

# Maryland Civil Liability Law Summary



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**MARYLAND CIVIL LIABILITY LAW SUMMARY**

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**Introduction**

This is a basic outline of Maryland law. The information contained herein is intended only as a general guide. The comments are not exhaustive and require explanation or clarification. Please do not rely on these comments as legal advice for any particular case or situation. Please consult an attorney for specific legal advice.

**Overview of Maryland Court Structure**

The Court of Appeals is the State's highest court. MD. CODE ANN., CTS. & JUD. PROC. § 1-301. The Court of Appeals selects the civil cases it wishes to hear. *Id.* at § 12-203. Generally, all seven judges hear each case. The Court of Special Appeals is an intermediate court of appeal consisting of fifteen judges, who usually sit on panels of three. *Id.* at §§ 1-401, 1-402(a), 1-403(b). The Court of Special Appeals has appellate jurisdiction over any final or reviewable judgment of the Circuit Court or Orphan's Court. *Id.* at § 12-308. There is an automatic right of appeal from a final judgment of the Circuit Court to the Court of Special Appeals. *Id.* at § 12-301.

Maryland has two levels of trial courts: the Circuit and District Courts. The Orphan's Court is a specialized court that handles wills, estates, and other probate matters. The Circuit Courts are divided into eight judicial circuits, and there is one Circuit Court in each of the 23 counties and Baltimore City. Similarly, the District Courts are divided into twelve districts, and there is at least one District Court judge presiding in each of the 23 counties and Baltimore City. There are 34 District Court locations statewide. The Circuit Courts have original jurisdiction over all actions except those that fall within the exclusive jurisdiction of the District Courts, such as landlord-tenant cases, motor vehicle violations, and misdemeanors. MD. CODE ANN., CTS. & JUD. PROC. §§ 1-501, 4-401. The Circuit Courts have concurrent jurisdiction with the District Courts where the amount in controversy exceeds \$5,000 but is not more than \$30,000. *Id.* at § 4-402. The Circuit Court has exclusive jurisdiction over all civil claims over \$30,000. *Id.* at § 4-401. A case may be removed from the District Court to the Circuit Court for a jury trial where the amount in controversy exceeds \$15,000. *Id.* at § 4-402(e)(1).

A party in a civil case may appeal from a final judgment entered in the District Court. MD. CODE ANN., CTS. & JUD. PROC. § 12-401(a). The appeal is taken to the Circuit Court of the county (or Baltimore City) in which the judgment was entered. *Id.* at § 12-403. In cases where the amount in controversy exceeds \$5,000, the appeal will be heard on the record made in the District Court. *Id.* at § 12-401(f). In every other case, an appeal from the District Court is tried *de novo*. *Id.* An appeal from the Circuit Court's decision in civil cases on appeal from the District Court is to the Court of Appeals by petition for certiorari. *Id.* at §§ 12-305, 12-307.

**Selected Torts**

**I. Negligence**

The elements of negligence are: “(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant’s breach of the duty.” *Warr v. JMGM Group, LLC*, 433 Md. 170, 181, 70 A.3d 347, 353 (2013).

**II. Premises Liability**

*A. In General*

Occupiers of real estate, such as owners, landlords, and lessees, may be liable for personal injury that occurs on their premises, such as slip and fall accidents, lead-based paint poisoning, and criminal attacks by others. The duty they owe to those on the premises depends upon their status on the property. *Baltimore Gas & Elec. Co. v. Flippo*, 348 Md. 680, 688-89, 705 A.2d 1144, 1148 (1998). The four different classifications and related duties are:

<b>Status</b>	<b>Definition</b>	<b>Duty</b>
<b>Invitee</b>	person who is invited or permitted to be on property for purposes related to business of the occupant	to use reasonable care to see that those portions of the property which the invitee may be expected to use are safe
<b>Social Guest</b>	person permitted on the property for no business purpose but as the express or implied guest	to use reasonable care to make the premises safe or to warn of known dangerous conditions that cannot reasonably be discovered by guest
<b>Bare Licensee</b>	person on the property with consent but not at the invitation of the owner and who is there to serve his/her own interest	no duty owed to bare licensee except to refrain from willful injury or entrapment
<b>Trespasser</b>	person on the property without consent	no duty owed to trespasser except to refrain from willful injury or entrapment

### B. *Lead Paint Poisoning*

Landlords have been stripped of many traditional premises liability defenses by the appellate courts in lead-based paint poisoning cases, particularly in Baltimore City, where virtually all such cases are litigated. Currently, the plaintiff is only required to prove that he/she resided at or regularly visited the subject property and that, during his/her time at the property, he/she was exposed to chipping and peeling paint. The notice requirement has been eliminated; the plaintiff is no longer required to prove that the landlord had notice of chipping, peeling or flaking paint. *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70, 88-89, 835 A.2d 616, 627 (2003), *aff'd*, *Polakoff v. Turner*, 385 Md. 467, 869 A.2d 837 (2005). The landlord has an affirmative duty to inspect under the Baltimore City code. Further, the plaintiff does not need to show that the defendants knew that the paint contained lead pigment. *Brown v. Dermer*, 357 Md. 344, 362, 744 A.2d 47, 57 (2000).

