

## MASSACHUSETTS

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- 1. What are the legal considerations in your State governing the admissibility or preventability in utilizing the self-critical analysis privilege and how successful have those efforts been?**

Whether to admit or exclude evidence concerning a transportation company's analysis of its drivers' performance or prior incidents is within the discretion of the judge.

- 2. Does your State permit discovery of 3<sup>rd</sup> Party Litigation Funding files and, if so, what are the rules and regulations governing 3<sup>rd</sup> Party Litigation Funding?**

This issue has not received much attention in MA. Any party seeking such discovery will have to convince a judge ruling on a motion to compel how such information will be relevant at trial.

- 3. Who travels in your State with respect to a Rule 30(b)(6) witness deposition; the witness or the attorney and why?**

Absent an agreement by the parties the Rule 30(b)(6) deponent is obligated to travel to the law office for counsel who noticed the deposition.

- 4. What are the benefits or detriments in your State by admitting a driver was in the "course and scope" of employment for direct negligence claims?**

Where the employer has admitted that the driver was in the course and scope of employment the theory of *Respondeat Superior* will hold the employer liable for the negligence of its employee driver. It is within the court's discretion whether to allow or exclude evidence related to claims of negligent hiring and supervision, including a driver's prior driving record as they become moot.

- 5. Please describe any noteworthy nuclear verdicts in your State?**

None.

- 6. What are the current legal considerations in terms of obtaining discovery of the amounts actually billed or paid?**

In MA the plaintiff can offer into evidence the amount of medical bills incurred. To rebut this evidence the defendant may offer into evidence the amounts usually accepted by medical providers for the services rendered. The defendant is not allowed to place into evidence the amount actually paid and, therefore, discovery concerning the amount actually paid is irrelevant and not discoverable.

**7. How successful have efforts been to obtain the amounts actually charged and accepted by a healthcare provider for certain procedures outside of a personal injury? (e.g. insurance contracts with major providers)**

In MA the plaintiff can offer into evidence the amount of medical bills incurred. To rebut this defense counsel may offer into evidence the amounts usually accepted by medical providers for the services rendered. The defendant is not allowed to place into evidence the amount actually paid.

**8. What legal considerations does your State have in determining which jurisdiction applies when an employee is injured in your State?**

Determining the location of the employment relationship, so as to determine whether Massachusetts has jurisdiction to adjudicate a workers' compensation claim, will depend upon the facts of each case. Relevant considerations may include whether the employee is a resident of the Commonwealth, the employer's contacts with and presence in the Commonwealth, whether the employee was recruited or hired in the Commonwealth, whether and under what conditions the employee is able, or expected, to return to the Commonwealth between assignments, and whether the employer procured workers' compensation insurance in Massachusetts.

**9. What is your State's current position and standard in regards to taking pre-suit depositions?**

Depositions are not allowed pre-suit, unlike examinations under oath related to claims for insurance benefits.

**10. Does your State have any legal considerations regarding how long a vehicle/tractor-trailer must be held prior to release?**

No.

**11. What is your state's current standard to prove punitive or exemplary damages and is there any cap on same?**

Generally in transportation cases, punitive or exemplary damages are not recoverable in MA, except under the wrongful death statute on a showing of willful, wanton, malicious or reckless conduct or gross negligence, and there is no cap.

**12. Has your state mandated Zoom trials? If so, what have the results been and have there been any appeals.**

No.

**13. Has your state had any noteworthy verdicts premised on punitive damages? If so, what kind of evidence has been used to establish the need for punitive damages? Finally, are any such verdicts currently up on appeal?**

Generally in transportation cases, punitive or exemplary damages are not recoverable in MA, except under the wrongful death statute on a showing of willful, wanton, malicious or reckless conduct. There are no recent notable verdicts in this regard.