

## MAINE

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**1. Provide an update on current black box technology and simulations in your State and the legal issues surrounding these advancements.**

There have been no legal issues on black box technology and simulations in Maine. So long as evidence is offered by a qualified expert and will be helpful to the factfinder, it is admissible.

**2. Besides black box data, what other sources of technological evidence can be used in evaluating accidents and describe the legal issues in your State involving the use of such evidence.**

Other technological evidence used in evaluating Maine accidents include simulations and recreations. So long as evidence is offered by a qualified expert and will be helpful to the factfinder, it is admissible.

**3. Describe the legal issues in your State involving the handling of post-accident claims with an emphasis on preservation / spoliation of evidence, claims documents, dealing with law enforcement early and social media?**

Regarding post-accident claims, when there is a potential issue regarding preservation/spoliation of evidence, law enforcement officers and expert witnesses are engaged early to ensure that evidence is preserved. For example, this could include obtaining surveillance footage of an accident before it is auto-recorded over by a store's surveillance system.

Preservation of social media evidence is generally left to the client. Although it has not yet been an issue to my knowledge in this area of the law, some courts in Maine have been concerned with the authentication of social media posts and messages and how they are admissible in light of the best evidence rule.

In Maine, claims documents are protected from discovery because they are presumed be prepared in anticipation of litigation. *See Harriman v. Maddocks*, 518 A.2d 1027, 1034

(1986). As such, claims documents only need to be produced when a party shows a “particularized need” under Maine Rule of Civil Procedure 26(b)(3). *Id.*

**4. Describe the legal considerations in your State when defending an action involving truck drivers who may be considered Independent Contractors, Borrowed Servants or Additional Insureds?**

Each of these scenarios is treated differently. Independent contractors are generally addressed in the workers’ compensation realm. See *Timberlake v. Frigon & Frigon*, 438 A.2d 1294 (Me. 1982). Maine does not follow the borrowed servant doctrine. Additional insureds depend on what the policy/contract reflects.

**5. What is the legal standard in your state for allowing expert testimony on mild traumatic brain injury (mTBI) claims and in what instances have you had success striking experts or claims?**

The legal standard for allowing expert testimony on mild traumatic brain injury (mTBI) is no different than the standard for allowing any other type of expert testimony. In Maine, *State v. Williams*, 388 A.2d 500 (1978), governs the admissibility of expert testimony. So long as the expert is properly qualified, expert testimony is admissible if it sufficiently reliable and will assist the trier of fact in understanding the evidence or determining a fact at issue.

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

A positive post-accident toxicology result is not likely admissible. Such a result may be admissible if another motor vehicle regulation or other law has been violated, or if it is being offered as evidence of a violation of a safety statute.

**7. What are some considerations for federally-mandated testing when drivers are Independent Contractors, Borrowed Servants, or Additional Insureds?**

This depends on the policy of the company using the driver an independent contractor, borrowed servant, or additional insureds. Maine does not recognize the borrowed servant doctrine. Additional insureds must be tested under the federal truck driver laws.

**8. Is there a mandatory ADR requirement in your State and are any local jurisdictions mandating cases to binding or non-binding arbitration?**

There is a mandatory ADR requirement in Maine. Nearly all cases use mediation as DR. No local jurisdictions are mandating cases to binding or non-binding arbitration.

**9. Can corporate deposition testimony be used in support of a motion for summary judgment or other dispositive motion?**

Yes.

**10. What are the rules in your State for contribution claims and does the doctrine of joint and several liability apply?**

The doctrine of joint and several liability applies in Maine. *See* 14 M.R.S. §§ 163, 156. Comparative negligence is recognized in Maine. *See* 14 M.R.S. § 156. Maine is a modified comparative negligence state. As such, if a plaintiff is more than 50% at fault, he may not recover. If he is less than 50% at fault the jury may reduce his damages to the extent it thinks it is just and equitable.

**11. What are the most dangerous/plaintiff-friendly venues in your State?**

Oxford County, Washington County, and Federal Court.

**12. Is there a cap on punitive damages in your State?**

No.

**13. Admissible evidence regarding medical damages – can the plaintiff seek to recover the amount charged or the amount paid?**

There is no uniform standard in Maine for whether the plaintiff may seek to recover the amount charged or the amount paid as medical damages. Each judge and jurisdiction handles this issue differently. Some judges allow for the admission of the “retail” amount, or the total amount charged on behalf of the plaintiff. Other judges allow admission of a “discounted” amount, or the amount actually paid by the plaintiff, reduced by the amount paid by a taxpayer funded program, such as Mainecare. Still other judges will allow for the admission of both figures.