

# DELAWARE STATE LAW SUMMARY

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# DELAWARE LAW SUMMARY

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## A. OVERVIEW OF THE COURT SYSTEM

### 1. Jurisdiction

Justice of the Peace Court (non-jury except in some landlord tenant matters). Jurisdictional amount is \$15,000. No bodily injury claims permitted and most is a sum certain.

Court of Common Pleas (non-jury) Jurisdictional amount is \$50,000. (Mostly non-jury civil matters.

Superior Court all litigation. Jury consists of twelve individuals

### 2. Venue

There are three counties. Sussex, Kent and New Castle. Litigation is appropriate in any county. The choice of venue can affect the ability to collect costs by the plaintiff.

### 3. Civil Rules and Rules of Evidence

Delaware's Civil Rules and Rules of Evidence are similar to the Federal Rules.

## B. CAUSES OF ACTIONS

### 1. Negligence

Negligence is the failure to use the care that a reasonable, prudent, and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done in such circumstances; or the failure to do what a person of ordinary prudence would have done under similar circumstances.<sup>1</sup>

Reasonable care depends upon the particular circumstances of the case and conduct is judged by what the actor knew or was duty bound to know.<sup>2</sup>

### 2. Negligence *Per Se*

The violation of a Delaware statute enacted for the safety of others is evidence of

*negligence per se*. There must, however, be a casual connection between the statutory violation and the alleged injury.<sup>3</sup> A regulation standing alone does not expand a common law right. For the extension of the *negligence per se* doctrine to apply to regulations of an administrative agency, the regulations must be promulgated pursuant to a legislative directive and be enacted for a valid purpose.<sup>4</sup>

### 3. **Respondeat Superior**

Under the doctrine of *respondeat superior*, the liability of a company for the negligence of its driver is based on the owner's control over the driver at the time of the accident. This doctrine holds the owner liable for the negligent operation of the vehicle by his agent or servant who at the time was engaged in the master's business, or engaged in pleasure with the master's knowledge.<sup>5</sup> A company is not liable for one whom it merely permits to use the vehicle.<sup>6</sup>

To determine whether a departure is a detour or frolic, you must determine whether the employee's departure from the employer's business was of such character that the employer is no longer responsible for the employee's actions. A slight departure does not break the relationship.<sup>7</sup>

### 4. **Negligent Hiring, Training and Retention**

Under Delaware law, for an employer to be held liable for negligent hiring, retention and training, the employer must have known, or in the exercise of reasonable care should have known, that the employee had a tendency to cause harm.<sup>8</sup>

### 5. **Negligent Infliction of Emotional Distress**

No cause of action may be asserted for a negligent infliction of emotional distress absent proof that plaintiff has suffered severe emotional distress and has some "physical injury" resulting from defendant's actions.<sup>9</sup> A person may claim emotional distress from witnessing the injury of another, or from one's own apprehension of injury. However, an essential element is that the claimant has a "physical injury".<sup>10</sup> Intentional infliction of emotional distress may warrant damages in the absence of an injury provided there is a showing of severe emotional distress caused by extreme or outrageous conduct.<sup>11</sup>

### 6. **Wrongful Death/Survival Action**

Delaware recognizes wrongful death actions.<sup>12</sup> If the decedent is survived by a spouse, parent, or child, an action may be maintained. In the event that there is no

spouse, parent, or child, an action may be commenced by those persons related by blood or marriage to the decedent.<sup>13</sup>

The estate of a decedent may recover for injuries to the decedent prior to death and the conscious pain and suffering of the decedent under Delaware's Survival Act.<sup>14</sup> Under Delaware law, a claim for pre-death pain, suffering, fear, fright and terror is not extinguished by the death of the victim. Such damages are recoverable and a separate award for them may be made by the jury where the decedent did not die instantaneously, but there was some appreciable interval of conscious pain and suffering before death. What must be shown is that death was not instantaneous and that the decedent experienced some conscious pain and suffering.<sup>15</sup>

### 7. **Third Party Bad Faith Claims- Insurance**

The Delaware Supreme Court has not directly addressed the issue of whether a third-party claimant has the right to bring a bad-faith claim against an insurer. An insured purchases protection and the special duty is owed to, and actionable only by, the insured. In such an action, the insurer, which is primarily responsible for the settlement, bears the burden of demonstrating that it acted reasonably and in good faith.<sup>16</sup> Delaware does not treat an injured third party as a third party beneficiary of a tortfeasor's insurance contract, absent a showing of a specific intent to create such a relationship.<sup>17</sup>

