1. **Minimum liability limits**

   The minimum insurance liability coverage in Wisconsin is $25,000 per person, $50,000 per accident, and $10,000 for property damage. Wis. Stat. § 344.15(1).

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

   Wisconsin has a comparative negligence statute. Thereunder, comparative negligence is measured separately against each causally negligent party, and recovery is proportional to the liability attributed. If a plaintiff's negligence exceeds the defendant's negligence, there is no recovery. Joint and several liability attaches to any defendant more than 50% liable. See Wis. Stat. § 895.045(1).

3. **Bodily Injury Statute of Limitations**

   The statute of limitations for bodily injury is three (3) years. Wis. Stat. § 893.54.

4. **Property Damage Statute of Limitations**

   The statute of limitations for property damage is six (6) years. Wis. Stat. § 893.52.

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

   Yes. An insurer must specifically exclude coverage for punitive damages if it does not want the policy to cover punitive damages. Brown v. Maxey, 124 Wis. 2d 426, 369 N.W.2d 677 (Wis. 1985).

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

   No. See, e.g., Goller v. White, 20 Wis. 2d 402, 122 N.W.2d 193 (Wis. 1963) (abrogating parental-immunity rule in negligence cases).

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

   No.

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

   An insurer is generally entitled to subrogation rights based on the policy provisions. Wis. Stat. § 632.32(4)(c). PIP is not required under Wisconsin law.

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

   No.
10. **Is the customer's insurance primary?**

    Typically, yes. However, the query is policy language-driven; limitations and “other insurance” clauses must be construed. The purpose of an “other insurance” clause is to define which coverage is primary and which coverage is excess between policies. *Progressive N. Ins. Co. v. Hall*, 2006 WI 13, ¶ 27, 288 Wis. 2d 282, 294, 709 N.W.2d 46, 52. Other insurance clauses govern the relationship between insurers, they do not affect the right of the insured to recover under each concurrent policy. *Id*.

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

    Evidence of a party's failure to wear a seat belt is admissible, but it may not reduce recovery for injuries and damages by more than 15%. *Wis. Stat. § 347.48(2m)(g)*.

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

    The issue of “clear last chance” may be a factor considered in the apportionment of causal negligence. *Britton v. Hoyt*, 63 Wis. 2d 688, 694-95, 218 N.W.2d 274 (Wis. 1974).

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

    Much like the issue of the “last clear chance” defense, assumption of the risk on the plaintiff’s part is not a bar to the plaintiff’s negligence action and may be considered in the apportionment of causal negligence, although it has been abolished as a “complete” defense in negligence actions. *Polsky v. Levine*, 73 Wis. 2d 547, 551-52, 243 N.W.2d 503 (1976).

    In Wisconsin, assumption of the risk should not be confused with the “open and obvious danger” rule. *Kloes v. Eau Claire Cavalier Baseball Ass’n*, 170 Wis. 2d 77, 86–87, 487 N.W.2d 77 (Ct. App. 1992). In the case of a plaintiff confronting an open and obvious danger, “his negligence, as a matter of law, exceeds any negligence attributable to the defendant(s).” *Id*.

    While not an absolute defense, its application bars a plaintiff’s recovery under the contributory negligence statute. *Id. at 87*.

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

    Yes. The minimum requirements for UM are $25,000 per person and $50,000 per accident. *Wis. Stat. § 632.32(4)(a)*.

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

    No, but an insured seeking to recover under his uninsured motorist coverage for an accident involving a vehicle that does not make physical contact with the insured’s vehicle (referred to as a “phantom motor vehicle”) must satisfy several statutory requirements. The insured must present evidence of the accident corroborated by someone other than the insured; report the accident to the authorities within 72 hours; and file a sworn statement with the insurer within 30 days of the accident. *Wis. Stat. § 632(2)(g).*
16. **Is there a mandatory ADR requirement?**

   There is no Wisconsin statute which requires ADR, but individual venues/judges may build a mediation requirement into the scheduling order.

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

   Yes, if the agreement is in writing and subscribed by the party to be bound or that party’s attorney. Wis. Stat. § 807.05. *See, e.g., Affordable Erecting, Inc. v. Neosho Trompler, Inc.*, 2006 WI 67, ¶¶ 22-23, 291 Wis. 2d 259, 715 N.W.2d 620.

