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Maryland

1. What are the statute of limitations for tort and contract actions as they relate to the transportation industry.

Bodily Injury	Three (3) years Md. Code, Cts. & Jud. Proc. § 5–101
Property Damage	Three (3) years Md. Code, Cts. & Jud. Proc. § 5–101
Contracts (written) For Transportation Matters	Three (3) years Md. Code, Cts. & Jud. Proc. § 5–101
Contracts (oral) For Transportation Matters	Three (3) years Md. Code, Cts. & Jud. Proc. § 5–101
Fraud	Three (3) years Md. Code, Cts. & Jud. Proc. § 5–101
Wrongful Death	Three (3) years Md. Code, Cts. & Jud. Proc. § 3–904(g)

2. What effects, if any, has the COVID Pandemic had on tolling or extending the statute of limitation for filing a transportation suit and the number of jurors that are sat on a jury trial.

By administrative orders issued by the Maryland Court of Appeals, the statute of limitations was tolled, effective March 16, 2020, by the number of days that courts were closed to the public due to COVID-19. *See* the Twelfth Revised Administrative Order "on the Emergency Tolling or Suspension of Statutes of Limitations and Statutory and Rules Deadlines related to the Initiation of Matters and Certain Statutory and Rules Deadlines in Pending Matters", dated March 1, 2022. When courts were reopened to the public on July 20, 2020, the filing deadlines to initiate matters were extended by an additional 15 days. *Id.*

Civil juries must have at least six (6) jurors, and COVID-19 has not affected that requirement.

3. Does your state recognize comparative negligence and if so, explain the law.

No, Maryland is a contributory negligence jurisdiction.

4. Does your state recognize joint tortfeasor liability and if so, explain the law.

In tort cases, Maryland follows the doctrine of joint and several liability. "Each individual is severally liable for the entire damage, regardless of whether the conduct of one directly caused more or less injury compared to that of another, because they acted together with a common purpose resulting in responsibility for the common injury." *Gables Construction, Inc. v. Red Coats, Inc.*, 468 Md. 632, 649

(2020) (emphasis added) (quoting *Mercy Med. Ctr. V. Julian*, 429 Md. 348, 354 (2012)). There is a right to contribution among joint tort-feasors for amounts paid beyond their *pro rata* share of the common liability. *See* Md. Code, Cts. & Jud. Proc. § 3–1402; *Owens-Illinois, Inc. v. Cook*, 386 Md. 468 (2005); *Parler & Wobbler v. Miles & Stockbridge*, 359 Md. 671 (2000). The Maryland Uniform Contribution Among Joint Tort-Feasors Act provides for a "right of contribution … among joint tort-feasors," *i.e.*, "two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them." Md. Code, Cts. & Jud. Proc. §§ 3–1401, 3–1402. Contribution may apply in cases of common liability, with joint tort-feasors responsible for the same damages "even though their liability may rest on different grounds." *Parler & Wobbler*, 359 Md. at 687. Maryland precedent provides that a party may qualify as a joint tort-feasor upon adjudication as liable or upon conceding its own liability. *See Martinez v. Lopez*, 300 Md. 91, 94–95 (1984). Without an admission or adjudication of liability, a party who enters into a release is deemed a volunteer, not a joint tort-feasor. *See Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 529–30 (2011).

5. **Are either insurers and/or insureds obligated to provide insurance limit information pre-suit and if so, what is required.**

If a claimant provides certain information to an insurer, under § 10–1102 of the Md. Code, a claimant pre-suit may obtain documentation of the applicable limits of coverage in any automobile insurance policy under which the insurer may be liable to "(1) satisfy all or part of the claim; or (2) indemnify or reimburse for payments made to satisfy the claim." The claimant must provide the insurer with "(1) the date of the alleged tort; (2) the name and last known address of the alleged tortfeasor; (3) a copy of any vehicle accident report, police report, or other official report concerning the alleged tort, if available; (4) the insurer's claim number, if available; and (5) a letter from an attorney admitted to practice law in the State certifying that: (i) the attorney has made reasonable efforts to investigate the underlying facts of the claim; and (ii) based on the attorney's investigation, the attorney reasonably believes that the claim is not frivolous." Md. Code, Cts. & Jud. Proc. § 10–1103. If the claim is brought by an estate or beneficiary, additional documents must be provided to the insurer for the estate or beneficiary to obtain the applicable policy's insurance limits. *See* Md. Code, Cts. & Jud. Proc. § 10–1104.

There is no requirement under Maryland law for an insured to provide insurance limit information pre-suit.

