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Rhode Island

Are preventability determinations and internal accident reports discoverable or admissible in your state? What factors determine discoverability or admissibility?

Although the Rhode Island Supreme Court has not expressly ruled on this issue, we would not anticipate that any privilege would protect such reports from discovery or prevent their admissibility at trial. *See Pastore v. Samson*, 900 A.2d 1067, 1078 (R.I. 2006) (explaining privileges, by their nature, shut out the light on ascertaining truth).

The Rhode Island Supreme Court has "declared that privileges, in general, are not favored in the law and therefore should be strictly construed." *Gaumond v. Trinity Repertory Co.*, 909 A.2d 512, 516-17 (R.I. 2006) (internal citations and quotations omitted). As to the creation of new privileges, the court has held that it does "not easily embrace the creation of new privileges," and that "[t]his Court has refused to recognize new privileges, even when a statute manifests and effectuates an important legislative policy favoring confidentiality and generally prohibits the disclosure of information." *Id.* at 516-17. Even when a statute mandates the confidentiality of certain records, this alone does not create a privilege. *Id.* at 519.

Another legal consideration concerning preventability determinations and accident reports is that Rhode Island departs from the majority of jurisdictions when dealing with the admissibility of subsequent remedial measures. *DeCurtis v. Visconti, Boren & Campbell, Ltd.*, 152 A.3d 413, 421 (R.I. 2017). Rule 407 of the Rhode Island Rules of Evidence permits evidence of subsequent remedial measures when "after an event, measures are taken which, if taken previously, would have made the event less likely to occur." As such, Rhode Island has rejected the policy behind its federal counterpart "of encouraging people to take, or at least not discouraging them from taking, steps in furtherance of added safety." *Brokaw v. Davol Inc.*, PC-2007-5058, 2008 WL 4897928 (R.I. Super. Ct. Oct. 27, 2008) (Gibney, P.J.).

In weighing these considerations, the Superior Court in Rhode Island has already expressly rejected the adoption of the self-critical analysis privilege. *Brokaw*, 2008 WL 4897928 at *6. However, the legislature has adopted this privilege in the context of medical peer review boards. R.I.G.L. 1956 § 23-17-25.

Does your state permit discovery of 3rd party litigation funding files and, if so, what are the rules and regulations governing 3rd party litigation funding?

Although the issue has not been addressed by any court in Rhode Island, it is unlikely that Rhode Island's discovery rules would permit discovery of 3rd Party Litigation Funding files. Rule 26(b)(1) of the Rhode Island Superior Court Rules of Civil Procedure states:

> *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 26(b)(2) permits the disclosure of insurance agreements, even though it is not relevant or admissible at trial. With respect to the discoverability of a 3rd Party Litigation Funding file, a Rhode Island court would likely decide that such information is not discoverable on the grounds that the information is not relevant to any claim or defense of a party and/or that the request is not reasonably calculated to lead to the discovery of admissible evidence. Such agreements are not analogous to insurance agreements that are discoverable (to facilitate settlement negotiations), but not admissible because discovery of a Funding file would not be likely to assist the parties in resolving the case through settlement.

The regulation of 3rd Party Litigation Funding is not well defined outside of the normal requirements imposed on lenders. Although there was an attempt in the Rhode Island legislature to regulate this area in 2011, there have been no further attempts to do so. *See* H. 5533, 2011 Gen. Assemb., Jan. Sess. (R.I. 2011); S. 0366, 2011 Gen. Assemb., Jan. Sess. (R.I. 2011).

A complicating factor is that Rhode Island still recognizes the common law doctrines of maintenance and champerty. *Toste Farm Corp. v. Hadbury, Inc.*, 798 A.2d 901, 906 (R.I. 2002). As the court explained, "maintenance is helping another prosecute a suit; champerty is maintaining a suit in return for a financial interest in the outcome[.]" *Id.* at 905 (quoting *Osprey, Inc. v. Cabana Limited Partnership*, 532 S.E.2d 269, 273 (S.C. 2000)). "A champertor is one who purchases an interest in the outcome of a case in which he has no interest otherwise. A champertous agreement is unlawful and void where the rule of champerty is recognized, and the tainted agreement is unenforceable." *Osprey, Inc.*, 532 S.E.2d at 273. "In other words, champerty was described by the Supreme Court as a subset of maintenance in which assistance is provided specifically in return for a financial interest in the outcome." *Progressive Gaming Intern., Inc. v. Venturi*, 563 F. Supp.2d 321, 324 (D.R.I. 2008). Although the court noted that the modern trend among many courts is to abolish these causes of action, the court refused to do so. *Toste Farm*, 798 A.2d at 905-06. The court left it to the legislature to modify or repeal these doctrines. *Id.* at 906.