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

   A party may move for a new trial because of errors in the trial, the verdict is contrary to law or to the weight of evidence, excessive or inadequate damages, newly-discovered evidence, or in the interest of justice. Wis. Stat. § 805.15(1). A new trial shall be ordered on the grounds of newly-discovered evidence only if the evidence came to the moving party’s notice after trial, the moving party’s failure to discover the evidence earlier did not arise from lack of diligence in seeking to discover it, the evidence is material and not cumulative, and the new evidence would probably change the result. Wis. Stat. 805.15(3).

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

   Yes, but it may be awarded only if the amount of damages is ascertainable or can be determined prior to a judicial determination either because damages are liquidated or because there is a reasonably certain standard of measurement. *City of Merrill v. Wenzel Bros., Inc.*, 88 Wis. 2d 676, 698, 297 N.W.2d 799 (Wis. 1979).

   Also, if the plaintiff makes a statutory offer of settlement under Wis. Stat. § 807.01(3) that is not accepted and the plaintiff obtains a judgment which is greater than or equal to the amount specified in the offer of settlement, from the date of the offer of settlement, the plaintiff is entitled to “interest at an annual rate equal to 1 percent plus the prime rate in effect on January 1 of the year in which the judgment is entered if the judgment is entered on or before June 30 of that year or in effect on July 1 of the year in which the judgment is entered if the judgment is entered after June 30 of that year, as reported by the federal reserve board in federal reserve statistical release H. 15, on the amount recovered.” Wis. Stat. § 807.01(4).

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

   Yes, the rate is 1% plus the prime interest rate in effect on January 1st and July 1st of each year. If a judgment is entered on or before June 30, the applicable interest rate is the rate in effect on January 1st of that year. If a judgment is entered after June 30, the applicable interest rate is the rate in effect on July 1st of that year. Wis. Stat. § 814.04(4).

21. **Is there a workers compensation exclusive remedy defense?**
Yes. Wis. Stat. § 102.03(2); see also Weiss v. City of Milwaukee, 208 Wis. 2d 95, 103, 559 N.W.2d 588 (Wis. 1997). However, in some cases, intentional conduct of the employer will defeat the exclusivity because it is not an “accident” under the statutory provision. See Cohn ex rel. Shindell v. Apogee, Inc., 225 Wis. 2d 815, 593 N.W.2d 921 (Ct. App. 1999).

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

Yes. A person found to be causally negligent whose percentage of causal negligence is 51% or more shall be jointly and severally liable for the damages allowed. Wis. Stat. § 895.045(1). In addition, if two or more parties act in accordance with a common scheme or plan, those parties are jointly and severally liable for all damages resulting from that action. Wis. Stat. § 895.045(2). In product liability actions, a product defendant whose responsibility for the damages to the injured party is 51% or more of the total responsibility is jointly and severally liable for all of the damages to the injured party, but not in actions based on negligence or breach of warranty. Wis. Stat. § 895.045(3).

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

Yes, but with limited application (i.e., medical/health care suits). Wis. Stat. § 146.38(2) (1997-1998).

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

Yes. Wis. Stat. § 907.02

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

In general, a plaintiff’s recovery for medical services is for the reasonable value of the services, not for the expenditures actually made or the obligations incurred, so evidence of a reduced or negotiated rate would not be admissible. Leitinger v. DBart, Inc., 2007 WI 84, ¶ 23, 302 Wis. 2d 110, 121, 736 N.W.2d 1, 6. (The Collateral Source Rule provides that a tortfeasor’s liability to an injured individual is not reduced because the injured individual received payments from some other source.) Id. at ¶ 26.

However, there is a rebuttable presumption that the amount of medicals billed reflects the reasonable value of the services incurred. Wis. Stat. § 908.03(6m)(bm).