However, plaintiffs still must prove exposure and causation. Proving exposure and causation requires plaintiffs to prove three separate links: (1) the link between the defendant's property and the plaintiff's exposure to lead (the "source"); (2) the link between exposure to lead and the elevated blood lead levels ("source causation"); and (3) the link between the elevated blood lead levels and the injuries allegedly suffered by the plaintiff ("medical causation"). *Rogers v. Home Equity USA, Inc.*, 453 Md. 251, 265, 160 A.3d 1207, 1215 (2017); *Ross v. Hous. Auth. of Baltimore City*, 430 Md. 648, 668, 63 A.3d 1, 12 (2013). "[C]ausation evidence that is wholly speculative is not sufficient." *Dow v. L & R Properties, Inc.*, 144 Md. App. 67, 75, 796 A.2d 139, 144 (2002); *West v. Rochkind*, 212 Md. App. 164, 170-171, 66 A.3d 1145, 1149 (2013).

Plaintiffs often resort to circumstantial evidence when they lack direct evidence to establish the "source" and "source causation" links. Maryland courts have recognized two ways for plaintiffs to satisfy these links through circumstantial evidence – the "process of elimination" method or the "rule in" method. *Rogers*, 453 Md. at 265-66, 160 A.3d 1215-16. The "process of elimination" method requires plaintiffs to prove that the subject property is the only possible source of the plaintiff's lead exposure. *Id.*; *Dow*, 144 Md. App. at 75, 796 A.2d at 144 (2002). The *Dow* Court held that, **if** there is testimony of chipping and peeling paint **and** there is no other possible source of lead poisoning, *i.e.*, spending time/living anywhere else, **coupled with** the inference that homes built before 1950 often contain lead-based paint, one can "support an inference that the paint in question contained lead." *Id.* 144 Md. at 76, 796 A. 2d at 144 (emphasis added). The "rule in" method allows plaintiffs to prove causation and exposure even where there are multiple potential sources if the plaintiffs can establish that it is reasonably probable that the subject property was a substantial contributing factor to the lead poisoning. *Hamilton v. Kirson*, 439 Md. 501, 527-30, 439 A.3d 714, 729-731 (2014).

Lead paint plaintiffs typically join their negligence claims with claims for violations of the Maryland Consumer Protection Act, MD. CODE ANN., COM. LAW § 13-301 *et seq.* These claims require evidence that "at the inception of the lease, the landlord made material

misstatements or omissions, which either had the tendency to or, in fact, did, mislead the tenant.” *Benik v. Hatcher*, 358 Md. 507, 531, 750 A.2d 10, 23 (2000).

## **Tort Defenses**

### **I. Contributory Negligence**

Maryland is one of five states where the plaintiff’s contributory negligence is a complete defense to liability for negligence. *Harrison v. Montgomery County Bd. of Educ.*, 295 Md. 442, 456 A.2d 894 (1983). In 2013, the Court of Appeals declined to abandon contributory negligence in favor of some form of comparative negligence. *Coleman v. Soccer Assoc. of Columbia*, 432 Md. 679, 69 A.3d 1149 (2013).

The defense of contributory negligence is unavailable to defendants in three circumstances:

- (1) Strict products liability actions. *Montgomery County v. Valk Mfg. Co.*, 317 Md. 185, 188, 562 A.2d 1246, 1247 (1989); *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581, 597, 495 A.2d 348, 356 (1985).
- (2) Actions based on intentional torts, such as assault or battery. *State Farm Mut. Auto Co. v. Hill*, 139 Md. App. 308, 316–18, 775 A.2d 476, 481–82 (2001).
- (3) Claims brought by children less than five years old. *Taylor v. Armiger*, 277 Md. 638, 649, 358 A.2d 883, 889 (1976).

Note that children under the age of four are deemed incapable of contributory negligence. *Miller v. Graff*, 196 Md. 609, 620, 78 A.2d 220, 224 (1951). Children who are five years old or older may be contributorily negligent, but children are “held only to that measure of care which children of the same age and intelligence would be expected to exercise under similar circumstances.” *Taylor v. Armiger*, 277 Md. 638, 649-50, 358 A.2d 883, 889-90 (1976). A parent’s negligence may not be imputed to the minor. MD. CODE ANN., CTS. & JUD. PROC. § 10-910.

### **II. Assumption of Risk**

Assumption of risk is a complete bar to liability. The three elements to the defense of assumption of risk are that the plaintiff: (1) knew of the risk of danger; (2) appreciated that risk; and, (3) voluntarily confronted the risk of danger. *American Powerlifting Ass'n v. Cotillo*, 401 Md. 658, 668, 934 A.2d 27, 33-34 (2007).