However, the U. S. District Court for the District of Delaware, interpreting Delaware law, has recognized an independent tort of bad faith. The court ruled that the insurer has a fiduciary obligation to the insured which requires the exercise of that degree of care which a reasonable, prudent insurer would exercise to ensure that the interests of the insured are protected.<sup>18</sup>

If the bad faith claim is based on a denial of coverage, or refusal to provide first party benefits, punitive damages may be available. In order to prevail, plaintiff must establish that: there is no reasonable basis for the denial to honor the contractual obligation (arbitrariness); and the egregiousness of the conduct rises to the level of willful or malicious misconduct, ill-will, hatred, or intent to cause injury.<sup>19</sup>

### 8. **Unfair Claims Practices**

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No insurer is permitted to misrepresent facts or insurance policy provisions relating to the coverages at issue; fail to acknowledge and act reasonably promptly upon communication with respect to claims arising under insurance policies; fail adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; refuse to pay claims without conducting a reasonable investigation based upon all available information; fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; make no good faith attempt to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; compel insureds to institute litigation to recover by offering substantially less than the amount ultimately recovered in a lawsuit; attempt to settle a claim for less than a reasonable amount by reference to written or printed advertising material accompanying or made part of an application.

Additionally, an insurer is prohibited from settling claims on the basis of an application which was altered without notice to or knowledge or consent of the insured; pay claims with out identifying the source of the coverage under which the payments are being made; informing insureds/claimants of a policy to appeal adverse arbitration awards to compel acceptance compelling of a settlement less than the amount awarded in arbitration; or delay the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information; or fail to promptly provide a reasonable explanation of the factual or legal basis in the insurance policy for denial of a claim or for the offer of a compromise settlement.<sup>20</sup>

An insurer is required to maintain complaint handling procedures.<sup>21</sup> This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints and the time it took to process each complaint.

An insured is prohibited from knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for insurance or, for the purpose of obtaining any money or benefit, or knowingly or willfully present or cause to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepare, make or subscribe a false or fraudulent account, certificate, affidavit or proof of loss or other document or writing with intent that the same may be presented or used in support of such a claim.<sup>22</sup>

9. **Reckless, Willful And Wanton Definition**

Reckless conduct reflects a knowing disregard of a substantial and unjustifiable risk. It amounts to an "I don't care" attitude. Recklessness occurs when a person, with no intent to cause harm, performs an act so unreasonable and so dangerous that he or she knows, or should know, that harm will probably result.<sup>23</sup>

Willfulness indicates an intent, or a conscious decision, to disregard the rights of others. Willfulness is a conscious choice to ignore consequences when it is reasonably apparent that someone will probably be harmed.

Wanton conduct occurs when a person, though not intending to cause harm, does something so unreasonable and so dangerous that the person either knows or should know that harm will probably result. It reflects a foolhardy "I don't care" attitude.<sup>24</sup>

10. **Bailment**

When a negligent bailment results in injury to property, the measure of damages is the difference in the value of the property before and after the injury plus any consequential damages, less any proper storage charges.<sup>25</sup> If the injury to the bailed property is caused by a third party, a bailee without fault is only liable to the bailor for the surplus recovered by the bailor from that third party after deducting all proper costs and charges in connection with the bailment.<sup>26</sup> When a bailee places the property in the custody of a succeeding bailee and the property is damaged while in the custody of that succeeding bailee, the original bailee is liable for the difference between the value of the property before it came into the custody of the succeeding bailee and when it was returned to the bailor.<sup>27</sup>

If property is damaged while in transit by a common carrier, the measure of damages is the difference in the value of the property before and after the injury.<sup>28</sup> If the common carrier fails to deliver the property, the measure of damages is the market value of the property at the time and place at which the delivery should have been made.<sup>29</sup>

11. **Spoliation/document retention**

Courts in Delaware recognize spoliation of evidence "where a litigant intentionally suppresses or destroys pertinent evidence, an inference arises that such evidence would be unfavorable to his case."<sup>30</sup> The most severe remedy for the destruction of evidence is the imposition of a default judgment.<sup>31</sup> To impose a default judgment, the spoliator must have acted "willfully or in bad faith and intended to prevent the other side from examining the evidence."<sup>32</sup> Generally an adverse inference is given if the party intentionally destroyed evidence.

