

MARYLAND

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1. Identify the venues/areas in your State that are considered dangerous or liberal.

Maryland juries are traditionally more conservative in their verdicts and awards in the western and eastern counties of the state, and more generous in their verdicts and awards in middle municipalities, around the Baltimore-Washington metropolitan area. Some of the state's most litigious municipalities—Baltimore City and Prince George's County, for example—are the most likely to empanel a plaintiff-friendly jury, and located towards the center of the state. Prince George's County, in particular, tends to render larger jury verdicts. The landscape can change quickly, however, and generally tends to become more conservative the further from the center one moves. Baltimore County (surrounding Baltimore City, and a separate municipal entity), for example, tends to be more moderate in its awards than Baltimore City. Similarly, Montgomery County, which neighbors Prince George's County and also shares a border with Washington, D.C., tends to render more conservative jury verdicts.

2. Identify any significant trucking verdicts in your State during 2017-2018, both favorable and unfavorable from the trucking company's perspective.

In the last two years, the largest jury verdict returned in favor of a plaintiff in a trucking incident was \$3,852,192.00 in Baltimore City in a case involving a motorist struck and dragged by a tractor-trailer while parked on the shoulder of an interstate to repair a tire. *Seman v. Brown, et al.*, No. 24-C-2017-003210 (Md. Cir. Ct. for Baltimore City, Nov. 1, 2018). The next highest jury verdict was a sharp decrease to \$500,000.00, rendered in Anne Arundel County, which shares its northern border with Baltimore City. *Kopec v. Diversified Site Works, LLC, et al.*, No. C-02-CV-17-001704 (Md. Cir. Ct. for Anne Arundel Cnty., Sept. 12, 2018). Generally, however, settlements and jury verdicts in trucking cases in Maryland have either been for amounts less than \$50,000.00, or resulted in defense verdicts.

3. Are accident animations and/or computer-generated evidence admissible in your State?

Accident animations and computer-generated evidence are not *per-se* inadmissible, and may be admitted subject to the existing rules of evidence. It should be noted that the Maryland Rules provide for pretrial notice of computer simulations and animations, so that objections may be made and ruled on pretrial. *See* Md. Rule 2-504.3.

4. Identify any significant decisions or trends in your State in the past two (2) years regarding (a) retention and spoliation of in-cab videos and (b) admissibility of in-cab videos.

There have not been any apparent significant recent trends specifically regarding in-cab videos in Maryland.

5. What is your State's applicable law and/or regulation regarding the retention of telematics data, including but not limited to, any identification of the time frames and/or scope for retention of telematics data and any requirement that third party vendors be placed on notice of spoliation/retention letters.

While not specific to telematics data, Maryland follows the traditional rule regarding spoliation, 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.*

6. Is a positive post-accident toxicology result admissible in a civil action?

Md. Code Ann., Cts. & Jud. Proc. § 10-306 (entitled, "Admissibility of intoxication test results"), provides only that in specified "criminal trial[s]," a copy of a report of the results of a test of breath or blood to determine alcohol concentration or drug content, may be "admissible as substantive evidence without the presence or testimony of the technician or analyst who performed the test," when certain requirements are met. *See* Md. Code Ann., Cts. & Jud. Proc. § 10-306(a). However, the Maryland Court of Appeals has held that: "The amount of alcohol in the blood of a drinking driver is admissible in a civil action as well as in a criminal cause as evidence of the degree of the impairment of the driver's normal coordination, faculties, and abilities as a result of the consumption of alcohol." *Nast v. Lockett*, 312 Md. 343, 355 (1988), *overruled on other grounds by Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420 (1992). *See also Hickey v. Kendall*, 111 Md. App. 577 (1996), *aff'd sub nom. Kendall v. Nationwide Ins. Co.*, 348 Md. 157 (1997) (holding in personal injury action following a motor vehicle accident that hospital records concerning the defendant motorist's drug and alcohol use on night when accident occurred, including results of blood serum alcohol test, were admissible within the business records exception to the hearsay rule).

7. Is post-accident investigation discoverable by adverse counsel?

Under Maryland law, documents produced by non-attorneys may enjoy work product privilege. Maryland's work product doctrine provides broad protection from discovery for materials prepared in anticipation of litigation by or for a party or its representative. A party representative includes not only an attorney, but also a consultant, surety, indemnitor, insurer, or agent. *See* Md. Rule 2-402(d). Under Md. Rule 2-402(d), a party may obtain discovery of "documents, electronically stored information, and tangible things prepared in anticipation of litigation or for trial" only if such materials are generally discoverable under Md. Rule 2-402(a) and if the party seeking discovery has "substantial need for the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means." *Id.* Even if the required showing can be made, in ordering discovery of these materials, the court is required to "protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." *Id.*

8. Describe any laws in your State which regulate automated driving systems (autonomous vehicles) or platooning.

Maryland has instituted a "permitting" process to encourage dialogue between entities wishing to test automated vehicles on public roads and the agencies that own and operate those roads. The permit process requires any entity intending to test automated vehicles on Maryland's public roadways to first obtain a permit from the Maryland Department of Transportation Motor Vehicle Administration.