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

Wis. Stat. § 807.01(1) provides: “After issue is joined but at least 20 days before the trial, the defendant may serve upon the plaintiff a written offer to allow judgment to be taken against the defendant for the sum, or property, or to the effect therein specified, with costs. If the plaintiff accepts the offer and serves notice thereof in writing, before trial and within 10 days after receipt of the offer, the plaintiff may file the offer, with proof of service of the notice of acceptance, and the clerk must thereupon enter judgment accordingly. If notice of acceptance is
Wis. Stat. § 807.01(3) provides: “After issue is joined but at least 20 days before trial, the plaintiff may serve upon the defendant a written offer of settlement for the sum, or property, or to the effect therein specified, with costs. If the defendant accepts the offer and serves notice thereof in writing, before trial and within 10 days after receipt of the offer, the defendant may file the offer, with proof of service of the notice of acceptance, with the clerk of court. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer of settlement is not accepted and the plaintiff recovers a more favorable judgment, the plaintiff shall recover double the amount of the taxable costs.”

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

There are two kinds of spoliation sanctions: dismissal of the case, see, e.g., *American Family Mutual Insurance Co. v. Golke*, 2009 WI 81, 319 Wis. 2d 397, 768 N.W.2d 729, and the spoliation inference. (“Dismissal of action as sanction for spoliation of evidence is an extreme sanction that is only justified in cases of egregious conduct involving, more than negligence, a conscious attempt to affect the outcome of the litigation, or a flagrant, knowing disregard of the judicial process; lesser spoliation sanctions, such as pre-trial discovery sanctions and negative inference instructions may be appropriate for spoliation where a party violated its duty to preserve relevant evidence, but where the destruction of such evidence did not constitute egregious conduct.”) *Id.* at ¶ 40.

The spoliation inference permits the trier of fact to draw an inference from the intentional spoliation of evidence that the destroyed evidence would have been unfavorable to the party that destroyed it. See, e.g., *S.C. Johnson & Son, Inc. v. Morris*, 2010 WI App 6, 322 Wis. 2d 766, 779 N.W.2d 19.

The award of sanctions is wholly within the court's discretion, but the court is required to make factual findings that the conduct of the spoliator was in “bad faith” or egregious. The burden is on the party making the accusations of spoliation to prove by clear and convincing evidence that the other party “intentionally destroyed the evidence.” The sanction should be commensurate with the harm, and a court cannot award excessive sanctions for acts that are merely negligent.

An independent tort of spoliation is not recognized in Wisconsin.

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

Yes. Punitive damages are capped at $200,000 or twice the amount of compensatory damages, whichever is greater. The cap does not apply to drunk drivers. Wis. Stat. § 895.043(6). Non-economic damages for bodily injury arising from the care or treatment (or any omission) by a “long-term care provider” - which includes nursing homes, hospice centers, and
assisted living centers - are capped at $750,000. This same limit already was in place for cases involving other health care providers. See Wis. Stat. § 893.55.

Additionally, in a wrongful death action additional damages are “not to exceed $500,000 per occurrence in the case of a deceased minor, or $350,000 per occurrence in the case of a deceased adult, for loss of society and companionship” to the spouse, children or parents of the deceased, or to minor siblings of the time of the deceased’s death.

29. Is CSA 2010 data admissible?

Likely, yes, because there is no regulation or statutory authority that specifically states that information collected as a result of CSA will, or will not, be admissible in legal proceedings. However, there is no case law on point at this time.

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

Parties must first meet and confer regarding e-discovery issues, including the subject, time, cost, phasing of production, ESI preservation pending discovery, the form or forms in which ESI will be produced, the method for asserting or preserving claims of privilege, and, in certain cases, court appointment of a referee or expert witness to supervise e-discovery. Wis. Stat. § 804.01(2)(e).

A party may make a request to inspect, copy, test or sample any ESI. Wis. Stat. § 804.09(1). The request may, without leave of court, be served upon a party. Id. The request must specify a reasonable time, place, and manner of making the inspection and performing the related acts, and the form or forms in which ESI is to be produced. Id. The responding party may object to a requested form but must state the reasons for objection. Wis. Stat. § 804.09(2)(b)1. If a request or subpoena does not specify a form for producing ESI, the person responding shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. The person responding need not produce the same electronically stored information in more than one form. Wis. Stat. § 804.09(2)(b)2.

Absent exceptional circumstances, a court may not impose sanctions on a party for failing to provide ESI lost as a result of the routine, good-faith operation of an electronic information system. Wis. Stat. § 804.12(4m).

