

Survey of U.S. State Laws on Insurability of Punitive Damages

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* Associates at Sullivan & Cromwell LLP Elizabeth Olsen and Julia Long provided valuable assistance in the preparation of this survey. The views expressed in this article are solely those of the author and do not necessarily reflect the views of Sullivan & Cromwell LLP. The information in this survey should be used only as a guide and a start to research on the issues discussed herein. Despite the broad characterizations necessary for charts of the types herein, many cases are, of course, fact-specific and those included in this survey may be distinguished by other cases on such grounds. In addition, this area of the law is constantly evolving, so care should be taken to consult outside counsel and to ensure research on your particular question is accurate and up-to-date.

Summary: Survey of U.S. State Laws on Insurability of Punitive Damages

1. Choice of Law Rules

Most Significant Relationship Test	Place of the Contract Test	Government Interest Test	Other Test (see chart)
Alaska Arizona Colorado Connecticut Delaware District of Columbia Hawaii Idaho Illinois Indiana Iowa Kentucky Maine Massachusetts Mississippi Missouri Montana Nebraska Nevada New Hampshire New Jersey New York Ohio Oregon Rhode Island Tennessee Texas Utah Vermont Washington Wyoming	Alabama Arkansas Florida Georgia Kansas Maryland Michigan New Mexico North Carolina Oklahoma South Dakota Virginia West Virginia	California	Louisiana Minnesota North Dakota Pennsylvania South Carolina Wisconsin

Summary: Survey of U.S. State Laws on Insurability of Punitive Damages

2. Punitive Damages Assessed for Defendant’s Own Conduct

Insurable	Uninsurable	Unclear (see chart for more detail)
Alabama Alaska Arizona Arkansas Delaware Georgia Hawaii Idaho Iowa Kentucky Louisiana Maryland Massachusetts Michigan Mississippi Montana Nevada New Hampshire New Mexico North Carolina North Dakota Oregon South Carolina Tennessee Vermont Virginia Washington West Virginia Wisconsin	California Colorado Florida Illinois Indiana Kansas Minnesota Nebraska New Jersey New York Oklahoma Pennsylvania Rhode Island Utah	Connecticut District of Columbia Maine Missouri Ohio South Dakota Texas

Summary: Survey of U.S. State Laws on Insurability of Punitive Damages

Insurable	Uninsurable	Unclear (see chart for more detail)
Wyoming		

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3. Rule for Vicarious Liability When Punitive Damages Generally Are Not Insurable

Insurable	Uninsurable	Unclear (see chart for more detail)
Arkansas Connecticut Florida Illinois Indiana Kansas Kentucky Minnesota Oklahoma Pennsylvania	New York Utah	California Colorado District of Columbia Maine Massachusetts Missouri Nebraska Nevada New Jersey Ohio Rhode Island South Dakota Texas

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4. Rule For Insurability Determined by Basis of the Punitive Damages If General Rule Is That Punitive Damages Are Not Insurable

Insurable	Uninsurable	Unclear (see chart for more detail)
California Kentucky Nevada New York Texas	Utah	Colorado Connecticut District of Columbia Florida Illinois Indiana Kansas Maine Massachusetts Minnesota Missouri Nebraska New Jersey Ohio Oklahoma Pennsylvania Rhode Island South Dakota

Survey of U.S. States Laws on Insurability of Punitive Damages¹

State	Choice of Law Method	General Rule For Insurability of Punitive Damages Assessed for Defendant’s Own Conduct	Rule For Insurability Vicarious Liability If General Rule Is That Punitive Damages Are Not Insurable.	Rule For Insurability Determined by Basis of the Punitive Damages If General Rule Is That Punitive Damages Are Not Insurable.
Alabama	<p>“The general choice of law rule in Alabama is <i>lex loci contractus</i>, which provides that ‘a contract is governed as to its nature, obligation, and validity by the law of the place where it was made.’” <i>Kruger Commodities, Inc. v. United States Fid. & Guar.</i>, 923 F.Supp. 1474, 1477 (M.D. Ala. 1996); <i>Harrison v. Ins. Co. of N. Am.</i>, 318 So.2d 253 (Ala. 1975). However, if the contract has a provision dictating the law of a specific state shall be used, the court will apply that law. <i>Stovall v. Universal Const. Co., Inc.</i>, 893 So.2d 1090, 1102 (Ala. 2004).</p>	<p>Insurable.</p> <p>“From [the Alabama] authorities it is manifest that it is not necessary to the awarding of exemplary damages that the plaintiff show wantonness or willfulness in the commission of the tort; but such damages may be awarded, if the commission of the tort is attended with circumstances of aggravation, and therefore may be awarded in a case involving a charge only of simple negligence.” <i>Birmingham Waterworks Co. v. Brooks</i>, 16 Ala.App. 209, 76 So. 515, 518 (1917). “It is not surprising, therefore, that Alabama courts hold that an insurance policy covers ‘punitive’ damages.”” <i>Northwestern Nat’l Casualty Co. v. McNulty</i>, 307 F.2d 432, 439 (5th Cir. 1962).</p>	N/A	N/A

¹ This paper provides a broad overview of the laws of all 50 states, as of June 5, 2015, regarding the insurability of punitive damages. The paper, being a summary, may necessarily omit relevant details and should not be considered a substitute for legal advice.

State	Choice of Law Method	General Rule For Insurability of Punitive Damages Assessed for Defendant's Own Conduct	Rule For Insurability Vicarious Liability If General Rule Is That Punitive Damages Are Not Insurable.	Rule For Insurability Determined by Basis of the Punitive Damages If General Rule Is That Punitive Damages Are Not Insurable.
Alaska	Alaska follows the “most significant relationship test” for choice of law issues “based on the Restatement (Second) Conflict of Laws approach.” <i>Lakeside Mall, Ltd. v. Hill</i> , 826 P.2d 1137, 1142 (Alaska 1992); <i>Alaska Airlines, Inc. v. United Airlines, Inc.</i> , 902 F.2d 1400, 1402 (9th Cir. 1990).	Insurable. Alaska courts allow punitive damages to be covered by insurance. <i>State Farm Mut. Auto. Ins. Co. v. Lawrence</i> , 26 P.3d 1074, 1075 (Alaska 2001) (“Because the Lawrences’ liability policies cover them for punitive damages for which they themselves may be liable, we affirm the superior court’s ruling on the punitive damages issue.”).	N/A	N/A
Arizona	“With respect to contract matters, in the absence of an explicit choice of law by the parties, the contractual rights and duties are determined by the local law of the state having the most significant relationship to the parties and the transaction.” <i>Cardon v. Cotton Lane Holdings, Inc.</i> , 173 Ariz. 203, 207 (1992).	Insurable. “[A]n insurance company which admittedly took a premium for covering all liability for damages, should honor its obligation [for punitive damages] It is our holding that the premium has been paid and accepted and the protection has been tendered, and that under the circumstances public policy would be best served by requiring the insurance company to honor its obligation.” <i>Price v. Hartford Accident & Indem. Co.</i> , 502 P.2d 522, 524 (Ariz. 1972); <i>see also State Farm Fire & Cas. Co. v. Wise</i> , 721 P.2d 674 (Ariz. Ct. App. 1986) (“As in any standard liability policy, the insurer’s failure to specifically exclude punitive	N/A	N/A

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		damages from its uninsured motorist coverage makes it liable for punitive damages. Such a specific exclusion for punitive damages would be valid and enforceable.”).		
Arkansas	Rights and liabilities of the parties to an insurance contract should be determined with regard to the “place of the contract” test. <i>John Hancock Mut. Life Ins. Co. v. Ramey</i> , 140 S.W.2d 701 (Ark. 1940) (applying Michigan law to an insurance policy procured in Michigan). Intermediate courts, however, sometimes also apply the most significant relationship test to determine choice of law for contract analysis in Arkansas. <i>Southern Farm Bus. v. Craven</i> , 79 Ark. App. 423, 428 (Ark. App. 2002).	Generally Insurable. “While there are jurisdictions which hold that any insurance for punitive damages is void because against public policy, Arkansas does not appear to be one of those jurisdictions, and it arguably should be counted as a jurisdiction which does not bar an award of punitive damages, also on public policy grounds.” <i>Med. Liab. Mut. Ins. Co. v. Alan Curtis Enters., Inc.</i> , 2006 U.S. Dist. LEXIS 89180 (E.D. Ark. Dec. 8, 2006). Arkansas cases suggest that as long as the conduct is not intentional, then the punitive damages can be insured. <i>Smith v. St. Paul Guardian Ins. Co.</i> , 622 F. Supp. 867 , 874 (W.D. Ark. 1985) (“There is nothing in the state’s public policy that prevents an insurer from indemnifying its insured against punitive damages arising from an ‘accident.’”); <i>see also Talley v. MFA Mut. Ins. Co.</i> , 620 S.W.2d 260, 273	Insurable. Federal courts in Arkansas have ruled that vicarious liability can be covered, even if the underlying conduct was intentional. <i>See Med. Liab. Mut. Ins. Co. v. Alan Curtis Enters., Inc.</i> , 2006 U.S. Dist. LEXIS 89180 (E.D. Ark. Dec. 8, 2006) (noting that any “prohibition does not apply when the insured did not personally commit the conduct giving rise to punitive damages.”); <i>Southern Farm Bureau Cas. Ins. Co. v. Daniel</i> , 440 S.W.2d 582 (Ark. 1969).	N/A

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		(Ark. 1981) (clarifying that the unintended consequences of intentional acts are insurable).		
California	California courts generally apply a “governmental interest” analysis to choice of law issues. <i>Continental Cas. Co. v. Fibreboard Corp.</i> , 762 F. Supp. 1368, 1376 (N.D. Cal. 1991), <i>aff’d</i> 953 F.2d 1386 (9th Cir. 1992), <i>cert. granted and judgment vacated for consideration of mootness</i> 506 U.S. 948 (1992) (“The judgment is vacated and the case is remanded . . . to consider the question of mootness.”). “The first step in the governmental interest analysis is to determine whether the applicable rules of law of the potentially concerned jurisdictions materially differ. If there is no material difference, there is no choice-of-law problem and the court may proceed to apply California law. The party arguing that foreign law governs has the burden to identify the applicable foreign law, show that it materially differs from California law, and show that the foreign law furthers an interest of the foreign state.” <i>Frontier Oil Corp.</i>	Generally Uninsurable. As a general rule, punitive damages are not insurable under California law. <i>Carter v. EnterCom Sacramento, LLC</i> , 219 Cal.App.4th 337, 352 (Cal. Ct. App. 2013) (“It is true that public policy prohibits the payment of punitive damage awards by [an] insurer.”); <i>Ford Motor Co. v. Home Ins. Co.</i> , 116 Cal. App. 3d 374, 382 (Cal. Ct. App. 1981) (“The City Products rule prohibits insurance coverage of punitive damages, regardless of the context of the award.”); <i>City Prods. Corp. v. Globe Indem. Co.</i> , 88 Cal. App. 3d 31, 35, 42 (Cal. Ct. App. 1979) (“In any event, the policy of this state that punitive damages may be recovered only ‘for the sake of example and by way of punishing the defendant’ precludes passing them on to an insurer.”) (“The foregoing demonstrates that the policy of this state with respect to punitive damages would be frustrated by permitting the party	Unclear. There is some support for the proposition that California recognizes an exception to its rule against insurability of punitive damages where those damages have been imposed on account of vicarious liability for the conduct of another. <i>See, e.g., Certain Underwriters at Lloyd’s of London v. Pacific Southwest Airlines USAir, Inc.</i> , 786 F. Supp. 867, 869 (C.D. Cal. 1992) (“The courts interpreting California law, however, have supplied one exception to this legal concept. In vicarious liability cases where an employer is required to pay punitive damages as a result of the actions of one of his employees, the courts have held that Section 533 does not apply and the employer can be indemnified.”). These courts reach this result by first holding that Section 533 of the California	Insurable. If a punitive damages award is made in another jurisdiction, California will look to whether the basis of the award would have justified an award of punitive damages in California. If it would not have, then the award is insurable in California notwithstanding its being classified as a punitive damages award by the awarding jurisdiction. <i>Continental Cas. Co. v. Fibreboard Corp.</i> , 762 F. Supp. 1368, 1372 (N.D. Cal. 1991), <i>affirmed</i> 953 F.2d 1386 (9th Cir. 1992), <i>cert. granted and judgment vacated for consideration of mootness</i> 506 U.S. 948 (1992) (“Since the punitive damages at issue in our case were awarded in West Virginia and Texas, we can not assume that they were awarded

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	<p>v. <i>RLI INS. Co.</i>, 153 Cal.App.4th 1436, 1466 (Cal. Ct. App. 2007). Under this analysis, the court is “to look to the policies underlying each of the conflicting laws, and then [is] to determine which policy is more significantly impaired by the application of the law of the other state. The law of the more significantly impaired state is to be applied.” <i>Fibreboard</i>, 762 F. Supp. at 1377 (applying governmental interest analysis to determine which state’s law should apply as to whether insuring against punitive damages is contrary to public policy). In <i>Fibreboard</i>, the court was required to determine whether California or Texas law should govern insurability of a punitive damages award issued in Texas against a California corporation for conduct that occurred in Texas. The court held that because “the torts here at issue occurred in Texas,” Texas’ interests “outweigh[ed] California’s attenuated interest in punishing and deterring the wrongful behavior of California manufacturers.” <i>Id.</i> at 1378-79.</p>	<p>against whom they are awarded to pass on the liability to an insurance carrier. . . . We concluded, therefore, that the public policy of this state prohibits insurance covering the punitive damages levied against plaintiff.”). Some courts, including the <i>City Products Corp.</i> court, look to Section 533 of the Insurance Code to reach this conclusion. Section 533 provides that an insurer “is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, or of the insured’s agents or others.” Cal. Ins. Code § 533.</p>	<p>Insurance Code (which provides that an insurer is not liable to indemnify the insured for its willful conduct) is the basis for the rule against insurance for punitive damages, and then holding that Section 533 does not apply when the liability is vicarious. To the extent, however, that a court holds that the bar to insurance for punitive damages is based not on Section 533 but instead on some broader policy, <i>see, e.g., Ford Motor Co. v. Home Ins. Co.</i>, 116 Cal. App. 3d 374 (Cal. Ct. App. 1981) (“<i>City Products</i> addresses the question of whether punitive damages are uninsurable as a matter of public policy as a separate and distinct issue from whether conduct is uninsurable under Insurance Code section 533. . . . The <i>City Products</i> rule prohibits insurance coverage of punitive damages, regardless of the context of the award. It is thus broader than the proscription in Insurance Code section 533.”), it may be possible to argue that punitive damages should not be</p>	<p>in accordance [with] the strict California standard for punitive damages. . . . If the Texas and West Virginia juries found Fibreboard liable based upon conduct which would not justify the imposition of punitive damages in California, but which did satisfy the lower threshold for punitive damages existing in Texas and West Virginia, then California public policy would not prohibit insurance of the punitive damages.”). As noted by the <i>Fibreboard</i> court, California has a particularly high threshold for imposing punitive damages. The applicable statute provides that a defendant can be held liable for punitive damages only “where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice” Cal. Civ. Code § 3294. An award from another state that is based upon conduct that does not constitute “oppression, fraud, or</p>

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			<p>insurable, even when imposed due to vicarious liability.</p> <p>Additionally, section 3294 of the California Civil Code provides that "any employer shall not be liable for [exemplary damages] based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice." When this standard of behavior is met, there may be less justification for allowing insurance for vicariously imposed punitive damages since the employer would have displayed some level of culpable conduct.</p>	malice" would appear to be insurable under California law.
Colorado	"In resolving choice of law issues, Colorado follows the 'most significant relationship' approach of the Restatement (Second) of Conflict of Laws (1971) for both tort and contract	<p>Uninsurable.</p> <p>Punitive damages for defendant's own conduct are not insurable. "[P]ublic policy prohibits insurers from assuming any obligation for indemnity of punitive</p>	Unclear.	Unclear.