12. **Worker's Compensation**

Delaware employers must provide benefits to any employee injured or who contract an occupational disease while working. The benefits include medical care, temporary disability payments and compensation for a resulting permanent impairment. In the event of the death of an injured worker, benefits are payable to the family of the worker. Benefits may be paid voluntarily or it may be necessary to petition the Office of Workers' Compensation for relief.<sup>33</sup> Employees must promptly notify an employer of an injury. Note an employee traveling to or from work may be entitled to benefits.<sup>34</sup> Employers shall keep a record of all injuries received by employees and file a report within 10 days in writing to the Office of Workers' Compensation and their insurance carrier.<sup>35</sup> This report is required regardless of the severity of the injury. If the employer denies the claim, the employee has two years from the date of accident to file a petition for compensation due with the Office of Workers' Compensation. The workers' compensation statute prohibits the employer from firing or in any other manner discriminating against an employee because the employee has claimed or attempted to claim workers' compensation benefits, or because he/she has testified, or is about to testify in a workers' compensation case.

Once a petition is filed, a pretrial hearing is scheduled. At the time of the pretrial, a pretrial memorandum is completed. The employee lists all benefits sought seeking and identifies the witnesses needed for the hearing. A hearing date is then assigned. The case may be heard by the Industrial Accident Board or by a Hearing Officer. Petitions for wage replacement and petitions to terminate benefits are scheduled within 120 days from the date of the notice of pretrial. The hearing is held in the office closest to the place where the injury occurred. The burden of proof falls on the party who filed the petition. Employers may file Petition to Terminate.

A "personal injury" under the Workers' Compensation Act does not include any injury caused by the willful act of another employee directed against the employee by reasons personal to such employee and not directed against the employee as an employee or because of the employee's employment.<sup>36</sup>

13. **Premises Liability**

An owner or occupier is required to keep its premises in a reasonably safe condition and warn a business invitee of any unreasonable risks of which the owner/occupier had knowledge, or with the exercise of reasonable care, should have known about, and which the business invitee would not be expected to discover. The business invitee must establish that (1) the alleged defective condition constituted an unreasonably dangerous condition; (2) that owner/occupier knew or should have known (actual versus constructive knowledge) that the area was dangerous; and (3) that the business invitee should not have anticipated or discovered through the exercise of reasonable care the condition.

A landlord "is responsible for and presumed to be capable of maintaining his or her premises in a reasonably secure and physically safe condition." The landlord owes a duty to a plaintiff when the landlord has retained "actual control" of the premises.<sup>37</sup> It is not enough that the landlord maintained the right to inspect the property or retained the ability to retake control. The test to determine whether a landlord has retained "actual control" over the premises for purposes of liability is whether the landlord has the authority to "manage, direct, superintend, restrict or regulate [the property]."<sup>38</sup>

Under Delaware Law, a "trespasser" is a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise. A property owner can, under certain circumstances, face liability for the acts of those on his property without permission. A duty may

arise where the landowner knew or should have known of the risk created on his property and did nothing to prevent it. This duty has been extended to trespassers.

Neither a trespasser or guest (without payment) on a private residential or farm owned or occupied has a cause of action against the owner or occupier the premises for any injuries or damages sustained by such person while on the premises unless such accident was intentional on the part of the owner or occupier or was caused by the willful or wanton disregard of the rights of others.<sup>39</sup>

14. **Product Liability**

There is no strict liability in Delaware for a defective product. However an action can be asserted against the manufacturer, wholesaler, and distributor for defective products under general negligence principles, breach of warranty or failure to warn.

**C. STATUTES OF LIMITATION**

1. **Bodily Injury/Property Damage Claims**

The Delaware statute of limitations for personal injuries is two years.<sup>40</sup> Actions for damages to realty are subject to a three year statute of limitations.<sup>41</sup>

2. **Wrongful Death**

The Delaware statute of limitations for wrongful death is two years.<sup>42</sup>

3. **Breach of Contract/Bad Faith Claims**

The Delaware statute of limitations for breach of contract and bad faith claims is three years.<sup>43</sup>

4. **PIP Subrogation**

The Delaware Statute of Limitations for subrogation of PIP benefits paid to the injured Delaware insured is three years from the date of the final benefit payment.<sup>44</sup>

**D. DAMAGES**

1. **Damages Recoverable in Personal Injury Actions**

A tortfeasor is liable for damages which are the natural and proximate consequence of the wrongful acts or omission.<sup>45</sup> The claimant must establish that the tortfeasor's conduct was the proximate cause of the injury.<sup>46</sup> Proximate cause is the cause which, in the natural and continuous sequence, unbroken by any efficient intervening cause, that produces injury, and without which, injury would not have occurred.<sup>47</sup> In other words, plaintiff must show that the result would not have occurred "but for" the tortfeasor's action.<sup>48</sup>

The damages in a personal injury action include pain and suffering; loss of earning power (past and future); loss of time and necessary expense by procuring labor to perform tasks which the plaintiff had been capable of performing before the accident; medical expenses; and compensation for the permanent nature of the injury.

