I. THE LEGAL DATA PROJECT

A. Minimum liability limits

Pursuant to 29-A M.R.S.A. § 1605 (2013), the mandatory minimum limits are 25/50/100 for property damage, injury or death of a person, and injury or death of more than one person, respectively. Medical pay is mandatory for any personal auto policy insuring four vehicles or less in the amount of $2,000 as of September 30, 2007. 29-A M.R.S.A. §1605(1)(C)(4); . 29-A M.R.S.A. §1605-A (2013). For accidents prior to September 30, 2007, the mandatory minimum is $1,000.

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

Modified Comparative. If plaintiff’s negligence equals or exceeds that of the defendant, plaintiff is barred from recovery. If plaintiff’s negligence is less than the defendant’s negligence, than the jury may reduce damages to the extent considered just and equitable, having regard to the plaintiff’s share in the responsibility for the damages. 14 M.R.S.A. § 156 (2013); see e.g. Brown v. Crown Equip. Corp., 2008 ME 186, ¶ 24, 960 A.2d 1188 (holding that Section 156 “requires the fact-finder to make two separate and distinct decisions: first, to determine liability, and second, to apportion the damages between two blameworthy parties in a just and equitable manner.”)

C. Bodily Injury Statute of Limitations

The general statute of limitations for both bodily injury and property damage is six years from the date of the accident. The statute of limitations for a UM claim is six years from the date of the breach or denial of the claim. The statute of limitations for wrongful death actions, liquor liability actions, and actions against a governmental entity is two years. Other provisions affecting the operation of Maine Statute of limitations include a tolling provision during one’s minority, tolling provisions for the mentally ill, tolling provisions for people in prison, and a tolling provision excluding the period of time a defendant is out of state.

D. Property Damage Statute of Limitations
See above paragraph.

E. Are punitive damages insurable in the jurisdiction?

No. See Braley v. Berkshire Mut. Ins. Co., 440 A.2d 359 (Me. 1982) (holding that, based upon a construction of the policy language and consideration of the purposes of uninsured motorist coverage, punitive damages awarded for reckless conduct were not insurable under an uninsured motorist policy).

F. Is there an intrafamily immunity defense?

No. See MacDonald v. Macdonald, 412 A.2d 71, 75 (Me. 1990)(holding A person injured by the tortious conduct of a spouse can recover from the tortfeasor in a civil action even though the tortious conduct occurred between a husband and a wife.)

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

No.

H. What are the quick rules on Subrogation MP/PIP?

Pursuant to P.L. 2011, ch. 509, § 1, which repealed subsection. 1, paragraph A, of 24-A M.R.S.A. § 2910-A, subrogation or priority over the insured is no longer limited by the $20,000 minimum insured’s settlement/award requirement. However, the insurer’s subrogation right is subject to subtraction to account for the pro-rata share of the insured’s attorney’s fees incurred in obtaining the recovery from another source. The statute does provide an exception which allows an insured exercise its own subrogation rights directly against any person legally responsible for the insured’s injury. In the event that the insurer pursues it subrogation rights directly against such a person, the insurer’s subrogation right is not subject to any subtraction to account for attorney’s fees and the insurer is entitled to full recovery. Maine does not have PIP.

I. Are there no fault laws in the jurisdiction?

No.

J. Is the customer’s insurance primary?

Yes.

K. Is there a seat belt defense?

No. See 29-A M.R.S.A. § 2081(5).

L. Is there a last clear chance defense?
This defense has been subsumed in Maine’s comparative negligence law. See 14 M.R.S.A. § 156; see also Cushman v. Perkins 245 A.2d 846 (Me. 1968).

M. Is there an assumption of risk defense?

This defense has been subsumed in Maine’s comparative negligence law. See 14 M.R.S.A. § 156; see also Wilson v. Gordon, 354 A.2d 398 (Me. 1976).

N. Is there a UM requirement?

Uninsured motorist coverage is mandated by statute, 24-A M.R.S.A. § 2902 (2013).

O. Is there a physical contact requirement?

No.