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	actions.” <i>ITT Specialty Risk Serv. v. Avis Rent A Car</i> , 985 P.2d 43, 47 (Colo. Ct. App. 1998) (citing <i>Wood Bros. Homes, Inc. v. Walker Adjustment Bureau</i> , 601 P.2d 1369 (1979)).	damages. Otherwise, the legal and social purposes for punitive damages would be defeated.” <i>Universal Indemnity Insurance Co. v. Tenery</i> , 96 Colo. 10, 39 P.2d 776 (1934); <i>see also Ace American Insurance Company v. Dish Network, LLC</i> , 883 F.3d 881, 890 (10th Cir. 2018) (“The public policy of Colorado prohibits an insurance carrier from providing insurance coverage for punitive damages.”) (quoting Lira v. Shelter Ins. Co. , 913 P.2d 514, 517 (Colo. 1996).		
Connecticut	“The validity of a contract of fire, surety or casualty insurance and the rights created thereby are determined by the local law of the state which the parties understood was to be the principal location of the insured risk during the term of the policy, unless with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 [of the Restatement (Second) Conflict of Laws] to the transaction and the parties, in which event the local law of the other state will be applied. This establishes a special presumption in favor of	Unclear – Older Case Law Indicates Uninsurable but More Recent Precedent Holds Policy Providing Coverage for Intentional Acts Can Insurer Punitive Damages Imposed for Those Acts. In <i>Tedesco v. Md. Cas. Co.</i> , 18 A.2d 357, 359 (Conn. 1941), it was held that a tortfeasor may not protect himself from liability by seeking indemnity from his insurer for punitive damages that were imposed on him for his own intentional or reckless wrongdoing. <i>See also Bodner v. United Services Automobile Ass’n</i> , 222	Insurable. “In several other jurisdictions, public policy has been held to preclude the wrongdoer whose conduct has resulted in an award of punitive damages from shifting this liability to his insurer, the courts have allowed insurance coverage for an insured such as Avis, on whom liability for such damages has been imposed vicariously. . . . conclude that the syntax of the pertinent policy provisions as well as the established principle resolving insurance policy	Unclear – possibly Insurable. The language in the original <i>Tedesco</i> case strongly suggests that the reason punitive damages are not allowed are because they are allowing the insured to recover for his own intentional or reckless wrongdoing. If punitives were assessed for some other purpose, then the case does not seem like it would banned under the public policy considerations in <i>Tedesco</i> .

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	<p>application, in liability insurance coverage cases, of the law of the jurisdiction that is the principal location of the insured risk.” <i>Amr. States Ins. Co. v. AllState Ins. Co.</i>, 282 Conn. 454, 469 (2007).</p>	<p>Conn. 480, 499 (1992) (awarding insurance coverage for punitive damages contravenes considerations of public policy).</p> <p>However, a more recent decision by the Supreme Court of Connecticut rejected an argument that <i>Bodner</i> unequivocally prohibited construing a policy to indemnify a wrongdoer for punitive damages arising out of his own intentional conduct, and instead stated that “<i>Bodner</i> was a case focusing on policy considerations specific to uninsured motorist coverage.” <i>Nationwide Mutual Ins. Co. v. Pasiak</i>, 327 Conn. 225, 260 (2017). In <i>Pasiak</i>, the insurance policy expressly provided “coverage for an intentional act, namely, false imprisonment” which was the act giving rise to the punitive damages award. <i>Id</i> at 261. The court in <i>Pasiak</i> reasoned that “to refuse to enforce a contract covering punitive damages for intentional acts under such circumstances [where the policy explicitly provided such coverage] would allow insurers to avoid an obligation for which they bargained, and</p>	<p>ambiguities in favor of the policyholder require us to construe the policy provisions in this case to afford coverage for the liability imposed on Avis for treble damages.” <i>Avis Rent A Car Sys. v. Liberty Mut. Ins. Co.</i>, 203 Conn. 667, 672 (Conn. 1987)</p>	

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		<p>to be unjustly enriched.” <i>Id.</i> The court there quoted a leading treatise, “[I]n those various contracts where the company insures against liability for false arrest, false imprisonment, malicious prosecution, libel, slander, and invasion of privacy, [punitive] damages—under current judicial practices—almost necessarily will follow. It is not seemly for insurance companies to collect premiums for risks which they voluntarily undertake, and for which they actively advertise in competition with other companies, and then when a loss arises to say ‘It is against public policy for us to pay this award.’” <i>Id.</i> at 261-62 (quoting 12 J. Appleman, Insurance Law and Practice (1981) § 7031, p. 155). The court concluded that “ in the absence of a public policy reflected in our laws against providing such coverage, we conclude that, under the facts of the present case, the plaintiffs are bound to keep the bargain they struck, which includes coverage for common-law punitive damages for false imprisonment.” <i>Id.</i></p>		

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Delaware	<p>Where the contract does not state the law to be used, Delaware uses the “most significant relationship test” to determine which state’s law will apply to contract interpretation. <i>See Travelers Indemnity Company v. Lake</i>, 594 A.2d 38, 41 (Del. Super. 1991).</p> <p>Courts in Delaware have found that the location of the insured’s headquarters is often the basis for what state has the most significant relationship. <i>See Hoechst Celanese Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh</i>, 1994 Del. Super. LEXIS 558 (Del. Super. Ct. Mar. 28, 1994); <i>North Am. Philips Corp. v. Aetna Cas. & Sur. Co.</i>, 1994 Del. Super. LEXIS 421 (Del. Super. Ct. September 2, 1994).</p> <p>“If the law applicable to the claim permits insurance coverage for punitive damages, the inquiry stops. If the law prohibits insurance for punitive damages and the case has been settled, the court will allocate covered and uncovered portions of the settlement by excluding any portion of the settlement determined to be for punitive damages.” <i>Playtex v.</i></p>	<p>Insurable.</p> <p>“In conclusion, public policy in this State does not prohibit the issuance of an insurance contract that covers punitive damages. Having so ruled, we now remand this case to the Superior Court to determine whether On-Deck’s insurance policy with General Accident insured against punitive damage awards.” <i>Whalen v. On Deck Inc.</i>, 514 A.2d 1072, 1074 (Del. 1986). <i>See also Arch Insurance Co. v. Murdock</i>, 2018 WL 1129110, at *12 (Del. Mar. 1, 2018) (“Delaware public policy d[oes] not prohibit insurance provisions that cover punitive damages.”)</p>	N/A	N/A

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	<i>Columbia</i> , 1991 Del. Super. LEXIS 251 (Del. Super. Ct. July 9, 1991).			
District of Columbia	<p>The District of Columbia first determines whether a true conflict exists between the states whose law might apply to a contract, and if so, applies the law of the state having the “most substantial interest” in the resolution of the issue. <i>Eli Lilly & Co. v. Home Ins. Co.</i>, 764 F.2d 876, 882 (D.C.Cir. 1985); <i>Greycoat Hanover F Street Limited Partnership v. Liberty Mut. Ins. Co.</i>, 657 A.2d 764, 768 (D.C. Ct. App. 1995).</p> <p>The District of Columbia also treats life insurance policies differently, noting that “the place of delivery of life insurance policies determines what state law should apply.” <i>YWCA v. Allstate Ins. Co.</i>, 275 F.3d 1145, 1150 (D.C. Cir. 2002) (noting that this rule is specific to life insurance).</p>	<p>Unclear.</p> <p>One case has suggested punitive damages may not be insurable. <i>Salus v. Cont'l Cas. Co.</i>, 478 A.2d 1067, 1070 (D.C. 1984) (suggesting, but not holding, that indemnification of punitive damages may be contrary to public policy).</p>	<p>Unclear.</p>	<p>Unclear.</p>
Florida	Florida choice of law dictates that the law where the contract was made governs the contract. However, Florida also recognizes an exception to this rule where public policy requires assertion of	<p>Uninsurable.</p> <p>One may not insure against liability for punitive damages that result from one's own misconduct. <i>U.S. Concrete Pipe Co. v. Bould</i>, 437 So. 2d 1061 (Fla. 1983); <i>see</i></p>	<p>Insurable.</p> <p>Florida public policy prohibits liability insurance coverage for punitive damages assessed against a person because of his own wrongful</p>	<p>Unclear.</p>

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	<p>Florida's paramount interest in protecting its citizens. <i>Lincoln Nat. Health Ins. v. Mitsubishi</i>, 666 So.2d 159, 161 (Fla. App. 1995); <i>Sturiano v. Brooks</i>, 523 So. 2d 1126, 1129-1130 (Fla. 1988).</p> <p>To fall within the public policy exception and ensure Florida law will apply, there must be a Florida citizen in need of protection, a paramount Florida public policy and insurer must be on reasonable notice that the insured is a Florida citizen. <i>State Farm Mut. v. Roach</i>, 945 So.2d 1160, 1165 (Fla. 2006). Although Florida courts have not yet done so, this policy could be applied against punitive damages.</p> <p>The court of appeals for the 11th Circuit has found another exception, and applied Florida law to an insurance coverage dispute because it involved real property in Florida. <i>Shapiro v. Associated International Ins. Co.</i>, 899 F.2d 1116 (11th Cir. 1990). Although this holding has not been expressly overruled, the Florida Supreme Court suggested such an exception would <i>not</i> apply in <i>State</i></p>	<p><i>also Morgan Int'l Realty, Inc. v. Dade Underwriters Ins. Agency, Inc.</i>, 617 So. 2d 455 (Fla. Dist. Ct. App. 1993); <i>Aromin v. State Farm Fire & Cas. Ins. Co.</i>, 908 F.2d 812 (11th Cir. 1990).</p>	<p>conduct. The Florida policy of allowing punitive damages to punish and deter those guilty of aggravated misconduct would be frustrated if such damages were covered by liability insurance. However, Florida public policy does not preclude insurance coverage of punitive damages when the insured himself is not personally at fault, but is merely vicariously liable for another's wrong. <i>See Travelers Indem. Co. v. Despain</i>, 2006 WL 3747318, at *4 (M.D. Fla. Dec. 18, 2006) ("Florida public policy does not preclude insurance coverage of punitive damages when the insured himself is not personally at fault, but is merely vicariously liable for another's wrong.") It is generally held that there is a distinction between the actual tortfeasor and one only vicariously liable and that therefore public policy is not violated by construing a liability policy to include punitive damages recovered by an injured person where the insured did not</p>	

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	<i>Farm Mut. Auto. Ins. Co. v. Roach</i> , 945 So. 2d 1160, 1163 (Fla. 2006).		participate in or authorize the act. <i>United States Concrete Pipe Co. v. Boulton</i> , 437 So. 2d 1061, 1064 (Fla. 1983).	
Georgia	<p>“Under the Georgia conflict of laws rule the place of the delivery of the insurance contract controls. The insurance contract at issue in this case was executed and delivered in the state of Tennessee and, therefore, Tennessee law governs the determination of the substantive issues.” <i>O’Neal v. State Farm Mut. Auto. Ins. Co.</i>, 243 Ga. App. 756, 757 (Ga. Ct. App. 2000).</p> <p>“Under the rule of <i>lex loci contractus</i>, these issues, including the question of whether insurance coverage for punitive damages violates public policy, are to be determined by the substantive law” where the contract was made. <i>Fed. Ins. Co. v. Nat’l Distrib. Co.</i>, 203 Ga. App. 763, 766 (Ga. Ct. App. 1992).</p>	<p>Insurable.</p> <p>The legislature’s expressed policy in favor of coverage for any legal liability is broad enough to include punitive damages. <i>Greenwood Cemetery, Inc. v. Travelers Indem. Co.</i>, 232 S.E.2d 910, 913 (Ga. 1977); <i>Lunceford v. Peachtree Cas. Ins. Co.</i>, 495 S.E.2d 88, 91 (Ga. Ct. App. 1997) (the public policy against insuring for injuries intentionally inflicted was not violated when an automobile liability insurance contract covered the liability of the insured arising out of willful and wanton misconduct).</p>	N/A	N/A
Hawaii	Hawaii follows the “most significant relationship” test, though it does not follow any “formula” for determining what state’s laws to apply. Instead,	<p>Insurable.</p> <p>Haw. Rev. Stat. Ann. § 431:10-240 states that coverage under any policy of insurance in Hawaii shall not be construed</p>	N/A	N/A

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	Hawaii undergoes “an assessment of the interests and policy factors involved with a purpose of arriving at a desirable result in each situation” to determine what state’s laws to apply. <i>Peters v. Peters</i> , 63 Haw. 653, 664 (Haw. 1981)	to provide coverage for punitive or exemplary damages unless specifically included. By implication, policies must specifically include coverage for such damages if a policy is to respond to a punitive damages award, but punitive damages are allowed if included.		
Idaho	Under Idaho law, the “most significant relationship test is applied to choice of law questions involving the interpretation and construction of contracts.” <i>Ryals v. State Farm Mut. Auto. Ins. Co.</i> , 134 Idaho 302, 305 (2000) (citing <i>Unigard Ins. Group v. Royal Globe Ins. Co.</i> , 100 Idaho 123, 126 (1979)).	Insurable. Noting the public policy of deterrence and punishment upon which many courts rely in holding punitive damages uninsurable, the Supreme Court of Idaho nevertheless decided that the countervailing policy of affording a fund from which to compensate injured persons sufficiently tipped the balance in favor of coverage. <i>See Abbie Uriguen Oldsmobile Buick v. U.S. Fire Ins. Co.</i> , 511 P.2d 783 (Idaho 1973).	N/A	N/A
Illinois	Illinois applies a variation of the “most significant contacts test” to determine the jurisdiction whose law should apply to determine whether punitive damages are insurable. Under this test, “a number of factors are considered including the location of the subject matter, the	Uninsurable. Under Illinois law, punitive damages are not insurable. <i>Beaver v. Country Mut. Ins. Co.</i> , 420 N.E.2d 1058, 1060 (Ill. App. Ct. 1981) (“We think the better view, and one which consists with the function and nature of punitive damages in Illinois, is	Insurable. Illinois allows coverage for punitive damages when the liability has been caused by the insured’s “agents and servants.” <i>Scott v. Instant Parking, Inc.</i> , 245 N.E.2d 124, 126 (Ill. App. Ct. 1969). <i>See also Beaver v.</i>	Unclear.

