

MAINE

- 1. What are the legal considerations in your State governing the admissibility or preventability in utilizing the self-critical analysis privilege and how successful have those efforts been?**

Aside from the statutory peer review privilege applicable to medical providers, 24 M.R.S. § 2510-A (2020), Maine does not have any authority governing the self-critical analysis privilege in the transportation context.

- 2. Does your State permit discovery of 3rd Party Litigation Funding files and, if so, what are the rules and regulations governing 3rd Party Litigation Funding?**

In Maine, discovery relating to third-party litigation funding is permissible; however, it is only admissible to the extent that it may reasonably raise an inference of bias on behalf of the Plaintiff.

- 3. Who travels in your State with respect to a Rule 30(b)(6) witness deposition; the witness or the attorney and why?**

Typically—prior to the COVID-19 pandemic—the attorney noticing the Rule 30(b)(6) deposition travels to the witness’s location.

- 4. What are the benefits or detriments in your State by admitting a driver was in the “course and scope” of employment for direct negligence claims?**

There are no benefits or detriments to such an admission when there is no other claim involved. However, where there is a claim against both the driver and the employer, settlement with the driver would foreclose any liability against the employer, as the employer’s liability is only vicarious.

- 5. Please describe any noteworthy nuclear verdicts in your State?**

There have not been any nuclear verdicts in the transportation context

- 6. What are the current legal considerations in terms of obtaining discovery of the amounts actually billed or paid?**

In Maine, a plaintiff may recover for medical expenses “includ[ing] the reasonable value of medical services . . . shown by the evidence to have been reasonably required and actually used in treatment.” The Maine Supreme Judicial Court has not addressed the issue of whether the amount billed or the amount paid is admissible as evidence of the reasonable value of the medical services rendered to a patient. For that reason, there is a judicial split among Maine’s trial court’s regarding the admissibility of medical expenses: courts have decided: (1) to admit only the actual amount paid and accepted by the provider; (2) to admit only the amount billed by the provider; or (3) to admit both the amount billed and the amount actually paid and accepted by the provider. Therefore, discovery on this issue largely depends on which trial court justice you receive.

7. How successful have efforts been to obtain the amounts actually charged and accepted by a healthcare provider for certain procedures outside of a personal injury? (e.g. insurance contracts with major providers)

Maine has not been a leader in dealing with what insurance companies negotiate with healthcare providers.

8. What legal considerations does your State have in determining which jurisdiction applies when an employee is injured in your State?

Pursuant to Maine's choice-of-law rules, the "state that has the more significant contact and more substantial relationships to the occurrence and the parties should enjoy the application of its laws," although Maine courts apply Maine's statute of limitations.

9. What is your State's current position and standard in regards to taking pre-suit depositions?

Pre-suit depositions are governed by Maine Rule of Civil Procedure 27(a), which requires the party seeking the deposition to file a petition establishing that the deposition would "prevent a failure or delay in justice."

10. Does your State have any legal considerations regarding how long a vehicle/tractor-trailer must be held prior to release?

A vehicle/tractor trailer must be held for a reasonable period of time, and all relevant parties must be notified that the vehicle/tractor trailer is being held, in order to prevent any spoliation of evidence

11. What is your state's current standard to prove punitive or exemplary damages and is there any cap on same?

In order to establish entitlement to punitive damages, a plaintiff must show that the defendant acted with malice or deliberate conduct so outrageous that malice can be implied.

12. Has your state mandated Zoom trials? If so, what have the results been and have there been any appeals.

No, Maine has not mandated Zoom trials. Non-family civil matters are not expected to be heard until sometime in 2021 (or 2022), and some in-person criminal trials have been held.

13. Has your state had any noteworthy verdicts premised on punitive damages? If so, what kind of evidence has been used to establish the need for punitive damages? Finally, are any such verdicts currently up on appeal?

Maine's seminal case on punitive damages is Tuttle v. Raymond, 494 A.2d 1353 (Me. 1985), which established that a plaintiff must establish—by clear and convincing evidence—that the defendant acted with malice or deliberate so outrageous that malice can be implied. There are not any punitive damage verdicts currently on appeal.