

UTAH

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1. What are the venues/areas in Utah that are considered dangerous or liberal?

Utah as a whole is conservative, but the Third District, which includes Salt Lake, Summit, and Tooele Counties, is more liberal than other venues in this State. With respect to the Federal District Court, the Southern Region of Utah is considered more conservative than the Central/Northern Region of Utah.

This, however, does not mean that the Third District is “dangerous.” The Third District Judges and the Federal District Judges are highly competent. In cases involving complex issues and significant motion practice, the Third District or, if possible, the Central/Northern Region of the Utah Federal District Court may be the preferred venue.

2. Identify any significant trucking verdicts in your state during 2017-2018, both favorable and unfavorable.

A search on Lexis’ “Verdict & Settlement Analyzer” turned up no significant trucking verdicts in Utah last year. We are not otherwise aware of any such verdicts.

3. Are Accident animations and/or computer generated evidence admissible in Utah?

In *Green v. Louder*, 2001 UT 62, 29 P.3d 638, the Utah Supreme Court held that testimony regarding computer generated evidence is admissible to the extent that it is relied upon by an accident reconstruction expert. The court reasoned that, once an expert renders his opinion, “he must be allowed to explain the foundation of that opinion.” *Id.*, ¶ 29.

A search on Lexis did not reveal any Utah cases directly addressing whether the underlying animations and computer generated evidence relied on by an expert can itself be admitted into evidence.

4. Identify any significant decisions or trends in Utah in the past two years regarding retention and spoliation of in cab videos and admissibility of in cab videos.

In-cab videos are admissible in Utah. We have not seen a case regarding the retention and spoliation of in-cab videos. If it came before the court, the court would focus on (1) whether a duty to preserve evidence had arisen (based on the severity of the accident, communications with the claimant and/or his/her counsel, or other factors indicating the existence of a claim), and (2) whether the company took reasonable steps to preserve relevant 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.

We have not seen a case regarding the retention and spoliation of telematics data. If it came before the court, the court would focus on (1) whether a duty to preserve evidence had arisen (based on the severity of the accident, communications with the claimant and/or his/her counsel, or other factors indicating the existence of a claim), and (2) whether the company took reasonable steps to preserve relevant evidence.

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

The Utah appellate courts have not addressed this issue. However, if this question were to come before the court, the results would need to be presented through an expert witness and meet the requirements of Utah or Federal Rule of Evidence 702.

An expert may also be needed to demonstrate that the results are relevant, i.e., that the information contained in the post-accident toxicology reports indicates that defendant was actually impaired at the time of the accident.

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

Generally yes. "If in connection with an accident or an event, a business entity in the ordinary course of business conducts an investigation for its own purposes, the resulting investigative report is produceable in civil pre-trial discovery." *Gold Standard, Inc. v. American Barrick Resources Corp.*, 805 P.2d 164, 168 (Utah 1990).

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

None at this time.

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.

An adult driver may generally use a hands-free device to have a conversation over a cell phone while driving. Utah Code § 41-6a-1716(3). However, a driver may not dial a phone number or do other manual tasks with a cell phone while operating a moving motor vehicle on a

highway: “[a] person may not use a handheld wireless communication device while operating a moving motor vehicle on a highway in this state to manually:

- (a) write, send, or read a written communication, including:
 - (i) a text message;
 - (ii) an instant message; or
 - (iii) electronic mail;
- (b) dial a phone number;
- (c) access the Internet;
- (d) view or record video; or
- (e) enter data into a handheld wireless communication device.

Utah Code § 41-6a-1716(2).

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

In *Phillips v. Dull*, 2017 U.S. Dist. LEXIS 90020, *2, 2017 WL 2539759 (Cent. D. Utah 2017), a federal district court permitted the plaintiff to advance golden rule arguments on the issue of ultimate liability, but excluded any such arguments on the issue of damages. The court denied the defendant’s motion to exclude evidence based on the “reptilian theory” on the grounds that the defendants did not show what plaintiff’s counsel should be precluded from saying at trial. The court further noted that it would instruct the jury to base its decision only on the proof admitted at trial and the law given to the jury but not on the statements or arguments of counsel. The court made clear that it would “not tolerate any attempts by either party to incite the jury to render a verdict based on any other consideration, including the passions and prejudice of jurors.”

11. Compare and contrast the advantage and disadvantage of Federal Court versus State Court in Utah.

The two most significant advantages over Federal Court versus State Court in Utah are: (1) Federal courts require a unanimous verdict by a twelve person jury while Utah State Courts require a verdict from six out of eight jurors. (2) The standard for admitting expert testimony is also more difficult under Federal R. Evid. 702 than under Utah R. Evid. 702. Instead of using the *Daubert* approach used by the Federal Courts, Utah Courts employ a standard known as the *Rimmasch* approach. Compare *Daubert v. Merrel Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) with *State v. Rimmasch*, 775 P.2d 388 (Utah 1989); *Eskelson v. Davis Hospital and Medical Center*, 2010 UT 59, ¶ 11, 242 P.3d 762 (Utah 2010).

The State Court may, however, be in a more conservative venue than the Federal Courts, especially if it is located in one of the more rural counties in Utah. Utah State Courts also employs unique discovery rules that limit the amount of discovery based on the amount alleged. These discovery caps may be an advantage or disadvantage based on the complexity of the case.

12. Citations or criminal convictions in civil litigation.

A. Are citations admissible in the civil litigation?

No. Rule 416 of the Utah Rules of Evidence provides that “[e]vidence that a person was convicted of an infraction or class C misdemeanor under Utah Code Annotated Title 41, Chapter 6a, is not admissible: (a) to prove the person acted negligently or otherwise wrongly, or (b) to impeach the person’s testimony on those issues.” *Id.* R. 416. In *Ottens v. McNeil*, the Utah Court of Appeals upheld the trial court’s decision to exclude evidence of a traffic citation under Rule 416. 2010 UT App 237, ¶ 69, 239 P.3d 308.

B. How does a guilty plea or verdict impact civil litigation? Pleas of no contest?

Evidence regarding whether the defendant entered a plea of guilty, was found guilty, or entered a plea of no contest to a traffic citation is not allowed under Rule 416 of the Utah Rules of Evidence. Additionally, the Utah Supreme Court has held that evidence of guilty pleas and convictions related to traffic citations, including drug and alcohol related traffic citations, are themselves not admissible as evidence in civil actions. *See Utah Farm Bureau Ins. Co. v. Chugg*, 315 P.2d 277, 280 (Utah 1957). However, a guilty plea to a charge under the criminal code, in the context of a traffic accident, may be relevant and admissible in a related civil matter. *See Dixon v. Stewart*, 658 P.2d 591, 600 (Utah 1982).

13. 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?

Utah courts have not resolved this issue, although the strong trend in the district courts is to allow the amount billed into evidence, and to exclude evidence of the amount paid on the basis of the collateral source rule.

Collateral source evidence is generally not appropriate for jury consideration. *Wilson v. IHC Hospitals, Inc.*, 2012 UT 43, 289 P.3d 369.

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

Utah caps non-economic or “pain and suffering” damages in medical malpractice cases. *See Utah Code 78B-3-410.*

Although not a statutory cap, Utah R. Civ. P. 26 requires plaintiffs to plead one of three tiers based on expected damages. In turn, this tier designation restrains discovery schedules, document production, and general costs associated with litigation. A plaintiff cannot recover damages above the designated tier at trial unless the plaintiff seeks to amend his complaint pursuant to Utah R. Civ. P. 15(a).