A. THE LEGAL DATA PROJECT

1. Minimum liability limits

   15/30/10

2. Negligence laws (Is the jurisdiction a pure contributory negligence state; what type of comparative fault is applicable, etc?)

   Delaware has a modified comparative fault rule. If the defendant’s conduct was plain negligence, and the plaintiff is more than 50% at fault, the plaintiff cannot recover. 1 Del. C. § 8132; Brittingham v. Layfield, 962 A.2d 916 (Del. 2008).

3. Bodily Injury Statute of Limitations

   2 years. 10 Del. C. Ann. § 8119.

4. Property Damage Statute of Limitations

   2 years. 10 Del. C. Ann. § 8107.

5. Are punitive damages insurable in the jurisdiction?

   Punitive damages assessed due to both direct liability and vicarious liability are insurable.

6. Is there an intrafamily immunity defense?

   No.

7. Is there a bodily injury damage threshold? If so, what is it?

   No.

8. What are the quick rules on Subrogation MP/PIP?
Statutory right of subrogation for reimbursement under 21 Del. C. Ann. § 2118(g) exists only against a third party’s liability carrier, not the tortfeasor individually. Subrogation rights exist only against third-party policy limits remaining after the insured settles with the third-party. The carrier cannot join the insured’s third-party lawsuit. The third-party carrier can settle with the personal injury protection carrier before the insured, but must reimburse the insured if the third-party claim and subrogation recovery exceed the third-party policy limits. Harper v. State Farm Mut. Auto. Ins. Co., 703 A.2d 136 (Del. Super. Ct. 1997). Subrogation may proceed directly against a self-insured tortfeasor. State Farm v. Dann, 794 A.2d 42 (Del. Super. Ct. 2002). Med pay coverage is not applicable.

9. Are there no fault laws in the jurisdiction?

Yes. No Fault or PIP coverage is required on all vehicles registered in the State of Delaware. 21 Del. C. Ann. § 2118.

10. Is the customer’s insurance primary?

The answer depends upon the insurance policy language, if any, of the concurrent policies. If there is none, the apportionment is on an all-sums basis. Hercules, Inc. v. AIU Ins. Co., 784 A.2d 481 (Del. 2001).

11. Is there a seat belt defense?

No. Failure to wear a seat belt is not evidence of either comparative or contributory negligence and is not admissible as evidence in any civil lawsuit or insurance claim adjudication arising out of any motor vehicle accident. 21 Del. C. Ann. § 4802(i).

12. Is there a last clear chance defense?

No. The last clear chance doctrine was abolished by the enactment of the comparative negligence statute.

13. Is there an assumption of risk defense?

The concept of assumption of the risk has been divided into the distinct doctrines of primary and secondary assumption of the risk. Koutoufaris v. Dick, 604 A.2d 390, 397-98 (Del. 1992). Primary assumption of the risk involves the plaintiff expressly consenting to relieve the defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what the defendant is to do or leave undone. Storm v. NSL Rockland Place, LLC, 898 A.2d 874, 879-80 (Del. Super. Ct. 2005). Secondary assumption of the risk is implicated where the plaintiff voluntarily encounters a known, unreasonable risk that is out of proportion to the advantage gained. Koutoufaris, 604 A.2d at 397-98. Secondary assumption of the risk is included within
comparative negligence, and therefore, secondary assumption of the risk does not ordinarily bar a claim, but rather serves as a basis for apportionment of fault under the doctrine of comparative negligence. *Id.*

14. **Is there a UM requirement?**

UM and UIM coverages are not mandatory, but every insurer must offer to the insured the option to purchase additional coverage for personal injury or death up to a limit of $100,000.00 per person and $300,000.00 per accident or $300,000.00 single limit, but not to exceed the limits for bodily injury liability set forth in the basic policy. 18 DEI. C. ANN. §§ 3902(a)(1), (b). UM/UIM coverage can be rejected in writing on an appropriate form. 18 DEI. C. ANN. § 3902(a)(1).

15. **Is there a physical contact requirement?**

No. It has been held that physical contact contractual provisions unlawfully limit the scope of insurance coverage and are, therefore, void. *State Farm Mut. Auto. Ins. Co. v. Abramowicz*, 386 A.2d 670, 674 (Del. 1978).

16. **Is there a mandatory ADR requirement?**

According to Rule 16 of the Rules of Civil Procedure of the Superior Court of Delaware, ADR is required. The format of the ADR is to be agreed on by the parties and may include non-binding or, if agreed to by the parties, binding arbitration, mediation or neutral case assessment. If the parties cannot agree on the format of ADR, the default format will be mediation unless otherwise ordered by the Court.

17. **Are agreements reached at a mediation enforceable?**

Delaware Courts analyze mediation agreements in a manner consistent with well-settled contract interpretation principles. A settlement that is reached at mediation but not reduced to a signed written agreement may not enforceable if there exists a dispute as to a material term. *United Health Alliance, LLC v. United Medical, LLC*, 2013 Del. Ch. LEXIS 289 (Del. Ch. 2013)

18. **What is the standard of review for a new trial?**

The grant or denial of a new trial is within the discretion of the trial court. See, e.g., *Lawrence v. State*, 253 A.2d 506, 508 (Del. 1969). In exercising its discretion, the court may weigh the evidence and pass on its credibility. See, e.g., *Storey v. Camper*, 401 A.2d 458, 461 (Del. 1979). The central concern is whether the movant suffered some prejudice resulting in the denial of a fair trial or whether allowing the verdict to stand would otherwise result in a miscarriage of justice. See, e.g., *Burgos v. Hickok*, 695 A.2d 1141, 1145 (Del. 1997); *Eustice v. Rupert*, 460 A.2d 507, 510 (Del. 1983).