6. **Does your state have any monetary caps on compensatory, exemplary or punitive damages.**

Maryland currently caps non-economic damages at $905,000 for personal injury lawsuits, and caps non-economic damages at $1,357,500 for wrongful death claims with two (2) or more beneficiaries. By statute, the cap on individual claims increases each year by $15,000. The cap on non-economic damages in personal injury actions is identified under § 11–108(b)(2) of the Cts. & Jud. Proc. Article of the Maryland Code. The cap on non-economic damages in wrongful death actions is identified under § 11–108(b)(3)(ii). There is no cap on economic or punitive damages in Maryland.

7. **Has your state recently implemented any tort reforms which may affect transportation lawsuits or is your state planning to, and if so explain the reforms.**

The primary tort reform issue that affects transportation lawsuits in Maryland is the annual increase in the cap on non-economic damages in personal injury and wrongful death lawsuits. The $15,000 annual increase of the non-economic damages cap impacts companies who are self-insured, and employ drivers as part of that company's business. The non-economic damages cap is not a particularly recent measure, as § 11–108 of the Cts. & Jud. Proc. Article was most recently amended in 2005. However, these businesses that are self-insured, or otherwise maintain a general liability policy that carries a high self-insured retention must be cognizant of the annual increase in the non-economic damages cap.

8. How many months generally transpire between the filing of a transportation related complaint and a jury trial.

In Maryland state courts, due to the case backlog caused by the COVID-19 pandemic, jury trials for transportation related complaints will likely be held more than one (1) year after the filing of the complaint. In fact, depending on the county, a jury trial may not even transpire until more than two (2) years after the suit was initiated. Maryland courts have prioritized holding jury trials for criminal matters, instead of civil matters, in order to resolve a backlog of criminal matters in which the criminal defendant is incarcerated prior to trial.

9. When does pre-judgment interest begin accumulating and at what percent rate of interest.

When pre-judgment interest is recoverable, the interest begins accruing at the time of the lawsuit. However, "interest is not permitted on unliquidated claims, which are typically tort claims." *Tricat Industries, Inc. v.* Harper, 131 Md.App. 89, 123 (2000). "[W]here the recovery is for bodily harm, emotional distress, or similar intangible elements of damage not easily susceptible of precise measurement, the award itself is presumed to be comprehensive, and prejudgment interest is not allowed". *Baltimore County, Maryland v. Aecom Services, Inc.*, 200 Md.App. 380, 424 (2011) (quoting *Buxton v. Buxton*, 363 Md. 634, 656–57 (2001)). In transportation-related matters, pre-judgment interest is typically not recoverable. However, if the damages in a case fall somewhere between an unliquidated claim, and a claim where prejudgment interest is allowed as a matter of right, such as in a contract dispute, "pre-judgment interest is within the discretion of the trier of fact." *Aecom*, 200 Md.App. at 424 (quoting *Buxton*, 363 Md.App. at 657).

There is a narrow exception under which pre-judgment interest is allowed in personal injury actions arising from operating a motor vehicle if the court "finds that the defendant caused unnecessary delay in having the action ready or set for trial." Md. Code, Cts. & Jud. Proc. § 11–301(a). For these instances, the court can assess pre-judgment interest at a rate of not more than ten percent. *Id.* Notably, state government personnel are immune from pre-judgment interest. *See* Md. Code, Cts. & Jud. Proc. § 5–522(a)(2).

10. What evidence at trial are the parties allowed to enter into evidence concerning medical expense related damages.

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 injuries from sources unrelated to the tortfeasor." *Lockshin v. Semsker*, 412 Md. 257, 284–85 (2010). As a result, 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 the collateral source rule, a plaintiff generally may seek to recover the full, reasonable value of the medical services rendered to the plaintiff. *Id.*; and *see also Haischer v. CSX Trans., Inc.*, 381 Md. 119, 132 (2004). Maryland has followed the collateral source rule since 1899. *See City Pass Ry. Co. v. Baer*, 90 Md. 97 (1899) (holding, in a suit for injuries sustained while attempting to board a trolley car, that sick benefits received by plaintiff from a source other than from defendant were not to be considered by the jury when rendering their verdict).

"The collateral source rule prohibits a defendant in a medical malpractice action from introducing evidence that the plaintiff has or will recover his medical expenses from sources unrelated to the tortfeasor, such as a private insurer, government insurance (Medicare), liability insurance, worker's compensation, and the like. Consequently, actual or possible recovery of medical expenses from a collateral source may not be considered in awarding damages." *Narayen v. Bailey*, 130 Md.App. 458, 466 (2000). The Maryland Court of Appeals has also precluded, under the collateral source rule, the presentation of evidence as to plaintiff's receipt of disability and retirement benefits. *Eastern Shore Title Company v. Ochse*, 453 Md. 303, 341 (2017).

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 for special damages. *See, e.g, Desua v. Yokim*, 137 Md.App. 138, 143–44 (2001). In actions for less than $30,000 in claimed damages, 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, Cts. & Jud. Proc. § 10–104.

