1. Minimum liability limits

The minimum amount of statutorily required coverage is set forth in MCL 500.3009(1) and MCL 500.3131, which provides that liability coverage must be at least $20,000.00 for an individual, $40,000.00 per accident, and $10,000.00 for property damage.

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

Michigan has pure comparative negligence with respect to economic damages, meaning the total amount of damages that a plaintiff would otherwise be entitled to recover is reduced by the percentage of a plaintiff’s negligence. With respect to non-economic damages, Michigan has modified comparative negligence and a plaintiff is not entitled to noneconomic damages if he/she is more than 50% at fault.

The Michigan legislature also adopted modified comparative negligence as a part of Michigan’s no-fault law. Specifically, MCL 500.3135(b) provides that “[d]amages shall be assessed on the basis of comparative fault, except that damages shall not be assessed in favor of a party who is more than 50% at fault.” Notably, under MCL 600.2955a(1), it is an absolute defense if the injured person had an impaired ability to function due to the influence of alcohol or a controlled substance and, as a result of that impaired ability, the individual was 50% or more the cause of the accident or event that resulted in the death or injury. If the person was less than 50% the cause of the accident, his or her damages will be reduced by that percentage.

3. Bodily Injury Statute of Limitations

Pursuant to MCL 600.5805(10), the statute of limitations for a negligence cause of action is three years after the time of death or injury to a person or property and begins to run on the date of the injury. For an action charging assault or battery, the statute of limitations is typically two years, unless it is brought by a person who has been assaulted or battered by a current or former spouse, or someone that person dated. See MCL 600.5805(2).

4. Property Damage Statute of Limitations
Pursuant to MCL 600.5805(10), the statute of limitations for a negligence cause of action is three years after the time of death or injury to a person or property and begins to run on the date of the injury. For an action charging assault or battery, the statute of limitations is typically two years, unless it is brought by a person who has been assaulted or battered by a current or former spouse, or someone that person dated. See MCL 600.5805(2). An action for the recovery of property protection insurance benefits cannot be comments later than 1 year after the accident. See MCL 500.3145(2).

5. **Are punitive damages insurable in the jurisdiction?**

Punitive damages are not generally permitted in Michigan. *Kewin v Massachusetts Mut Life Ins Co*, 409 Mich 401 (1980). However, a Michigan policy will cover punitive damages awarded in another jurisdiction if the jurisdiction which awards the punitive damages allows those damages to be insured.

6. **Is there an intrafamily immunity defense?**

Michigan abolished intrafamily tort immunity in *Plumley v Klien*, 388 Mich 1 (1972), holding that it “best serves the interests of justice and fairness to all concerned.” However, there are two exceptions to this general rule: “(1) where the alleged negligent act involves an exercise of reasonable parental authority over the child; and (2) where the alleged negligent act involves an exercise of reasonable parental discretion with respect to the provision of food, clothing, housing, medical and dental services, and other care.” *Id.* at 8.

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

The threshold is found under MCL 500.3135(7), which defines “serious impairment of body function” as “[1] an objectively manifested impairment of [2] an important body function [3] that affects the person’s general ability to lead his or her normal life.” *McCormick v Carrier*, 487 Mich 180 (2010).

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

It is well settled under Michigan law that an insurer is not entitled to subrogation for PIP benefits. See e.g., *Steinmann v Dillon*, 258 Mich App 149 (2003) (holding an insurer had no basis for subrogation of medical expenses because medical damages are not a recoverable item of damages in third-party actions). A no-fault insurer has a right to reimbursement from the insured’s third-party tort recovery for first-party economic damages it paid only in the following situations: (1) out-of-state accidents, (2) claims against the owner or operator of an uninsured motor vehicle that was required to be insured, and (3) claims for intentional harm to persons or property. MCL 500.3116.

9. **Are there no fault laws in the jurisdiction?**

Yes, Michigan’s No Fault Automobile Insurance Law.
10. Is the customer’s insurance primary?