### 2. **Damages in a Wrongful Death Action**

The decedent's beneficiaries may recover "pecuniary losses" as well as contributions for support, loss of parental, marital and household services, funeral expenses and mental anguish.<sup>49</sup>

In a survival action, the estate may recover only pecuniary damages.<sup>50</sup>

### 3. **Punitive damages- Standards for recovery**

Punitive damages are recoverable if the defendant's actions were wanton or in willful disregard for the safety of others.<sup>51</sup> Punitive damages are recoverable for acts accompanied by malice, willful wanton conduct or reckless disregard.<sup>52</sup>

### 4. **Insurability of Punitive Damages**

Generally, punitive damages are insurable in Delaware.<sup>53</sup>

### 5. **Effect of Settlement With a Co-Defendant**

Delaware has adopted the Uniform Contribution Among Tortfeasors Law which provides that a release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasor unless the release so provides; rather the settlement reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.<sup>54</sup>

A release by the injured person of one tortfeasor does not relieve that individual or entity from liability for contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the *pro rata* share of the released tortfeasor, of the injured party's damages recoverable against all the other tortfeasors.<sup>55</sup>

6. **Minor's Settlements**

7. **Pre-judgment and Post -judgment Interest**

A party must affirmatively request the award include the interest in the pleadings or in the issues raised at trial.<sup>56</sup> A general allegation of damages is insufficient to receive prejudgment interest. *Collins v. Throckmorton*, 425 A. 2d 146, 152 (Del. 1980). A written demand which is open for thirty days is required before the imposition of pre-judgment interest. Any award must exceed the amount demanded and interest of 5 percent above the Federal Discount Rate will be imposed and calculated from the date of the accident.

Post Judgment interest is calculated from the date of the verdict at the Federal Discount Rate plus 5%.

**E. COMPARATIVE FAULT**

1. **Type of Comparative Fault System**

Delaware is a comparative negligence state. Plaintiff may recover damages if not more than 50% at fault.<sup>57</sup> Plaintiff's recovery will be reduced by the percentage of plaintiff's negligence.<sup>58</sup>

2. **Status of Joint and Several Liability**

Delaware recognizes joint and several liability among defendants.

**F. DEFENSES**

**Standard Defenses That Should Be Raised**

Delaware recognizes comparative negligence and assumption of risk.<sup>59</sup> The last clear chance doctrine was abolished by the enactment of the comparative negligence statute.<sup>60</sup> However, the underlying evidentiary concepts remain relevant. A party may argue the temporal factors important to the application of the last clear chance doctrine to the trier of fact, and the trier of fact may consider

those factors in apportioning fault. Additionally, a defendant may attempt to persuade the trier of fact that the other party should bear a greater percentage of liability for the accident because it had the last clear chance to avoid the injury. <sup>61</sup>

In Delaware, the concept of assumption of the risk has been divided into the distinct doctrines of primary and secondary assumption of the risk. <sup>62</sup> Primary assumption of the risk involves the plaintiff expressly consenting to "relieve the defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what the defendant is to do or leave undone."<sup>63</sup> Secondary assumption of the risk is implicated where the plaintiff "voluntarily encounter[s] a known unreasonable risk which is out of proportion to the advantage gained."<sup>64</sup> Under Delaware law, secondary assumption of the risk has been completely subsumed into the concept of comparative negligence; thus, secondary assumption of the risk does not ordinarily bar a claim, but rather serves as "a basis for apportionment of fault under the comparative negligence scheme."<sup>65</sup>

In addition, the sudden emergency doctrine is an available defense. This doctrine is applied when one is placed in a position of peril or sudden emergency, other than by his its negligence. In such a circumstance, defendant is not held to the same duty of care as a person who has the time for thought and reflection. <sup>66</sup>

Under Delaware Superior Court Rule 41(a)(1), “. . . a notice of dismissal operates as an adjudication upon the merits filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.”<sup>67</sup>

## **F. EVIDENCE/DISCOVERY**

### **1. Rules of Evidence**

The Delaware Uniform Rules of Evidence are similar to the Federal Rules of Evidence.

