MARYLAND

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1. Requirements for use of hands free devices in each state

In general, it is impermissible for the driver of a motor vehicle to use a handheld telephone while the vehicle is in motion. Md. Code Ann., Transp. § 21-1124.2(d)(2). By implication, the use of a hands free telephone device by the operator of a motor vehicle in motion is permissible. See id. Moreover, a Court may waive the penalty for using a handheld telephone while a motor vehicle is in motion if the accused individual demonstrates “that the person has acquired a hands-free accessory . . . that will allow the person to operate a motor vehicle in accordance with this section.” See id. at § 21-1124.2(f)(2).

Notably, drivers under the age of 18 years old may not utilize a wireless telephone in any manner while operating a motor vehicle, including use by means of a hands free device. Md. Code Ann., Transp. § 21-1124(c).

2. Discovery and admissibility of preventability determinations

Maryland State Courts have never expressly addressed the discovery or admissibility of internal preventability determinations.

The United States District Court for the District of Maryland has occasionally applied the “self-critical analysis privilege” in cases between private litigants where the party asserting the privilege shows: “1) the information sought [] result[s] from an internal review conducted to improve procedures or products; 2) the party conducting the review [] intended that the information remain confidential in order to preserve the free exchange of ideas; and 3) the information [is] such that permitting discovery of it would curtail that free exchange.” Brem v. DeCarlo, Lyon, Hearn & Pazourek, P.A., 162 F.R.D. 94, 101 (D. Md. 1995). More recent decisions, however, have called into doubt the continuing existence of the privilege in the Fourth Circuit. See Williams v. Corelogic Rental Prop. Sols., LLC, 2016 WL 6277675, at *6 (D. Md. Oct. 26, 2016). Importantly, in Williams, the Court appears to have placed a quite substantial burden on the party asserting the privilege to show that discovery of the subject internal review would actually discourage future similar internal reviews. Id.

3. Spoliation of evidence, specifically related to electronic data and whether there is a duty to preserve evidence absent a specific demand
Maryland State Courts have not adopted any specific rule regarding spoliation in the context of electronic data. Instead, it follows its traditional rule, which is stated as follows:

The destruction of or the failure to preserve evidence by a party may give rise to an inference unfavorable to that party. If you find that the intent was to conceal the evidence, the destruction or failure to preserve must be inferred to indicate that the party believes that his or her case is weak and that he or she would not prevail if the evidence was preserved. If you find that the destruction or failure to preserve the evidence was negligent, you may, but are not required to, infer that the evidence, if preserved, would have been unfavorable to that party.

Cost v. State, 417 Md. 360, 370 (2010). Under this rule, there is generally a duty to preserve evidence that may be relevant to a later claim, even absent a specific demand. See id.

The United States District Court for the District of Maryland holds that the duty to preserve evidence arises only at the time that litigation is initiated or threatened. Goodman v. Praxair Servs., Inc., 632 F. Supp. 2d 494 (D. Md. 2009). Once the duty to preserve has attached, a party must preserve electronic records related to the potential or asserted claims. Id. The failure to do so leaves that party amenable to sanctions, “ranging from dismissal or judgment by default, preclusion of evidence, imposition of an adverse inference, or assessment of attorney's fees and costs.” Id.

4. Broker exposure or liability for motor carrier negligence

Maryland State Courts have never expressly addressed the issue of vicarious liability for brokers.

The United States District Court for the District of Maryland has rejected the concept that a broker can be vicariously liable for the actions of a motor carrier, even if the motor carrier is the broker’s agent. Schramm v. Foster, 341 F. Supp. 2d 536 (D. Md. 2004). However, a broker may be liable to an injured plaintiff under a theory of negligent hiring. Id. A broker therefore must act with “reasonable care in selecting the truckers whom it maintains in its stable of carriers.” Id. at 551. It is likely that Maryland State Courts would adopt the same rule.

5. Logo or placard liability - whether motor carrier is liable for any vehicle bearing its Department of Transportation identification placard, company name, or business logo

Maryland State Courts have not recognized any specific rule pertaining to logo or placard liability.

The Fourth Circuit has recognized that evidence of the logo or placard on a truck is probative as to the issue of whether the driver of the vehicle is the apparent agent of the party on the logo or placard. Gaines Motor Lines, Inc. v. Klaussner Furniture Indus., Inc., 734 F.3d 296 (4th Cir. 2013). An apparent agent may be vicariously liable for the actions of the at fault individual. See id. It is likely that Maryland State Courts would adopt the same rule.
6. **Offers of Judgment**

Maryland State Courts do not recognize the offer of judgment rule. The United States District Court for the District of Maryland does recognize the offer of judgment rule.

7. **Punitive Damages**

   a. **Are punitive damages insurable?**

      Punitive damages are insurable in Maryland.

   b. **Any limitations or how much may be awarded as punitive damages?**

      There is no cap on punitive damages in Maryland.

8. **Citations or criminal convictions resulting from a motor vehicle accident**

   a. **Are citations admissible in the civil litigation?**


   b. **How does a guilty plea or verdict impact civil litigation? Plea of no contest?**

      Guilty pleas to minor traffic offenses are admissible in subsequent civil litigation relating to the same accident as evidence of an admission of fault. *Crane v. Dunn*, 382 Md. 83 (2004). Consequently, under this logic, *nolo contendere* pleas are not admissible, as there is no admission associated with a *nolo contendere* plea. *Id.* at 96.

9. **Recent, significant trucking or transportation verdicts in each state**


Intervening insurer in a tort lawsuit does not have the burden to prove amount of UM/UIM coverage under insurance policy. *Kpone v. Allstate Ins. Co.*, 448 Md. 311 (2016) (adopts in whole part the rationale in *Allstate Ins. Co. v. Kpone*, 225 Md. App. 370, 124 A.3d 1147 (2015)). Moreover, judgment in tort lawsuit does not establish amount that insurer owes to insured under insurance policy. *Id.*

10. **Admissible evidence regarding medical damages - can plaintiff seek to recover the amount charged by the medical providers or the amount actually paid, and is there a basis for post-verdict reductions or off-sets**
Maryland follows the collateral source rule, which “permits an injured person to recover the full amount of his or her provable damages, regardless of the amount of compensation which the person has received for his injuries from sources unrelated to the tortfeasor.” *Haischer v. CSX Transp., Inc.*, 381 Md. 119, 132 (2004) (quotation omitted). Under this rule, a plaintiff may seek to recover the full, reasonable value of the medical services rendered to them. *See id.* Nevertheless, in most circumstances, a defendant is generally entitled to an equitable setoff in appropriate circumstances, such as for any sums previously paid to the plaintiff. *See Cane v. EZ Rentals*, 450 Md. 597 (2016).

11. **Driver criminal history and how it affects negligent hiring and supervision claims**

Evidence of the criminal history of an individual may be probative and admissible with regard to a claim for negligent hiring and supervision. *Evans v. Morsell*, 284 Md. 160 (1978). However, whether a criminal history is itself sufficient evidence of negligent hiring depends on the nature of the criminal records and the circumstances surrounding the negligent hiring claim. *See id.*