1. Minimum liability limits

15/30/5

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

Pennsylvania has a modified comparative fault rule. The plaintiff’s negligence will diminish, but not bar, his recovery, unless he was more negligent than the defendants. 42 Pa. Cons. Stat. Ann. § 7102.

3. Bodily Injury Statute of Limitations


4. Property Damage Statute of Limitations


5. Are punitive damages insurable in the jurisdiction?

Punitive damages assessed due to direct liability are not insurable, but punitive damages assessed due to 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?

Yes, if subjected to “limited tort.” Plaintiffs subject to the “limited tort” threshold cannot receive compensation for pain and suffering unless a “serious injury” is proven. See 75 Pa. Cons. Stat. Ann. §1705.
8. **What are the quick rules on Subrogation MP/PIP?**

Subrogation historically prohibited personal injury protection (“PIP”) in any action arising out of use or maintenance of a motor vehicle. 75 Pa. Cons. Stat. Ann. § 1720. However, an unreported Superior Court decision affirms that § 1720 does not prevent PIP subrogation where insured is made whole and subrogation does not interfere with the insured’s claim. *State Farm Mutual Auto. Ins. Co. v. Soxman*, J-A13040, No. 2659 EDA 2010 (Pa. Super. 2011) (unreported decision). Section 1720 only bars subrogation or reimbursement “from a claimant’s tort recovery.” However, the decision mistakenly maintained that § 1722 still prohibited subrogation, even when there was not going to be a double recovery. That obstacle is avoided by a direct action against a tortfeasor’s liability carrier. Medical pay coverage is not required, but there are subrogation rights similar to PIP subrogation above.

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

Yes. Any person who suffers injury arising out of the “maintenance or use” of a motor vehicle is entitled to recover first party benefits from the applicable insurance coverage in the following order of priority: (1) for a named insured, the policy on which he is the named insured; (2) for an insured, the policy covering the insured; (3) for the occupants of an insured motor vehicle, the policy on that motor vehicle; and (4) for persons not occupying a motor vehicle, i.e., pedestrians, the policy on any motor vehicle involved in the accident. 75 Pa. Cons. Stat. Ann. § 1713(a).

10. **Is the customer’s insurance primary?**

Yes.

11. **Is there a seat belt defense?**


12. **Is there a last clear chance defense?**

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

13. **Is there an assumption of risk defense?**

Yes. Assumption of the risk remains a viable defense available in Pennsylvania. *Longwell v. Giordano*, 57 A.3d 163, 166-67 (Pa. Super. Ct. 2012). To raise this defense, it must be shown that the plaintiff was aware of the facts creating the danger. *E.g.* *Crance v. Sohanic*, 344 Pa. Super. 526, 529 (1985). This defense is limited in the landlord-tenant context. *See Id.* at 168. In that context, the lessor may remain liable to the lessee or a third person notwithstanding the lessee or third person’s knowledge of the existence of the dangerous condition. *Id.;* Restatement (Second) of Torts § 360.
14. Is there a UM requirement?

UM and UIM coverages are not mandatory, but carriers are required to offer such coverage on all policies. 75 Pa. Cons. Stat. Ann. § 1731(a). Unless coverage is waived by the first named insured on the policy by signing and dating an approved form, the insured is deemed to have elected UM/UIM coverage in amounts equal to the bodily injury liability coverage. 75 Pa. Cons. Stat. Ann. § 1731(c.1).

15. Is there a physical contact requirement?

No. The purpose of the Uninsured Motorist Coverage Act is to provide protection to innocent victims of irresponsible drivers and a physical contact requirement would run contrary to that purpose and, therefore, should be void and unenforceable. Webb v. United Services Auto. Asso., 227 Pa. Super. 508, 518-22 (1973).

16. Is there a mandatory ADR requirement?

Civil cases must first be submitted to arbitration unless the dispute involves title to real property or where the amount in controversy exceeds $50,000. 42 Pa. Cons. Stat. Ann. § 7361. This rule, particularly the amount in controversy limitation, may vary by county.

17. Are agreements reached at a mediation enforceable?


Under Pennsylvania law, the test for enforceability of an agreement is whether both parties have manifested an intention to be bound by its terms and whether the terms are sufficiently definite to be specifically enforced. Id. at *5-6 (citing Channel Home Ctrs v. Grossman, 795 F.2d 291, 298-99 (3d Cir. 1986)). The intent of the parties is a question of fact which must be determined by the factfinder. If the existence and binding effect of the settlement agreement is contested by the parties, an evidentiary hearing exploring these matters is the appropriate procedure. Id. at *6 (citing Standard Steel, LLC v. Buckeye Energy, Inc., 2005 WL 2403636, *9 (W.D. Pa. 2005)).