### III. Employer's Defense That Workers' Compensation Is the Sole Remedy Against an Employer

The Maryland Workers' Compensation Act, MD. CODE ANN., LAB. & EMPL. § 9-101 *et seq.*, is the exclusive remedy for injured workers against their employers and no action at law will lie. *Id.* at §9-509(a). Maryland differs from many states in that fellow or co-employees are subject to suit and are not protected by this defense. *Hill v. Knapp*, 396 Md. 700, 711, 914 A.2d 1193, 1199 (2007).

If the injured worker's employer does not purchase workers' compensation insurance, the worker may recover benefits from his "statutory employer" in the right circumstances. The Statutory Employer Doctrine is derived from the Workers' Compensation Act. MD. CODE ANN., LAB. & EMPL. §9-508. A "statutory employer" is defined as:

1. A principal/prime/general contractor;
2. Who has contracted to perform work;
3. Which is part of his trade, business or occupation; and
4. Who has contracted with a different party for that party to act as a subcontractor of all or part of the work required by the initial contract.  
*Honaker v. W.C. & A.N. Miller Dev. Co.*, 278 Md. 453, 460, 365 A.2d 287, 291 (1976).

For the statutory employment doctrine to apply, there must be two separate contracts: a contract between the principal contractor and a third party where the contractor becomes obligated to do work; and a contract between the principal contractor and a subcontractor, where part of that work is delegated to the subcontractor. *Para v. Richards Group*, 339 Md. 241, 249, 661 A.2d 737, 742 (1995). Employees of the subcontractor are statutory employees of the principal contractor. Statutory employers, like employers, are immune from common law suit by the statutory employee whether or not they pay benefits.

### IV. Sovereign Immunity

Maryland State personnel are generally immune from torts committed within the scope of their public duties. MD. CODE ANN., CTS. & JUD. PROC. § 5-522(b). However, the Maryland Tort Claims Act, MD. CODE ANN., STATE GOV'T § 12-101 *et seq.*, permits suits against the State and its employees to the extent of its insurance coverage and only after compliance with prerequisites set forth in the Act. *Id.* at § 12-104(a). The State's tort liability limit is \$400,000 for a single claimant for injuries arising from a single incident or occurrence. *Id.* at § 12-104(a)(2). One-year notice is required. *Id.* at § 12-106(b)(1). Punitive damages and prejudgment interest are not recoverable. MD. CODE ANN., CTS. & JUD. PROC. § 5-522.

Tort suits against local governments and their employees are also subject to sovereign immunity; liability may not exceed \$400,000 per individual and \$800,000 per occurrence. MD. CODE ANN., CTS. & JUD. PROC. § 5-303(a). The statute requires 180-day notice. *Id.* at § 5-304. Punitive damages are not recoverable. *Id.* at § 5-303(c).

## V. Parent-Child Immunity

Ordinarily, a minor child cannot recover against his/her parent for negligence. This parent-child immunity does not apply to step-parents, even if *in loco parentis* to the child, or to emancipated minors, or to cruel, inhumane, or outrageous conduct. Nor does the doctrine confer immunity on the business partner of the parent of an injured child. *Eagan v. Calhoun*, 347 Md. 72, 698 A.2d 1097 (1997); *Warren v. Warren*, 336 Md. 618, 336 Md. 618 (1994); *Waltzinger v. Birsner*, 212 Md. 107, 128 A.2d 617 (1957).

An exception to the parent-child immunity doctrine exists for claims for “wrongful death, personal injury, or property damage arising out of the operation of a motor vehicle... up to the limits of motor vehicle liability coverage or uninsured motor vehicle coverage.” MD. CODE ANN., CTS. & JUD. PROC. § 5-806; *Allstate Insurance Co. v. Kim*, 376 Md. 276, 829 A.2d 611 (2003).

## VI. Interspousal Immunity

Maryland has abolished interspousal immunity. *Boblitz v. Boblitz*, 296 Md. 242, 462 A.2d 506 (1983).

## VII. Statute of Limitations

Most civil actions, such as negligence, breach of contract, and product liability, must be brought within three years of the date of the injury or when the plaintiff knew, or with the exercise of due diligence, reasonably should have known of the wrong. MD. CODE ANN., CTS. & JUD. PROC. § 5-101; *Poffenberger v. Risser*, 290 Md. 631, 636, 431 A.2d 677, 680 (1981). The statute of limitations for assault, libel or slander is one year from the date it accrues. MD. CODE ANN., CTS. & JUD. PROC. §5-105.