11. Does your state recognize a self-critical analysis or similar privilege that shields internal accident investigations from discovery?

The self-critical analysis privilege has not been recognized in Maryland state court. However, the privilege has been applied in local federal court. *See Brem v. DeCarlo, Lyon, Hearn & Pazourek, P.A.*, 162 F.R.D., 101–02 (D. Md. 1995).

Otherwise, internal accident investigation documents may be protected under the work product doctrine. 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). It is important to keep in mind however that In Maryland, the party opposing production of documents bears the burden of demonstrating that they were prepared in anticipation of litigation, as opposed to being prepared in the ordinary course of business. *Kelch v. Mass Transit Admin.*, 287 Md. 223, 229 (1980).

Under Md. Rule 2–402(d), a party may obtain discovery of "documents, electronically stored information, and tangible things prepared in anticipation of litigation nor for trial" only if (1) such documents are generally discoverable under Md. Rule 2–402(a); and (2) if the party seeking discovery has a "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." Even if the required showing is made under Maryland Rule 2–402(d), when the court orders production of these materials, the court is required under Maryland law 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."

12. Does your state allow independent negligence claims against a motor carrier (i.e. negligent hiring, retention, training) if the motor carrier admits that it is vicariously liable for any fault or liability assigned to the driver?

When a motor carrier and/or employer admits agency of its driver, such as admitting that a driving employee was acting within the scope of employment, the Maryland Court of Appeals has held that it is "quite unnecessary to pursue the alternative theory" of negligent hiring. *Houlihan v. McCall*, 197 Md. 130, 137–38 (1951). Instead it is only necessary for the plaintiff to prove that the driver's negligence caused the motor vehicle accident. *Id.* In *Houlihan*, plaintiffs proceeded on a negligence claim against the driver, and proceeded on a negligence claim against the driver's employer "in selection or retaining a driver known to be incompetent and reckless." *Id.* at 137.

The *Houlihan* opinion also held that the trial court erred in allowing the plaintiff to present evidence of the defendant driver's driving record in support of that plaintiff's negligent entrustment claim against the driver's employer, as prior instances of the driver's negligence allow a jury to draw improper inferences that because the defendant driver was negligent on prior occasions, he was therefore negligent at the time of the accident. Houlihan, 197 Md. at 140–41. The Court of Appeals ultimately reversed the judgment entered against the driver and his employer and awarded a new trial. *Id.* at 141.

The Maryland Court of Appeals' logic behind the *Houlihan* opinion also applies to negligent retention and

negligent training claims against the motor carrier company that employed the driver. This is because the court emphasized that allowing a plaintiff to proceed against the driver's employer under both vicarious liability through the doctrine of *respondeat superior*, as well as through an alternative theory of liability such as negligent entrustment, creates a pathway for the introduction of unfairly prejudicial evidence in support of the plaintiff's negligence claim against the driver defendant. *Houlihan*, 197 Md. at 140–41. Ultimately, in Maryland a motor carrier has a viable argument that any negligent hiring, negligent retention or negligent training claim pleaded against the motor carrier should be dismissed if the motor carrier is admitting that it is vicariously liable for any liability assigned to the driver.

13. Does your jurisdiction have an independent claim for spoliation? If not, what are the sanctions or repercussions for spoliation?

Maryland does not allow independent claims against responsible parties for spoliation. *See Goin v. Shoppers Food Warehouse Corp.*, 166 Md.App. 611, 618 (2006). Recent Maryland appellate court decisions have affirmed that there is no separate cause of action for a spoliation claim in Maryland. *Cumberland Insurance Group v. Delmarva Power*, 226 Md.App. 691, 698–99 (2016) ("[w]e have concluded in other contexts that destruction of evidence is not an independent tort that itself gives rise to a cause of action"); and *see also O'Reilly v. Tsottles*, 2021 WL 424415, at *9 (D.Md. Feb. 8, 2021) (slip copy) (the court dismissed counts of spoliation of evidence "and related conspiracy and aiding and abetting claims, on the basis that they asserted claims not recognized in Maryland").

In Maryland, there is a general duty to preserve evidence that may be relevant to a later claim, even absent a specific demand. *Cost v. State*, 417 Md. 360, 370 (2010). Spoliation "gives rise to inferences or presumptions unfavorable to the spoliator, the nature of the inference being dependent upon the intent or motivation of the party. Unexplained and intentional destruction of evidence by a litigant gives rise to an inference that the evidence would have been unfavorable to his cause, but would not in itself amount to substantive proof of a fact essential to his opponent's cause." *Miller v. Montgomery Cty.*, 64 Md.App. 202, 214 (1985).