P. Is there a mandatory ADR requirement?

Yes. Pursuant to Maine Rule of Civil Procedure 16B, all civil cases in the Maine Superior Court must participate in ADR. A plaintiff may request exemption by certifying that the likely recovery of damages will not exceed $30,000.

Q. Are agreements reached at a mediation enforceable?

Yes, using standard contract litigation and a motion to enforce.

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

Appellate courts review the trial court's denial of a motion for a new trial for a “clear and manifest abuse of discretion, reviewing the evidence in the light most favorable to the verdict.” Provencher v. Faucher, 2006 ME 59, ¶6, 898 A.2d 404 (citing Chenell v. Westbrook Coll., 324 A.2d 735, 737 (Me. 1974).

S. Is pre-judgment interest collectable? If so, at what rate?

Yes, prejudgment interest as allowed at the one-year United States Treasury Bill rate plus 3%. Prejudgment interest accrues from the time of notice of claim setting forth under oath the cause of action, served personally or by registered or certified mail upon the defendant, or if a notice of claim has not been given to the defendant, prejudgment interest accrues from the date on which the complaint is filed. See c.f. 14 M.R.S.A. § 1602-B (2013).

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

Pursuant to 14 M. R. S. A. § 1602-C (2013), post judgment interest is allowed at the one-year United States Treasury Bill rate plus 6%.
U. **Is there a workers compensation exclusive remedy defense?**

Yes. See Cole v. Chandler, 2000 ME 104, ¶10, 752 A.2d 1189 (“[t]he legislative intendment in enacting the comprehensive scheme for worker's compensation’ was to giv[e] effect to the underlying policy of providing certainty of remedy to the injured employee and absolute but limited and determinate liability for the employer” (quoting Beverage v. Cumberland Farms Northern, Inc., 502 A.2d 486, 489 (Me.1985) (internal quotations omitted)).

V. **Is the doctrine of joint and several liability applicable?**

Yes. Joint and several liability laws do apply in Maine in a plaintiff may recover 100% of final verdict from any tortfeasor who was found to be liable. Any tortfeasor may then recover contribution from any other tortfeasor based upon percentage contribution to the injury and regardless of whether the other tortfeasor is legally liable to the plaintiff, i.e., even if plaintiff’s fault exceeds that of the other tortfeasor, other tortfeasor may be liable for a percentage contribution. See 14 M.R.S.A. § 156 (2013).

W. **Is there a self critical analysis privilege?**

Maine Courts have not specifically addressed the self-critical analysis privilege. However, pursuant to Maine Rule of Evidence 407, subsequent remedial measures are not admissible.

X. **Is accident reconstruction data admissible?**

Yes.

Y. **What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?**

Although the Maine Law Court has never addressed the issue specifically, the Court has held that an injured person “is entitled to be compensated for only those medical expenses which are reasonable and necessary, and are related to the accident and injuries complained of.” Stubbs v. Bartlett, 478 A.2d 690, 692 (Me. 1984). However, the Maine Superior Court Justices who have encountered this issue have limited the admissible evidence of the amount of the medical bills to those amounts paid by Medicare or MaineCare. Ricci v. Beverage Mart, Inc., Docket No. CV-07-89 (Crowley, J.); Goddard v. Fowles, Docket No. CV-06-10 (Hjelm, J.); Young v. Sauderwald, Docket CV-05-649 (Crowley, J.); Pelletier v. Brann & Higgins, Docket No. CV-02-639 (Crowley, J.); Roy v. Beaule, CV-01-87 (Gorman, J.); Labrie v. Griffin, Docket No. CV-01-238 (Gorman, J.); Eastman v. Eastern Maine Medical Center et al., Docket No. CV-98-210 (Hjelm, J.).