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

Yes. See, e.g., Totsky v. Riteway Bus Services, Inc., 2000 WI 29, 233 Wis. 2d 371, 607 N.W.2d 637; Gage v. Seal, 36 Wis. 2d 661, 154 N.W.2d 354 (Wis. 1967).

32. Are there any rules prohibiting or limiting the use of the reptile theory at trial?
Larson v. Hanson, 207 Wis. 485, 242 N.W. 184 (1932) sets out the Golden Rule in Wisconsin. In Larson, counsel for the plaintiff said to the jury: “There is not a man of you that would trade his left hip for $30,000.” Id. at 489. The defendant objected, and the trial court instructed the jury to ignore the statement. Id. The trial court subsequently set aside the jury verdict as excessive, especially in light of the improper statement to the jury, and ordered a new trial. Id.

On appeal, the Wisconsin Supreme Court affirmed the trial court and held that counsel’s statement clearly constituted an improper argument:

As in the case of the damages, it is not necessary to decide whether, had the trial court approved the verdict, this court would have set aside the verdict because of the improper argument to the jury. Even if this court might have held in such a situation that the immediate instruction of the trial court to disregard the statements avoided the necessity of a reversal, we think there was ground for the trial court to come to the conclusion that his warning to the jury to disregard the statements had not been effective to counteract their prejudicial effect, in view of the extremely high damages that were awarded.

Id.

The subject matter of closing arguments should be the evidence which has been admitted during the course of the trial and the reasonable inferences which can be drawn from such evidence. Affett v. Milwaukee & Suburban Transp. Corp., 11 Wis. 2d 604, 106 N.W.2d 274 (1960). Counsel may not refer to matters which are extraneous to the evidence and which appeal to the prejudice or sympathy of the jury. Speliopoulos v. Schick, 129 Wis. 556, 109 N.W. 568 (1906).

In the same vein as Larson, counsel may not also ask the jury to arrive at a damages amount in a verdict that they would consider satisfactory if they were in the position of the client, as this would be an attempt to “impair the integrity of a verdict.” McCaffery v. Minneapolis, St. Paul & Sault Ste. Marie Ry. Co., 222 Wis. 311, 267 N.W. 326 (1936). The McCaffery court recognized the prejudicial effect of such a tactic.

However, in Rodriguez v. Slattery, 54 Wis. 2d 165, 194 N.W.2d 817 (1972), the Wisconsin Supreme Court recognized that use of the Golden Rule, or appealing to a jury’s passions or prejudices, does not automatically require a new trial; rather, the use’s impact must be considered under the totality of the circumstances. Id. at 819–20.

Generally, it is frowned upon as inappropriate. In Wisconsin it is clearly an improper argument to make to a jury. Its use can warrant ordering a new trial, but not always so. Here the trial court could have ordered a mistrial; whether it should have involves a variety of factors including the nature of the case, the emphasis upon the improper measuring stick, the reference in relation to the entire argument, [and] the likely impact or effect upon the jury. Id. See also Dostal v. Millers Nat. Ins Co., 137 Wis. 2d 242, 404 N.W.2d 90 (Ct. App. 1987) and Burns v. Cress, 119 Wis. 2d 896, 350 N.W.2d 739 (Ct. App. 1984) (both cases concluding that under the
Given the state of case law, it is unclear if Wisconsin courts would find appeals to public safety and endangering the public to be *unfairly* prejudicial under Wis. Stat. § 904.03, such that a mistrial could be ordered in the discretion of the trial court.

**33. What are the jurisdictional limits of the jurisdiction’s civil courts - i.e. Small Claims, District Courts, Superior Court?**

Wisconsin personal injury and tort claims are heard in the small claims civil court if the amount claimed is $5,000 or less. Wis. Stat. § 799.01(cr). Other jurisdictional requirements of the Wisconsin Courts are governed by statute. *See* Wis. Stat. §§ 801.04-07.

**34. Are state judges elected or appointed?**

State judges are elected. The governor appoints judges to fill vacancies, and the appointed judges serve until a successor is elected and qualified. *See* Wis. Const. art. VII, § 9.