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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?

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 the self-critical analysis is that Rhode Island departs from both 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.

2. 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 has 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 a 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.

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

Rhode Island has no rule or statute that directly addresses this issue. The Rhode Island Supreme Court has held that when Rhode Island's Superior Court Rules of Civil Procedure and its own precedents are silent on an issue, the court looks to the Federal Rules of Civil Procedure. *Ciunci, Inc. v. Logan*, 652 A.2d 961, 962 (R.I. 1995). Under the Federal rules, the deposition of a corporation by its agents and officers should ordinarily be taken at its principal place of business. *Slusarksi v. Life Ins. Co. of North America*, 632 F. Supp.2d 159, 169 n. 16 (D.R.I. 2009) (quoting 8 C. Wright & A. Miller, *Federal Practice & Procedures* § 2112 (1970)). This creates a presumption that such depositions take place at the corporation's principal place of business, however, there can be various factors that can change this scenario. *Paleteria La Michoacana, Inc. v.*

Productos Lacteos Tocumbo S.A. de C.V., 292 F.R.D. 19, 22 (D.D.C. 2013) (courts consider location of counsel for both parties; size of the corporation and regularity of executive travel, resolution of discovery disputes by the forum court and the nature of the claim and the relationship of the parties). Therefore, the attorney travels rather than the witness in most cases if counsel for the Rule 30(b)(6) deponent insists that the deposition take place at the principal place of business.

The custom and general practice in this jurisdiction is that for a deposition concerning a Rhode Island corporation the deposition is held at the attorney's office rather than the corporation's principal place of business. This is in large part driven by the size of the state and the relative ease of traveling. With respect to out-of-state companies, it generally depends on the company's location and the deponent's willingness to travel. Of course, with remote depositions now being the norm, many of these issues are no longer pertinent.

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?

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.

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

There have been no noteworthy nuclear verdicts in Rhode Island.

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

There is no current legal authority addressing this issue in Rhode Island. In considering whether a party may obtain discovery of the amounts actually billed or 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.

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)

To the best of our knowledge, no attempts have been made either in the legislature or the court system to gain this information.

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

Under Rhode Island law, the Rhode Island Workers' Compensation Court has jurisdiction over all cases where the employee was either injured or hired in the State of Rhode Island. R.I.G.L. 1956 § 28-29-1.3. The General Assembly expanded the court's jurisdiction in 2004 to include jurisdiction of employee's claims when he or she is injured in Rhode Island. Before, the court only had jurisdiction over employees who entered their

employment contract in Rhode Island. *Grinnell v. Wilkinson*, 98 A. 103, 109 (R.I. 1916).

The issue over where an employee's contract for hire is made is governed by the court's holding in *Miles v. Bendix Corp.*, 492 A.2d 1218 (R.I. 1985). Where an employment contract is made is where the "last act to complete the contract for hire" took place. *Id.* at 1219. In *Miles*, the employee had numerous "minimum contacts" with other jurisdictions. *Id.* However, the employee was actually hired while in Indiana and therefore this last act is the place of his employment contract.

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

Under Rhode Island law, pre-suit depositions are permitted with prior court approval. The person seeking to conduct a pre-suit deposition must file a petition to perpetuate the testimony of the witness in the Rhode Island Superior Court. R.I.G.L. 1956 § 9-18-12; Super. R. Civ. P. Rule 27. The court must be satisfied with the reasonableness of the request and that the testimony of the witness concerns a matter that may be the subject of litigation. *Id.*

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

To the best of our knowledge, there are no specific legal considerations regarding how long a vehicle/tractor-trailer must be held prior to release.

11. What is your state's current standard to prove punitive or exemplary damages 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 is 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 worthy 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).

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

Rhode Island has not mandated Zoom trials. The Rhode Island Supreme Court has permitted bench trials to be done either in person or remotely. Upon information and belief, no jury or bench trial has taken place either in person or remotely since March 17, 2020 when the Rhode Island Supreme Court continued all trials.

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?

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 Wal-Mart 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 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 new trial was denied. No appeal was taken.

Malone v. Lockheed Martin Corp., 2009 WL 1360875 (D.R.I. May 14, 2009):

The jury awarded $1,000,000 for compensatory damages and $500,000 for punitive damages. Plaintiff's claims were for racial discrimination and retaliation. He was an African-American employee who received an escalating series of reprimands, deteriorating performance reviews and a demotion. Plaintiff alleged that these were the result of racial animus. However, the case was later dismissed on separate grounds due to the statute of limitations.