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	<p>domicile of the insured or the insurer, the place of performance, and where the underlying action was filed.” <i>U.S. Gypsum Co. v. Admiral Ins. Co.</i>, 643 N.E.2d 1226, 1250 (Ill. App. Ct. 1995) (internal citations, quotations, and ellipses omitted). In <i>U.S. Gypsum</i>, the court applied South Carolina law to determine whether punitive damages were insurable because “South Carolina was the place where the underlying action was filed, where the underlying plaintiff was domiciled, and where the underlying injury occurred.” <i>Id.</i> at 1250.</p>	<p>that which prohibits insurance under such circumstances.”). <i>See also GTE North Inc. v. First State Ins. Co.</i>, 1990 WL 186470, at *3 (N.D. Ill. 1990) (“Although never decided by the State Supreme Court, it is clear that under Illinois law insurance coverage is not allowed for punitive damages arising out of one’s own conduct.”); <i>Crawford Laboratories, Inc. v. St. Paul Ins. Co. of Illinois</i>, 306 Ill.App.3d 538, 545 (Ill. App. Ct. 1999) (“[I]n Illinois, public policy prohibits insurance against liability for punitive damages that arise out of the misconduct of the insured.”)</p>	<p><i>Country Mut. Ins. Co.</i>, 420 N.E.2d 1058, 1061 (Ill. App. Ct. 1981) (“Our holding here that public policy prohibits insurance against liability for punitive damages that arise out of one’s own misconduct does not affect the rule . . . that an employer may insure himself against vicarious liability for punitive damages assessed against him in consequence of the wrongful conduct of his employee.” (internal citation omitted)).</p>	
Indiana	<p>“An insurance policy is governed by the law of the principal location of the insured risk during the term of the policy. . . Because Dunn was a Tennessee resident at the time he took out the policy, his claim is grounded in the law of Tennessee.” <i>Dunn v. Meridian Mut. Ins. Co.</i>, 836 N.E.2d 249, 251 (Ind. 2005) (citing Restatement (Second) of Conflict of Laws § 193).</p>	<p>Uninsurable. (probably). A federal District Court, predicting Indiana law on the issue, has held that Indiana public policy would be violated if a wrongdoer were permitted to insure against punitive damages arising from his own misconduct. <i>See Grant v. N. River Ins. Co.</i>, 453 F. Supp. 1361 (N.D. Ind. 1978) (city could not shift responsibility to insurer for payment of punitive damages for which city was directly liable).</p>	<p>Insurable. Vicarious liability is insurable. <i>See Norfolk & W.R. Co. v. Hartford Acc. & Indemn. Co.</i>, 420 F. Supp. 92 (N.D. Ind. 1976). The court granted the insured’s motion for summary judgment because the insured was held on a vicarious liability theory, which was within the scope of the policy’s coverage.</p>	<p>Unclear.</p>

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		<p>Additionally, the Indiana Court of Appeals held in <i>Shuamber v. Henderson</i>, 563 N.E.2d 1314, 1317 (Ind. Ct. App. 1990), that punitive damages were not recoverable under Indiana’s underinsured motorist statute. <i>See also Stevenson v. Hamilton Mut. Ins. Co.</i>, 672 N.E.2d 467, 473 (Ind. Ct. App. 1996) (“Courts have clearly and repeatedly affirmed the general proposition that public policy prohibits the use of insurance to provide indemnification for civil tort liability that results from an insured’s intentional wrongdoing.”)</p>		
Iowa	<p>Iowa courts often cite to the Restatement (Second) of Conflict of Laws, which notes that “[i]n the absence of a choice-of-law clause in the policy, the rights of the parties are determined by the law of the state which “has the most significant relationship to the transaction and the parties.” <i>Gabe’s Construction Co., Inc. v. United Capitol Ins. Co.</i>, 539 N.W.2d 144 (Iowa 1995).</p>	<p>Insurable.</p> <p>Iowa decisions have permitted insurance coverage of punitive damages. Specifically, where the policy “affords broad coverage and has no intentional-acts-exclusion provision,” the Supreme Court of Iowa concluded that “the public policy of freedom of contract for insurance coverage” prevails “over the public policy reasons for barring coverage for the intentional act of fraud.” <i>Grinnell Mut. Reinsurance Co. v. Jungling</i>, 654 N.W.2d 530, 541 (Iowa, 2002).</p>	N/A	N/A

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		<p>Additionally, the Supreme Court of Iowa has interpreted "damages" in a CGL policy as referring to both punitive and compensatory damages, and allowed coverage for punitive damages awarded against an insured. <i>See A.Y. McDonald Indus. v. Ins. Co. of N. Am.</i>, 475 N.W.2d 607 (Iowa 1991); <i>Skyline Harvestore Sys., Inc. v. Centennial Ins. Co.</i>, 331 N.W.2d 106 (Iowa 1983) (unless a contract specifically differentiates between punitive and compensatory, the court will construe "damages" as including both).</p> <p>Although "it is not against the public policy of [Iowa] to provide insurance coverage for punitive damages" the Supreme Court of Iowa found that an insured's homeowner's policy did not cover damages arising out of intentional sexual misconduct, noting "the general rule that insurance to indemnify an insured against his or her own violation of criminal statutes is against public policy and therefore void." <i>Altena v. United Fire and Cas. Co.</i>, 422 N.W.2d 485, 491 (Iowa 1988).</p>		

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Kansas	<p>“In determining what state’s law applies to a contractual dispute, Kansas follows the Restatement First of the Conflict of Laws. Accordingly, Kansas applies the lex loci contractus doctrine and applies the law of the state where the contract is made. A contract is made where the last act necessary for its formation occurs.” <i>Found. Property Invs., LLC v. CTP, LLC</i>, 37 Kan. App. 2d 890, 894-95 (Kan. Ct. App. 2007). Under Kansas law, “[a] contract is made where the last act necessary for its formation occurs.” <i>Novak v. Mutual of Omaha Ins. Co.</i>, 29 Kan. App. 2d 526, 534 (2001).</p> <p>However, the Kansas Supreme Court has noted that Kansas law must be applied if the application of its general choice of law rules would result in coverage of punitive damages. <i>Hartford Accident & Indem. Co. v. American Red Ball Transit Co.</i>, 262 Kan. 570, 575 (1997) (“If we were to refuse to apply Kansas law on the issue of punitive damages, we would thwart the purposes for which the policy was adopted.”) (quoting <i>St. Paul Surplus Lines Ins. Co. v. International Playtex</i>,</p>	<p>Uninsurable.</p> <p>“The Kansas Supreme Court has held that it is against the public policy of this state to allow a wrongdoer to purchase insurance to cover punitive damages.” <i>State Farm Fir and Cas. Co. v. Martinez</i>, 26 Kan.App.2d 869, 878 (Kan. 2000). Kansas public policy requires that payment of punitive damages rests ultimately, as well as nominally, on the party who committed the wrong, otherwise such damage would often serve no useful purpose; the objective to be obtained in imposing punitive damages is to make the culprit, not the culprit’s insurer, feel the pecuniary punch. <i>See Hackman v. Western Agr. Ins. Co.</i>, 251 P.3d 113, 2011 WL 1878135 at *5 (Kan. May 6, 2011)(“Kansas public policy prohibits insurance coverage for intentional acts: [A]n individual should not be exempt from the financial consequences of his own intentional injury to another.”) Specifically, permitting insurance coverage of punitive damages assessed against insureds would violate public policy. <i>Hartford Acc. &</i></p>	<p>Insurable.</p> <p>It is not against public policy to obtain insurance to cover liability for punitive damages or exemplary damages assessed against an insured as a result of the acts of employees, agents, servants or any other person for whom the insured is vicariously liable. KAN. STAT. ANN. § 40-2,115 (2010); <i>see also Hartford</i>, 938 P.2d at 1290.</p>	<p>Unclear.</p>

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	<i>Inc.</i> , 245 Kan. 258, 269-270 (1989)).	<i>Indem. Co. v. Am. Red Ball Transit Co., Inc.</i> , 938 P.2d 1281, 1293 (Kan. 1997).		
Kentucky	<p>“Kentucky consistently utilizes the most-significant-relationship standard to resolve choice-of-law issues when a dispute is contractual in nature.” <i>Ward v. Nationwide Assurance Co.</i>, No. 2012-CA-000809-MR, 2014 WL 7339238, at *2 (Ky. Ct. App. Dec. 24, 2014), <i>reh’g denied</i> (Feb. 12, 2015). “An exception is when the law of another state would violate Kentucky public policy.” <i>Id.</i> “To determine when it is appropriate to invoke the public-policy exception, Kentucky courts apply a two-part test.” <i>Id.</i> “First, the court must ascertain whether there is legislation “<i>expressly</i> forbidding enforcement” of the contract term. <i>State Farm Mutual Auto Insurance Company v. Hodgkiss–Warrick</i>, 413 S.W.3d 875, 880 (2013) (emphasis added). Such a “public policy . . . must be found clearly expressed in the applicable law.” <i>Id.</i> at 881. The search is fairly simple: is there a constitutional provision, statute, or other legislation that directly and unequivocally forbids or</p>	<p>Insurable.</p> <p>Kentucky has rejected the view that liability insurance coverage of punitive damages is void as contrary to public policy. See <i>Cont’l Ins. Companies v. Hancock</i>, 507 S.W.2d 146, 151 (Ky. 1973) (distinguishing between gross negligence resulting in assault as insurable where intentional wrongs are not). See also <i>Jamos Capital LLC v. Endurance American Specialty Ins. Co.</i>, 2016 WL 552750, at *4 (Ky. Feb. 12, 2016) (discussing whether Kentucky or Ohio law applied and stating that Kentucky “allows an insurance policy to cover punitive damages.”); <i>Maryland Casualty Co. v. Baker</i>, 200 S.W.2d 757, 760 - 62 (Ky. 1947) (holding that Kentucky statute required insurer of taxicab company to cover punitive damages resulting from employee’s assault on passenger).</p>	N/A	N/A

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	<p>declares unenforceable the sort of exclusion at issue? When such legislation exists, “the court is bound to carry out the legislative mandate with respect to the enforceability of the term.” Restatement (Second) of Contracts § 178 cmt. a (1979).</p> <p>Second, absent an <i>express</i> prohibition, “a contract term is unenforceable on public policy grounds only if”: (a) “the policy asserted against it is clearly manifested by legislation or judicial decision”; and (b) the policy ‘is sufficiently strong to override the very substantial policies in favor of the freedom of contract and the enforcement of private agreements.’” <i>Id.</i> (quoting <i>Hodgkiss–Warrick</i>, 413 S.W.3d at 880).</p>			
Louisiana	<p>“In any case involving a potential choice of law issue, a court’s first task is to determine which jurisdictions have meaningful contacts to the dispute. La. C.C. art. 3537 states:</p> <p>Except as otherwise provided in this Title, an issue of conventional obligations is governed by the law of the state whose policies would be most</p>	<p>Insurable, unless the punitives are imposed on account of intentional wrongdoing.</p> <p>Punitive/exemplary damages are not favored under Louisiana law. Accordingly its policy “has been to reject punitive damages without specific authority.” <i>Louviere v. Byers</i>, 526 So. 2d 1253, 1255 (La. Ct. App. 1988). The</p>	N/A	N/A

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	<p>seriously impaired if its law were not applied to that issue.</p> <p>That state is determined by evaluating the strength and pertinence of the relevant policies of the involved states in the light of: (1) the pertinent contacts of each state to the parties and the transaction, including the place of negotiation, formation, and performance of the contract, the location of the object of the contract, and the place of domicile, habitual residence, or business of the parties; (2) the nature, type, and purpose of the contract; and (3) the policies referred to in Article 3515, as well as the policies of facilitating the orderly planning of transactions, of promoting multistate commercial intercourse, and of protecting one party from undue imposition by the other.”</p> <p><i>Lee v. Sapp</i>, 2014-1047 (La. App. 4 Cir. 3/4/15) (La. Ct. App. Mar. 4, 2015).</p> <p>“Next, a court must determine whether any meaningful difference exists between the substantive laws of the jurisdictions. If the governing law of each jurisdiction is identical, or so</p>	<p>Louisiana legislature has authorized the imposition of punitive damages in drunk driving cases, and litigation over whether the public policy of Louisiana permits coverage for punitive damages has focused on this context. The courts which have addressed the issue have held that Louisiana public policy does not prohibit insuring against punitive damages. <i>See id.</i> (“We hold that public policy does not preclude insurance coverage of exemplary damages under La. C. C. art. 2315.4.”); <i>see also Sharp v. Daigre</i>, 555 So. 2d 1361 (La. 1990) (holding that it was not against Louisiana public policy to provide coverage for punitive damages).</p> <p>After <i>Sharp</i>, however, the Louisiana legislature passed a statute allowing automobile insurers to affirmatively exclude punitive damages from policies, which has been upheld by the courts. <i>See</i> LSA-R.S. 22:1406(D)(1)(a)(i) (“The coverage provided under this Subsection may exclude coverage for punitive or exemplary damages by the terms of the policy or contract”); <i>Yonter v. State Farm Mut. Auto. Ins. Co.</i>, 802 So. 2d 950,</p>		