### **2. Admissibility of Traffic Citations/Criminal Charges Against the Driver**

A plea of guilt to a traffic offense is admissible in a civil trial for personal injury as evidence of negligence. <sup>68</sup>

A plea of guilty to a criminal charge may be regarded as a verbal admission against interest and as such may be admissible in a subsequent civil proceeding arising from the same accident. A plea of *no lo conendre* may not be admitted into

evidence at the civil trial.<sup>69</sup>

3. **Discoverability of Statements/Claims Files**

A party may obtain discovery of documents and tangible items prepared in anticipation of litigation or trial only upon a showing that the party seeking discovery has a “substantial need” for the materials in the preparation of the case. The party seeking the materials must also show that they are unable to obtain the “substantial equivalent without undue hardship.”<sup>70</sup>

4. **Discoverability of Insurance Information**

A party may obtain, through discovery, the existence and contents of any insurance policy by which any person carrying on an insurance business may be liable to satisfy part, or all, of a judgment which may be obtained in the action, or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance policy is not by reason of disclosure admissible evidence at trial.<sup>71</sup>

5. **ADR**

All civil cases are subject to mandatory dispute resolution. Any case may be submitted to arbitration by agreement of the parties.<sup>72</sup>

Self-insurers and insurers providing motor vehicle liability insurance in Delaware must submit to arbitration in accordance with the rules set forth in the Delaware Code.<sup>73</sup>

6. **Photographs of Property Damage/Use of Biomechanical Expert Testimony**

Photographs of the property damage to the vehicles involved in a collision may not be introduced into evidence to argue or correlate the seriousness of personal injuries to the extent of damages depicted in the photographs, unless the party can produce competent expert testimony on the issue. The photographs may be admissible to describe the "mechanism of the injury."<sup>74</sup>

Biomechanical experts may be permitted to testify about the physical forces involved in an automobile accident and the effect on the human body those forces may produce. However, the biomechanical expert's testimony must be specific to the particular plaintiff and take into account any pre-existing conditions or injuries. Simple generalized conclusions are insufficient and will not be admissible evidence at trial.<sup>75</sup>

7. **Driving Under the Influence**

The blood alcohol test is a "scientifically accurate method of detecting alcoholic content in the blood, thus furnishing an exact measure upon which to base a decision as to intoxication," and is considered a "reasonable means to make automobile driving less dangerous."<sup>76</sup> The officer must have a reasonable suspicion that the operator is under the influence before administration of either the breathalyzer, field sobriety tests or request for a blood test. If a blood test is administered the toxicologist must testify. An arresting officer may not testify as an expert about the results of the horizontal nystagmus test unless additional training and experience were provided and proven.<sup>77</sup> A toxicology report noting the presence of a drug without more is not admissible as to causation.<sup>78</sup> Evidence must be presented that the presence of the substance impaired the faculties, judgment, or observation of the operator.<sup>79</sup>

8. **Police Officer (Fact/Expert) Witness**

An investigating police officer may testify as both a fact and expert witness.<sup>80</sup> However, the Delaware Supreme Court held that a state trooper's testimony attributing the cause of an automobile accident to the defendant motorists was an inadmissible lay opinion. The Supreme Court found that a police officer, who has not been qualified to provide expert opinion testimony, cannot testify as to the cause of an accident.<sup>81</sup>

**h. PLACARD LIABILITY**

The Delaware Supreme Court appears to consider the placard or logo on a commercial vehicle as one factor to be considered when determining the party responsible for the vehicle at the time of the accident.

**i. LIABILITY FOR UNAUTHORIZED PASSENGERS**

A passenger with express permission is considered a guest and subjects the company owner to liability. However, unauthorized passengers have no cause of action against the company.<sup>82</sup>

**j. LIENS/SUBROGATION**

1. **No Fault**

Delaware is a no-fault jurisdiction. Thus, an insurer which has provided first-party benefits has a right to recover the amount of benefits paid to the insured from the tortfeasor, including an out-of state tortfeasor.<sup>83</sup> In addition, benefits

paid under the workman's compensation law are recoverable from the tortfeasor.

2. **Subrogation**

The right to subrogation is limited to the maximum amount of the tortfeasor's liability insurance coverage available for the injured party, after the injured party's claim has been settled, or otherwise resolved, except that the insurer providing benefits shall be indemnified by any workman's compensation insurer obligated to make such payments to the injured party.<sup>84</sup> The subrogation interest may be enforced by demanding arbitration.<sup>85</sup>

**K. OFFERS OF JUDGMENT**

According to the Delaware Superior Court Rules, a party may make an offer of judgment at any time, but no less than 10 days before trial.<sup>86</sup>

An offer not accepted shall be deemed withdrawn and evidence thereof not admissible at trial, except in a proceeding to determine litigation costs. If the judgment obtained by plaintiff is not more favorable than the offer, plaintiff must pay the costs incurred after the making of the offer. Furthermore, when the liability of one party to another has been determined by verdict, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial, if it is served within a reasonable time, but not less than 10 days prior to the commencement of the hearing to determine the amount or extent of liability.<sup>87</sup>

