retention and Spoliation of In-Cab Videos and (b) Admissibility of In-Cab Videos?

- a. The Rhode Island Supreme Court has not addressed spoliation or retention of in-cab videos. Spoliation of evidence occurs when a party to litigation deliberately or

negligently destroys relevant evidence. *Tancretelle v. Friendly Ice Cream Shop*, 756 A.2d 744, 748 (R.I. 2000). A showing of bad faith or intentional conduct is not required, but may strengthen the spoliation inference. There are technically no Rhode Island regulations that expressly require the data from these systems to be preserved for any length of time. Arguably the data is classified as support data for hours of service, in which case companies must preserve it for at least six month. See *Federal Motor Carrier Safety Regulation*, 49 C.F.R. § 379, Appendix A (2016).

- b. The Rhode Island Supreme Court has not addressed the admissibility of in-cab videos.
5. What are Rhode Island’s Applicable Laws and/or Regulations 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 Rhode Island Supreme Court has not specifically addressed the retention of telematics data; however, the Court has held that an implication of a defendant mishandling a tachograph by itself is not enough to support a proposition of spoliation. *Malinowski v. United Parcel Service, Inc.*, 792 A.2d 50, 55 (R.I. 2002).

There is a duty to preserve evidence. The duty to preserve evidence applies to electronic data. *Berrios v. Jevic Transp., Inc.*, 2013 WL 300889, at *3 (R.I. Super. Ct. Jan. 18, 2013). That obligation to preserve “arises prior to the filing of a complaint where a party is on notice that litigation is likely.” *Tancretelle*, 756 A.2d at 749.

6. Is a Positive Post-Accident Toxicology Result Admissible in a Civil Action?

There is no bright line test for the admission of post-accident toxicology results in a civil matter. During evidentiary hearings, the trial justice will consider whether the probative value of the report will be outweighed by prejudice. *State v. Griffin*, 567 A.2d 796, 801 (R.I. 1989).

The admissibility of results of toxicology tests in criminal prosecutions for driving under the influence of alcohol or drugs rests on compliance with regulations established by the director of the Department of Health of the State of Rhode Island pursuant to §§ 31-27-2(c)(4) and 31-27-2(g) of the Rhode Island General Laws.

7. Is Post-Accident Investigation Discoverable by Adverse Counsel?

“Statements taken by insurance investigators from witnesses immediately after accidents [are] entitled to qualified privilege of rule precluding discovery of documents obtained or prepared by adverse party, attorney, surety, indemnitor or agent in anticipation of litigation and in preparation for trial, casting burden upon party requesting documents to show that denial of production or inspection would result in an injustice or undue hardship.” *Fireman’s Fund Ins. Co. v. McAlpine*, 391 A.2d 84 (R.I. 1978).

8. Describe Any Laws in Rhode Island which Regulate Automated Driving Systems (autonomous vehicles) or Platooning.

As of 2018, Rhode Island has yet to pass laws relating to Automated Vehicles. Currently, Rhode Island has neither legislation nor executive orders regarding autonomous vehicles. However, the Rhode Island Department of Transportation (“RIDOT”) recently released a request for proposals to test autonomous vehicles.

Rhode Island has not specifically authorized platooning in regards to heavy trucks or caravans; however, Rhode Island prohibits drivers from following too closely. 31 R.I. Gen. Laws § 31-15-12.

9. Describe Any Laws or Court Decisions Which Would Preclude a Commercial Driver from Using a Hands-Free Device to Have a Conversation Over a Cell-Phone.

There are no laws or court decisions that would preclude a commercial driver from using a hands-free device. However, no driver shall use a hand-held mobile telephone while driving a commercial motor vehicle. 31 R.I. Gen. Laws § 31-10.3-38. “Driving” means operating a commercial motor vehicle on a highway, including while temporary stationary because of traffic, a traffic-control device, or other momentary delays. *Id.* Driving does not include operating a commercial motor vehicle when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary. *Id.* There is an emergency exception to the prohibition. A hand-held mobile telephone is permissible by drivers of a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.

10. Describe Any Court Decisions in Rhode Island Precluding Golden Rule and/or Reptile Style Arguments by Plaintiff’s Counsel.

Rhode Island courts have rejected reference to the golden rule; however, they have not provided an in-depth guidance on its application. *Duffy v. Town of W. Warwick*, C.A. No. KC-2007-0446, 2007 WL 4471059 (R.I. Super. Nov. 30, 2007) (noting that a golden rule argument is “universally recognized as improper because it encourages the jury to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence.”) *See also Silveira v. Murray*, 192 A.2d 18, 20 (R.I. 1963). There is no reported decision regarding the use of “Reptile Style” arguments.