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	<p>similar that the same result would be reached under either law, a “false conflict” exists and, thus, no need exists to determine which state’s law applies.” <i>Id.</i> (finding that Florida law applied where an insurance contract was issued in Florida to plaintiffs injured when they were passengers in an accident in Louisiana).</p>	<p>951 (La. Ct. App. 2001) (upholding an automobile policy excluding punitive damages). This is a contractual exclusion, though, and not one imposed as a matter of public policy by the Louisiana courts regardless of insurance policy language.</p> <p>It is, however, against public policy in Louisiana to insure against intentional wrongdoing. <i>Vallier v. Oilfield Const. Co., Inc.</i>, 483 So. 2d 212, 219 (La. Ct. App. 1986) (“[I]t would be against public policy to allow an employer to obtain insurance coverage for its voluntary and intentional wrongful acts.”). While <i>Vallier</i> deals with coverage for employers, it seems likely that the rule that Louisiana forbids any coverage for intentional wrongdoing of employers would apply equally to forbidding coverage for punitive damages, as well as compensatory damages, imposed upon other types of tortfeasors for their intentional wrongdoing.</p>		
Maine	<p>“When a contract contains a choice of law provision, we generally will interpret the contract under the chosen state’s laws.” <i>Stenzel v. Dell, Inc.</i>, 870 A.2d</p>	<p>Unclear – possibly Uninsurable.</p> <p>In at least one decision, a court in Maine did not permit punitive damages to be insured. <i>Bralely v. Berkshire Mut. Ins.</i></p>	<p>Unclear – likely insurable.</p> <p>In one case, the Supreme Court of Maine found that “[p]ublic policy does not prohibit insurance coverage</p>	<p>Unclear.</p>

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	<p>133, 139 (Me. 2005). "Maine's choice of law rule in contract cases requires that the law of the state with the most significant relationship to the parties and the transaction should control." <i>Smith v. Concord Gen. Mut. Ins. Co.</i>, No. CIV.A. CV-99-056, 2000 WL 33676154, at *1 (Me. Super. Ct. Jan. 3, 2000).</p>	<p><i>Co.</i>, 440 A.2d 359, 361 (Me. 1982). In that case, the court considered whether punitive damages could be awarded under the uninsured motorist provision of an insurance policy. <i>Id.</i> The court interpreted the contract language and found that punitive damages were excluded. <i>Id.</i> at 362. The court also noted that under Maine law, punitive damages are awarded to deter a tortfeasor and, here, no deterrence would be possible. <i>Id.</i> Additionally, because "the amount of punitive damages under Maine law is in part determined by its deterrent effect and must therefore bear some relationship to the actual wealth of the defendant . . . one of the traditional measures of punitive damages would often be lacking if an uninsured motorist was permitted to recover them." <i>Id.</i> at 363.</p> <p>However, at least one decision seemingly applying Maine law did permit punitive damages to be insured. <i>Concord Gen. Mut. Ins. Co. v. Hills</i>, 345 F. Supp. 1090, 1095 (D. Me. 1972). Punitive damages were included within the coverage of an</p>	<p>for an insured whose negligence contributed to an injury from sexual abuse." <i>Hanover Ins. Co. v. Crocker</i>, 688 A.2d 928, 932 (Me. 1997). The court there distinguished the claim for coverage there, which was based on the insured's negligent conduct related to sexual abuse intentionally inflicted by another, from a situation where "the perpetrator himself was seeking coverage for an intentional act" and concluded that permitting insurance coverage for the former did not violate public policy though in the latter situation it would. <i>Id.</i></p>	

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		<p>automobile policy requiring the insurer to pay on behalf of the insured all sums which the insured should become legally obligated to pay as damages because of bodily injury, or because of injury to or destruction of property. <i>Id.</i> At the time of the accident, the vehicle was being driven without permission of the insured by a friend of the son of the principal operator. In an action by the insurer seeking to determine the extent of its obligation to defend any suits in connection with the accident, the court asserted that it was well settled that such broad provisions in automobile liability policies “unmistakably” included both compensatory and punitive damages. <i>Id.</i> Accordingly, although the court entered a judgment that the insurer was under no obligation to defend any suits against the principal operator’s son or his friend involving the accident, since neither was an insured under the policy at the time, and, likewise, that the insurer had no obligation to pay any resulting judgment for damages against either of them, the court decreed that the coverage of the insurer’s policy included an obligation to</p>		

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		pay any punitive damages which might be awarded against the insured.		
Maryland	<p>“When deciding choice-of-law questions in the interpretation of contracts, Maryland courts apply the substantive law of the state where the contract was made, <i>i.e.</i>, where the policy was delivered and the premiums were paid.” <i>TIG Ins. Co. v. Monongahela Power Co.</i>, 58 A.3d 497, 501-02 (Md. Ct. Spec. App. 2012) <i>aff'd</i> 86 A.3d 1245 (Md. 2014).</p>	<p>Insurable.</p> <p>Where, in a malicious prosecution action, punitive damages had been awarded against a bank on the basis of an instruction that the necessary malice could be inferred from want of probable cause, the court held in <i>First Nat. Bank of St. Mary's v. Fid. & Deposit Co.</i>, 389 A.2d 359, 367 (Md. 1978) that public policy did not protect the insurance company from liability under its policy of insurance for such punitive damages. The court said that “public policy” was a difficult term to define, and that what is fair or unfair changes from one generation to the next. The court asserted that insurance companies probably had been cognizant that they might be called upon to pay an award of punitive damages and that they probably had considered such a possibility in establishing rates. Moreover, denying insurance coverage of punitive damages could jeopardize small businesses whose owners suffered punitive damages awards in malicious prosecution actions wherein</p>	N/A	N/A

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		<p>they might have acted in good faith, though in ignorance of certain legal standards, in prosecuting an action. <i>Id.</i> at 241. The court said its decision would not eliminate the deterrent effect of punitive damages since those who were poor risks would encounter great difficulty in obtaining insurance, a fact which such persons knew. <i>Id.</i> at 242. <i>See also Bailer v. Erie Ins. Exchange</i>, 344 Md. 515, 535 (Md. 1997) (finding no public policy precluding insurance coverage for intentional tort of invasion of privacy); <i>Medical Mut. Liability Ins. Soc. of Maryland v. Miller</i>, 52 Md.App. 602, 613 (Md. 1982) (noting argument “that the public policy of [Maryland] precludes insurance coverage for punitive damages based upon alleged criminal conduct of the insured” “was rejected by the Court of Appeals” in <i>First National</i>).</p>		
Massachusetts	<p>Massachusetts follows the Restatement (Second) of Conflicts of Laws approach. <i>Clarendon Nat. Ins. Co. v. Arbella Mut. Ins. Co.</i>, 803 N.E.2d 750, 752-53 (Mass. App. Ct. 2004). “The Restatement is structured such that, when faced, as here,</p>	<p>Insurable in some circumstances but not in others.</p> <p>Directly assessed punitive damages are not insurable where liability is due to “deliberate or intentional crime or wrongdoing,” but insurers can “cover all</p>	<p>Insurable.</p> <p>Insurers can “indemnify insureds for liability arising from grossly negligent or reckless misconduct, and thus would allow insurers to pay for punitive damages based on a</p>	<p>Insurable.</p>

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	<p>with a conflict of laws question involving insurance contracts, the first step is to ascertain whether the provisions of § 193 will resolve the matter; if not, the next step is to employ the principles set forth in § 188 to ascertain which State has a more significant relationship to the issues, using in that analysis the factors set forth in § 6.</p> <p>Section 193 provides that the rights created by a contract of casualty insurance are to be determined by the local law of the State that the parties to the insurance contract understood would be the principal location of the insured risk during the term of the policy, unless some other State has a more significant relationship.” <i>Id.</i> at 753. “The principal location of the insured risk is emphasized because location often has an ‘intimate bearing’ on the nature of the risk, and may determine the terms and conditions of the contract. Therefore, in our analysis of which State’s law to apply, we are to give greatest weight to the location of the insured risk, provided that</p>	<p>liability for misconduct causing bodily injury even if that misconduct was undertaken deliberately or intentionally” and insurers can “indemnify insureds for liability arising from grossly negligent or reckless misconduct, and thus would allow insurers to pay for punitive damages based on a defendant’s gross negligence or recklessness.” <i>Williamson-Green v. Interstate Fire and Casualty Co.</i>, 2017 WL 3080559, at *4 (Mass. Super. Ct. May 26, 2017). <i>See also</i> M.G.L.A. 175 § 47 (providing that insurers may provide coverage to “any person against legal liability for loss or damage on account of the injury or death of any other person or on account of any damage to property of another, except that no company may insure any person against legal liability for causing injury, <i>other than bodily injury</i>, by his deliberate or intentional crime or wrongdoing”) (emphasis added). <i>Santos v. Lumbermens Mut. Cas. Co.</i>, 556 N.E.2d 983, 990 (Mass. 1990) (“In sum, neither the purposes of the underinsurance statute nor the wrongful death statute will be served by requiring that punitive</p>	<p>defendant’s gross negligence or recklessness.” <i>Williamson-Green v. Interstate Fire and Casualty Co.</i>, 2017 WL 3080559, at *4 (Sup. Ct. Mass. May 26, 2017)</p>	

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	the risk can be located principally in one State.” <i>Id.</i> (internal citations omitted).	<p>damages shall be considered as part of the “damages” allowable under G.L. c. 175, § 113L.”).</p> <p>A recent decision from the Superior Court of Massachusetts stated that “Massachusetts law does not reflect any public policy against an insurer indemnifying its insured for punitive damages awarded in a wrongful death case based on a finding that reckless or grossly negligent conduct caused bodily injury and thus death.” <i>Williamson-Green</i>, 2017 WL 3080559, at *4. The court in <i>Williamson-Green</i> explicitly noted that <i>Santos</i> does not completely prohibit insurance coverage for punitive damages, but only that “<i>Santos</i> holds that punitive damages imposed under the wrongful death act are not recoverable under the underinsured motorist provisions of each automobile insurance policy.” <i>Id</i> at *5.</p>		
Michigan	“Generally, interpretation of contract provisions is governed by the law of the state in which the contract was entered.” <i>O’Berry v. Pitcairn Dev. LP</i> , No. 285919, 2009 WL 2913587, at *2 (Mich.	<p>Insurable. (probably).</p> <p>Although no Michigan case has addressed the issue, in action against commercial general liability insurer seeking determination that policy covered</p>	N/A	N/A

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	Ct. App. Sept. 10, 2009) (quoting <i>Jones v. State Farm Mut. Auto. Ins. Co.</i> , 509 N.W.2d 829, 833 (Mich. Ct. App. 1993)) (internal quotation marks omitted).	insured's liability for punitive damages awarded in separate action against insured by injured third party, a federal district court held Michigan law permitted coverage. <i>Meijer, Inc. v. General Star Indem. Co.</i> , 826 F. Supp. 241, 247 (W.D. Mich. 1993) <i>aff'd</i> , 61 F.3d 903 (6th Cir. 1995). Observing that policy contained no express exclusion of coverage of liability for punitive damages, the court said that coverage existed unless state public policy precluded coverage. <i>Id.</i> Additionally, public policy did not preclude coverage, in that contrary holding would create exclusion not found in parties' contract. <i>Id.</i> See also <i>New Amsterdam Casualty Co. v. Jones</i> , 135 F.2d 191, 193 - 95 (6th Cir. 1943) (holding that Michigan public policy did not prohibit ordinary accident policy from covering damages when injury was intentionally caused).		
Minnesota	"Before applying a choice-of-law analysis, a court must first determine whether there is an actual conflict between the legal rules of the two states. An actual conflict exists if choosing the	Uninsurable. In Minnesota, "punitive damages are uninsurable as a matter of public policy." <i>Hawkins, Inc. v. American Intern. Specialty Lines Ins. Co.</i> , 2008 WL	Insurable. Minnesota cases explicitly state that vicariously assessed damages are insurable. <i>Seren Innovations, Inc. v. Transcontinental Ins. Co.</i> , 2006 WL	Unclear.

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	<p>rule of one state or the other is 'outcome determinative.'" <i>Nodak Mut. Ins. Co. v. Am. Family Mut. Ins. Co.</i>, 590 N.W.2d 670, 672 (Minn. Ct. App. 1999) <i>aff'd</i>, 604 N.W.2d 91 (Minn. 2000) (internal citations omitted). "As part of our analysis, we must consider whether the rule of each state may be constitutionally applied." <i>Id.</i> at 672. (internal citations omitted). "The next step in choice-of-law analysis is to consider certain choice-influencing factors. These factors help reveal the reasons for choosing one state's law over another. <i>Jepson v. General Cas. Co.</i>, 513 N.W.2d 467, 469 (Minn. 1994). The factors are: (1) predictability of result; (2) maintenance of interstate and international order; (3) simplification of the judicial task; and (4) advancement of the forum's governmental interest. <i>Nodak Mut. Ins. Co.</i>, 590 N.W.2d at 673.</p>	<p>4552683, at *11 (Minn. Oct. 14, 2008). In most instances, public policy should prohibit a person from insuring himself against misconduct of a character serious enough to warrant punitive damages, despite the lack of certainty concerning the deterrent effect of such damages. <i>Wojciak v. N. Package Corp.</i>, 310 N.W.2d 675, 679 (Minn. 1981). While finding that the case was not an appropriate one in which to apply the rule, the court said that although the multiple damages authorized in the compensation law were described as "punitive damages," the statutory provision providing for such damages was enacted not only to punish and deter employers, but also to afford redress to employees. <i>Id.</i> But the court said that it recognized differences between a statutory award of multiple damages, not necessarily reflecting a judgment concerning the culpability of the employer's conduct, and an award of punitive damages at common law. The latter, the court said, is assessed by the jury and thus reflects the community's condemnation of a defendant's conduct when it is viewed as</p>	<p>1390262, at *4 (Minn. May 23, 2006) ("This general prohibition [against providing insurance coverage for punitive damages] is subject to an exception for punitive-damages claims based on vicarious liability"); <i>Lake Cable Partners v. Interstate Power Co.</i>, 563 N.W.2d 81 (Minn. Ct. App. 1997); <i>Perl v. St. Paul Fire & Marine Ins. Co.</i>, 345 N.W.2d 209 (Minn. 1984).</p> <p>The Minnesota legislature explicitly codified the principle that that insurance companies may insure against vicarious liability for punitive damages. 2000 Minn. Laws ch. 304, § 1, at 177. "Under the statutory codification of the common-law exception, providing coverage for punitive damages that arise through vicarious liability would not violate public policy." <i>Seren</i>, 2006 WL 1390262, at *4.</p> <p>In one federal case, the court found that the vicarious liability exception to general prohibition against</p>	