What constitutes assistance is not clearly defined. There have been very few modern cases dealing with these issues especially since the creation of the 3rd Party Litigation Funding industry. The cases that do involve either maintenance or champerty usually involve a person actively involved in the litigation and not merely providing financial assistance, however, there are no bright line rules in this area.

What is the procedure for the resolution of a claim for injuries to a minor in your state? Does the minor's age affect the statute of limitations for a personal injury claim?

Pursuant to R.I.G.L. § 9-1-19, "[i]f any person at the time any such cause of action shall accrue to him or her shall be under the age of eighteen (18) years, . . . the person may bring the cause of action, within the time limited under this chapter, after the impediment is removed."

The general statute on the tolling of statutes of limitation for personal injury claims of minors allows a lawsuit to

be brought on behalf of a minor plaintiff in a personal injury action at any time until the minor reaches the age of majority, after which time the minor has three (3) years to file suit on his or her own behalf. *Ho-Rath v. Rhode Island Hosp.*, 115 A.3d 938 (2015).

R.I.G.L. § 33-15.1-1 provides in pertinent part:

> A release given by both parents or by a parent or guardian who has the legal custody of a minor child or by a guardian or adult spouse of a minor spouse shall, where the amount of the release does not exceed ten thousand dollars ($10,000) in value, be valid and binding upon the minor.

As a result of R.I.G.L. § 33-15.1-1, minor settlements in excess of $10,000 require the appointment of a guardian ad litem and approval by the Superior Court (commonly referred to as a "Friendly Suit") to be binding on the minor. Any release executed on behalf of a minor where the settlement does not exceed $10,000 must comply with R.I.G.L. § 33-15.1-1, but court approval is not required.

What are the advantages or disadvantages in your State of admitting that a motor carrier is vicariously liable for the fault of its driver in the context of direct negligence claims?

Although it has not been addressed by a court in Rhode Island, an employer who admits the driver was in the course and scope of his employment for a direct negligence claim precludes any claim for negligent entrustment. As such, the benefit is that the employee's driving history becomes irrelevant and inadmissible. There really is no determinant aside from the fact that any defense based upon non-permissive use or acts outside the scope of employment will no longer be available.

What is the standard applied for spoliation of physical and/or documentary evidence in your state?

In Rhode Island, the party seeking the charge of spoliation of evidence has the burden of proof to establish that the destruction of evidence was deliberate or negligent. *Malinowski v. United Parcel Serv.*, 792 A.2d 50, 54-55 (R.I. 2002). "The deliberate or negligent destruction of relevant evidence by a party to litigation may give rise to an inference that the destroyed evidence was unfavorable to that party." *Tancrelle v. Friendly Ice Cream Corp.*, 756 A,2d 744, 748 (R.I. 2000). It is not necessary to show bad faith by the spoliator to draw an adverse inference instruction; however, bad faith may strengthen the spoliation inference. *Kurczy v. St. Joseph's Veterans Ass'n, Inc.*, 820 A.2d 929, 946 (R.I. 2003).

The Rhode Island Supreme Court has provided more specific instructions for corporate parties. In these cases, it is appropriate for the judge to give a spoliation instruction when the corporation or entity "(1) failed to produce a document which the evidence tended to show was routinely generated by the corporation, and (2) was unable to provide a satisfactory explanation as to why the document was not prepared with respect to the incident in the case before the court." *Mead v. Papa Razzi*, 899 A.2d 437, 442-43 (R.I. 2006).

Is the amount of medical expenses actually paid by insurance or others (as opposed to the amounts billed) discoverable or admissible in your State?

There is no current legal authority addressing this issue in Rhode Island. In considering whether a party may obtain discovery of the amounts actually paid turns on whether this evidence is relevant and/or whether the request is reasonably calculated to lead to the discovery of admissible evidence.

The major barrier to the relevance of this evidence is the collateral source rule. The "collateral source rule"

prohibits "defendants in tort actions from reducing their liability with evidence of payments made to injured parties by independent sources." *Esposito v. O'Hair*, 886 A.2d 1197, 1199 (R.I. 2005). Therefore, to obtain this discovery, the party would need to show an independent ground for its relevance other than reducing their own liability such as challenging the reasonableness of the medical expenses. The determination would then be made on a case-by-case basis depending upon the specific facts and circumstances presented to the court.

What is the legal standard in your state for obtaining event data recorder ("EDR") data from a vehicle not owned by your client?

There is no current legal authority addressing this issue in Rhode Island. However, EDRs obtained by opposing parties have been held to be admissible at trial provided the proffering party has laid an adequate foundation and provides expert testimony to interpret and establish the accuracy of EDR data. *See generally Malinowski v. United Parcel Serv., Inc.*, 792 A.2d 50 (R.I. 2002).

What is your state's current standard to prove punitive or exemplary damages against a motor carrier or broker and is there any cap on same?

