CONNECTICUT

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1. **Provide an update on current black box technology and simulations in your State and the legal issues surrounding these advancements.**

   Connecticut General Statute §14-164aa provides guidelines for accessing black boxes (also refereed to as Event Data Recorders) in vehicles. Generally, data can be harvested with the owner's consent, by Court order or through discovery. Additionally, it can be utilized by mechanics in diagnosing, servicing or repairing the vehicle. Data may not be destroyed or altered after a crash until a "reasonable period" of time has passed to allow law enforcement to obtain a warrant. The most common legal issue presented by black box technology is the spoliation of evidence (discussed further below).

2. **Besides black box data, what other sources of technological evidence can be used in evaluating accidents and describe the legal issues in your State involving the use of such evidence.**

   Accident reconstruction, accident animation, and computer-generated evidence are admissible with proper foundation established through biomechanical and reconstruction experts. We find the visual depiction of an expert's opinion testimony to be effective. In order to admit computer-generated evidence, the proponent must adduce testimony to establish that (1) the computer equipment is accepted in the field as standard and competent and was in good working order; (2) qualified computer operators were employed; (3) proper procedures were followed in connection with the input and output of information; (4) a reliable software program was utilized; (5) the equipment was programmed and operated correctly; and (6) the exhibit is properly identified as the output in question. These factors represent an "approach" to admissibility of computer-generated evidence, and not a mechanical, clearly defined test.

3. **Describe the legal issues in your State involving the handling of post-accident claims with an emphasis on preservation / spoliation of evidence, claims documents, dealing with law enforcement early and social media.**

The duty to preserve electronic data attaches upon knowledge of a potential claim, even absent a specific demand. Once on notice, the obligation to preserve evidence runs first to counsel who must advise and explain to the client its obligations to retain pertinent documents that may be relevant to the litigation i.e. that is reasonably calculated to lead to the discovery of admissible evidence. Put differently, the general rule is that a party need not preserve every shred of paper, every e-mail or electronic document, and every backup tape or hard drive. A party is under a duty to preserve what it knows, or reasonably should know, is relevant in the action; is reasonably calculated to lead to the discovery of admissible evidence; is reasonably likely to be requested during discovery; and/or is the subject of a pending discovery request.

The intentional spoliation of electronic evidence permits the trier to draw an adverse inference that the evidence would have been unfavorable. Such an inference arises, however, only where the act was intentional, and indicates fraud and a desire to suppress the truth.

The discoverability of an adjuster's file materials (a.k.a. the claims file) is assessed on a case-by-case basis and whether said materials are discoverable depends on many factors, including who is seeking discovery; what discovery specifically is being sought; at what stage is the request being made; has suit been filed; is the insurer a party to the suit; what is the nature of the cause of action(s); what are the interests of the parties involved; and, are the interests of the insurer and its insured aligned or are they adverse. There are also practical discovery and admissibility issues.

In Connecticut, courts have required the insurer to produce various portions of the claims file, i.e., those non-privileged documents which describe facts uncovered and activity undertaken during the insurer's claims investigation, as well as, the production of non-privileged documents which may outline the basis and reasoning for the insurer's coverage defense. *Hutchinson v. Farm Family Cas. Ins. Co.*, 273 Conn. 33, 867 A.2d 1 (2005).

We routinely monitor the social media accounts of plaintiffs, witnesses, and possible deponents to gather as much information as possible. Likewise, we reach out to the relevant law enforcement personnel as soon as possible.

4. **Describe the legal considerations in your State when defending an action involving truck drivers who may be considered Independent Contractors, Borrowed Servants or Additional insureds?**

   The relevant distinction in Connecticut is between an independent contractor and employee. The general rule is an employer is not liable for the negligence of an independent contractor. This defense must be raised in the defendant's first responsive pleading. Connecticut law is preempted by the Federal Motor Carrier Safety Regulations when an interstate truck driver negligently causes injury to a member of the public. FMCSR deems the driver to be an employee of the trucking company.

5. **What is the legal standard in your state for allowing expert testimony on mild traumatic brain injury (mTBI) claims and in what instances have you had success striking experts or claims?**

   Connecticut Courts have not ruled specifically in the context of expert testimony related to mTBI. The most significant development in this area is a recent Connecticut trial court decision which denied a defendant's motion to bar the introduction of a behavioral neurological evaluation. The expert conducted the evaluation, administered and interpreted a DTI of the plaintiff.

   In general, Connecticut permits expert testimony if the party offering the testimony can show that the expert's methods for reaching his/her conclusion are reliable. A nonexhaustive list of factors for the court to consider include: general acceptance in the relevant scientific community; whether the methodology underlying the scientific evidence has been tested and subjected to peer review; the known or potential rate of error; the prestige and background of the expert witness supporting the evidence; the extent to which the technique at issue relies [on] subjective judgments made by the expert rather than on objectively verifiable criteria; whether the expert can present and explain the data and methodology underlying the testimony in a manner that assists the jury in drawing conclusions therefrom; and whether the technique or methodology was developed solely for purposes of litigation. Additionally, the proposed scientific testimony must be demonstrably relevant to the facts of the particular case in which it is offered, and not simply be valid in the abstract.

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

   Yes, with proper foundation to account for the effects of metabolism. Generally, evidence is relevant if it has the tendency to make the existence of any material fact more probable or less probable than it would be without the evidence. All relevant evidence is admissible unless otherwise prohibited by the Connecticut Code of Evidence. Relevant evidence is prohibited by the Code if the judge feels that it is overly prejudicial, confuses the issues, misleads the jury or wastes time. If liability is admitted, evidence of negligence, specifically intoxication, is no longer material to any pending issues, and even if relevant, is overly prejudicial and wastes time.