No. The automobile owner’s no-fault carrier is responsible for paying primary residual liability under Michigan’s no-fault law. The owner’s no-fault carrier must provide primary coverage for their automobiles and permissive users, and insurance policies cannot shift this responsibility to permissive users. See Corwin v DaimlerChrysler Ins Co, 296 Mich App 242, 261 (2012) (holding that “the car rental companies and their insurers [were] required to provide primary residual liability coverage for the permissive use of the rental cars, up to their policy limits or the minimum required by statute.”).

11. Is there a seat belt defense?

Yes. The safety belt statute, M.C.L. § 257.710e, requires the use of safety belts in an automobile. It allows evidence of the failure to use a safety belt to be admitted in court to prove comparative negligence, while limiting the reduction for recovery of damages arising out of the ownership, maintenance, or operation of a motor vehicle to no more than 5%. The safety belt statute's cap is applicable only to tort actions brought under Michigan’s No-Fault Act. Mann v. St. Clair Cnty. Rd. Comm’n, 470 Mich. 347, 350-51, 681 N.W.2d 653, 655-56 (2004)

12. Is there a last clear chance defense?

No. Michigan has abolished the last clear chance doctrine. See Petrove v Grand Trunk W RR Co, 437 Mich 31 (1991). Notions of last clear chance are still available as a factor for the jury to consider in apportioning damages. “A party may properly argue to the jury that the other party had the greater percentage of negligence because he or she had the last clear chance to avoid injury.” See Petrove, 437 Mich at 33 n4.

13. Is there an assumption of the risk defense?

No. Assumption of the risk defense does not apply in non-employment negligence actions. See Felgner v Anderson, 375 Mich 23, 32 (1965). However, assumption of the risk has been revived in the context of voluntary recreational activities. For example, according to Michigan’s Ski Area Safety Act, downhill skiers, by engaging in the sport, accept the obvious and necessary dangers that inhere in the sport.

14. Is there a UM requirement?

No. Uninsured motorist coverage is a voluntary offering in Michigan. Most insurers, however, still sell uninsured motorist coverage. In general, uninsured motorist policies provide that insured persons are allowed to seek from their own insurance company any damages that they would otherwise be entitled to recover from the uninsured motorist, including damages for pain and suffering. In Harts v Farmers Ins Exch, 461 Mich 1, 597 NW2d 47 (1999), the court ruled that an insurance agent has no duty to advise or counsel the insureds about uninsured motorist coverage.

15. Is there a physical contact requirement?
No. Frequently, however, insurance contracts provide that a plaintiff must have physical contact with the unidentified motorist’s vehicle to recover uninsured motorist benefits. This requirement is enforceable in Michigan. Berry v State Farm Mut Auto Ins Co, 219 Mich App 340 (1996). The physical contact requirement was meant to ensure that phantom vehicles are not invented and claims made for uninsured motorist benefits without some evidence that an unidentified motorist’s vehicle was involved. See Lord v Auto-Owners Ins Co, 22 Mich App 669 (1970).

16. Are agreements reached at mediation enforceable?

Yes, but only to the extent the agreement is reduced to a writing that contains the necessary elements of a binding contract. MCR 2.507(G) sets forth that an agreement or consent between the parties or their attorneys respecting the proceedings in an action is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party’s attorney. See Michigan Mut Ins Co v Indiana Ins Co, 247 Mich App 480; 637 NW2d 232 (2001).

17. Is there a mandatory ADR requirement?

Yes, pursuant to MCR 2.403(A)(2), all tort cases must undergo case evaluation. The hearing is informal in that the rules of evidence do not apply. Facts that bear on issues and damages should be supported by documents whenever possible. MCR 2.403(J). Although not required, all civil cases are subject to alternative dispute resolution (“ADR”) processes unless otherwise provided by statute or court rule, MCR 2.410(A)(1). ADR is defined as any process designed to resolve a legal dispute in the place of adjudication in court. MCR 2.410(A)(2).