When a trial court determines that spoliation occurred, the court "has wide discretion to choose a sanction." *Klupt v. Krongard*, 126 Md.App. 179, 201 (1999). In *Klupt*, the Maryland Court of Special Appeals adopted a test applied by the United States District Court for the District of Maryland to determine whether sanctions are appropriate:

(1) An act of destruction;

(2) Discoverability of the evidence;

(3) An intent to destroy the evidence; and

(4) Occurrence of the act at a time after suit has been filed, or, if before, at a time when the filing is fairly perceived as imminent.

Id. at 199 (citing *White v. Office of the Pub. Def. for the State of Md.*, 170 F.R.D. 138, 147–48 (D.Md. 1997)).

Negative inference instruction

Maryland permits a negative inference jury instruction for spoliation of evidence. In *Miller*, the Court of Special Appeals of Maryland stated that "the remedy for alleged spoliation would be appropriate jury instructions as to permissible inferences …" *Miller*, 64 Md.App. at 215. *See Cost*, 417 Md. at 370 ("[i]n the civil context, we give a jury instruction for the 'spoliation of evidence' where a party has destroyed or failed to produce evidence.") The instruction does not require that a jury make an adverse inference in situations

involving the spoliation of evidence, rather it merely permits such an inference. *Cost*, 417 Md. at 370. Such an instruction is designed to draw a jury's attention to a simple, straightforward premise: that "one does not ordinarily withhold evidence that is beneficial to one's case." *Anderson v. Litzenberg*, 115 Md.App. 549, 562 (1997).

Dismissal

Maryland courts have upheld a trial court's dismissal of the offending party's claims as the sanction for discovery abuse. *Peck v. Toronto*, 246 Md. 268, 270, cert. denied, 389 U.S. 868 (1967); *Rubin v. Gray*, 35 Md.App. 399, 400 (1977). Even if another trial court may have imposed a more lenient sanction for spoliation, the Maryland Court of Special Appeals stated that fact "does not mean that the trial court abused its discretion for deciding not to fashion a more lenient result." *Cumberland*, 226 Md.App. at 712.

For example, in *Cumberland*, a 2018 Maryland Court of Special Appeals opinion, the spoliation that occurred in that case was not obviously malicious, as a property insurance company demolished a property damaged in an electrical fire before the electric company had an opportunity to inspect the damaged property. *Cumberland*, 226 Md.App. at 694–96. The property insurance company eventually filed a subrogation claim against the electric company, and in response the electric company filed a motion for summary judgment based upon the insurance company's destruction of evidence. *Id.* at 693 and 696. The court found that the property insurance company was at fault for not stopping the demolition, and the destruction certainly prejudiced the electric company by leaving its experts "with no evidence to rule out or rebut *any* of [the insurance company's] theories" of liability. *Id.* at 706–12. "[W]hile it's true that [the insurance company] did not directly engineer the demolition, it was heavily involved in, aware of, and financed" the demolition process. *Id.* at 709. The problem ultimately was a failure by the insurance company to properly provide the electrical company with proper notice that the demolition was going to occur. *Id.* at 707–09.

Cumberland is in contrast to the clearly intentional destruction of evidence in *Klupt*, where the violating party destroyed tapes of recorded telephone conversations that were material to the lawsuit with a hammer, and wrote dummy memoranda which he failed to produce. *Klupt*, 126 Md.App. at 188–90 and 199. The violating party even confessed during "his deposition testimony, he destroyed the tapes as much as six months *after* the [opposing party] had requested" production of the tapes. *Id.* at 201. In 2018, the court characterized the spoliation that was evident in *Klupt* as "clear, willful, and contumacious destruction of discoverable evidence." *Peterson*, 238 Md.App. at 53 (citing *Klupt*, 126 Md.App. at 203).

Other sanctions

Maryland courts measure their sanctions for spoliation of evidence against the prejudice to the other party. *White*, 170 F.R.D. at 152. An example of other sanctions that have been handed down as a result of spoliation by a party include the entry of a default judgment for violations of discovery rules. *See Lynch v. R.E. Tull & Sons, Inc.*, 251 Md. 260, 260–62 (1968); and *Pacific Mortgage & Inv. Group, Ltd. v. Horn*, 100 Md.App. 311, 324–26 (1994). "The Maryland Rules do not require that a showing of prejudice is necessary to support the entry of a default judgment for failure to comply with the discovery rules. In fact, Md. Rule 2–433(a) clearly provides that once the trial court finds a failure of discovery, it may impose various sanctions." *Billman v. State of Maryland Deposit Ins. Fund Corp.*, 86 Md.App. 1, 11 (1991). However, "generally there exists an element of defiance and/or recalcitrance where the severe sanction of default is imposed." *Lakewood Engineering and Mfg. Co., Inc. v. Quinn*, 91 Md.App. 375, 387 (1992).