Under Rhode Island law, to recover punitive or exemplary damages, a plaintiff must prove that the defendant acted with such willfulness, recklessness or wickedness, as amounts to criminality, which for the good of society and warning to the individual ought to be punished. *Felkner v. Rhode Island College*, 203 A.3d 433, 461 (R.I. 2019) (quoting *Palmisano v. Toth*, 624 A.2d 314, 318 (R.I. 1993)). In addition, the plaintiff must prove that the defendant acted with malice or in bad faith. *Id.* (quoting *Palmisano*, 624 A.2d at 318). The Rhode Island Supreme Court has said that "[t]his standard 'is rigorous and will be satisfied only in instances wherein a defendant's conduct requires deterrence and punishment over and above that provided in an award of compensatory damages.'" *Id.* (quoting *Palmisano*, 624 A.2d at 318). "An award of punitive [or exemplary] damages is considered an extraordinary sanction and is disfavored in the law, but it will be permitted if awarded with great caution and within narrow limits." *Id.* (quoting *Palmisano*, 624 A.2d at 318). Additionally, "a plaintiff must make a prima facie showing at an evidentiary hearing that a viable claim exists for an award of punitive [or exemplary] damages before discovery of defendant's financial worth may be undertaken." *Id.* (quoting *Castellucci v. Battista*, 847 A.2d 243, 247 (R.I. 2004)).

Under Rhode Island law, there are no caps on punitive or exemplary damages. *Fenwick v. Oberman*, 847 A.2d 852, 855 (R.I. 2004).

Has your state had any noteworthy recent punitive damages verdicts? If so, what evidence was admitted supporting issuance of a punitive damages instruction? Finally, are any such verdicts currently on appeal?

Schara v. TLIC Worldwide, Inc., No. 20-CV-423-JJM-PAS, 2023 WL 1964267 (D.R.I. Feb. 13, 2023):

> In a workplace harassment case, the plaintiff was awarded $391,500 for compensatory damages and $100,000 for punitive damages. Plaintiff's own testimony at trial established "ample evidence of harassment that she suffered at the hands of [the defendant] employees" which resulted in "serious physical and emotional harm." *Id.* The decision did not include specifics as to the evidence of harassment presented. A motion for a new trial or remittitur was denied.

Gomes v. Rhode Island Hospital, PC-2015-1281 (R.I. Super. Ct. Nov. 12, 2019):

> The jury awarded $25,000 for compensatory damages and $750,000 for punitive damages. Plaintiff's claims were for false arrest and intentional infliction of emotional distress. He was detained for over four hours and verbally abused with racially charged language, including "immigrants like him steal from WalMart and Stop & Shop and everywhere else, but not from here," by the defendant's employees under the suspicion that he failed to pay for part of his meal in the kitchen. Although the defendant moved for a new trial, no final decision was rendered and there is no indication of what has occurred since the verdict in 2019. It is assumed that the parties settled the matter.

McQuaide v. Smith, WC-2002-0488 (R.I. Super. Ct. June 15, 2018):

> The jury awarded $70,000 for compensatory damages and $150,000 for punitive damages. Plaintiff's claims were for sexual harassment. She was subject to sexually harassing remarks and actions by a supervisor. Her employer refused to take any corrective actions. A motion for a new trial was denied. No appeal was taken.

Does your state permit an expert to testify as to content of the FMCSRs or the applicability of the FMCSRs to a certain set of facts?

There is no current legal authority addressing this issue in Rhode Island. In considering generally when a party may introduce expert testimony, Rule 702 of the Rhode Island Rules of Evidence permits expert opinions "if scientific, technical, or other specialized knowledge will assist the trier of fact to understand or to determine the fact in issue. . . ." Further, "[e]xpert testimony may be admitted when such testimony will aid the trier of fact in understanding a subject matter beyond the ken of a layperson of ordinary intelligence." *Kelly v. Rhode Island Public Transit Authority*, 740 A.2d 1243, 1248 (R.I.1999) (citing *Allen v. State*, 420 A.2d 70, 72–73 (R.I.1980)). Where a matter is not obvious to a lay person and lies beyond common knowledge, expert testimony is typically required. *Giron v. Bailey*, 985 A.2d 1003 (R.I. 2009). Thus, the determination of whether to allow expert testimony concerning the content of FMCSRs would likely be made on a case-by-case basis depending upon the specific facts and circumstances presented to the court.

Does your state consider a broker or shipper to be in a "joint venture" or similar agency relationship with a motor carrier for purposes of personal injury or wrongful death claims?

There is no current legal authority directly addressing this issue in Rhode Island. However, Rhode Island courts have held that there are three elements in an agency relationship: "(1) the principal manifests that the agent will act for him, (2) the agent accepts the undertaking, and (3) the parties agree that the principal will be in control of the undertaking." *Credit Union Central Falls v. Groff*, 966 A.2d 1262, 1268 (R.I. 2009).