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

A new trial may be granted to all or some of the parties, on all or some of the issues when their substantial rights are materially affected, because of: (1) irregularity in the proceedings of the court, jury, or prevailing party, or an order of the court or abuse of discretion which denied the moving party a fair trial; (2) misconduct of the jury or of the prevailing party; (3) excessive or inadequate damages appearing to have been influenced by passion or prejudice; (4) a verdict clearly or grossly inadequate or excessive; (5) a verdict or decision against the great weight of the evidence or contrary to law; (6) material evidence newly discovered, which could not with reasonable diligence have been discovered and produced at trial; or (7) error of law occurring in the proceedings, or mistake of fact by the court. MCR 2.611(A). A trial court’s decision whether to grant a new trial is reviewed for an abuse of discretion. An abuse of discretion occurs when the result is outside the range of principled outcomes.

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

In Michigan, there is no distinction between pre- and post- judgment interest. There is a distinction between pre- and post- complaint interest. A plaintiff may seek interest from the date
of the injury to the date the complaint is filed, as an element of damages available in tort cases. In tort cases, there is no specified rate for pre-complaint interest. Therefore, the jury can determine the rate.

Once the complaint is filed, the plaintiff can collect interest on judgment up to the date the judgment is satisfied. Post-complaint to judgment satisfaction interest is set by statute. Interest on a money judgment recovered in a civil action is calculated at 6-month intervals from the date of filing the complaint at a rate of interest equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually. Interest under this subsection is calculated on the entire amount of the money judgment, including attorney fees and other costs. The current judgment interest rate is 2.452%.

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

In Michigan, there is no distinction between pre- and post- judgment interest. For a money judgment, a plaintiff can collect interest on the judgment from the date the complaint is filed to the date of satisfaction. See question R for more details on how judgment interest is calculated in Michigan. The current judgment interest rate is 2.452%.

21. Is there a workers compensation exclusive remedy defense?

Yes. Michigan’s workers’ disability compensation act (WDCA), MCL 418.101 et seq, provides that workers’ compensation benefits are the exclusive remedy, as against an employer or coemployee, for workplace injuries. See MCL 418.131 (employer); see also MCL 418.827(1) (coemployee). There is an intentional tort exception. Palazzola v Karmazin Prods Corp, 223 Mich App 141, 149-150 (1997).

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

No. In Michigan, a trier of fact must allocate liability and determine the percentage of fault of each person who contributed to the death or injury, regardless of whether the person is, or could have been, named as a party to the action. The trier of fact must also determine the total amount of the plaintiff’s damages. Liability is several only, not joint. See MCL 600.2957; MCL 600.6304. Exceptions to the abolition of joint and several liability exist when: (1) an employer is vicariously liability for his or her employee’s acts or omissions, MCL 600.2956; (2) when a defendant’s act or omission leads to his or her conviction on specific types of crime, MCL 600.6312; and vehicle-owner liability cases under MCL 257.401(1).

23. Is there a self-critical analysis privilege?

Michigan has not adopted the self-critical analysis privilege. However, Michigan does recognize a privilege that protects “records, data, and knowledge collected for or by individuals or committees assigned a professional review function in a health facility or agency.” MCL 333.20175(5). This privilege furthers the same goals as the self-critical analysis privilege, but in the limited context of medical “peer-review” procedures. Petition of Attorney General, 422 Mich 157, 169 (1985).
24. Is accident reconstruction data admissible?

Yes, accident reconstruction data is admissible in Michigan.

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

There are no Michigan cases which specifically address whether the difference between medical bills as originally submitted, and medical bills paid by contracting health insurers - whether the difference is a recoverable reasonable expense for medical services. Medical expenses are not admissible in a motor vehicle accident case.

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

Until 28 days before trial, a party may serve a written offer on an adverse party. To accept, the adverse party, within 21 days, must serve on the other parties a written notice of acceptance. The adverse party may also serve, within 21 days after service of the offer, a counter offer. If the adjusted verdict is more favorable to the offeror than the average offer, the offeree must pay to the offeror the offeror’s actual costs incurred in the prosecution or defense of the action. Costs may not be awarded in a case that has been submitted to case evaluation, unless the case evaluation award is not unanimous.