A cause of action accrues when the plaintiff knows he has been injured, not when he knows the cause of his injury. *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 448, 749 A.2d 796, 803 (2000). Therefore, the statute is not tolled for “the conclusion of a diligent investigation.” *Id.* The statute of limitations is tolled for minor children until they reach the age of majority, which is 18 years old in Maryland. MD. CODE ANN., CTS. & JUD. PROC., § 5-201(a). In construction defect cases, the running of limitations is not tolled during the defendant’s efforts to

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repair. *Booth Glass Company, Inc. v. Huntingfield Corp*, 304 Md. 615, 622-624, 500 A.2d 641, 644-45 (1985).

Breach of warranty claims under the Uniform Commercial Code are subject to a four-year statute of limitations that runs from the delivery of nonconforming goods regardless of when the breach was discovered. MD. CODE ANN., COM. LAW § 2-725.

Claims for indemnification and contribution accrue at the time the tortfeasor pays or is ordered to pay the injured person. *Hanscome v. Perry*, 75 Md. App. 605, 614; 542 A.2d 421, 425 (1988); *Washington Suburban Sanitary Com'n v. Riverdale Heights Volunteer Fire Co. Inc.*, 308 Md. 556, 570 n.3, 520 A.2d 1319, 1327 n.3 (1987).

### **Death Actions**

There are two distinct causes of action that arise upon the death of a person caused by a wrongful act: (1) a “survival” action, MD. CODE ANN., EST. & TRUSTS § 7-401(y); and (2) a “wrongful death” action. MD. CODE ANN., CTS. & JUD. PROC. § 3-901 *et seq.* Both are authorized by statute.

A “survival” action is nothing more than the decedent’s own personal injury action. At common law, the personal injury action died with the victim. Maryland’s Survival statute permits the cause of action to “survive” the death of the victim. *Benjamin v. Union Carbide Corp.*, 162 Md. App. 173, 202–03, 873 A.2d 463, 480 (2005), *abrogated on other grounds by Mummert v. Alizadeh*, 435 Md. 207, 77 A.3d 1049 (2013). The survival claim is brought by the personal representative of the estate for the decedent’s pre-death harm such as pain and suffering, funeral expenses, medical expenses, and lost wages (if any) prior to death. *See, e.g., Jones v Flood*, 351 Md. 120, 123-24 716 A.2d 285, 286-87 (1998).

The Wrongful Death statute, MD. CODE, ANN., CTS. & JUD. PROC. § 3-904, permits a schedule of beneficiaries, including the surviving spouse or children, to make claims for specified damages, including loss of support and mental anguish. All persons who are or may be entitled to damages must be named as plaintiffs regardless of whether they are joined in the action. Md. Rule 15-1001. The wrongful death statute was amended in 1997 to coordinate with the cap on non-economic damages. MD. CODE ANN., CTS. & JUD. PROC. § 11-108(b). At common law, there was no cause of action for wrongful death.

### **I. Damages for Wrongful Death Beneficiaries**

Spouse – A spouse may recover for his/her economic losses, including the loss of financial support and services that the spouse could reasonably have expected to receive. A spouse can also recover for noneconomic losses such as mental anguish, pain and suffering, loss of society, companionship, comfort, protection, marital care, attention, and advice. A spouse

qualifies even if he/she is separated from the decedent. *Forbes v. Harleysville Mutual*, 322 Md. 689, 589 A.2d 944 (1991).

Parent – A parent may recover for his/her economic losses as the result of the death of his/her child, including any financial benefits the parent would have been expected to receive from the child until the child turned eighteen. A parent can also recover for non-economic losses, including mental anguish, pain and suffering, the loss of society, companionship, comfort, protection, care, attention, and advice. The non-economic damages are not limited to the period of time when the child is a minor.

Minor child - A surviving minor child can recover economic losses as a result of the death of a parent, including the loss of financial support and services that the child could reasonably have expected to receive from the deceased parent until he/she reached 18 years old. The child can also recover non-economic damages, including mental anguish, pain and suffering, the loss of society, companionship, comfort, protection, care, attention, and advice.

Adult child - A surviving adult child may recover for economic losses upon a showing that the deceased parent rendered services of a pecuniary nature to the adult child and the child could reasonably have expected to continue receiving those services. In addition, an adult child is also entitled to recover non-economic damages for the wrongful death of the parent without any limitation as to age, marital status or dependency.

Punitive damages are not permitted under the wrongful death statute.

## II. Settlement in Wrongful Death Actions

Settlement requires the consent of all joined parties or approval of the court because claims of individual plaintiffs are not severable. MD. CODE, ANN., CTS. & JUD. PROC. § 3-904(f); *Walker v. Essex*, 318 Md. 516, 569 A.2d 645 (1990).