**L. AVAILABILITY OF UNINSURED/UNDERINSURED MOTORIST COVERAGE TO EMPLOYEE DRIVERS**

The Delaware Financial Responsibility Law requires minimum insurance coverage for vehicles registered in Delaware of \$15,000 for any one person and \$30,000 for all persons injured in any one accident.<sup>88</sup> Supplemental coverage for uninsured and underinsured motorist's protection is mandatory in at least the minimum limits for bodily injury coverage. Property damage coverage is subject to at least a \$250 deductible arising from property damage for one accident. The insured has the option to choose higher or lower coverage or deductibles.<sup>89</sup> Further, an insured may reject this type of coverage, however, the rejection must be written.<sup>90</sup> The mandatory UIM coverage applies to any vehicle registered in Delaware even if deadheading.<sup>91</sup>

1.     **Loss of Consortium**

Damages for loss of consortium include aid, assistance, comfort, society, services, companionship, affection, fellowship, sexual relations, solace, conjugal life, and all the assistance that accompanies the marriage relationship.<sup>92</sup>

2.     **Negligent Entrustment**

If a vehicle is entrusted to a person unqualified to operate it, the owner is liable for injuries to third parties. In order to be found liable, the vehicle owner must know or have reason to believe at the time he entrusts the vehicle to the driver, that the driver is unqualified.<sup>93</sup>

3.     **Seatbelt Law**

Although Delaware has a mandatory seatbelt law, plaintiff's failure to wear a seat belt is not evidence of comparative or contributory negligence.<sup>94</sup>

4.     **Motor Cycle Helmet Law**

Helmets are not mandated. Persons under 18 years of age are required to wear a helmet if on a bicycle.<sup>95</sup> However, the failure to wear a helmet may not be used as evidence of comparative or contributory negligence.<sup>96</sup>

5.     **Speed Limit**

The maximum speed limit is 65 m.p.h. on Delaware Route 1.<sup>97</sup> In any business district; 25 miles per hour and 25 miles per hour in any residential district; 20 miles per hour at all school zones where 20 mph regulatory signs are posted and state the time periods or conditions during which the speed limit is in effect; such conditions may include when children are present or while 1 or more warning lights flash; 50 miles per hour on 2-lane roadways; and 55 miles per hour on 4-lane roadways and on divided highways.<sup>98</sup>

**M.     APPELLATE REVIEW**

An appeal from the Justice of the Peace Court to the Court of Common Pleas is *de novo*. Matters appealed from the Court of Common Pleas to the Superior Court. Superior Court matters are heard by the Delaware Supreme Court. Civil Appeals to the Supreme Court must be filed within thirty days of the entry of a judgment or final order. Generally, only matters presented to the trial court may be reviewed. An interlocutory appeal must be certified by the trial court. In order to be certified the trial court must determine a substantial issue, establishes a

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legal right and/or is a certified question of law, has sustained a controverted jurisdiction, opened a prior judgment or is case dispositive.

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<sup>1</sup> Amoco Chem. Corp. v. Hill, 318 A.2d 614 (Del. Super. 1974); State v. Baker, 679 A.2d 1002 (Del. Super. 1996)

<sup>2</sup> Rheim v. Wark & Co., 174 A.2d 132 (Del. Super. 1961).

<sup>3</sup> Duphily v. Delaware Electric Co-Op. Inc., 662 A.2d 821, 828 (Del. Super. 1995).

<sup>4</sup> Toll Bros., Inc. v. Considine, 706 A.2d 493 (Del. Super. 1998).

<sup>5</sup> Finkbiner v. Mullins, 532 A.2d 609 (Del. Super. 1987).

<sup>6</sup> Id.

<sup>7</sup> Desmond v. Lucks, 1989 WL 64065 (Del. Super. 1989).

<sup>8</sup> Hutchins v. Cannon & Cannon, 1988 WL 130414 (Del. Super. 1984).

<sup>9</sup> Mergenthaler v. Asbestos Corp. of America, 480 A.2d 6747 (Del. Super. 1965)

<sup>10</sup> Brett v. Bekowitz, 706 A.2d 509 (Del. Supr. 1998)

<sup>11</sup> Id.

<sup>12</sup> 10 Del. C. 3724

<sup>13</sup> 10 Del. C. 3724

<sup>14</sup> 10 Del. C. §3701 see, Loden v. Getty Oil Co., 340 A.2d 174 (Del. Super. 1975) *aff'd in part* 359 A.2d 161 (Del. Supr. 1976) and Magee v. Rose, 405 A.2d 143 (Del. Supr. 1979)

<sup>15</sup> Midcap v. Sears, Roebuck & Co., 01C-03-042 WLW (Del. Super. 5-26-2004)

<sup>16</sup> Corrado Brothers v. Twin City Fire Insurance Co., 562 A.2d 1188 (Del. Supr. 1989)