Conversely, an independent contractor relationship exists where one is retained to perform a task independent of and not subject to the control of the employer. *See Webbier v. Thoroughbred Racing Protective Bureau, Inc.*, 105 R.I. 605, 254 A.2d 285 (1969). Therefore, the key element of an agency relationship is the right of the principal to control the work of the agent. *Rosati v. Kuzman*, 660 A.2d 263, 265 (R.I. 1995).

Provide your state's comparative/contributory/pure negligence rule.

Rhode Island is a pure comparative negligence jurisdiction. *See* R.I.G.L § 9-20-4. Accordingly, plaintiff's damages shall be reduced in proportion to the plaintiff's own negligence. Unless plaintiff is found to be one hundred (100) percent liable, a plaintiff's own negligence will not act as a bar to recovery. For example, if a plaintiff and

defendant are involved in a car accident in which the plaintiff is more at fault than the defendant; the trier of fact will determine the total liability and apportion the damages based on the percentage of fault. Even if the trier of fact determines plaintiff to be ninety-nine percent (99%) at fault, plaintiff may still recover one percent (1%) of his or her damages from the defendant.

Provide your state's statute of limitations for personal injury and wrongful death claims.

In Rhode Island, the statute of limitations for both personal injury and wrongful death claims is three (3) years. R.I.G.L. §§ 9-1-14(b); 10-7-2.

The statute of limitations for personal injury actions is three (3) years from the date the cause of action accrues, and not after, except as provided for otherwise in subsection (c) herein:

> (c) [a]s to an action for personal injuries wherein an injured party is entitled to proceed against an insurer pursuant to § 27-7-2, where an action is otherwise properly filed against an insured within the time limitations provided for by this section, and process against the insured tortfeasor has been returned "*non est inventus*" and filed with the court, then the statutory limitation for filing an action under § 27-7-2 directly against an insurer shall be extended an additional one hundred twenty (120) days after the expiration of the time limitation provided for in subsection (b) herein.

R.I.G.L. § 9-1-14.

The statute of limitations for wrongful death claims is three (3) years from the date of death. R.I.G.L. § 10-7-2.

With respect to any death caused by any wrongful act, neglect or default which is not known at the time of death, the action shall be commenced within three (3) years of the time that the wrongful act, neglect or default is discovered or, in the exercise of reasonable diligence, should have been discovered. *Id.*

In your state, who has the authority to file, negotiate, and settle a wrongful death claim and what must that person's relationship to the decedent be?

Pursuant to R.I.G.L. § 10-7-1 et seq., a wrongful death claim may be brought by and in the name of the executor or administrator of the deceased person.

Additionally, "[i]f there is no executor or administrator, or if, there being one, no action is brought in his or her name within six (6) months after death, one action may be brought in the names of all the beneficiaries, either by all, or by part stating that they sue for the benefit of all[.]" R.I.G.L. § 10-7-3.

Is a plaintiff's failure to wear a seatbelt admissible at trial?

No. The failure to wear a child restraint system, seat belt, or shoulder harness is not admissible as evidence at trial in any civil action. R.I.G.L. § 31-22-22 (a)(2).

In your state, are there any limitations on damages recoverable for plaintiffs who do not have insurance coverage on the vehicle they were operating at the time of the accident? If so, describe the limitation.

No. There are no limitations on damages recoverable for plaintiffs who do not have insurance coverage on the vehicle they were operating at the time of the accident.

How does your state determine applicable law/choice of law questions in motor vehicle accident cases?

Rhode Island has adopted the "interest-weighing" approach in deciding choice of law questions in all tort cases. *Woodward v. Stewart*, 104 R.I. 290, 243 A.2d 917, 923 (1968). Under this approach, courts "look at the particular case facts and determine therefrom the rights and liabilities of the parties 'in accordance with the law of the state that bears the most significant relationship to the event and the parties.'" *Cribb v. Augustyn*, 696 A.2d 285, 288 (R.I.1997) (per curiam) (quoting *Pardey v. Boulevard Billiard Club*, 518 A.2d 1349, 1351 (R.I.1986)).

The following factors are weighed determining the applicable law: "(1) predictability of result; (2) maintenance of interstate and international order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interests; and (5) application of the better rule of law." *Pardey*, 518 A.2d at 1351 (citing *Brown v. Church of the Holy Name of Jesus*, 105 R.I. 322, 252 A.2d 176 (1969)).

Additionally, in applying these principles in tort cases, contacts to be considered are as follows:

> (a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered.

Brown, 105 R.I. at 326–27, 252 A.2d at 179.

Lastly, "in an action for a personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship." *Blais v. Aetna Casualty & Surety Co.*, 526 A.2d 854, 856–57 (R.I.1987) (quoting Restatement (Second) Conflict of Laws § 146).