## III. Damages in Survival Actions

The estate of the decedent may recover for damages to the deceased between the time of injury and the time of death. MD. CODE ANN., EST. & TRUSTS § 7-401. Damages for economic losses may include property damage, funeral expenses generally not to exceed \$15,000, and loss of earnings from the time of injury to the time of death. MD. CODE ANN., EST. & TRUSTS § 8-106(c). There can be recovery for pain and suffering sustained by the decedent from the time of injury to the time of death provided there is proof that decedent was capable of experiencing *conscious pain and suffering*. *Ory v. Libersky*, 40 Md. App. 151, 159-163, 389 A. 2d 922, 928-930 (1978). Punitive damages are recoverable in those cases where they might have been awarded to the decedent. *Smith v. Gray Concrete Pipe Co.*, 267 Md. 149, 160, 297 A.2d. 721, 727 (1972), *overruled on other grounds by Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 601 A. 2d 633 (1992).

**Insurance Issues**

**I. Duty to Defend**

The insurer's duty to defend is much broader than its duty to indemnify. Insurance contracts generally provide that the insurer must defend *any* suit against an insured. This language has led to two rules: the "exclusive pleading rule" and the "potentiality rule." The "exclusive pleading rule" requires the insurer to determine its duty to defend solely based upon the allegations of the complaint. *Brohawn v. Transamerica Ins. Co.*, 276 Md. 396, 408, 347 A.2d 842, 850 (1975). The courts refer to the allegations of the complaint as shorthand for the allegations of the lawsuit, which may include allegations in motions hearings or discovery. *Baltimore Gas and Elec. Co. v. Commercial Union Ins. Co.*, 113 Md. App. 540, 569, 688 A.2d 496, 510 (1997) (citing *St. Paul Fire & Mar. Ins. v. Pryseski*, 292 Md. 187, 193, 438 A.2d 282, 285; *Brohawn*, 276 Md. at 407, 347 A.2d at 850). An insurer cannot look outside the pleadings to defeat the duty to defend. *Baltimore Gas and Elec. Co.*, 113 Md. App. at 567, 688 A. 2d at 509; *Aetna Cas. & Sur. Co. v. Cochran*, 337 Md. 98, 107, 651 A.2d 859, 863 (1995). However, an insured (or one in the shoes of an insured) may establish a "potentiality of coverage under an insurance policy through the use of extrinsic evidence." *Cochran*, 337 Md. at 111-112, 651 A.2d at 866.

**II. Motor Vehicle Insurance**

*A. Minimum Policy Limits*

Maryland's compulsory minimum motor vehicle limits are \$30,000 for any one person, \$60,000 for any two or more persons, and \$15,000 for property damage. MD. CODE ANN., TRANSP. §17-103.

*B. Uninsured Motorist Coverage*

Minimum Limits: Maryland requires uninsured motorist ("UM") limits be the same as minimum liability limits. MD. CODE ANN., INS. § 19-509. When the insured elects liability limits greater than those required by statute, the UM limits must equal the liability limits unless waived by the first named insured. *Id.* at §§ 19-509, 19-510. The minimum limits may not be waived. Personal Injury Protection, as contrasted with UM coverage, may be waived by the first named insured. MD. CODE ANN., INS. § 19-506(a).

Stacking: There are two possible types of stacking: intra-policy and inter-policy. Intra-policy stacking is the aggregation of limits of liability for coverage of each car covered under one policy. Intra-policy stacking is prohibited in Maryland. Inter-policy stacking involves the aggregation of coverage under more than one policy. Inter-policy stacking is permitted but

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subject to the coordination of coverage provisions of the “other insurance” clauses so that the insured’s potential recovery amounts to the highest UM limit involved.

**Settlement Procedure:** If an injured person receives a written policy limits offer to settle a claim from an automobile liability insurer, the injured person copies the offer by certified mail to the uninsured/underinsured motorist carrier. MD. CODE ANN., INS. § 19-511(b). The UM insurer then has 60 days after receipt of the notice to send the UM insured/claimant acceptance of the settlement offer and the execution of releases or a refusal to consent. *Id.* at § 19-511(c); *Keeney v. Allstate Ins. Co.*, 130 Md. App. 396, 746 A.2d 947 (2000). If the UM insurer consents to the settlement, the injured person may accept the policy limits and execute releases in favor of the liability insurer and its insured “without prejudice to any claim the injured person may have against [the UM carrier].” MD. CODE ANN., INS. § 19-511(f) (emphasis added). If the UM insurer refuses to consent, it must, within 30 days after refusal, pay to the UM insured/claimant the amount of the settlement offer. *Id.* at § 19-511(d). The refusal to consent and the payment to the UM insured/claimant preserves the UM insurer’s subrogation rights against the liability insurer and its insured. *Id.* at § 19-511(e)(1). It also gets an assignment of rights up to the amount of the payment against any recovery made by the UM insured/claimant against the available liability coverage. *Id.* at § 19-511(e)(2).