9. Describe any laws or Court decisions in your State which would preclude a commercial driver from using a hands-free device to have a conversation over a cell phone.

In general, it is impermissible for the driver of a motor vehicle to use a handheld telephone while the vehicle is in motion. *See* 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). Additionally, the statute generally prohibiting the use of handheld telephones while driving states that it "does not apply to" the "[u]se of a handheld telephone as a communication device utilizing push-to-talk technology by an individual operating a commercial motor vehicle..." *See id.* at § 21-1124.2(b)(2)(4). 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. *See id.* at § 21-1124.2(c).

10. Identify any Court decisions in your State precluding Golden Rule and/or Reptile style arguments by Plaintiffs' counsel.

Reptile style arguments have not been specifically precluded or prohibited in Maryland. The Maryland Court of Appeals has held that “golden rule” arguments, which “urge jurors to deal with counsel’s clients as they would wish to be dealt with if they were in such client’s position, are improper,” but also held that that the trial judge has discretion to issue a curative instruction rather than to grant a mistrial. *Leach v. Metzger*, 241 Md. 533, 536 (1966). *See also Lawson v. State*, 389 Md. 570, 594-95 (2005) (holding that prosecutor made improper personalizing comments by asking jury to “put [themselves] in the shoes” of relative of child claiming to have been sexually molested).

11. Compare and contrast the advantage and disadvantages of Federal Court versus State Court in your State.

Generally, federal court has the benefit of a larger, more diverse jury pool as prospective jurors are chosen from a jury pool generated by a random selection of citizens from each county in Maryland. In contrast, jurors in Maryland’s state courts must reside in the county/Baltimore City in which they would serve as a juror. Federal court judges are also generally viewed as more willing to grant meritorious dispositive motions, while Maryland state court judges are viewed as less inclined to do so overall.

12. How does your State handle the admissibility of traffic citations (guilty plea, pleas of no contest, etc.) in subsequent civil litigation?

Evidence of payment of a citation for a traffic violation is not admissible in a subsequent civil lawsuit relating to the same accident. *Briggerman v. Albert*, 81 Md. App. 482, 483 (1990). 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.

13. Describe the laws in your State which regulate whether medical bills stemming from an accident are recoupable. In other words, can a plaintiff seek to recover the amount charged by the medical provider or the amount paid to the medical provider? Is there a basis for post-verdict reductions or offsets?

Under Maryland law, both paid and unpaid medical bills can be introduced in order to establish the existence or extent of a plaintiff’s damages. It should be noted, however, that a plaintiff will typically need to provide expert testimony that the plaintiff’s medical bills were reasonable, fair, and necessary for those bills to be admitted into evidence to support an award of special damages. *See, e.g., Desua v. Yokim*, 137 Md. App. 138, 143-44 (2001). In actions for less than \$30,000.00, however, medical bills produced under certain procedures prior to trial can be admitted without the support of a health care provider’s testimony as evidence of the amount, fairness, and reasonableness of the charges for the services or materials provided. *See Md. Code Ann., Cts. & Jud. Proc. § 10-104*. It should be further noted that 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 [or her] injuries from sources unrelated to the tortfeasor.” *Lockshin v. Semsker*, 412 Md. 257, 284-85

(2010). Hence, under Maryland law, the collateral source rule “generally prohibits presentation to a jury of evidence of the amount of medical expenses that have been or will be paid by health insurance.” *Id.* Under this rule, a plaintiff generally may seek to recover the full, reasonable value of the medical services rendered to them. *See id.; Haischer v. CSX Transp., Inc.*, 381 Md. 119, 132 (2004). Generally, there is no basis for a reduction or offset based upon payments from a collateral source due to the collateral source rule.

14. Describe any statutory caps in your State dealing with damage awards.

Maryland currently caps noneconomic damages at \$860,000.00 for claims arising from the same act or omission on or after October 1, 2018, and \$1,290,000.00 for all wrongful death claims with two (2) or more beneficiaries. By statute, the cap on individual claims increases each year by \$15,000 and has done so since inception of the cap.