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		<p>wanton, malicious, or outrageous. <i>See also Perl v. St. Paul Fire & Marine Ins. Co.</i>, 345 N.W.2d 209 (Minn. Ct. App. 1984) (holding insurer liable to indemnify in forfeiture of fee for malpractice case based on vicarious liability of law and comparing public policy to that of insuring punitive damages based on vicarious liability).</p> <p>In <i>Caspersen v. Webber</i>, 298 Minn. 93, 99, 213 N.W.2d 327, 331 (1973), concerning an insurer's liability, under a homeowners' policy, for an assault committed by the policyholder, the court held that since the punitive damages were awarded as punishment to the policyholder and as a deterrent to others, they were not awarded because of bodily injury within the meaning of the policy, so that the company's policy afforded no coverage for the punitive damages.</p> <p>However, the Court of Appeals of Minnesota declined to adopt a broad public policy of "an absolute rule of uninsurability for intentional acts when the policy provides coverage" and noted that other Minnesota courts had "enforced</p>	<p>insurance coverage for punitive damages did not apply to insured tire manufacturer's liability for punitive damages in products liability action where, notwithstanding insured's contention that sole reason for posing punitive damages was failure to distribute adequate warnings and that duty to distribute such warnings was on manufacturer's wholly owned subsidiary, jury specifically found that both manufacturer and subsidiary were negligent. The court however did not rule on the specific issue of whether Minnesota recognizes a vicarious liability exception to the general rule prohibiting insurance coverage for punitive damages (for purposes of this decision, the court assumed that such an exception exists in Minnesota). <i>U.S. Fire Ins. Co. v. Goodyear Tire & Rubber Co.</i>, 920 F.2d 487, 492 (8th Cir. 1990).</p>	

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		<p>liability contracts in accordance with their terms even when insureds commit intentional wrongful acts.” <i>Independent School Dist. No. 697 v. St. Paul Fire and Marine Ins. Co.</i>, 495 N.W.2d 863, 868 (Minn. 1993). The court there explained that “[w]hen the language of the policy, as here, provides coverage for wrongful acts, we will not read into the contract an exception for claims resulting from alleged intentional discrimination by the school district. The carrier is, of course, free to expressly provide an exclusion for such conduct in the future. We enforce this insurance contract as written.” <i>Id.</i> See also <i>St. Paul Fire & Marine Ins. Co. v. Love</i>, 459 N.W.2d 698 (Minn.1990) (professional liability policy covers damages caused by psychologist’s sexual relationship with patient)</p>		
Mississippi	<p>“We apply the center of gravity test to each question presented, recognizing that the answer produced in some instances may be that the law of this state applies and on other questions in the same case the substantive law of another state may be enforceable.” <i>Boardman v. United</i></p>	<p>Insurable. Directly assessed punitive damages are insurable. <i>Anthony v. Frith</i>, 394 So. 2d 867, 868 (Miss. 1981) (“As to there being any public policy in this state against allowing recovery for punitive damages in a case as this under the terms of an</p>	N/A	N/A

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	<p><i>Servs. Auto. Ass'n</i>, 470 So. 2d 1024, 1031 (Miss. 1985).</p> <p>“To begin with, we regard Restatement § 193 as among the choice of law rules applicable in this state. We have no prior cases construing § 193. Nevertheless, having embraced the general center of gravity test found in Restatement § 6 . . . we perceive no reason why when it comes to actions on insurance contracts we should chart a separate course. Restatement § 193 presents a fair and enlightened set of principles and we adopt them.” <i>Id.</i> at 1033.</p> <p>“The central thrust of Restatement § 193 is that the law applicable in actions on insurance contracts (other than those providing life insurance) should the law of the state the parties understood was to be the principal location of the risk. Note that the phrase ‘principal location’ is used, not ‘exclusive location’ or other like phraseology. This choice of wording no doubt reflects the reality that choice of law questions do not arise unless at least two states have some</p>	<p>insurance contract as set forth herein, . . . it was not against public policy to require the carrier to pay punitive damages.”).</p>		

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	arguable basis for application of their law." <i>Id.</i>			
Missouri	<p>“Missouri has adopted sections 188 and 193 of the Restatement (Second) Conflict of Laws (1971) for determining choice of law issues as they relate to insurance contracts. Under section 193, ‘the principal location of the insured risk is given greater weight than any other single contact in determining the state of applicable law provided that the risk can be located in a particular state.’”</p> <p><i>Accurso v. Amco Ins. Co.</i>, 295 S.W.3d 548, 551 (Mo. Ct. App. 2009) (internal citations omitted).</p>	<p>Unclear.</p> <p>Uninsurable.</p> <p>In <i>Crull v. Gleb</i>, 382 S.W.2d 17, 23 (Mo. Ct. App. 1964), the court held that to allow a motorist to insure himself against judgments imposed against him for punitive damages, which were assessed against him for his wanton, reckless, or willful acts, would be contrary to public policy. The insured policyholder had suffered a judgment for compensatory and punitive damages as a result of an accident in which he had been found to have conducted himself wantonly and recklessly. The court pointed out that in order for a plaintiff to recover punitive damages, he had to prove either actual or legal malice. It explained that in a case of actual malice, the action is motivated by hatred or ill will, and that legal malice is the intentional doing of a wrongful act without just cause or excuse in reckless disregard of the rights of others. The court reasoned that since the chief purpose of punitive damages is punishment to the</p>	Unclear.	Unclear.

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		<p>offender, and a deterrent to similar conduct by others, the burden of paying such damages should rest ultimately, as well as nominally, on the party who actually committed the wrong. If the insurance company was to bear the burden of such damages, the award would have served no purpose, the court said, pointing out that in such event the injured party would already have been made whole through his compensatory damages, and that the insurance company, which had done no wrong, would be punished. Public policy against such coverage is based on the thesis that wrongdoing is discouraged by the imposition of personal punishment. The court explained that the same policy which renders violative of public policy insurance against criminal fines should invalidate any insurance contract against the civil punishment that punitive damages represent. Accordingly, the court reversed the trial court's judgment against the insurance company in a garnishment proceeding brought by the injured person which had recovered a judgment against the insured policyholder for compensatory and punitive damages.</p>		

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		<p><i>See also Brand v. Kansas City Gastroenterology & Hepatology, LLC</i>, 414 S.W.3d 546 (Mo.App.W.D. 2013) (“Missouri courts have consistently held that an insured’s intentional infliction of damage ... cannot be covered by liability insurance.”) (quotation omitted)</p> <p>Insurable.</p> <p><i>Colson v. Lloyd’s of London</i>, 435 S.W.2d 42 (Mo. Ct. App. 1968). In <i>Colson v. Lloyd’s of London</i>, the court considered “whether it would be against public policy to permit an association of law enforcement officers to insure themselves against alleged willful and intentional acts.” <i>Id.</i> at 47. The court concluded that “it would tend to discourage them from entering into that public service” if “they were told by the courts that they could not enter into a contract which would afford them protection against financial loss arising from claims for punitive damages.” <i>Id.</i>; <i>see also Ohio Casualty Ins. Co. v. Welfare Fin. Co.</i>, 75 F.2d 58, 60 (8th Cir. 1934) (affirming decision of District Court for Eastern District of Missouri and stating “[w]e hold that the</p>		

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		punitive damages under the facts here must be held to be within the meaning and protection of this [insurance] policy; that there is no public policy, under the circumstances of this case, requiring such provision to be held invalid”).		
Montana	<p>“[W]here a contract does not specify the law that will apply to an issue arising from a contract, the matter should be determined using the law of the state which has the ‘most significant relationship’ to the transaction and to the parties, with respect to that issue. <i>Mitchell</i>, ¶¶ 17–18. In setting forth this rule, we relied on § 188 of the <i>Restatement (Second) of Conflict of Laws</i>.” <i>Tidyman’s Mgmt. Servs. Inc. v. Davis</i>, 2014 MT 205, ¶ 16, 376 Mont. 80, 90, 330 P.3d 1139, 1147.</p> <p>“We concluded that § 28–3–102, MCA, provided a statutory directive that Montana law should apply if performance of the contract occurred in Montana. <i>See Mitchell</i>, ¶¶ 18–23. Section 28–3–102 provides that “[a] contract is to be interpreted according to the law and usage of the place where it is</p>	<p>Insurable.</p> <p><i>First Bank (N.A.)-Billings v. Transamerica Ins. Co.</i>, 679 P.2d 1217, 1223 (Mont. 1984) (“We find that providing insurance coverage of punitive damages is not contrary to public policy.”). The court in <i>First Bank (N.A.)-Billings v. Transamerica Insurance Co.</i> also stated:</p> <p>Until such time that the law of punitive damages is more certain and predictable, or until the legislature alters the law of punitive damages or expressly declares a policy against coverage in all cases, we leave the decision of whether coverage will be permitted to the insurance carriers and their customers. <i>Id.</i>; <i>see also Fitzgerald v. W. Fire Ins. Co.</i>, 679 P.2d 790, 792 (Mont. 1984) (noting that “[i]n the instant case, appellant [the insurer] creates an ambiguity in the language by</p>	N/A	N/A

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	to be performed or, if it does not indicate a place of performance, according to the law and usage of the place where it is made." Interpreting place of performance in the insurance contract, we observed that where an insurance contract designates the place of performance to be any state where a claim arises, performance occurs where the insured obtains judgment. <i>Mitchell</i> , ¶ 20." <i>Tidyman's Mgmt. Servs. Inc. v. Davis</i> , 2014 MT 205, ¶ 16, 376 Mont. 80, 91, 330 P.3d 1139, 1147.	contending that we must read into the language the distinction between punitive and compensatory damages" and stating "[w]e therefore hold that the language of the insurance contract provides for coverage of punitive damages and that no public policy in Montana precludes payment of these damages by an insurance carrier").		
Nebraska	The Supreme Court of Nebraska has adopted the Restatement (2d) of Conflict of Laws § 188 (1971) for disputes involving interpretation of contracts. <i>Mertz v. Pharmacists Mutual. Ins. Co.</i> , 625 N.W.2d 197 (Neb. 2001); <i>Johnson v. United States Fidelity & Guar. Co.</i> , 696 N.W.2d 431 (2005).	Uninsurable. <i>Miller v. Kingsley</i> , 194 Neb. 123, 124, 230 N.W.2d 472, 474 (1975) ("It is a fundamental rule of law in this state that punitive, vindictive, or exemplary damages are not allowed. The measure of recovery in all civil cases is compensation for the injury sustained."); <i>see also State ex rel. Cherry v. Burns</i> , 258 Neb. 216, 226, 602 N.W.2d 477, 484 (1999) (holding that, ordinarily, for state causes of actions, punitive damages contravene Nebraska Constitution art. 7, § 5, and are not allowed).	Unclear – likely not Insurable. Nebraska law does not recognize punitive damages, so probably not.	Unclear – likely not Insurable. Nebraska law does not recognize punitive damages, so probably not.

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Nevada	<p>“This court has adopted the substantial relationship test to resolve conflict-of-law questions.” <i>Williams v. United Serv. Auto. Ass’n</i>, 109 Nev. 333, 334-335 (Nev. 1993); “Under [the substantial relationship test], the state whose law is applied must have a substantial relationship with the transaction; and the transaction must not violate a strong public policy of Nevada . . . The Restatement (Second) of Conflict of Laws §193 (1971) provides that the location of the insured risk embodies a significant criterion in deciding which law governs.” <i>Id.</i> The agreement must also not be contrary to the public policy of another interested state. <i>Progressive Gulf Ins. Co. v. Faehnrich</i>, 327 P.3d 1061, 1064 (2014).</p>	<p>Insurable.</p> <p>The Nevada Supreme Court clearly prohibited, on grounds of public policy, indemnification for punitive damages.” <i>Lombardi v. Maryland Cas. Co.</i>, 894 F. Supp. 369, 372 (D. Nev. 1995) (applying Nevada law). However, after that case, the legislature passed a statute stating punitive damages may be insured if they do not arise from the wrongful act of the insured with the intent to cause injury to another. NEV. REV. STAT. § 681A.095 (2007). This statute is not retroactive. <i>Albert D. Seeno Constr. Co. v. Twin City Fire Ins. Co.</i>, 1997 U.S. App. LEXIS 12432 (9th Cir. Nev. May 27, 1997).</p>	<p>Unclear.</p>	<p>Insurable.</p> <p>Nevada law explicitly states that punitive damages may be insured if they do not arise from the wrongful act of the insured with the intent to cause injury to another. NEV. REV. STAT. § 681A.095 (2007)</p>
New Hampshire	<p>“[I]n the context of insurance contracts, we have found that the State which is the ‘principal location of the insured risk’ bears the most significant relationship to the contract, in the absence of an express choice of law by the parties. <i>Ellis v. Royal Ins. Co.</i>, 129 N.H. 326, 331, 530 A.2d 303, 306 (1987).” <i>Glowski v.</i></p>	<p>Insurable.</p> <p>An insurance company can be liable for exemplary or punitive damages where such coverage is not expressly excluded by the policy language. <i>Weeks v. St. Paul Fire & Marine Ins. Co.</i>, 673 A.2d 772 (N.H. 1996); <i>American Home Assurance Co. v. Fish</i>, 451 A.2d 358 (N.H. 1982) –</p>	<p>N/A</p>	<p>In a civil action founded on a tort, nothing but compensatory damages can be awarded, but the injured party is entitled to full compensation for all the injury sustained, mental as well as material. In some cases, compensation for the actual</p>

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	<i>Allstate Ins. Co.</i> , 134 N.H. 196, 198, 589 A.2d 593, 595 (1991).	Although New Hampshire prohibits the award of punitive damages unless otherwise provided by statute, <i>See</i> .N.H. Rev. Stat. Ann. § 507:16, where punitive damages are available they are insurable.		material damage sustained will be full compensation. In other cases, the material damages may be trivial, and the principal injury be to the wounded feelings from the insult, degradation, and other aggravating circumstances attending the act. <i>Kimball v. Holmes</i> , 60 N.H. 163, 164 (1880); see also <i>Vratsenes v. N.H. Auto, Inc.</i> , 289 A.2d 66, 68 (N.H. 1972) (reversing an order granting a punitive damages award and holding that “no damages other than compensatory are to be awarded. However, when the act involved is wanton, malicious, or oppressive, the compensatory damages awarded may reflect the aggravating circumstances.”
New Jersey	New Jersey's choice of law rules require that the “law of the place of contracting applies unless some other state has a dominant significant relationship to the transaction.” <i>Conn. Indem. Co. v.</i>	Uninsurable. It is against the public policy of New Jersey to allow insurance for punitive damages. <i>Variety Farms, Inc. v. New Jersey Manufacturers Ins. Co.</i> , 410 A.2d	Unclear - likely not Insurable. In an early case, <i>Malanga v. Manufacturers Cas. Ins. Co.</i> , 146 A.2d 105 (N.J. 1958), the New Jersey Supreme Court addressed a	Unclear. At least one New Jersey court has been faced with the argument that it should recognize an exception when