<sup>17</sup> Hostetter v. Hartford Ins. Co., Del. Super., Gebelin, J. (July 13, 1992) citing, Delmar News, Inc. v. Jacobs Oil Co., 584 A.2d 531 (Del. Super. 1990), and Lewis v. Home Ins. Co., 314 A.2d 924 (Del. Super. 1973)

<sup>18</sup> McNally v. Nationwide Ins. Co., 815 F. 2d 254 (3 Cir., 1987); Maguire v. Allstate, 341 F. Supp 866 (D. Del. 1972) and Chittick v. State Farm, 170 F. Supp. 276 (D. Del. 1958)

<sup>19</sup> Casson v. Nationwide Ins. Co., 455 A.2d 361, 368 (Del. Supr. 1982)

<sup>20</sup> 18 Del. C. §2304

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Jardel Co. v. Hughes, Del. Supr., 523 A.2d 518, 529-30 (1987).

<sup>24</sup> Jardel Co. v. Hughes, Del. Supr., 523 A.2d 518, 529-30 (1987); Eustice v. Rupert, Del. Supr., 460 A.2d 507, 509-11 (1983); Yankanwich v. Wharton, Del. Supr., 460 A.2d 1326, 1331 (1983); Aastad v. Rigel, Del. Supr., 272 A.2d 715, 717 (1970); Wagner v. Shanks, Del. Supr., 194 A.2d 701 (1963); Creed v. Hartley, Del. Supr., 199 A.2d 113 (1962); Sadler v. New Castle County, Del. Super., 524 A.2d 18, *aff'd*, Del. Supr., 565 A.2d 917 (1987).

<sup>25</sup> Catalfano v. Higgins, 191 A.2d 330, 333 (Del. Super. 1963); Milford Packing Co. v. Isaacs, 90 A.2d 796, 798 (Del. Super. 1952)

<sup>26</sup> Terry v. Pennsylvania R. Co., 156 A. 787, 789 (Del. Super. 1931)

<sup>27</sup> Schagrin v. Bacon, 117 A. 741, 742 (Del. Super. 1922)

<sup>28</sup> Hardesty v. American R. E. Co., 119 A. 681, 684 (Del. Super. 1922); Klair v. Philadelphia, B. & W. R. Co., 78 A. 1085, 1098 (Del. Super. 1910); Carpenter v. Baltimore & O. R. Co., 64 A. 252, 253 (Del. Super. 1906)

<sup>29</sup> Hardesty v. American R. E. Co., 119 A. 681, 684 (Del. Super. 1922)

<sup>30</sup> Lucas v. Christiana Skating Center, Ltd., 722 A.2d 1247 (Del. Superior Ct. 1998) (citations omitted)

<sup>31</sup> Sundor Elec, Inc. v. E.J.T. Constr., 337 A.2d 651, 652 (Del. 1975)

<sup>32</sup> Positron, 2003 WL 21104954, at \*2 (citations omitted)

<sup>33</sup> 19 Del. C. § 2301 et. seq.

<sup>34</sup> Histead v. E.I. Du Pont Nemours & Co., 621 A.2d 340, 343 (Del. 1993)

<sup>35</sup> Id.

<sup>36</sup> 19 Del. C. § 2301(15)(b)

<sup>37</sup> Craig v. A.A.R. Realty Corp., 576 A.2d 688, 694-95 (Del. Super. 1989)

<sup>38</sup> Id.