11. Compare and Contrast the Advantages and Disadvantages of Federal Court versus State Court in Rhode Island.

Cases generally move more quickly in Federal Court because scheduling orders are entered that control the timing of discovery, dispositive motions, expert disclosures and trial. In addition, the Federal Court is usually more defense-oriented in that it is more probable that a dispositive motion or a motion in limine to exclude an expert would be granted. The Federal Court also usually attempts to steer cases toward early Settlement Conferences with Magistrate Judges, which can be an effective means to achieve early resolution where appropriate.

12. How Does Rhode Island Handle the Admissibility of Traffic Citations (guilty plea, pleas of no contest, etc.) in Subsequent Civil Litigation.

Citations from motor vehicle accidents have been admitted in civil litigation. *Gomes v. Rosario*, 79 A.3d 1262, 1267 (R.I. 2013).

In 2005, the Rhode Island General Assembly enacted Chapter 41.2, Title 31 of the Rhode Island General Laws, entitled *The Rhode Island Automated Traffic Violation Monitoring Systems (ATVMS)*. Nothing in this chapter prohibits the use of evidence produced by an automated traffic violation detection system in a criminal or private civil proceeding provided that the admissibility of such evidences shall follow the applicable laws and rules of procedure. R.I. Gen. Laws § 31-41.2-7.

- a. Guilty pleas: Rule 609 of the Rhode Island Rules of Evidence provides that evidence that a witness has been convicted of a crime shall be admitted at trial. Further, “[a] plea of guilty in a prior criminal proceeding is competent evidence in subsequent civil actions as an admission of each element of the formal criminal charge.” *Silveira v. Santos*, 490 A.2d 969, 971 (R.I. 1986) (citing *Ludwig v. Kowal*, 419 A.2d 297, 303 (R.I. 1980)).
 - b. Nolo: Generally, “[i]t is a widely accepted rule that a conviction upon a plea of nolo contendere is not admissible in evidence in a subsequent civil suit on the same matter an admission of guilt or as proof that the defendant committed the offense.” *Korsack v. Prudential Property & Cas. Ins. Co.*, 441 A.2d 832, 834 (R.I. 1982).
13. Describe the Laws in Rhode Island Which Regulate Whether Medical Bills Stemming from an Accident are Recoupable. 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?

Rhode Island courts have consistently employed the collateral source rule to exclude evidence of the amount actually paid for medical expenses or the fact that expenses were reduced. *Votolato v. Merandi*, 747 A.2d 455 (R.I. 2000). The collateral source rule in Rhode Island requires a “tortfeasor to pay in full the damages suffered by the injured person without credit for any amounts received by the injured person from sources independent of the defendant.” *Colvin v. Goldenberg*, 272 A.2d 663, 666 (R.I. 1971). The rationale behind this rule is that the injured party is entitled to be made whole from the tortfeasor. Therefore, the plaintiff can seek to recover the amount charged by the medical providers. Reductions based on actual payment are not allowed.

Rhode Island is a pure joint and several jurisdiction. A defendant will receive either a dollar-for-dollar setoff or a pro rata reduction, whichever is greater, from settling or otherwise liable defendants. Therefore, a defendant could be responsible for the entire judgment if we were found any part liable.

14. Describe Any Statutory Caps in Rhode Island Dealing with Damage Awards.

Rhode Island does not cap noneconomic damages, including pain and suffering and punitive damages. *See Asbury v. A.W. Chesterton Co.*, 2010 WL 1280470, at *10 n.4 (R.I. Super. Mar. 29, 2010) (Gibney, P.J.). The standard for punitive damages is willful and wanton conduct amounting to criminality.

Rhode Island has a minimum statutory recovery for wrongful death of \$250,000.00 as well as other considerations made pursuant to a statute regarding valuation of the claim. R.I. Gen. Laws § 10-7-2.

In tort cases asserted against the state or a municipality, there is general statutory-damage limitation: “any damages recovered therein shall not exceed the sum of one hundred thousand dollars (\$100,00); provided, however, that in all instances in which the state was engaged in a proprietary function in the commission of the tort, or in any situation where the state has agreed to indemnify the federal government or any agency thereof for any tort liability, the limitation on damages set forth in this section shall not apply.” R.I. Gen. Laws § 9-31-2.

Pre-judgment interest accrues at a rate of 12% per annum from the date of the origination of the cause of action. R.I. Gen. Laws § 9-21-10.