7. **What are some considerations for federally-mandated testing when drivers are Independent Contractors, Borrowed Servants, or Additional Insureds?**

   Connecticut broadened its law in 1995 to allow employers to conduct alcohol and drug testing of employees. The Connecticut law immediately followed the federal requirements imposed on drivers of vehicles between 10,001 and 26,000 pounds. The Connecticut law is silent with respect to independent contractors.

8. **Is there a mandatory ADR requirement in your State and are any local jurisdictions mandating cases to binding or non-binding arbitration?**

   There is no mandatory ADR requirement in Connecticut for personal injury cases. Parties have the option to participate in non-binding ADR through the court at no cost. Parties are also encouraged to submit cases to binding arbitration or mediation by private arbitrators and mediators. Often, the parties share in the costs of retaining private arbitrators or mediators.

9. **Can corporate deposition testimony be used in support of a motion for summary judgment or other dispositive motion?**

   Yes. In general, motions for summary judgment (and other dispositive motions) may be supported by transcripts/testimony of corporate representatives.

10. **What are the rules in your State for contribution claims and does the doctrine of joint and several liability apply?**

    Connecticut has adopted a modified form of several liability. Under this rule, joint tortfeasors are generally only severally liable; however, a claimant may seek relief from the court within one year from the entry of final judgment if any portion thereof has not been satisfied. Upon such a showing, the court must re-allocate liability for the unsatisfied portion of the judgment based upon the other joint tortfeasors' relative degrees of fault. A right of contribution exists in favor of a defendant required to pay more than his proportionate share a judgment.

11. **What are the most dangerous/plaintiff-friendly venues in your State?**

    The Judicial District of Waterbury is considered to be the most toxic to the defense. Due to Connecticut's wide discrepancy in income, many courthouses pull a wide variety of jurors.

12. Is there a cap on punitive damages in your State?

In Connecticut, punitive damages are awarded under either specific statutory provisions or the common law. No statute or practice rule, however, establishes a standard for punitive damages awards in general. Instead, various civil statutes provide for punitive damages awards in discrete situations. These statutes usually declare what the governing standard is; whether the award is mandatory or discretionary with the court or trier of fact; and what the amount should be, including whether it is subject to a maximum dollar figure. For example, for groundless or vexatious civil suits or defenses, CGS § 52-568 provides for mandatory double damages if the suit or defense was without probable cause, and treble damages if additionally the suit was motivated by "a malicious intent unjustly to vex and trouble another person." A list of civil statutes authorizing punitive damages follows below.

Where there is no controlling statutory provision, or the provision is silent as to the applicable standard, the courts allow punitive damages "when the evidence shows a reckless indifference to the rights of others or an intentional or wanton violation of those rights" (*Collens v. New Canaan Water Co.*, 155 Conn. 477, 489 (1967) (tort action asserting taking of water privileges), *quoted with approval in Tessman v. Tiger Lee Construction Co.*, 228 Conn. 42, 54 (1993) (CUTPA action), *see also, e.g., Champagne v. Raybestos-Manhattan, Inc.*, 212 Conn. 509, 532 (1989) (common law strict liability action); *Markey v. Santangelo,* 195 Conn. 76, 77 (1985) (common law assault and battery action); *Triangle Sheet Metal Works, Inc. v. Silver,* 154 Conn. 116, 128 (1966) (breach of contract action founded on tortious conduct)).

Statutes which provide for punitive damages awards usually specify their amount or establish a maximum dollar figure. Where punitive damages are awarded under the common law, or the applicable statute is silent as to their amount, the general rule is that they are limited to plaintiff's attorneys fees and nontaxable costs (*see Bodner v. United Servs. Auto. Ass'n,* 222 Conn. 480, 492 (1992)). In *Bodner,* the Court observed that this rule provides some punishment and deterrence in addition to compensation of the victim. The Court reiterated the reasoning articulated in *Waterbury Petroleum Products, Inc. v. Canaan Oil and Fuel Co.,* 193 Conn. 208, 237-38 (1984), where it rejected plaintiff's claims that punitive damages should not be limited to the expense of litigation less taxable costs. According to the *Bodner* Court, `in limiting punitive damages awards to the costs of litigation less taxable costs, our rule fulfills the salutary purpose of fully compensating a victim for the harm inflicted on him while avoiding the potential for injustice which may result from the exercise of unfettered discretion by a jury' (222 Conn. at 492 (quoting *Waterbury Petroleum Prods., Inc.,* 193 Conn. at 237-38)).

Punitive damages do not, however, include costs incurred in defending a subsequent appeal (*O'Leary v. Indus. Park Corp.,* 211 Conn. 648, 651 (1989)).

13. Admissible evidence regarding medical damages – can the plaintiff seek to recover the amount charged or the amount paid?

In Connecticut a plaintiff can submit to the jury the full amount charged by a medical provider as part of his or her economic damages. Subsequent to a plaintiff's verdict, the defendant can request a collateral source hearing pursuant to Conn. Gen. Stat. § 52-225a. The collateral source hearing asks the court to reduce the economic damages by the applicable collateral sources. The collateral source offset is subject to several limitations. Specifically, the plaintiff is entitled to credit for any insurance premiums paid during the treatment period. Also, if the collateral source is an ERISA plan then the amount paid by the plan would not offset. This area of law is in a state of flux as a recent decision has held that a valid lien for part of the economic damages may apply to all of the economic damages. *Marciano v. Jimenez, et al.*, 324 Conn. 70 (2016). Connecticut Superior Courts have begun to interpret this ruling and have recently held that the lienholder need not have taken any affirmative steps to seek subrogation in order for there to be no collateral source hearing and that the simple fact that the right exists precludes the hearing. *Ashmore v. Hartford Hospital*, 2017 WL 3975529 (Conn. Super. 2017).