<sup>39</sup> 25 Del. C. § 1501

<sup>40</sup> 10 Del. C. § 8119

<sup>41</sup> 10 Del. C., §8106

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- <sup>42</sup> 10 Del. C. 8701
- <sup>43</sup> 10 Del. C. 8106
- <sup>44</sup> Prudential Property v. Melvin, 99C-09-046(WCC)(Del. Super. 4/30/2001)
- <sup>45</sup> Gill v. Celotex Corp., 565 A.2d 21, 23 (Del. Supr. 1989)
- <sup>46</sup> General Motors Corp. v. Wolhar, 686 A2d. 170 (Del. Supr. 1996)
- <sup>47</sup> Del. Electric Co-op v. Duphily, 702 A.2d 1202 (Del. Supr. 1997) re-hearing denied
- <sup>48</sup> Mazda Motor Corp. v. Lindahl, 706 A. 2d 526 (Del. Supr. 1998)
- <sup>49</sup> 10 Del. C. §3724
- <sup>50</sup> Magee v. Rose, 405 A.2d 143 (Del. Supr. 1979)
- <sup>51</sup> Mansino v. Webb, 274 A.2d 711 (Del. Supr. 1971)
- <sup>52</sup> Jardel Co.. Inc. V. Hughes, 523 A.2d 518 (Del. Supr. 1987)
- <sup>53</sup> Whalen v. On-Deck, Inc., 514 A .2d 1072 (Del. Supr. 1986); Transamerica Corp. v. Reliance Ins. Co. of Ill., 94C-10-221, 1996 WL 659014 (Del. Super. 8/30/96)
- <sup>54</sup> 10 Del. C. §6304(a)
- <sup>55</sup> 10 Del. C. §8132
- <sup>56</sup> Speidel v. St. Francis Hospital, 98C-05-227 RRC (Del. Super. &-03-2003), citing, Chrysler Corporation v. Chaplake Holdings, 822 A. 2d. 1024 (Del. 2003)
- <sup>57</sup> 10 Del. C. §6304(b)
- <sup>58</sup> 10 Del. C. §6301 et seq.
- <sup>59</sup> Leishman v. Brady, 3 A.2d 118 (Del. Super. 1939) and Diamond State Telephone v. Univ. of Delaware, 269 A.2d 52 (Del. Supr. 1970)
- <sup>60</sup> Yankawich v. Wharton, 460 A.2d. 1326 (Del. Supr. 1983)
- <sup>61</sup> Dodds v. Pennsylvania Railroad Co., 251 A. 2d 559 (Del. Supr. 1969)
- <sup>62</sup> Koutoufaris v. Dick, 604 A.2d 390, 397-98 (Del. 1992)
- <sup>63</sup> Storm v. NSL Rockland Place, LLC, 898 A.2d 874, 879-80 (Del. Super. 2005)
- <sup>64</sup> Koutoufaris, 604 A.2d at 397-98

- <sup>65</sup> Id.
- <sup>66</sup> Laws v. Webb, 658 A.2d 1000, 1008 (Del. Supr. 1995)
- <sup>67</sup> Rule 41(a)(1)
- <sup>68</sup> McNally v. Eckman, 466 A.2d 363, 369 (Del. Supr. 1983)
- <sup>69</sup> Boyd v. Hammond, 87 A.2d 413 (Del. Supr. 1963)
- <sup>70</sup> Superior Court Civil Rule 26(b)(3)
- <sup>71</sup> Superior Court Civil Rule 26(b)(3)
- <sup>72</sup> Superior Court Civil Rule 16
- <sup>73</sup> 21 Del. C. §2118(g)
- <sup>74</sup> Davis v. Maute, 770 A.2d 36 (Del. Supr. 2001)
- <sup>75</sup> Eskin v. Carden, 842 A. 2d 1222 (Del. Supr. 2004)
- <sup>76</sup> Breithaupt v. Abram, 352 U.S. 432, 433 (1957)
- <sup>77</sup> State v. Ruthardt, 680 A.2d 349 (Del.Super. 1996)
- <sup>78</sup> Robbins v. William H. Porter, Inc., 2006 WL 2959483 (Del.Super.)
- <sup>79</sup> Holland v. Allstate Insurance Co., 06C-03-169-JOH (Del.Super. 3-7-2008)
- <sup>80</sup> Hudson v. State, 956 A.2d 1233, 1242 (Del. 2008)
- <sup>81</sup> Alexander v. Cahill, 829 A.2d 117 (Del. 2003)
- <sup>82</sup> Hall v. E.A. Gallagher, 125 A.2d 507 (Del. Supr. 1956)
- <sup>83</sup> 21 Del. C. §2118(f)
- <sup>84</sup> 21 Del. C. §2118(0)(3). Dann v. State Farm, 794 A.2d 42 (Del. Super. 2002)
- <sup>85</sup> 21 Del. C. §2118(g)(3)
- <sup>86</sup> Superior Court Civil Rule 68
- <sup>87</sup> Superior Court Civil Rule 68
- <sup>88</sup> 21 Del. C. 2118(a) (2) (b)

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<sup>89</sup> 18 Del. C. 3902(a)(2) and (1)

<sup>90</sup> Lacy v. G. D. Searle & Co., 484 A.2d 527 (Del. Super. 1984)

<sup>91</sup> Castillo v. Clearwater Ins. Co., Del., 8 A.3d 1177 (Del. 2010)

<sup>92</sup> Finkbinker v. Mullins, 532 A.2d 609 (Del. Super. 1987)

<sup>93</sup> Niemann v. Rogers, 802 F.Supp. 1154, 1157 (D. De. 1992)

<sup>94</sup> 21 Del. C. §4802(i)

<sup>95</sup> 21 Del. C. §4198K(a)

<sup>96</sup> 21 Del. C. §4198K(e)

<sup>97</sup> 21 Del. C. §4169(d)

<sup>98</sup> 21 Del. C. §4169(a)