**Coordination of Coverage:** UM insurers are entitled to credits for the sums paid to the insured that exhaust all applicable liability insurance policies. MD. CODE ANN., INS. § 19-509(g). UM insurers may not take a credit for the amount paid pursuant to a medical payment endorsement. *Lewis v. Allstate Ins. Co.*, 368 Md. 44, 792 A.2d 272 (2002). UM insurers are also entitled to coordinate their UM payment with workers’ compensation benefits to a limited extent. This reduction is from the UM policy limits, not from the damages awarded to the injured plaintiff. In theory, this section is designed to preclude a double recovery by the injured party. *Id.* Note that the coordination is limited to benefits where the compensation carrier has not been reimbursed. Further, the UM carrier only gets the offset of workers’ compensation benefits where the benefits have actually been “received”; that is, not where they are “receivable” or owed. *Gable v. Colonial Ins. Co.*, 313 Md. 701, 704, 548 A.2d 135, 137 (1988). The Court defined “recover” to mean “to get,” “to obtain,” “to come into possession of,” “to receive.” *State Farm Mut. Auto. Ins. Co. v. Insurance Com’r*, 283 Md. 663, 671, 392 A.2d 1114, 1118 (1978); *See also Parry v. Allstate Ins. Co.*, 408 Md. 130, 140-41, 968 A.2d 1053, 1059-60 (2009). Where an insured is entitled to receive workers’ compensation benefits in the future, but does not make a claim or has not received the benefits yet, the UM insurer is not entitled to the offset. However, if the employer pays the medical expenses, even though a formal workers’ compensation claim has not been filed, the Uninsured Motorist Insurer gets a credit. *Parry v. Allstate Ins. Co.*, 408 Md. 130, 968 A.2d 1053 (2009).

### III. Bad Faith

#### A. Third-Party Bad Faith

In Maryland, the courts have recognized a tort of wrongful failure to settle within policy limits. The tort arises only where the insurer has undertaken the defense of the insured. The insured may be entitled to recover the amount of judgment against the insurer that exceeds the policy limits. Where the insurer denies coverage and refuses to undertake the duty to defend, however, Maryland has held that the insured will be entitled to recover up to the policy limits, plus the attorney's fees and expenses, in the underlying suit. The insured will not be permitted to recover the excess judgment. See *Kremen v. MAIF*, 363 Md. 663, 770 A.2d 170 (2001); *Mesmer v. MAIF*, 353 Md. 241, 725 A.2d 1053 (1999). A third-party may not bring a cause of action for bad faith absent an assignment. *Bean v. Allstate*, 403 A.2d 793, 285 Md. 572 (1979). An action for bad faith may be assigned. *Medical Mut. Liab. Ins. Soc'y of Maryland v. Evans*, 330 Md. 1, 25, 622 A.2d 103, 114 (1993).

#### B. First-Party Bad Faith

There is no common law cause of action for first-party bad faith in Maryland, *Johnson v. Federal Kemper Ins. Co.*, 74 Md. App. 243, 536 A. 2d 1211 (1988), nor is there a private cause of action under Maryland's Unfair Claims Settlement Practices Act. MD. CODE ANN., INS. § 27-301 *et seq.*

However, a cause of action against first-party insurers for failure to act in good faith was created by MD. CODE ANN., CTS. & JUD. PROC. § 3-1701 ("Maryland's Good Faith Statute"). An insured must first (with certain exceptions) bring an administrative action before the Maryland Insurance Administration ("MIA") pursuant to MD. CODE ANN., INS. § 27-1001. If a case fits one of the following exceptions, it may be filed in court and is not subject to the jurisdiction of the MIA: a small claim within the jurisdiction of the Maryland District Court, if the insurer and insured agree to waive the requirement, or a commercial insurance policy on a claim where the policy limits exceed \$1,000,000. MD. CODE ANN., CTS. & JUD. PROC. § 3-1701(c)(2). Some courts have applied Maryland's Good Faith Statute to third-party insurance. *Whiting-Turner Contracting Co. v. Liberty Mut. Ins. Co.*, 912 F. Supp. 2d 321, 339 (D. Md. 2012).

### Damages Issues

#### I. Statutory Cap

Maryland has a statutory cap on the recovery of noneconomic damages. MD. CODE ANN., CTS. & JUD. PROC. § 11-108. Noneconomic damages are capped at \$350,000 for actions arising on or after July 1, 1986, and \$500,000 for causes of action arising after October 1, 1994. The limitation increases by \$15,000 each year after October 1, 1994. In death cases under the post-1986 cap, there are two separate caps: one for the survival claimants and a second for the

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wrongful death beneficiaries. If there is more than one wrongful death beneficiary, the cap is expanded to 150% of the statutory limit. MD. CODE ANN., CTS. & JUD. PROC. § 11-108. Below is a chart showing the annual cap increases from 1986 through 2020:

