

VIRGINIA

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

There are a number of venues in Virginia that are considered to be liberal and dangerous for defendants, including Petersburg, Portsmouth, Newport News, Hampton, Louisa County, City of Richmond, City of Roanoke, and City of Charlottesville, among others.

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

Olegario Valles v. Alberto Librato, et al., Case No. CL175533 (Prince William Cir. Ct. Dec. 6, 2018) – Plaintiff was rear-ended by a dump truck, resulting in two herniated discs. Plaintiff did not go to the ER after the accident, but did see a chiropractor and orthopedist, ultimately undergoing a laminectomy foraminotomy and discectomy. Plaintiff later attended physical therapy and received steroid injections. Plaintiff's medical bills totaled \$134,000 and he sought \$30,000 in lost wages, as well as future lost wages. Prior to trial, the defendants last offered \$350,000 in response to the plaintiff's demand of \$400,000. Plaintiff requested \$1.9 million from the jury, but was only awarded \$619,000.

Jasmine Courts v. Kristopher Wiggins, et al., Case No. 5:16cv00054 (WD Va. March 2, 2018) – Plaintiff was a 17 year-old high school student when she was struck by a tractor trailer on I-81 near Harrisonburg, Virginia, when the tractor trailer driver tried to merge into the plaintiff's lane of travel. Plaintiff claimed a TBI as a result of the crash, with an ongoing litany of post-concussion syndrome symptoms, including headache, anxiety, PTSD, and sleep disturbance, among others. She claimed such symptoms continued more than 4 years since the accident up until the time of trial at the end of February, 2018.

During a week-long trial, Plaintiff called at least six treating physicians testify regarding her post-accident treatment and complaints. A life care planner and economist also testified regarding the plaintiff's more than \$300,000 life care plan. Defendants, who admitted liability, focused on the plaintiff's three concussions prior to the accident, her excellent grades her senior year of high school and in college, and her vibrant social life, as evidenced by Facebook and Instagram posts. Plaintiff requested \$8 million in closing. The jury returned their verdict in two hours, awarding the plaintiff \$850,000.

November 6, 2018 Settlement – Plaintiff, operating a passenger car, and Defendant, operating a tractor trailer, collided in a curve on a two lane road. Defendant was on the outside of the curve and was completing the curve, whereas Plaintiff was just entering the curve on the inside. The vehicles did not collide head on, rather, Plaintiff collided with the left rear tires of the defendant's tractor.

Liability was hotly contested. Defendant had an inward and outward facing dash cam which recorded just before and after the incident and appeared to show the plaintiff's vehicle heading across the double yellow lines just prior to impact. Defendant also argued Plaintiff's vehicle's electronic data showed he was traveling much faster than the posted speed. Plaintiff contended the Defendant had spoliated portions of the video by not preserving more of the video. Plaintiff also argued that the inward facing camera showed Defendant driving with just one hand, which was a violation of his safety training, and that Defendant was not wearing his required prescription glasses at the time of the accident.

Plaintiff claimed more than \$900,000 in medical expenses related to the accident. The matter settled for \$2.2 million.

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

Accident animations and/or computer-generated evidence is generally not admissible as evidence in Virginia because they do not account for all variables that were or could have been in play leading up to and during the accident. These animations can, however, be used as demonstrative aids with the proper foundation testimony from the expert who created the animation.

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) There is no specific guidance regarding preservation of in-cab videos in Virginia. All potential litigants are expected to take reasonable steps to preserve evidence when the party knows or reasonably should know that the evidence would be material in a pending or reasonably probable litigation. A formal litigation hold from opposing counsel is not required.

Virginia's legislature just adopted a new law regarding spoliation of evidence which generally tracks the language of Rule 37(e) of the Federal Rules of Civil Procedure, but permits a spoliation inference in situations of either intentional or reckless destruction of evidence. (SB 1619, 2019 Legislative Session; to be codified at Va. Code § 8.01-379.2:1)

(b) In-cab videos are generally admissible.

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.

There is no specific guidance regarding preservation of telematics data in Virginia. All potential litigants are expected to take reasonable steps to preserve evidence when the party knows or reasonably should know that the evidence would be material in a pending or reasonably probable litigation. A formal litigation hold from opposing counsel is not required. Such data should be preserved until the statute of limitations has run for the plaintiff to file his or her claim, which is two years in personal injury actions.

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

Yes.

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

Whether documentation generated as part of a post-accident investigation is discoverable varies depending on jurisdiction and whether counsel was involved in the post-accident investigation. Virginia circuit courts are split on the discoverability of these materials. The standard argument is that such materials were prepared in anticipation of litigation. Certain courts have held that materials cannot be prepared in anticipation of litigation if no attorney has been retained and such information collection is done in the normal course of business. Other courts have held that because litigation is reasonably foreseeable and the insurance adjuster (or whoever conducts the post-accident investigation) is carrying out its duty to defend, the materials are protected.

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

Virginia has a law permitting a motor vehicle operator to view a moving image (i.e., movie) while the vehicle is being operated autonomously. (Va. Code 46.2-1077) Otherwise, Virginia does not restrict self-driving or connected vehicles. Virginia is developing the *Virginia Automated 20XX Strategic Plan*, which goal is to transition autonomous vehicles into the Virginia transportation network, including testing platooning technology with tractor trailers on I-66 in northern Virginia.

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.

Virginia does not have a law precluding a commercial driver from using a hands-free device to have a conversation over a cell phone.

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

The Supreme Court of Virginia, in *Velocity Express Mid-Atlantic v. Hugen*, 266 Va. 188 (2003), reiterated its position that in closing argument, counsel may not invoke the "Golden Rule." In short, counsel in closing argument is not permitted to appeal to the economic fears

and passions of a jury; such argument is reversible error. Objection from opposing counsel is, however, required in order to force the circuit court to rule on the improper argument and preserve this issue on appeal.

The use of Reptile-style arguments by Plaintiffs' counsel is on the rise in Virginia, and it is becoming increasingly common for defense attorneys to file motions *in limine* prior to trial to try to prevent Plaintiffs' attorneys from using Reptile arguments during voir dire, opening and closing, and questioning of witnesses at trial.

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

State court in Virginia moves much slower than federal court, particularly the Eastern District of Virginia, which is known as the "Rocket Docket" based on how quickly the Courts force cases to go to trial. It can be advantageous to remove eligible cases to federal court, as Plaintiffs' attorneys often are not as comfortable and are not as prepared to move quickly regarding discovery and experts. Federal court also allows motions for summary judgment, which Virginia state courts have been admonished against granting. Federal court also utilizes offers of judgment and does not permit nonsuits.

The flip side of the coin is that state court cases are subject to more flexible discovery deadlines, trial is often set more than year out due to lack of civil trial availability, and it is much easier to obtain trial continuances should the need arise.

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

Citations resulting from an accident are admissible in the civil litigation if the defendant pleaded guilty, no contest, or pre-paid the citation. If the defendant pleaded not guilty, then the citation is inadmissible in the civil litigation, even if the defendant is later found guilty by the court.

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?

Virginia permits plaintiffs to recover the amount charged for medical treatment, not the amount paid. No evidence of write-offs is permitted to be introduced and there is no post-verdict basis for reductions or offsets in relation to the plaintiff's medical bills.

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

Virginia has a punitive damages cap in state court of \$350,000.