19. **Is pre-judgment interest collectable? If so, at what rate?**
Yes. Any lender may charge and collect from a borrower interest at any rate agreed on in writing not in excess of 5% over the Federal Reserve discount rate including any surcharge. 6 DEL. C. ANN. § 2301(a). Where there is no expressed contract rate, the legal rate of interest is 5% over the Federal Reserve discount rate including any surcharge as of the time from which interest is due. Id.

20. Is post judgment interest collectable? If so, at what rate?

Yes. Any lender may charge and collect from a borrower interest at any rate agreed on in writing not in excess of 5% over the Federal Reserve discount rate including any surcharge. 6 DEL. C. ANN. § 2301(a). Where there is no expressed contract rate, the legal rate of interest is 5% over the Federal Reserve discount rate including any surcharge as of the time from which interest is due. Id.

21. Is there a workers compensation exclusive remedy defense?

Yes. 19 DEL. C. ANN. § 2304, provides: “Every employer and employee, adult and minor, except as expressly excluded in this chapter, shall be bound by this chapter respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.”

22. Is the doctrine of joint and several liability applicable?

Yes. In all tort actions in which no fault is assessed to the plaintiff, the liable defendants are jointly and severally liable for the entire judgment. A plaintiff may recover the entirety of his damages from any one of multiple tortfeasors. 10 DEL. C. ANN. §§ 1601-08. If one of the joint tortfeasors makes payment and discharges the liability or pays more than his pro rata share, he is entitled to a money judgment for contribution. 10 DEL. C. ANN. § 6302(b). However, a joint tortfeasor who enters into a settlement with the claimant is not entitled to contribution from another joint tortfeasor whose liability to the claimant is not extinguished by the settlement. 10 DEL. C. ANN. § 6302(c).

23. Is there a self critical analysis privilege?

No. Delaware Courts have refused to recognize this privilege.

24. Is accident reconstruction data admissible?

Yes, through qualified expert testimony.

25. What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?
A plaintiff can recover the full amount of his medical bills and is not limited to the amount actually paid. See Mitchell v. Haldar, 883 A.2d 32, 40 (Del. 2005) (holding that the trial court erred by excluding the full amount of the injured plaintiff’s medical bills as evidence of the total amount of his reasonable medical expenses); Onusko v. Kerr, 880 A.2d 1022, 1024 (Del. 2005) (holding that the trial court correctly allowed the jury to consider that the normal charge for each physical therapy visit was $534.00, even though the plaintiff only paid $282.00 per visit, which was accepted because the plaintiff did not have health insurance and paid cash).

26. What is the jurisdiction’s rule on offers of judgment?

Rule 68. Offer of judgment.

At any time more than 10 days before the trial begins a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the Clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

27. What is the jurisdiction’s rule on spoliation of evidence?


In Delaware, it is a class G felony to suppress physical evidence by concealment, alteration, or destruction believing that the evidence is about to be produced or used in an official proceeding or a prospective official proceeding and intending to prevent its production or use. 11 Del. C. ANN. § 1269.

28. Are there damages caps in place?
There are no caps in place on compensatory damages.

29. **Is CSA 2010 data admissible?**

There are no appellate decisions addressing the admissibility of CSA 2010 data. However, all relevant evidence is generally admissible, and thus, if determined to be relevant, this data will be held admissible.

30. **Briefly, does the jurisdiction have any unique rules on electronic discovery**

The rules regarding discovery have been updated to account for discovery of electronically stored information (“ESI”). Parties must take reasonable steps to preserve ESI that is potentially relevant to the litigation and that is within the party’s possession, custody, or control. Delaware Courts encourage counsel to meet and confer promptly after the start of discovery to develop a discovery plan that includes electronic discovery. Parties can agree with opposing parties to limit or forego the discovery of ESI and confer about its scope and timing. Counsel are expected to be able to answer questions posed by the Court regarding the manner in which the document collection and review was conducted.

31. **Is the sudden emergency doctrine recognized in the jurisdiction?**

Yes. One who is placed in a position of sudden emergency or peril, other than by his own negligence, is not held to the same degree of care and prudence as one who has time for thought and reflection. *Dadds v. Pennsylvania R. Co.*, 251 A.2d 559, 560-61 (Del. 1969) Medical emergencies are also recognized. Where a driver of a vehicle suddenly becomes physically or mentally incapacitated without warning, he is not liable for injury resulting from the operation of a motor vehicle while so incapacitated. *Lutzkovitz v. Murray*, 339 A.2d 64 (Del. 1975).

32. **Are there any rules prohibiting or limiting the use of the reptile theory at trial?**

Delaware evidentiary rules may be used to restrict the use of “reptile theory” arguments at trial. Relevant evidence is evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action. DEL. R. EVID. 401. Relevant evidence may be excluded if its probative value is substantially outweighed by the risk of undue prejudice, confusion of issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. DEL. R. EVID. 403. If the plaintiff attempts to present a “reptile theory” argument at trial, the defendant may argue that the evidence or argument is irrelevant and prejudicial to the defendant because it goes beyond the scope of the plaintiff’s damages and includes potential harm posed to the community.
Additionally, evidence of other crimes, wrongs, or acts is not admissible to prove the disposition of a person in order to show that such person acted in conformity therewith. Del. R. Evid. 404. If the plaintiff attempts to introduce “other acts” evidence regarding safety rules and regulations or potential harm to the public, the defendant can argue that it is inadmissible pursuant to Rule 404(b) and is highly prejudicial to the defendant.

33. What are the jurisdictional limits of the jurisdiction’s civil courts?

Court of Chancery: No limit
Superior Court: No limit
Court of Common Pleas: $50,000
Justice of the Peace: $15,000

34. Are state judges elected or appointed?

Appointed.