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	<p><i>Carela</i>, 2007 WL 2363123, at *3 (D.N.J. Aug. 15, 2007) (internal quotation omitted). The factors enumerated in the Restatement (Second) of Conflict of Laws are used to determine whether another jurisdiction has a “dominant significant relationship.” <i>Id.</i> at *4. These factors include “(a) the needs of the interstate and international systems; (b) the relevant policies of the forum; (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue; (d) the protection of justified expectations; (e) the basic policies underlying the particular field of law; (f) certainty, predictability and uniformity of result; and (g) ease in the determination and application of the law to be applied.”</p> <p><i>Id.</i> (quoting Restatement (Second) of Conflict of Laws § 6(2)). We did not locate a New Jersey case applying these principles to determine the law applicable to insurability of punitive damages. In <i>Johnson & Johnson v. Aetna Cas. and Surety Co.</i>, 667 A.2d</p>	<p>696, 703 (Sup. Ct. N.J. A.D. 1980) (“INA argues that claims for punitive damages are not covered by its policy. It maintains that since such damages are meant to punish and not to compensate, insuring against them would contravene public policy. We agree.”).</p>	<p>policy which provided that assault and battery would be deemed an accident so long as it was not committed “by or at the direction of the insured.” <i>Id.</i> at 106. The policy provided coverage to both the individual partners as well as the partnership as an entity, and the court held that only the individual partner responsible for the assault was barred from receiving coverage. <i>Id.</i> at 110.</p> <p>Some have argued that under <i>Malanga</i>, New Jersey would recognize an exception to its policy against insurance for punitive damages when they are imposed for vicarious liability. One appellate division case, however, has rejected this position and held that New Jersey bars insurance for punitive damages regardless of whether they were imposed for direct or vicarious liability. <i>Johnson & Johnson v. Aetna Cas. and Sur. Co.</i>, 667 A.2d 1087, 1091-92 (N.J. Super. Ct. App. Div. 1995) (“Notably, <i>Variety Farms, supra</i>, contains no analysis</p>	<p>punitive damages are imposed in another jurisdiction that has a lower standard for their imposition (<i>e.g.</i>, gross negligence). <i>Johnson & Johnson v. Aetna Cas. and Surety Co.</i>, 667 A.2d 1087, 1093-94 (N.J. Super. Ct. App. Div. 1995). The court refrained from deciding this issue because it found it unnecessary. <i>Id.</i> at 1094 (holding that the “legal standards imposed for the awards of punitive damages . . . are not so conceptually different from New Jersey’s standard as to cause us to abandon our State’s well-settled policy which precludes insurance coverage for punitive damage liability” but noting that it was not addressing “whether a different result could be reached if the punitive damage award was entered in a jurisdiction having a significantly lower standard than that required by our Products</p>

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	1087, 1093-94 (N.J. Super. Ct. App. Div. 1995), the court was faced with a situation in which punitive damages had been awarded in a different jurisdiction, but the court did not resolve any choice of law issue because all parties agreed New Jersey law on insurability applied, and each jurisdiction had the same public policy against insurance cover for punitive damages.		concerning whether or not the policy language is ambiguous, presumably because the issue is irrelevant in view of our overriding public policy precluding coverage for punitive damage awards. Nor does it make the vicarious/direct liability distinction in pronouncing the rule that such coverage would offend public policy. We find no reason to carve an exception to <i>Variety Farm's</i> holding based upon the vicarious/direct dichotomy on the facts before us.”).	Liability Act”).
New Mexico	“Generally, in determining the appropriate law to apply when an accident occurs in one state and an insurance contract has been entered in another, the law of the place of the accident applies to determine the plaintiff’s right to recover from the negligent party, and the law of the place of the contract, the <i>lex loci contractus</i> , applies to interpret the terms of the contract. <i>State Farm Auto. Ins. Co. v. Ovitz</i> , 1994–NMSC–047, ¶ 8, 117 N.M. 547, 873 P.2d 979; <i>Demir v. Farmers</i>	Insurable. <i>Mid-Continent Cas. Co. v. I & W Inc.</i> , 2015 WL 10818840, (D.N.M. 2015) (“[N]o New Mexico public policy against insuring for punitive damages.”); <i>Baker v. Armstrong</i> , 1987-NMSC-101, 106 N.M. 395, 398, 744 P.2d 170, 173 (“[t]his Court joins the majority of jurisdictions which allow insurance contracts to cover liability for punitive damages”). See also <i>Rummel v. St. Paul Surplus Lines Ins. Co.</i> , 1997-NMSC-042, 123 N.M. 767, 773, 945 P.2d 985, 991 (Where liability insurance policy	N/A	N/A

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	<p><i>Texas Cnty. Mut. Ins. Co.</i>, 2006–NMCA–091, ¶ 7, 140 N.M. 162, 140 P.3d 1111.” <i>Wilkeson v. State Farm Mut. Auto. Ins. Co.</i>, 2014-NMCA-077, 329 P.3d 749, 750 <i>cert. denied sub nom. Wilkeson v. State Farm</i>, 2014-NMCERT-006, 328 P.3d 1188.</p>	<p>is ambiguous as to exclusion for punitive damages, policy will be construed against insurer to require coverage of punitive damages, provided that such interpretation of policy complied with probable expectations of parties; where insurer refutes presumption in favor of insured, insurer must do so unambiguously, though not necessarily expressly.) See also <i>Rummel v. Lexington Ins. Co.</i>, 1997-NMSC-041, 123 N.M. 752, 765, 945 P.2d 970, 983 (Excess liability insurance policy that excluded coverage for punitive damages did not preclude allocation of punitive damages to underlying insurance and allocation of compensatory damages to excess insurance; excess insurer could have included provision in its policy that made its excess layer operative only after all underlying insurance was applied to compensatory damages part of award.)</p>		
New York	<p>In contract cases, New York utilizes the “center of gravity” or “grouping of contacts” method to determine which state has the most significant relationship to the parties or transaction. <i>Zurich Ins. Co. v. Shearson Lehman Hutton, Inc.</i>, 84</p>	<p>Uninsurable. New York has an “unambiguous policy against insurance coverage for punitive damages” <i>Zurich Ins. Co. v. Shearson Lehman Hutton, Inc.</i>, 84 N.Y.2d 309, 319 (1994). See also <i>J.P. Morgan</i></p>	<p>Uninsurable. New York does not recognize an exception for vicarious liability. <i>Zurich Ins. Co. v. Shearson Lehman Hutton, Inc.</i>, 84 N.Y.2d 309, 320-21 (1994) (“In Texas, unlike Georgia,</p>	<p>Insurable. Under New York law, punitive damages can only be imposed in a common law action upon a “showing of conscious disregard of the rights of others or conduct</p>

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	<p>N.Y.2d 309, 317 (1994). New York also looks to the provision in the Restatement (Second) of Conflict of Laws which provides that as to liability insurance contracts, the “local law of the state which the parties understood was to be the principal location of the insured risk . . . unless with respect to the particular issue, some other state has a more significant relationship.” <i>Id.</i> at 318 (quoting Restatement (Second) of Conflict of Laws § 193). New York courts also take into account the governmental interests behind conflicting laws when they are identifiable. <i>Id.</i> at 319.</p> <p>The Court of Appeals has held that New York’s public policy against insurance coverage for punitive damage applies even when the punitive damages have been awarded in another jurisdiction, at least if the New York contacts are sufficiently strong. <i>See id.</i> at 317-19 (finding that New York’s public policy applied where the insured had its principal place of business in New York; the insurance contract was negotiated</p>	<p><i>Sec. Inc. v. Vigilant Ins. Co.</i>, 21 NY.3d 324, 334 (2013) (“[A]n insurer may not indemnify an insured for a punitive damages award, and a policy provision purporting to provide such coverage is unenforceable. The rationale underlying this public policy exception emphasizes that allowing coverage would defeat the purpose of punitive damages, which is to punish and to deter others from acting similarly”) (internal citations omitted). However, if the punitive damages were awarded in another jurisdiction, the New York policy applies only if the damages would be punitive under New York law. <i>Id.</i> at 315, 317 (“[I]f the damages awarded would not be ‘punitive’ under New York law, indemnification would not be precluded by New York public policy.”) (“[O]nly when the damage award is of a ‘punitive nature’ is indemnification precluded by New York policy.”).</p>	<p>there is no statutory authority explicitly authorizing insurance coverage for punitive damages, but the Texas courts have interpreted the general insurance law to permit such coverage, taking the view that coverage is particularly justifiable in cases of vicarious corporate liability. New York, however, has taken the position that the imposition of vicarious punitive damages can significantly advance the deterrence goal by motivating an employer adequately to supervise its employees, particularly those whose actions may reflect what has come to be known as the ‘corporate culture’ and implicate the ‘institutional conscience’ and to take preventive and corrective measures. We have not deviated from this policy choice. That Texas has made another equally legitimate choice, is not sufficient to compel a New York court to disregard our State’s unswerving policy against permitting insurance indemnification for punitive damage awards, when New York choice of</p>	<p>so reckless as to amount to such disregard.” <i>Welch v. Mr. Christmas Inc.</i>, 440 N.E.2d 1317, 1321 (N.Y. 1982). If punitive damages are awarded in another jurisdiction for conduct that is not sufficiently culpable to meet this standard, New York public policy does not prohibit insurance for them. <i>Zurich Ins. Co. v. Shearson Lehman Hutton, Inc.</i>, 84 N.Y.2d 309, 317 (1994).</p>

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	<p>and issued there; the claims were handled by the insurer in New York; and the insurer had a selling office in New York which acted as the main supervisor of the insurer's United States branch and its examiner). The New York domicile of a tortfeasor is particularly important when considering choice of law concerning insurability of punitive damages. <i>Id.</i> at 319 (“[B]ecause a question of whether New York’s interest precludes indemnification for punitive damages focuses more on the conduct of the insured than on that of the insurer, the New York domicile of that insured becomes an even weightier contact once the governmental interest is taken into consideration.”); <i>see also Home Ins. Co. v. American Home Products Corp.</i> 75 N.Y.2d 196, 201 (N.Y. 1990) (“Nor should New York policy be applied any differently solely because the punitive damages award happens to have been rendered in another State. It is the punitive nature of the award coupled with the fact that a New York insured seeks to enforce it in New York against a New York insurer which calls for the</p>		<p>law principles dictate the application of that policy.”) (internal citations omitted).</p>	

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	<p>application of New York public policy.”).</p> <p>It is not clear whether New York would apply its public policy against punitive damages if the insured tortfeasor were not domiciled in New York. In <i>O’Neill v. Yield House, Inc.</i>, 964 F. Supp. 806 (S.D.N.Y. 1997), the court considered whether to apply New York law on insurability of punitive damages to a company that had been held liable in New York by a New York jury, where the insured was an insolvent New Hampshire corporation, the insurer was headquartered in Minnesota, and the mail order catalogues sold by the insured were distributed throughout the country. The court originally found that New York’s public policy precluded indemnification of punitive damages under these facts; the United States Court of Appeals reversed and remanded for consideration of the effect of the insured’s insolvency; and, on remand, the court found that New York’s public policy against indemnification of punitive damages did not apply on these facts. The court</p>			

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	<p>emphasized, however, that it was basing its ruling largely on the fact that the insured was insolvent. <i>See O'Neill v. Yield House Inc.</i>, 964 F. Supp. 806, 811 (S.D.N.Y. 1997) (“Where, as here, the judgment debtor is insolvent, the retributive purpose of New York’s public policy will not be advanced since the absence of assets means that Yield House will experience none of the intended effects of punitive damages. Even where assets remain, the judgment creditor will, as a practical matter, find himself standing in line with other creditors. If any assets are available for distribution, any punitive impact on the debtor would still be sharply reduced. Meanwhile, permitting the award to constitute a claim against the estate might have the unintended negative consequence of unfairly reducing distributions to innocent creditors. Likewise, the deterrent purposes—general and specific—of punitive damages would not be advanced where the defendant is insolvent. Underlying New York’s policy is the presumption that leaving punitive damage awards</p>			

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	<p>uninsurable inspires a higher level of care and encourages a higher degree of concern for safety among manufacturers. This component of New York's policy, however, will not be advanced where the debtor is bankrupt because other manufacturers and the general public will see no additional costs imposed on the grossly careless manufacturer because of the intervening bankruptcy. Specific deterrence will not be advanced because a manufacturer making choices about the level of care to bring to an enterprise is unlikely to spend time calculating whether, in the event of a future bankruptcy, a punitive damage award would be recovered from the estate, the insurer, or at all. Accordingly, this Court concludes that, since the public policy objectives of New York law will not be advanced by precluding indemnification where the defendant is insolvent, that public policy cannot be said to be 'sufficiently compelling' to preclude the application of New Hampshire law.'" (internal citations omitted).</p>			

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North Carolina	<p>A contract of insurance is to be interpreted in accordance with the laws of the state where the contract was made and delivered. <i>Land Co. v. Byrd</i>, 261 S.E.2d 655 (N.C. 1980); <i>Johns v. Auto. Club Ins. Co.</i>, 455 S.E.2d 466, 468 (N.C. Ct. App. 1995).</p> <p>However, an exception to this rule exists where a close connection exists between state of North Carolina and the interests insured by an insurance policy.</p> <p><i>Fortune Ins. Co. v. Owens</i>, 526 S.E.2d 463 (N.C. 2000). See N.C.G.S. § 58-3-1.</p>	<p>Insurable.</p> <p><i>Mazza v. Medical Mut. Ins. Co.</i>, 319 S.E.2d 217, 220 (N.C. 1984) (“We know of no public policy of this State that precludes liability insurance coverage for punitive damages in medical malpractice cases. North Carolina General Statute s 58 -72 appears to authorize insurers to provide coverage for punitive damages.”); <i>Collins & Aikman Corp. v. Hartford Accident & Indem. Co.</i>, 416 S.E.2d 591, 594 (N.C. Ct. App. 1992) (holding that definition of damages did not operate to exclude punitive damages from coverage and if Hartford “intended to eliminate coverage for punitive damages it could and should have inserted a single provision stating the policy does not include recovery for punitive damages”); <i>Boyd v. Nationwide Mut. Ins. Co.</i>, 108 N.C. App. 536, 543, 424 S.E.2d 168, 172 (1993) (Automobile liability insurance policy providing for payment of “any final judgment recovered against the insured for bodily injury to or death of any person. . . resulting from negligence in” operation, maintenance, or use of motor vehicle</p>	N/A	N/A