An oral settlement agreement may be enforceable and legally binding without a writing. Id. (citing Kazanjian v. New England Petroleum Corp., 480 A.2d 1153, 1157 (Pa. Super. 1984)). If parties agree upon essential terms and intend them to be binding, a contract is formed even though they intend to adopt a formal document with additional terms at a later date. Id. (citing Johnston v. Johnston, 499 A.2d 1074, 1076 (Pa. Super. 1985) (internal citations omitted)).
18. **What is the standard of review for a new trial?**

An appellate court’s standard of review in determining whether to grant a new trial is whether the trial court abused its discretion or committed an error of law. *Neison v. Hines*, 539 Pa. 516, 520 (1995) (citations omitted). The trial court may only grant a new trial when the jury’s verdict is so contrary to the evidence that it shocks one’s sense of justice. *Id.*

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

Yes, at the request of the plaintiff in a civil action seeking monetary relief for bodily injury, death, or property damage for the period of time from a date one year after the date original process was first served in the action up to the date of the award, verdict, or decision. Pa. R. Civ. P. 238(a)(1)-(2). It is calculated at the rate equal to the prime interest rate for each calendar year for which the damages are awarded, plus one percent in certain situations. Pa. R. Civ. P. 238(a)(3).

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


21. **Is there a workers compensation exclusive remedy defense?**

Yes. The Pennsylvania Workers’ Compensation Act provides the sole and exclusive remedy for an employee who seeks to recover for an injury sustained during the course of his or her employment, with limited exceptions.

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

Under the Fair Share Act, 42 Pa. Cons. Stat. Ann. § 7102, in all cases that accrue on or after June 28, 2011, defendants may be severally, but not jointly, liable, unless one of several exceptions applies. The exceptions for which joint and several liability will still apply include the following: where a defendant is found to be 60% or more at fault, intentional torts, intentional misrepresentation, a release or threatened release of a hazardous substance under the Hazardous Sites Cleanup Act, and an action brought under Section 496 of the Liquor Code.

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

No. Although a few lower Pennsylvania state courts have applied the privilege in limited circumstances, no Pennsylvania appellate court has adopted it.

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 is permitted to recover the reasonable value of medical services. Moorhead v. Crozer Chester Med. Cir., 564 Pa. 156, 162 (2001). A plaintiff may recover only the medical expenses actually paid or that are reasonably necessary to be incurred. Id.

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

There is no offer of judgment rule recognized in Pennsylvania.

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


Pennsylvania does not recognize spoliation of evidence as a separate cause of action. Elias v. Lancaster Gen. Hosp., 710 A.2d 65, 68 (Pa. Super. Ct. 1998). To determine the appropriate sanction, the court must examine: (1) the degree of fault of the party who altered or destroyed the evidence, (2) the degree of prejudice suffered by the opposing party, and (3) the availability of a lesser sanction that will protect the opposing party’s rights and deter future similar conduct. Schroeder v. Commonwealth Dep’t of Transp., 710 A.2d 23, 250-51 (Pa. 1998) (citing Schmid v. Milwaukee Electric Tool Corp., 13 F.3d 76 (3d Cir. 1994)).

The fault of the party who altered or destroyed the evidence requires consideration of: (1) the extent of the spoliator’s duty to preserve the relevant evidence and (2) the presence or absence of bad faith. Thompson, 2011 Phila. Ct. Com. Pl. LEXIS 267, at 45 (citing Creazzo, 903 A.2d at 29). However, bad faith need not be established in order for the court to impose sanctions for spoliation. Id. at 45-46 (citing Mount Olivet Tabernacle v. Edwin L. Wiegand Div., Emerson Electric Co., 781 A.2d 1263, 1272 (Pa. Super. Ct. 2001)).

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?

Any party may serve a request upon a party, or a subpoena upon a person not a party, to produce electronically stored information ("ESI"). Pa. R. Civ. P. 4009.1(a). The requesting party may specify the format in which the ESI is to be produced, but the responding party or person may object. Pa. R. Civ. P. 4009.1(b). If no format is specified, ESI may be produced in the form in which it is ordinarily maintained or in a reasonably usable form. Id. Pursuant to the official note to Rule 4009.11, a request for ESI should be as specific as possible, and limitations as to time and scope are favored, as are agreements between the parties on production formats and other issues.

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

Yes. A driver who suddenly and unexpectedly finds him or herself confronted with a perilous situation that permits little or no opportunity to apprehend the situation and act accordingly should not be found negligent. Lockhart v. List, 542 Pa. 141, 150 (1995). However, a driver is not entitled to the defense if it is determined that the person created the emergency by driving negligently or carelessly prior to the unexpected situation. Haines v. Dulaney, 424 Pa. 608 (1967). Medical emergencies are also recognized. An operator of an automobile who, while driving, is suddenly stricken by an unforeseeable loss of consciousness is not chargeable with negligence. Shiner v. Ralston, 64 A.3d 1 (Pa. 2013).

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

Pennsylvania evidentiary rules may be used to restrict the use of “reptile theory” arguments at trial. Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action. Pa. 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. Pa. 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 by including potential harm posed to the community.

Additionally, evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with that character. Pa. R. Evid. 404(b)(1). 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 and is highly prejudicial to the defendant.

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

Court of Common Pleas: No limit
Magisterial District Courts: $12,000
Philadelphia Municipal Court: $12,000 ($15,000 in real estate and school tax cases)
34. Are state judges elected or appointed?

State judges are elected.