<u>Non-Economic Cap</u>		<u>Wrongful Death Actions</u>	
<u>Year</u>	<u>Amount</u>	<u>Single Claimant</u>	<u>Multiple Claimants</u>
7/1/86 – 9/30/94	\$350,000	No Cap	
10/1/94 – 9/30/95	\$500,000	\$500,000	\$750,000
10/1/95 – 9/30/96	\$515,000	\$515,000	\$772,500
10/1/96 – 9/30/97	\$530,000	\$530,000	\$795,000
10/1/97 – 9/30/98	\$545,000	\$545,000	\$817,500
10/1/98 – 9/30/99	\$560,000	\$560,000	\$840,000
10/1/99 – 9/30/00	\$575,000	\$575,000	\$862,000
10/1/00 – 9/30/01	\$590,000	\$590,000	\$885,000
10/1/01-9/30/02	\$605,000	\$605,000	\$907,500
10/01/02-9/30/03	\$620,000	\$620,000	\$930,000
10/01/03-9/30/04	\$635,000	\$635,000	\$952,500
10/01/04-9/30/05	\$650,000	\$650,000	\$975,000
10/01/05-9/30/06	\$665,000	\$665,000	\$997,500
10/01/06-9/30/07	\$680,000	\$680,000	\$1,020,500
10/01/07-9/30/08	\$695,000	\$695,000	\$1,042,500
10/01/08-9/30/09	\$710,000	\$710,000	\$1,065,000
10/01/09-9/30/10	\$725,000	\$725,000	\$1,087,500
10/01/10-9/30/11	\$740,000	\$740,000	\$1,110,000
10/01/11-9/30/12	\$755,000	\$755,000	\$1,132,500
10/01/12-9/30/13	\$770,000	\$770,000	\$1,155,000
10/01/13-9/30/14	\$785,000	\$785,000	\$1,177,500
10/01/14-9/30/15	\$800,000	\$800,000	\$1,200,000
10/01/15-9/30/16	\$815,000	\$815,000	\$1,222,500

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10/01/16-9/30/17	\$830,000	\$830,000	\$1,245,000
10/01/17-9/30/18	\$845,000	\$845,000	\$1,267,500
10/01/18-9/30/19	\$860,000	\$860,000	\$1,290,000
10/01/19-9/30/20	\$875,000	\$875,000	\$1,312,500

### II. Emotional Distress

Physical impact is not a prerequisite for mental anguish damages; however, there must be physical injury manifested by external condition or symptoms indicative of resultant pathological or mental state. *Benyon v. Montgomery Cablevision Ltd. Partnership*, 351 Md. 460, 463, 718 A.2d 1161, 1163 (1998) (citing *Bowman v. Williams*, 164 Md. 397, 165 A. 182 (1933)). There can be no recovery for mental anguish resulting from damage to property, except where the act causing the injury is “inspired by fraud, malice, or like motives.” *Dobbins v. WSSC*, 338 Md. 341, 346 n. 2, 658 A. 2d 675, 677 n. 2 (1995). Maryland recognizes the tort of *intentional* infliction of emotional distress, but not *negligent* infliction of emotional distress. *Ford v. Douglas*, 144 Md. App. 620, 625, 799 A.2d 448, 451 (2002) (citing *Harris v. Jones*, 281 Md. 560, 380 A.2d 611 (1977)); *Alban v. Fiels*, 210 Md. App. 1, 16, 61 A.3d 867, 876 (2013).

### III. Pre-Judgment/Post-Judgment Interest

Pre-judgment interest is unrecoverable in personal injury cases, and is only recoverable as a matter of right in actions where “the obligation to pay and the amount due had become certain, definite, and liquidated by a specific date prior to judgment...” *Buxton v. Buxton*, 363 Md. 634, 656-57, 770 A.2d 152, 165 (2001). In breach of contract cases where the amount recoverable is not a “sum certain,” pre-judgment interest is recoverable at the discretion of the jury. *Id.* The Maryland rate for pre-judgment interest is 6% per annum. *Travel Committee, Inc. v. Pan Am. World Airways, Inc.*, 91 Md. App. 123, 189, 603 A.2d 1301, 1333-34 (1992).

Post-judgment interest is recoverable at the rate of 10% per annum from date of the judgment’s entry. MD. CODE ANN., CTS. & JUD. PROC. 11-107.

### IV. Attorneys’ Fees

Maryland follows the “American Rule” that attorneys’ fees are not recoverable unless (1) the parties contractually agreed to permit recovery of fees, (2) a statute exists that entitles the prevailing party to recover its fees, (3) the wrongful conduct of a defendant forces a plaintiff into litigation with a third party, or (4) a plaintiff is forced to defend against a malicious prosecution. *Nova Research, Inc. v. Penske Truck Leasing Co.*, 405 Md. 435, 445, 952 A.2d 275, 281 (2008).

