

## CONNECTICUT

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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?**

Connecticut does not recognize a “self-evaluative” and/or “self-critical” privilege by way of the common law nor statute. Defendants have asked Connecticut Courts to rely on federal cases to support of finding that such a privilege exists, but Connecticut Courts have not adopted the reasoning of other jurisdictions. The self-critical analysis privilege has led a checkered existence in the federal courts. Neither the Supreme Court nor the Second Circuit has settled the question of whether the self-critical analysis privilege should be recognized as a matter of federal law.

- 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?**

There is no Connecticut case which deals with the discoverability of Third Party litigation funding files. It is likely that Connecticut would follow recent precedents holding that litigation funding agreements and information regarding litigation funders who elected not to fund are not discoverable in US civil litigation. The existence and identity of an actual litigation funder will most likely be discoverable.

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

Typically, the attorney travels for a Rule (30)(b)(6) deposition in Connecticut. This is mainly dependent on the residence of the corporate representative and any logistical concerns of holding the deposition at a company’s office. The Connecticut equivalent of a 30(b)(6) deposition, Connecticut Practice Book § 13-27(h) has no requirement on travel for a 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?**

Negligent hiring, negligent training and negligent supervision are three similar causes of action, each of which imposes liability on an employer for the foreseeable tortious acts of an employee. Whether the claim is for negligent hiring, negligent supervision or negligent training, a plaintiff must allege facts that support the element of foreseeability. Connecticut's superior courts have interpreted this foreseeability requirement as one in which the employer knew or should have known of the employee's propensity to engage in the alleged harmful conduct.

To maintain any of these claims, the employee must be acting outside the scope of his employment when causing the injury to a third person. If the employer admits scope and course of employment, the only viable claim is for respondeat superior.

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

In *Estate of Dinardi v. PTX Services, LLC*, decided October 17, 2014, the plaintiff was awarded \$1,249,970.00 in economic damages and \$6,000,000.00 in noneconomic damages as a result of wrongful death of Daniel DiNardi. DiNardi was a DOT worker who had stopped and exited his vehicle on the right shoulder of the roadway when the defendant's driver struck him. The defendant contested liability.

In *Karotkin v. UPS*, decided September 30, 2014, the plaintiff was awarded \$3,476,025 by the jury, and the judge reduced the award to \$2,780,820.00. The plaintiff sustained significant injuries when the defendant's truck turned left in front of him resulting in a collision. The plaintiff was driving a motorcycle. The plaintiff suffered multiple fractures to his head and a pulmonary contusion.

In *Held v. Northeast Carriers*, decided on April 26, 2013, the six plaintiffs were awarded a total of \$15,795,600.00 by a jury. The defendant's driver, Derry, lost control of his tractor-trailer on 195. The tractor-trailer jumped the barrier and struck another tractor-trailer which in turn struck several other vehicles resulting in multiple fatalities and serious injuries. The jury found the defendant, Derry's, conduct was statutorily reckless and done with deliberate indifference or reckless disregard for the safety of others but declined to award the plaintiff's punitive damages.

In *Tremper v. State of Connecticut*, decided July 30, 2012, the jury awarded the plaintiff \$2,725,000.00. The plaintiff's vehicle was rear-ended by a tractor-trailer truck on an interstate. The plaintiff had changed lanes to avoid colliding with the State's truck that had stopped and was allegedly obstructing the lane. The jury found the State vehicle 30% negligent and the non-party tractor-trailer driver 70% negligent. The jury awarded \$225,000.00 in economic damages and \$2,500,000.00 in noneconomic damages. The court reduced the economic damage award to \$151,694.14. In a companion case the *Estate of Munoz v. State of Connecticut*, the plaintiff's estate was awarded \$4,011,289.00. The decedent died as a result of his injuries.

In *Crockford v. Spencer*, decided June 21, 2012, the jury awarded the plaintiff \$2,523,500.00, in economic and non-economic damages as a result of injuries sustained from being rear-ended by a tractor-trailer carrying a load of steel. The plaintiff sustained a traumatic brain injury with complications.

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

Billing information is discoverable in Connecticut. In fact, it is considered standard discovery. However, only the amount billed (i.e., not how much was paid or is outstanding) is admissible at trial.

## 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 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).

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

In *Cleveland v. U.S. Printing Ink, Inc.*, the Connecticut Supreme Court set forth a three part test to determine when Connecticut workers' compensation law may be applied. Under the *Cleveland* test, the commissioner may apply Connecticut law if Connecticut is: (1) the place of the injury; (2) the place of the employment contract; or (3) the place of the employment relation. At a minimum, the *Cleveland* test requires a showing of a *significant* relationship between Connecticut and either the employment contract or the employment relationship.

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

Pre-suit depositions are not allowed in Connecticut. Additionally, leave of judicial authority must be obtained if a party seeks to take a deposition prior to the expiration of twenty (20) days after the return day.

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

Currently, there is no bright line rule in Connecticut as to how long vehicles/tractor-trailers must be held prior to release. Legal considerations would likely be the severity of the accident, including extent of the injury or fatality, and whether there is a criminal investigation and/or charges have been filed.

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

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."

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 attorney's 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.

Punitive damages awards are limited to the costs of litigation less taxable costs. This 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.

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

Connecticut Courts utilize Microsoft Teams- a zoom like video conferencing tool for court proceedings including trials. The Connecticut Judicial Branch posts, and routinely updates, best practices for appearing for remote proceedings. We are not aware of any appeals.

**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?**

Answer: See those referenced above in response to #11, none of which are on appeal.