Other Superior Court Justices have held that it was up to the fact-finder to determine the fairness and reasonableness of the medical bills. Evidence of the reduced payments was determined to be admissible in order to allow the jury to make that determination. Nuzzu v. Kingsbury, Docket No. CV-06-38 (Gorman, J.); and Barday v. Donnelly, 2006 WL 381876, *3 (Me.Super. 2006) (Cole, J.) (“It is for the factfinder to decide, based on evidence not only of the amount of the payments made [by MaineCare], but also based on evidence of the amounts billed by the medical
service providers and any other relevant evidence not implicating the collateral source rule, what
the “reasonable value” of those medical services is”).

Therefore, the issue remains undecided in this jurisdiction.

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

Pursuant to Maine Rules of Civil Procedure 68, if the judgment obtained by the offeree is not
more than favorable than the offer, the offeree must pay the costs incurred after making the offer.
The offer must be made at least 10 days prior to trial in the offeree has 10 days to accept.

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

The Maine Law Court has never recognized an independent cause of action for spoliation of
evidence. See Breen v. Lucas, 2005 WL 2736540 (Me. Super. July 4, 2005). However, there may
be a possible adverse inference at trial and other sanctions depending on the circumstances.

BB. **Are there damages caps in place?**

Wrongful death actions: $500,000 for loss of comfort, society, and companionship of the
deceased and any emotional bystander distress claim of the beneficiary: punitive damages
capped at $250,000. 18-A M.R.S.A. § 2-804(b) (2013).

Liquor Liability Actions: the award of damages for all losses, except expenses for medical care
and treatment, including devices or aids, against both the server and the server’s employees and
agents, may not exceed $350,000 for any and all claims arising out of a single accident or

Governmental Entities: the award of damages, including costs, against either a governmental
entity or its employees, or both, may not exceed $400,000 for any and all claims arising out of
the single occurrence. 14 M.R.S.A. § 8105(1) (2013); but see Fortin v. Titcomb, 2013 ME 14,
¶10, 60 A.3d 765(finding that 14 M.R.S.A. 8116 (2013) “provides an alternative to the $400,000
damages cap of section 8105 in the event that the government entity has insurance for itself and/
or its employees. It says simply that if such insurance exists, and that insurance has a policy limit
higher than the $400,000 cap imposed by section 8105, ‘then the limits provided in the insurance
policy shall replace the limit imposed by section 8105.’”)

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

To date, the issue has not been addressed in this jurisdiction, but in the appropriate case, such
data may be admissible.

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

EE. Is the sudden emergency doctrine recognized in the jurisdiction?

Yes, a person confronted with a sudden emergency, not of their making, is held to a different (undefined) standard of care. *Ames v. Dipietro-Kay Corp.*, 617 A.2d 559 (Me. 1992).

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

No, this issue has never been addressed in Maine.

GG. What are the jurisdictional limits of the jurisdiction’s civil courts – i.e. Small Claims, District Court, Superior Court?

Small Claims is $6,000. There are no other jurisdictional limits.

HH. Are state judges elected or appointed?

District, Superior and Supreme Court judges are appointed for a 7 year term. Probate judges are part time and elected.

II. SLAYING THE REPTILE: EVIDENTIARY RULES TO RESTRICT USE OF REPTILE THEORY AT TRIAL

A. Applicability of the "Golden Rule" prohibiting argument asking jurors to place themselves into shoes of a party

Maine case law universally holds that “[i]t is impermissible for a party to encourage[ ] the jury to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence.” *Seabury-Peterson v. Jhamb*, 2011 ME 35, ¶15, 15 A.3d 746 (quoting *Forrestal v. Magendantz*, 848 F.2d 303, 309 (1st Cir. 1988)). However, a mistrial is not required if a curative instruction is able to “dissipate” the prejudicial statement. *Id.* at 309-10.

B. Application of Rules 401, 403 and 404 to prohibit Reptile Theory arguments regarding general safety rules/regulations, potential harm to the public and endangering the public/community

To date, the issue has not been addressed in this jurisdiction.

III. ADMISSIBILITY AND USE OF SOCIAL MEDIA AT TRIAL

Although the admissibility of social media, such as Facebook, MySpace, and Twitter, has yet to be addressed by this jurisdiction in a civil case, it is admissible subject to the Maine Rules of Evidence.