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		<p>provides coverage, within policy limits, of punitive damages award rendered against insured in action to recover for personal injuries sustained in motor vehicle accident for which insured was determined to have been at fault. Commercial umbrella policy, providing coverage of "all sums which the Insured ... becomes legally obligated to pay as damages ... because of personal injury," also provides coverage of punitive damages award under circumstances. Moreover, public policy does not prohibit coverage of punitive damages award.)</p>		
North Dakota	<p>North Dakota's choice of law doctrine is "something of a hybrid, and effectively [requires] a two-pronged analysis. Initially, we determine all of the relevant contacts which might logically influence the decision of which law to apply. Then we apply Leflar's five choice-influencing factors to determine which jurisdiction has the more significant interest with the issues in the case. . . . Our significant contacts method of analysis mirrors the Second Restatement's." <i>Daley v. Am. States Preferred Ins. Co.</i>, 587 N.W.2d</p>	<p>Insurable.</p> <p>An insurer "is obligated, under the express terms of its insurance policy . . . to pay for the punitive damages awarded [against an insured] . . . up to the policy limits." <i>Continental Cas. Co. v. Kinsey</i>, 499 N.W.2d 574 (N.D. 1993). An insurer "may seek indemnity [from the insured, however] . . . for injury caused by [the insured's] own fraud or deceit." <i>Id.</i> Indemnification from the insured is appropriate because insurers cannot be liable for "a loss caused by the willful act</p>	N/A	N/A

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	159, 162 (N.D. 1998).	of the insured.” <i>Hins v. Heer</i> , 259 N.W.2d 38 (N.D. 1977) <i>See</i> Section 26-06-04, N.D.C.C. <i>See also Tibert v. Nodak Mut. Ins. Co.</i> , 816 N.W.2d 31 (N.D. 2012) (North Dakota statutes “manifest a public policy precluding an insured from being indemnified for losses caused by the insured’s intentional or willful conduct.”)		
Ohio	Ohio follows the Restatement (Second) of Conflicts of Laws. For contract issues, the law of the state where the contract was made presumptively controls unless it can be shown that another state has a dominant relationship with the transaction. <i>See, e.g., Miller v. State Farm Mut. Auto. Ins. Co.</i> , 87 F.3d 822 (6th Cir. 1996). We could not locate an Ohio case applying this rule (or any other rule) to determine the law that should apply to insurability of punitive damages.	<p>It depends on the context.</p> <p>“Ohio law does not prohibit insurance coverage of punitive damages in all cases” <i>Foster v. D.B.S. Collection Agency</i>, No. 01-CV-514, 2008 WL 755082, *10</p> <p>“Insurance is available where punitive damages are awarded pursuant to statute, without any finding of malice, ill will, or other culpability.” <i>The Corinthian v. Hartford Fire Ins. Co.</i>, 143 Ohio.App.3d 392 (2001). <i>D.B.S. Collection Agency</i>, 2008 WL 755082, *10 (“To the extent that Plaintiffs are awarded punitive damages pursuant to a statute without any finding of malice, ill will, or other similar culpability [insurer] must indemnify against those damages.”)</p> <p>However, Ohio public policy has traditionally disfavored coverage for</p>	Unclear.	<p>Unclear – possibly Insurable.</p> <p>At least one Ohio appellate court has held that the prohibition on coverage for punitive damages does not extend to “special statutory punitive damages” that do not require a “finding of malice, ill will, or other culpability.” <i>The Corinthian v. Hartford Fire Ins. Co.</i>, 758 N.E.2d 218, 223 (Ohio Ct. App. 2001). This may indicate that if punitive damages were imposed for conduct not involving malice, ill will or similar culpability (for example by a jurisdiction that does not require this type of showing for punitive damages to be allowed), Ohio</p>

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		<p>punitive damages. <i>Casey v. Calhoun</i>, 531 N.E.2d 1348, 1350 (Ohio Ct. App. 1987) (“We hold that both the legislature and the judiciary have articulated a clear policy against the insurability of punitive damages and that a contract provision which contravenes that policy must be declared void.”) (“Both the legislature and judiciary have determined that insuring against punitives is detrimental to the welfare and the morals of the public.”). <i>See also Ruffin v. Sawchyn</i>, 599 N.E.2d 852, 856 (Ohio Ct. App. 1991) (“[W]e are obliged to hold that the settlement is void to the extent that the settlement purports to satisfy the punitive damage award with payments from the codefendant’s insurance carrier.”).</p> <p>In the context of insurance for motor vehicle accidents, insurance coverage for punitive damages is statutorily barred. <i>See</i> Ohio Rev. Code § 3937.182. This statute overturned a previous Ohio Supreme Court decision that had permitted coverage for punitive damages, arising from a motor vehicle accident, under an uninsured motorist provision. <i>See Casey</i></p>		<p>public policy might not bar coverage for the damages.</p>

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		<i>v. Calhoun</i> , 531 N.E.2d 1348, 1350 (Ohio Ct. App. 1987)		
Oklahoma	“This state’s established general choice-of-law rule for contract actions is bottomed on the terms of 15 O.S. § 162.22 According to its provisions, the rule of <i>lex loci solutionis</i> —the law where the relevant contract performance occurs—is to be applied. When there is no indication in the contract’s text where performance is to occur, the <i>lex loci contractus</i> rule—the law of the place where the contract is made—will govern.” <i>Bernal v. Charter Cnty. Mut. Ins. Co.</i> , 209 P.3d 309, 315 (Okla. 2009).	Uninsurable. “Public policy is generally contravened by coverage of punitive damages.” <i>Dayton Hudson Corp. v. Am. Mut. Liab. Ins. Co.</i> , 621 P.2d 1155, 1156 (Okla. 1980).	Insurable. “[A]n exception to public policy exists when the insured’s liability is imposed vicariously.” <i>Dayton Hudson Corp. v. Am. Mut. Liab. Ins. Co.</i> , 621 P.2d 1155, 1156 (Okla. 1980).	Unclear.
Oregon	“Like most jurisdictions, Oregon has abandoned the older conflict-of-laws jurisprudence based on some territorial aspect of the litigation, such as the place where a disputed contract was executed, and adopted in its place the more modern, issue-by-issue, ‘comparative interest’ approach.” <i>Machado-Miller v. Mersereau & Shannon, LLP</i> , 180 Or. App. 586, 592, 43 P.3d 1207, 1210 (2002).	Insurable. “[A]lthough it may be proper not to permit insurance coverage for punitive damages if ‘nothing less than wanton misconduct will support an award of [punitive] damages,’ the ‘reason for the prohibition of such insurance ceases to exist’ when no more than gross negligence is held to be sufficient for such an award.” <i>Harrell v. Travelers Indem. Co.</i> , 279 Or. 199, 211 (Or. 1977).	N/A	N/A

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Pennsylvania	<p>“[W]e are of the opinion that the strict lex loci delicti rule should be abandoned in Pennsylvania in favor of a more flexible rule which permits analysis of the policies and interests underlying the particular issue before the court. As said in <i>Babcock v. Jackson</i>, supra, 12 N.Y.2d at 481, 240 N.Y.S.2d at 749, 191 N.E.2d at 283, ‘The merit of such a rule is that ‘it gives to the place ‘having the most interest in the problem’ paramount control over the legal issues arising out of a particular factual context’ and thereby allows the forum to apply ‘the policy of the jurisdiction ‘most intimately concerned with the outcome of [the] particular litigation’.” <i>Griffith v. United Air Lines, Inc.</i>, 416 Pa. 1, 21-22, 203 A.2d 796, 805-06 (1964)</p>	<p>Uninsurable.</p> <p>“[A]n insurer owes no duty to indemnify an insured on an award of punitive damages.” <i>Aetna Cas. and Sur. Co. v. Roe</i>, 437 Pa. Super. 414, 425 (Sup. Ct. Pa. 1994). <i>See also State Auto Property and Cas. Ins. Co. v. Moser</i>, 2018 WL 2093596, at *2 (Sup. Ct. Pa. May 7, 2018) (“Under Pennsylvania law, however, insurance coverage for punitive damages is limited to claims arising from vicarious liability; coverage for punitive damage claims arising from direct liability is forbidden as against public policy.”)</p>	<p>Insurable.</p> <p>“[I]nsurance coverage for punitive damages claims based [on] vicarious liability are not against the public policy of Pennsylvania.” <i>State Auto Property and Cas. Ins. Co. v. Moser</i>, 2018 WL 2093596, at *2 (Sup. Ct. Pa. May 7, 2018). “Pennsylvania public policy does not preclude recovery of punitive damages where the insured is only vicariously liable for the damages.” <i>Butterfield v. Giuntoli</i>, 670 A.2d 646, 655 (Pa. Super. 1995)</p>	<p>Unclear.</p>

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Rhode Island	<p>“In determining choice of law questions, this Court has adopted an ‘interest-weighting’ approach. Under the interest-weighting approach, this Court will determine which state ‘bears the most significant relationship to the event and the parties.’” <i>Taylor v. Massachusetts Flora Realty, Inc.</i>, 840 A.2d 1126, 1128 (R.I. 2004)</p>	<p>Uninsurable.</p> <p>“[T]his court believes that the sounder approach bars the wrongdoer from shifting the punitive damages to the insurer.” <i>Allen v. Simmons</i>, 533 A.2d 541, 544 (R.I. 1987).</p>	<p>Unclear.</p>	<p>Unclear.</p>
South Carolina	<p>“South Carolina choice of law encompasses both the traditional <i>lex loci contractus</i> doctrine and S.C.Code Ann. § 38-61-10. Historically, South Carolina courts followed the rule of <i>lex loci contractus</i> and applied the law of the state where the insurance contract was formed. However, the traditional rule of <i>lex loci contractus</i> is modified by S.C.Code Ann. § 38-61-10, a statute enacted in 1947. That statute provides:</p> <p>All contracts of insurance on property, lives, or interests in this State are considered to be made in the state and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this</p>	<p>Insurable.</p> <p>“Liability policies have been held to cover punitive, as well as compensatory, damages.” <i>Carroway v. Johnson</i>, 245 S.C. 200 (S.C. 1965). <i>See also South Carolina State Budget & Control Bd, Div. of General Services, Ins. Reserve Fund v. Prince</i>, 304 S.C. 241, 403 S.E.2d 643 (S.C. 1991) (finding policy provided coverage for punitive damages arising out of “intentional and malicious defamation” and such coverage did not contravene public policy of South Carolina); <i>Gov’t Employees Ins. Co. v. Poole</i>, 424 S.C. 1, 817 S.E.2d 283 (S.C. 2018) (“Damages [related to UIM coverage] are defined by statute to include both actual and punitive damages.”) (citing S.C. Code Ann. § 38-</p>	<p>N/A</p>	<p>N/A</p>

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	State. S.C.Code Ann. § 38-61-10. ‘Where this statute applies, it governs as South Carolina’s rule of conflicts.’” <i>Heslin-Kim v. CIGNA Grp. Ins.</i> , 377 F. Supp. 2d 527, 530 (D.S.C. 2005)	77-30(4))		
South Dakota	“South Dakota law provides that ‘[a] contract is to be interpreted according to the law and usage of the place where it is to be performed or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.’ SDCL 53–1–4. . . . Generally, unless the parties agree otherwise, an insurance contract is ‘made’ at the place where the last act necessary to its completion is accomplished.” <i>Great W. Cas. Co. v. Hovaldt</i> , 603 N.W.2d 198, 201 (S.D. 1999).	Unclear – possibly Uninsurable. “‘This court has recently stated that ‘[w]ere a person able to insure himself against [the] economic consequences of his intentional wrongdoing, the deterrence attributable to financial responsibility would be missing.’ . . . [T]hat statement could be considered dicta because the Ft. Pierre majority already reached the same result in the case under a different rationale. The application of this principle of public policy to insurance contracts purporting to extend coverage for punitive damages is best left for a case where the question is squarely presented.” <i>Dairyland Ins. Co. v. Wyant</i> , 474 N.W.2d 514, 516 (S.D. 1991). <i>See also State Farm Fire & Cas. Co. v. Harbert</i> , 741 N.W.2d 228, 237 (S.D. 2007) (“Pursuant to this State’s public policy, an individual is not allowed to impute financial responsibility to his insurance company	Unclear.	Unclear.