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Attorneys' fees are recoverable in claims brought under the Maryland Consumer Protection Act. MD. CODE ANN., COM. LAW § 13-408. Attorneys' fees are also recoverable in first-party failure to act in good faith cases. If the Maryland Insurance Administration finds that an insurer failed to act in good faith, the insured may recover its reasonable attorneys' fees, which may not exceed one-third of the insured's actual damages. MD. CODE ANN., INS. § 27-1001(e).

The Court of Appeals established an exception to the American Rule in actions involving third-party insurance policies. *Cohen v. American Home Assur. Co.*, 255 Md. 334, 258 A.2d 225 (1969). Where an insured prevails in a declaratory judgment action after its insurer has denied a duty to defend, the insured is entitled to recover its attorneys' fees from its insurer. *Id.*; see also *Bausch & Lomb Inc., v Utica Mutual Ins. Co.*, 355 Md. 566, 591, 735 A.2d 1081, 1095 (1999); *Mesmer v MAIF*, 353 Md. 241, 264, 725 A.2d 1053, 1065 (1999); *Collier v MD-Individual Practice*, 327 Md.1, 12-17, 607 A.2d 537, 542-545 (1992); *Bankers and Shippers Ins. Co. of NY v Electro Enterprises, Inc.*, 287 Md. 641, 648, 415 A.2d 278, 282 (1980). An insurer that steps in to defend also has the right to recover reasonable attorneys' fees and costs incurred from an insurer that failed to defend. *Travelers Indem. Co. v. Insurance Company of N. Am.*, 69 Md. App. 664, 680, 519 A.2d 760, 767 (1987); *Rentals Unlimited, Inc., v. Aetna Cas. & Surety Ins. Co.*, 101 Md. App. 652, 663-4, 647 A.2d 1278, 1283-4 (1994).

### **V. Punitive Damages**

Recovery of punitive damages requires proof of actual malice or its equivalent. *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 453, 601 A.2d 633, 649 (1992). Punitive damages cannot be awarded without an award of compensatory damages. Punitive damages are not recoverable in wrongful death, breach of contract, or breach of warranty actions. *Cohen v. Rubin*, 55 Md. App. 83, 101-102, 460 A.2d 1046, 1056 (1983) (wrongful death); *K & K Management, Inc. v. Lee*, 316 Md. 137, 169, 557 A.2d 965, 981 (1989) (breach of contract); *Sims v. Ryland Group, Inc.*, 37 Md. App. 470, 475, 378 A.2d 1, 4 (1977) (breach of contract and warranty). It is not against public policy for insurance policies to cover punitive damages. See *First Nat'l Bank v. Fidelity & Deposit Co.*, 283 Md. 228, 389 A.2d 359 (1978).

### **Settlement Matters**

#### **I. Maryland Uniform Contribution Among Joint Tortfeasors Act**

A plaintiff may recover all of his/her damages from one of two parties at fault because of the doctrine of joint and several liability, even where that defendant was minimally at fault. A defendant may sue the other party at fault for contribution pursuant to the Maryland Uniform Contribution Among Joint Tortfeasors Act, MD. CODE ANN., CTS. & JUD. PROC. § 3-1401 *et seq.*

Joint tortfeasors are defined as "two or more persons, jointly or severally liable in tort for the same injury." *Id.* at § 3-1401(c). A defendant is a joint tortfeasor if he/she agrees in a release

that he/she is a tortfeasor or if he/she and others are found to all be liable to the Plaintiff for a single harm at trial. *Mercy Med. Ctr. v. Julian*, 429 Md. 348, 356-57, 56 A.3d 147, 151-52 (2012).

A joint tortfeasor release permits a claimant to settle with one party and pursue others. If the settling party was not guilty of negligence and was not a tortfeasor, and does not admit liability, then the settlement has no impact on the settlement or judgment of other parties who may be tortfeasors. A joint tortfeasor release generally provides a credit to the non-settling tortfeasors for their *pro rata* share or a *pro tanto* (dollar for dollar) credit, whichever is greater. *Id.* at § 3-1404. Thus, the plaintiff's claim is reduced against the non-settling tortfeasors in the amount of consideration paid for the release or in any amount or proportion by which the release provides that the total claim shall be released.

## **II. Workers' Compensation Lien**

The workers' compensation carrier has a statutory lien for benefits paid. MD. CODE ANN., LABOR & EMPL. § 9-902.

## **III. Claims by Minors**

Claims on behalf of minor children may be brought by a guardian, fiduciary or, if none, by a next friend. The suit may be settled by the next friend. If the next friend is not a parent or a person standing *in loco parentis*, the consent of the parent or other person responsible for the child must be obtained. If there is no parent or other person responsible for the child, the court must approve the settlement. MD. CODE ANN., CTS. & JUD. PROC. § 6-405.

Payments of \$5,000 or more must be made to the order of a trustee, unless the court appoints a guardian of the property of a minor. MD. CODE ANN., EST. & TRUSTS § 13-403.