1. Requirements for use of hands free devices in each state

   With the exception of school bus drivers, Arizona does not have any statewide restrictions regarding the use of handheld devices while operating a motor vehicle. However, recently proposed legislation, Senate Bill 1080, would prohibit the use of wireless communications devices while operating a motor vehicle across the state, except under certain emergency situations, if passed into law.

2. Discovery and admissibility of preventability determinations

   Arizona law does not specifically address the discovery and admissibility of motor vehicle accident preventability determinations. In general, evidence of subsequent remedial measures is inadmissible to prove negligence, culpable conduct, a defect in a product or its design, or a need for a warning or instruction. Ariz. R. Evid. 407. Importantly, however, subsequent remedial measures are admissible in Arizona to prove the feasibility of precautionary measures. Id. Thus, while preventability determinations, to the extent that they constitute subsequent remedial measures, would not be admissible to prove negligence, they would be admissible to prove the feasibility of precautionary measures.

3. Spoliation of evidence, specifically related to electronic data and whether there is a duty to preserve evidence absent a specific demand

   In Arizona, a party has a duty to preserve evidence that it knows or reasonably should know “is relevant in the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery and/or is the subject of a pending discovery request.” Souza v. Fred Carries Contracts, Inc., 191 Ariz. 247, 250, 955 P.2d 3, 6 (Ct. App. 1997) (quoting Turner v. Hudson Transit Lines, Inc., 142 F.R.D. 68, 72 (S.D.N.Y.1991)). Spoliation of evidence can lead to a rebuttable inference that the evidence was unfavorable. See Smyser v. City of Peoria, 215 Ariz. 428, 440 (Ct. App. 2007). Nonetheless, Arizona does not have a distinct tort for spoliation. Lips v. Scottsdale Healthcare Corp., 224 Ariz. 266 (2010). Arizona does not have any special rules regarding the spoliation of electronic data.
4. **Broker exposure or liability for motor carrier negligence**

Arizona law does not specifically address the issue of broker liability for motor carrier negligence. Nonetheless, Arizona’s doctrine of *respondeat superior* may be applicable. A broker in Arizona may be liable for the negligence of a motor carrier when the motor carrier in question was an “employee” of the broker and the action leading to the negligence was within the scope of the motor carrier’s employment. Under Arizona’s doctrine of *respondeat superior*, employers can be held vicariously liable for the negligent acts of their employees who are acting within the scope of their employment. *Engler v. Gulf Interstate Eng’g, Inc.*, 227 Ariz. 486, 491 (Ct. App. 2011), aff’d, 230 Ariz. 55, 280 P.3d 599 (2012). Vicarious liability for the negligent acts of an employer further requires that the employee “(1) [be] subject to the employer’s control or right of control, and (2) acting in furtherance of the employer's business.” *Id.*

In determining whether an employer-employee or an independent contractor relationship existed between a motor carrier and a broker, Arizona courts would consider the following factors: “(1) the extent of control exercised by the master over details of the work and the degree of supervision; (2) the distinct nature of the worker's business; (3) specialization or skilled occupation; (4) materials and place of work; 5. Duration of employment; (6) method of payment; (5) relationship of work done to the regular business of the employer; (6) belief of the parties.” *Santiago v. Phoenix Newspapers, Inc.*, 164 Ariz. 505, 509 (1990).

5. **Logo or placard liability - whether motor carrier is liable for any vehicle bearing its Department of Transportation identification placard, company name, or business logo**

Arizona does not have any law holding motor carriers liable for any vehicle bearing the motor carrier’s Department of Transportation identification placard, company name, or business logo.

6. **Offers of Judgment**

Offers of judgment are governed by Arizona Rule of Civil Procedure 68. An offer of judgment can be made by either party, and can include or exclude attorney fees when available. Ariz. R. Civ. P. Rule 68. A party, who rejects an offer of judgment and fails to obtain a more favorable judgment, must pay as a sanction reasonable expert fees, double the offeror’s taxable costs, and prejudgment interest on a liquidated amount. Ariz. R. Civ. P. Rule 68(g).

7. **Punitive Damages**

a. **Are punitive damages insurable?**

Punitive damages can be insured by contract. Arizona Constitution Article 2, Section 35 and Arizona Revised Statute §12-512 both provide that a “person who is present in this state in violation of federal immigration law related to improper entry by an alien shall not be awarded punitive damages in any action in any court in this state.”
b. Any limitations or how much may be awarded as punitive damages?


8. Citations or criminal convictions resulting from a motor vehicle accident

a. Are citations admissible in the civil litigation?


b. How does a guilty plea or verdict impact civil litigation? Plea of no contest?

Guilty pleas are admissible as admissions against interest in subsequent civil suits arising out of the same facts. See Hays v. Richardson, 95 Ariz. 263, 267, 389 P.2d 260, 263 (1964)

9. Recent, significant trucking or transportation verdicts in each state


While stopped in traffic, the plaintiff was struck by a vehicle driven by an employee of Defendant Termagon, Inc. As a result of the accident, Plaintiff sustained cervical, thoracic and lumbar strain, headaches and a facial contusion. Plaintiff argued that Defendant driver attempted to leave the scene of the accident and negligently operated the vehicle by not being aware of his surroundings and failing to moderate his speed. The defendants admitted negligent operation of the vehicle. The plaintiff was awarded $15,000 in compensatory pain and suffering damages.

Estate of Nazos v. City of Phoenix

The decedent, operating a motorcycle, was struck by a garbage truck at a T-intersection. The decedent’s estate asserted a wrong death action against the truck driver and the City of Phoenix, the owner of the garbage truck. The plaintiff argued that the truck driver failed to yield to oncoming traffic and negligently operated his vehicle. The defendants argued that the decedent was driving well in excess of the posted speed limit. The jury returned a verdict in favor of the defendants.
10. **Admissible evidence regarding medical damages** - can plaintiff seek to recover the amount charged by the medical providers or the amount actually paid, and is there a basis for post-verdict reductions or offsets

Plaintiffs may recover the full amount of reasonable medical expenses charged, without reductions for the amounts written off by healthcare providers. *Lopez v. Safeway Stores, Inc.*, 212 Ariz. 198, 207, 129 P.3d 487, 496 (Ct. App. 2006)

11. **Driver criminal history and how it affects negligent hiring and supervision claims**

Arizona has adopted Restatement (Second) of Agency’s rules on negligent hiring. *Kassman v. Busfield Enterprises, Inc.*, 131 Ariz. 163, 166 (Ct. App. 1981). Thus, in Arizona, an employer must take the care that a “prudent man would take in selecting the person for the business in hand.” *Id* at 356 (quoting Restatement (Second) of Agency § 213 (1958)). An employer can assume that a prospective employee is competent if the work is “simple.” *Id*. However, if the work is likely to subject a third party “to serious risk of great harm, there is a special duty of investigation.” *Id.*

Arizona does not have case law specifically addressing the duty to investigate the criminal history of a driver. In *Kassman*, the court found that the employer of a doorman of a bar did not owe a special duty to investigate the criminal history of the doorman because the work was considered relatively simple and did not involve a risk of harm through the carrying a dangerous weapon. Even though driving is arguably relatively simple work, there is the potential of serious risk of harm to others when operating a vehicle. Consequently, there may be a duty under Arizona law for employers to investigate a driver’s criminal history.