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		for his own intentional torts. Such responsibility stays with the insured.”)		
Tennessee	<p>“Accordingly, we adopt the ‘most significant relationship’ approach of §§ 6, 145, 146, and 175 of the Restatement (Second) of Conflict of Laws (1971), which provides:</p> <p>§ 145. The General Principle</p> <p>(1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state, which with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.3 (2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:</p> <p>(a) the place where the injury occurred,</p> <p>(b) the place where the conduct causing the injury occurred,</p> <p>(c) the domicile, residence, nationality, place of incorporation and place of business of the parties,</p> <p>(d) the place where the relationship, if</p>	<p>Insurable.</p> <p>“The insurance contract in the case at bar is a private contract between defendant and their assured, Norman Frank Crutchfield, which when construed as written would be held to protect him against claims for both compensatory and punitive damages. Then to hold assured, as a matter of public policy, is not protected by the policy on a claim for punitive damages would have the effect to partially void the contract. We do not think such should be done except in a clear case, and the reasons advanced do not make such a clear case.” <i>Lazenby v. Universal Underwriters Ins. Co.</i>, 214 Tenn. 639, 648-49 (Tenn. 1964)</p>	N/A	N/A

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	<p>any, between the parties is centered.</p> <p>These contacts are to be evaluated according to their relative importance with respect to the particular issue.”</p> <p><i>Hataway v. McKinley</i>, 830 S.W.2d 53, 59 (Tenn. 1992)</p>			
Texas	<p>Article 21.42 of the Texas Insurance Code includes a choice of law provision:</p> <p>“Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same.”</p> <p>Thus, when the insurance policy has been made payable to a citizen or inhabitant of Texas by an insurer doing</p>	<p>It depends on the context.</p> <p>Texas law is unclear, and the impact that public policy has on the insurability of punitive damages appears to differ depending on the context. There are, for example, certain legislative prohibitions on insurance for punitive damages. <i>Fairfield Ins. Co. v. Stephens Martin Paving, LP</i>, 246 S.W.3d 653, 656-57 (Tex. 2008) (noting that the Texas legislature has prohibited coverage for punitive damages assessed against certain health care providers and various public entities such as guaranty funds). Additionally, multiple Texas courts have held that public policy bars recovery of punitive damages “under uninsured or underinsured motorist policies when the insured seeks to recover from his own insurer exemplary damages assessed against a third-party tortfeasor.” <i>Id.</i> at</p>	<p>It depends on the context.</p> <p>In light of <i>Fairfield Ins. Co. v. Stephens Martin Paving, LP</i>, 246 S.W.3d 653 (Tex. 2008), coverage for punitive damages for vicarious liability will likely depend on the circumstances present in a particular situation. There is, however, language in the <i>Fairfield</i> decision which indicates that an insured entity would have strong arguments in favor of coverage for punitive damages when the liability was imposed vicariously: “The considerations may weigh differently when the insured is a corporation or business that must pay exemplary damages for the conduct of one or more of its employees. Where other employees and management are not involved in or aware of an</p>	<p>Insurable. in some contexts.</p> <p>The Texas Supreme Court has held that punitive damages imposed for gross negligence are insurable under a workers’ compensation policy. <i>Fairfield Ins. Co. v. Stephens Martin Paving, LP</i>, 246 S.W.3d 653 (Tex. 2008). Otherwise, the law is unclear, and insurability will depend on the nature of the conduct and the importance of Texas’ competing policies, including freedom of contract and the punitive nature of punitive damages. For example, a federal appellate court applying Texas law after <i>Fairfield</i> has held that Texas law does not permit coverage for punitive damages imposed on an</p>

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	<p>business in Texas, the Texas public policy on insurability of punitive damages applies. <i>See American Home Assurance Co. v. Safway Steel Products Co.</i>, 743 S.W.2d 693 (Tex. App. 1987).</p> <p>When this statute does not apply, Texas courts apply the “most significant relationship” test from the Restatement (Second) of Conflict of Laws. <i>American Home Assurance Co. v. Safway Steel Products Co., Inc.</i>, 743 S.W.2d 693 (Ct. App. Tex. 1988). Under this test as applied by Texas courts, the “substantive law of the state most significantly related to the disputed issue will apply . . . , unless the parties expressly contract otherwise.” <i>Id.</i> at 698. The court in <i>Safway Steel Products</i> indicated that the jurisdiction in which the punitive damages were imposed is significant. <i>Id.</i> at 699 (“If the needs of the interstate system are to be served . . . , then the appropriate local law to be applied in resolving both the policy construction issues and public policy issues is the law of the state that imposed the punitive damages in the first place – Texas.”).</p>	<p>668.</p> <p>In its most recent pronouncement on this topic, the Texas Supreme Court has held that it was not against public policy to insure against punitive damages imposed as a result of gross negligence in the context of a workers’ compensation policy. <i>Fairfield Ins. Co. v. Stephens Martin Paving, L.P.</i>, 246 S.W.3d 653, 670 (Tex. 2008) (“[T]he public policy of Texas does not prohibit insurance coverage of exemplary damages for gross negligence in the workers’ compensation context.”). Notwithstanding the specific context in which the court was addressing the public policy issue, it did discuss various factors which would impact the insurability of punitive damages more generally. For example, the court indicated that under different circumstances, it would likely be against public policy to allow insurance for punitive damages. <i>Id.</i> (“Extreme circumstances may prompt a different analysis. The touchstone is freedom of contract, but strong public policies may compel a serious analysis into whether a</p>	<p>employee’s wrongful act, the purpose of exemplary damages may be achieved by permitting coverage so as not to penalize many for the wrongful act of one. When a party seeks damages in these circumstances, courts should consider valid arguments that businesses be permitted to insure against them.” <i>Id.</i> at 670.</p>	<p>intoxicated driver of an 18-wheel vehicle where the accident represented the insured’s third conviction for driving while intoxicated and the insured knew he was a danger to others. <i>Minter v. Great American Insurance Co. of New York</i>, 394 Fed. App’x 47, 50 (5th Cir. 2010).</p>

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		<p>court may legitimately bar contracts of insurance for extreme and avoidable conduct that causes injury. For example, liability policies themselves normally bar insurance for damages caused by intentional conduct, as did the liability policy in this case. The fact that insurance coverage for exemplary damages may encourage reckless conduct likewise gives us pause. Were the existence of insurance coverage to completely eviscerate the punitive purpose behind awarding exemplary damages, it could defeat not only an explicit legislative policy but also the court's traditional role in deterring conscious indifference.”).</p> <p>Accordingly, at least two courts applying Texas law after <i>Fairfield</i> have held that coverage for punitive damages would be contrary to public policy in light of the underlying conduct that gave rise to the damages award. <i>American Int'l Specialty Lines Ins. Co. v. Res-Care, Inc.</i>, 529 F.3d 649, 663-64 (5th Cir. 2008) (refusing to permit coverage for punitive damages owed by a group home held liable for extreme mistreatment of a resident,</p>		

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		<p>concluding that “the extreme circumstances which gave pause to the <i>Fairfield</i> court” were present); <i>Minter v. Great American Insurance Co. of New York</i>, 394 Fed. App’x 47, 50 (5th Cir. 2010) (“It is unnecessary to announce a broad rule in order to decide this case. The application of <i>Fairfield</i> in this case is straightforward. This accident represented Largent’s <i>third DWI conviction</i>. Largent, then, was a repeat offender who clearly has not learned his lesson. . . . Under the facts of this case, Texas public policy prohibits Great American from indemnifying the exemplary damages award here.”) (emphasis original).</p> <p>Prior to <i>Fairfield</i>, courts outside Texas applying Texas law had concluded that Texas law permits insurance coverage for punitive damages. See <i>Zurich Ins. Co. v. Shearson Lehman Hutton, Inc.</i>, 84 N.Y.2d 309, 320-21 (1994) (“In Texas, unlike Georgia, there is no statutory authority explicitly authorizing insurance coverage for punitive damages, but the Texas courts have interpreted the general insurance law</p>		

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		to permit such coverage, taking the view that coverage is particularly justifiable in cases of vicarious corporate liability.”); <i>Continental Cas. Co. v. Fibreboard Corp.</i> , 762 F. Supp. 1368, 1376 (N.D. Cal. 1991) (“Texas does not see its policy goals as being undermined by punitive damage insurance.”), <i>affirmed</i> 953 F.2d 1386 (9th Cir. 1992), <i>cert. granted and judgment vacated for consideration of mootness</i> 506 U.S. 948 (1992).		
Utah	“We have held that the “most significant relationship” test, explained in Restatement (Second) Conflict of Laws section 188 is the ‘appropriate rule for Utah courts to apply to a conflict of laws question in a contract dispute.’” <i>Morris v. Health Net of California, Inc.</i> , 988 P.2d 940, 941 (Utah 1999).	Uninsurable. Utah law states that no insurer may insure or attempt to insure against punitive damages. UTAH CODE ANN. § 31A-20-101(4) (2010).	Likely Uninsurable. Although it has not been ruled on directly, UTAH CODE ANN. § 31A-20-101(4) (2010) plainly states that no insurer may insure against punitive damages.	Likely Uninsurable. Although it has not been ruled on directly, UTAH CODE ANN. § 31A-20-101(4) (2010) plainly states that no insurer may insure against punitive damages.
Vermont	“This Court has adopted the Restatement (Second) of Conflicts for choice-of-law questions in both tort and contract cases.” <i>McKinnon v. F.H. Morgan & Co.</i> , 750 A.2d 1026, 1028 (2000)	Insurable. “[W]e find no public policy in Vermont against coverage of punitive damages.” <i>State v. Glens Falls Ins. Co.</i> , 137 Vt. 313, 320 (Vt. 1979)	N/A	N/A
Virginia	“Disputes over the law governing contract validity and interpretation are	Insurable.	N/A	N/A

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	<p>resolved under a <i>lex loci contractus</i>.” approach. <i>Women in Military Service for Am.</i></p> <p><i>Memorial Foundation, Inc. v. Hartford Fire Ins. Co.</i>, 21 Fed.Appx. 186, 191 (4th Cir. 2001) (citing <i>Woodson v. Celina Mut. Ins. Co.</i>, 211 Va. 423, 177 S.E.2d 610, 613 (1970)).</p>	<p>“In 1962, a federal court, construing Virginia law, opined that insuring against punitive damages for “willful, reckless, or wantonly negligent conduct” may violate public policy in Virginia. <i>Northwestern National Casualty Co. v. McNulty</i>, 307 F.2d 432, 433-34 (5th Cir.1962). In 1983, the General Assembly resolved the issue by enacting former Code § 38.1-42.2 (now Code § 38.2-227). At the time of this accident, Code § 38.1-42.2 provided:</p> <p>It is not against the public policy of the Commonwealth for any person to purchase insurance providing coverage for punitive damages arising out of the death or injury of any person as the result of negligence, including willful and wanton negligence, but excluding intentional acts. This section is declaratory of existing policy.”</p> <p><i>United Servs. Auto. Ass’n v. Webb</i>, 235 Va. 655, 655-57, 369 S.E.2d 196, 197 (1988)</p>	<p>Virginia does not allow for an award of punitive damages arising from vicarious liability. <i>See Dalton v. Johnson</i>, 129 S.E.2d 647, 651 (Va. 1963) (“[E]xemplary or punitive damages are awarded not by way of compensation to the sufferer but by way of punishment to the offender, such damages can only be awarded against the one who has participated in the offense.”)</p>	
Washington	<p>“In choice-of-law questions, Washington has rejected the law of the place of injury, <i>lex loci delicti</i>, in favor of the most significant relationship rule for tort</p>	<p>Insurable.</p> <p>“[P]unitive damages coverage does not violate public policy in this state.” <i>Fluke</i></p>	N/A	N/A

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	and contract choice-of-law problems.” <i>Williams v. Leone & Keeble, Inc.</i> , 285 P.3d 906, 909 (Wash. 2012).	<i>Corp. v. Hartford Acc. & Indem. Co.</i> , 145 Wash. 2d 137 (Wash. 2001)		
West Virginia	“This Court has . . . consistently applied the common-law ‘lex loci delicti choice-of-law rule; that is, the substantive rights between the parties are determined by the law of the place of injury.’” <i>Williams v. Werner Enterprises, Inc.</i> , No. 14-0212, 2015 WL 1000779, at *15 (W. Va. Mar. 2, 2015).	Insurable. “[W]e refuse to find that our public policy precludes insurance coverage for punitive damages arising from gross, reckless or wanton negligence. Such action rooted in negligence as distinguished from a purposeful or intentional tort does not in our opinion carry the degree of culpability that should foreclose the right to insurance coverage.” <i>Hensley v. Erie Ins. Co.</i> , 168 W. Va. 172, 183-84 (W. Va. 1981)	N/A	N/A
Wisconsin	“Pursuant to the ‘grouping of contacts’ rule,” contract rights are” “determined by the law of the [jurisdiction] with which the contract has its most significant relationship.’ The contacts to be considered when determining the applicable state law include: ‘(a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of performance, (d) the location of the subject matter of the contract, and (e) the domicil[e], residence, nationality, place	Insurable. “We find no overriding reason to deprive these parties of what they have freely contracted. State Farm had the option of excluding liability for punitive damages. It failed to do so and has presumably collected premiums which it believed to be sufficient consideration for such coverage. See <i>Harrell v. Travelers Indemnity Co.</i> , 279 Or. 199, 217, 567 P.2d 1013 (1977). Moreover, we are not convinced that	N/A	N/A

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	of incorporation and place of business of the parties.” <i>Kender v. Auto-Owners-Ins. Co.</i> , 793 N.W.2d 88, 94 (Wisc. 2010).	<p>allowing insurance coverage for punitive damages will totally alleviate the deterrent effect of such awards. For example, as a consequence of the punitive damage award, defendant Maxey’s insurance premiums may rise, he may find himself unable to obtain insurance coverage, the punitive damage award may exceed coverage, and his reputation in the community may be injured.</p> <p>Finally, punitive damages are designed not only to deter and punish the wrongdoer, but also are designed to serve as a deterrent to others. Allowing insurance coverage to extend to punitive damages will not thwart this purpose. In conclusion, we hold that it is not contrary to public policy in this state to insure against punitive damages. In so holding, we find that the policy of insurance issued by State Farm to Maxey does provide coverage for punitive damages.”</p> <p><i>Brown v. Maxey</i>, 124 Wis. 2d 426, 447, 369 N.W.2d 677, 688 (1985)</p>		
Wyoming	“As an example, the analytical approach to a conflict of law question has been described within the framework of the	Insurable. “While the public policy arguments that	N/A	N/A

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	<p>Restatement (Second) of Conflict of Laws as follows:</p> <p>The Second Restatement method is constructed around the principle that the state with the most significant contacts to an issue provides the law governing that issue. A court therefore conducts a separate choice-of-law analysis for each issue in a case, attempting to determine which state has the most significant contacts with that issue. The Second Restatement enumerates specific factors that identify the state with the most significant contacts to an issue, and the relevant factors differ according to the area of substantive law governing the issue and according to the nature of the issue itself. To properly apply the Second Restatement method, a court must begin its choice-of-law analysis with a characterization of the issue at hand in terms of substantive law. By prescribing this analytical approach, the Second Restatement follows the principle of depechage, which has been long applied in connection with various methods for choice of law.</p>	<p>exemplary damages serve to punish and deter are not so strong with respect to vicarious liability, we do not believe a limited holding is warranted in this situation. The basis for the imposition of vicarious liability for punitive damages upon a corporation or other employer is substantially the same for imposing liability on any wrongdoer, that is punishment, deterrent and warning. The presumptive deterrent is that an award of punitive damages will encourage the employer to exercise closer control over his employees or facilities.</p> <p>* * *</p> <p>We hold that it is not against the public policy of the State of Wyoming to insure against either liability for punitive damages imposed vicariously based on willful and wanton misconduct or personal liability for punitive damages imposed on the basis of willful and wanton misconduct. We answer certified questions 1(a) and (b) in the negative. The answer to these questions effectively answers the other questions certified.”</p> <p><i>Sinclair Oil Corp. v. Columbia Cas. Co.</i>,</p>		

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	We agree that depeceage is the proper approach to a conflict of law question.” <i>Act I, LLC v. Davis</i> , 60 P.3d 145, 149 (Wyo. 2002).	682 P.2d 975, 981 (Wyo. 1984).		