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

The intentional spoliation or destruction of evidence raises the presumption against the spoliator where the evidence was relevant to the case or where it was his duty to preserve it, since his conduct may be properly attributed to his supposed knowledge that the truth would operate against him. Such a presumption can be applied only where there was intentional conduct indicating fraud and a desire to destroy and thereby suppress the truth.

28. Are there damages caps in place?

Yes. MCL 500.3107(1)(b) provides that an injured person may recover lost wages he or she would have earned from employment during the first three years after the accident. In addition to the three-year cap on work loss benefits under MCL 500.3107(1)(b), there is a monthly maximum on recoverable wages, the amount of which is revised yearly. Furthermore, the benefits payable for lost wages are reduced by 15 percent for taxes, unless the claimant can show that he or she was in a lower tax bracket at the time of the accident. MCL 500.3107(1)(c) entitles an injured claimant to recover up to $20 per day in benefits during the first three years after the date of the accident for what are known as replacement services.

If an insurer of an out-of-state resident is required to provide benefits to that out-of-state resident for accidental bodily injury for an accident in which the out-of-state resident was not an occupant of a motor vehicle registered in Michigan, the insurer is only liable for the amount of ultimate loss sustained up to $500,000.00. MCL 500.3163. Moreover, to the extent damages are
not covered by insurance, there is a $1,000.00 cap on damages to a motor vehicle. MCL 500.3135.

29. Is CSA 2010 data admissible?

There are no Michigan cases which specifically address the program, Compliance, Safety, Accountability (“CSA”).

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

Michigan does not have any unique rules on electronic discovery. MCR 2.302(B)(6) tracks with Fed R Civ P 26(b)(2)(B), which both take into account the burdens and costs of collecting ESI and provide a possible compromise solution to the competing interest inherent in all discovery.

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

Yes. One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger is not guilty of negligence if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence. White v Taylor Distributing Co., Inc., 275 Mich App 615 (2007); Vsetula v Whitmyer, 187 Mich App 675 (1991); Socony Vacuum Oil Co v Marvin, 313 Mich 528 (1946).

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

Michigan jurors may place themselves into the shoes of a party so long as it does not inflame or prejudice a jury. See People v Graham, Docket No. 297830, 2011 WL 4810883 (Mich App).

The reptile strategy is “to frame each case in a way to shift each juror’s brain into survival mode when he or she decides a case.” Marshall, David C, Litigating Reptiles, http://www.turnerpadget.com/media/images/Marshall_article.pdf (accessed Feb 17, 2014). In other words, “[i]t is a model of advocacy that features manipulating jurors by fostering fear.” Id. The theme of the “reptile” strategy is individual and community safety. Id.

Although there are no cases directly on point, Michigan courts have recognized that it is improper to suggest that jurors “send a message” to a party through its verdict. Hunt v CHAD Enterprises, Inc, 183 Mich App 59 (1990). Likewise, jury arguments that suggest a “civic duty” are improper as they inject into trial issues unrelated to the merits of the case. See People v Biondo, 76 Mich App 155 (1977) (noting the prosecutor asked the jury to help make Detroit a great city again and to keep the crime rates lower by convicting the defendant).

33. What are the jurisdictional limits of the jurisdiction’s civil courts?
i. **Circuit Courts** – Court of General Jurisdiction for all claims which exceed $25,000

ii. **District Courts** – Court of General Jurisdiction for all claims which do not exceed $25,000

iii. **Small Claims** – Claims which do not exceed $5,000

### 34. Are State Judges Elected or Appointed

State Judges are elected by nonpartisan elections. Supreme Court Judges serve eight year terms and must be re-elected if they wish to continue serving. Court of Appeals and Circuit Court Judges are elected by nonpartisan elections to serve six year terms and must be re-elected if they wish to continue serving. Court of Appeals and Circuit Court candidates are placed on the ballot via nonpartisan primaries or by nominating petitions.