ILLINOIS

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

As of January 1, 2014, a new law in Illinois bans the use of all hand-held devices while driving in Illinois. Only hands-free technology such as speakerphones, Bluetooth, and headsets are permitted. In addition: (1) all cell phone use is prohibited while driving in a school zone; (2) all cell phone use is prohibited while driving in a highway construction zone; and (3) all cell phone use is prohibited if you are a novice driver. All Illinois drivers are prohibited from texting.

In addition to the ban on hand held devices, Illinois prohibits texting while driving. Illinois’ anti-texting law (625 ILCS 5/12-610.2) states that “A person may not operate a motor vehicle on a roadway while using an electronic communication device to compose, send, or read an electronic message.” An electronic communication device" refers to a wireless telephone, personal digital assistant, or a portable or mobile computer that’s used for the purpose of composing, reading, or sending an electronic message. It doesn’t include a GPS or navigation system or a device that is physically or electronically integrated into the motor vehicle. An electronic message refers to electronic mail, a text message, an instant message, or a command or request to access an Internet site. This specific section does not apply to “a driver using an electronic communication device in hands-free or voice-operated mode, which may include the use of a headset.” 625 ILCS 5/12-610.2(d)(3). This section also does not apply to “a driver of a commercial vehicle reading a message displayed on a permanently installed communication device designed for a commercial motor vehicle with a screen that does not exceed 10 inches tall by 10 inches wide in size. 625 ILCS 5/12-610.2(d)(4).
Additional exceptions for drivers texting include (1) for the sole purpose of reporting an emergency situation and continued communication with emergency personnel during the emergency situation; (2) if the driver is parked on the shoulder of a roadway; or (3) when the vehicle is stopped due to normal traffic being obstructed and the driver has the motor vehicle transmission in neutral or park.

2. Discovery and admissibility of preventability determinations

Regarding discovery rules in Illinois, according to Illinois Supreme Court Rule 201(a) “[i]nformation is obtainable as provided in these rules through any of the following discovery methods: depositions upon oral examination or written questions, written interrogatories to parties, discovery of documents, objects or tangible things, inspection of real estate, requests to admit and physical and mental examination of persons. Duplication of discovery methods to obtain the same information and discovery requests that are disproportionate in terms of burden or expense should be avoided.”

Illinois follows the traditional rules of discovery, including preventability determinations, unless documentation is to be considered privileged. Specifically, Illinois Supreme Court Rule 201(b)(1) requires full disclosure stating “[e]xcept as provided in these rules, a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts. The word "documents," as used in Part E of Article II, includes, but is not limited to, papers, photographs, films, recordings, memoranda, books, records, accounts, communications and electronically stored information as defined in Rule 201(b)(4).”

The court defines privileged materials as “[a]ll matters that are privileged against disclosure on the trial, including privileged communications between a party or his agent and the attorney for the party, are privileged against disclosure through any discovery procedure. Material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party’s attorney. The court may apportion the cost involved in originally securing the discoverable material, including when appropriate a reasonable attorney’s fee, in such manner as is just.” Illinois Supreme Court Rule 201(b)(2).

Regarding admissibility at trial, most trucking matters are brought as a negligence suit. The standard in a negligence suit is quite different that the Federal Motor Carrier standards that implement and define a preventable accident. The National Safety Council defines a preventable accident as one where “the driver in question failed to exercise every reasonable precaution to prevent the accident.” National Safety Council, Accident Review Guidelines (emphasis added). Similarly, the Federal Motor Carrier Safety Regulations define a preventable accident as “an accident (1) that involved a commercial motor vehicle, and (2) that could have been averted but for an act, or failure to act, by the motor carrier or the driver.” 49 CFR § 385.3.
The strict definition of a “preventable accident” far exceeds the negligence standard often implicated in subsequent litigation. The Restatement Third of Torts defines negligence as a failure to “exercise reasonable care under all the circumstances.” Restatement 3d of Torts § 3. The Comment to this section further explains that reasonable care is “conduct that shows ‘ordinary care,’ conduct that avoids creating an ‘unreasonable risk of harm,’ and conduct that shows ‘reasonable prudence.’”

Many times if a company finds the accident to be preventable, Plaintiff’s counsel will try to illicit that testimony at trial as a sign of negligence. Any evidence of this should be excluded at trial. Proper motions should be brought before the trial begins. First the results of any internal post-accident investigation should not be admissible due to subsequent remedial measures and is irrelevant as it has no tendency to make the existence of a fact more or less probable. Federal Rule of Evidence 703, adopted by the Illinois Supreme Court and Bulger v. Chi. Transit Auth., 345 Ill. App. 3d 103, 108 (2003); and Illinois Rules of Evidence Rule 401. Additionally, it should be argued “[e]vidence which is not relevant is not admissible.” Illinois Rules of Evidence Rule 402. Even assuming the relevance of evidence demonstrating the violation of internal company policies, the Court should still exclude such evidence because its lack of probative value pursuant to Illinois law is far outweighed by a danger of unfair prejudice, confusion of the issues, and misleading the jury, and the presentation of such evidence will inevitably waste time and cause undue delay. Illinois Rules of Evidence Rule 403.

Secondly, it should be argued that a client’s internal rules or findings are not admissible because they imposed a higher standard than that was otherwise set by law (negligence in most cases). Preventability determinations are made internally by a client. “The goal in making these determinations is to maximize safety and prevent future accidents. However, where a company’s internal rules require a standard that exceeds the standard imposed by law, a violation of that internal rule cannot be considered as evidence of negligence in subsequent litigation.” Villalba v. Consolidated Freightways Corp. of Delaware, 2000 U.S. Dist. LEXIS 11773, *18–19 (N.D. Ill. 2000).

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

The Illinois Supreme Court set forth the elements needed for a spoliation of evidence claim in Boyd v. Travelers Insurance Co., 166 Ill.2d 188 (1995). Spoliation of evidence is not an independent basis for a tort claim, but relief is available if a claim can be stated under ordinary negligence law. Boyd, 166 Ill. 2d at 193. Thus, the plaintiff in a spoliation of evidence case must plead the existence of a duty, a breach of the duty, an injury proximately caused by the breach, and damages. Id. at 194–95; Andersen v. Mack Trucks, Inc., 341 Ill.App.3d 212, 215 (2d Dist. 2003). Absent a legal duty of care owed to the plaintiff, the defendant cannot be found negligent. Ballog v. City of Chicago, 2012 IL App (1st) 112429, ¶ 20 (1st Dist.2012), (citation omitted).

The general rule is that there is no duty to preserve evidence. Boyd, 166 Ill.2d at 195. However, in the seminal case on spoliation of evidence in Illinois, the Boyd court articulated a two-prong test for when a duty to preserve evidence may arise. Id. First, the duty may arise through an
agreement, contract, statutory requirement, or some other special circumstance or if a defendant voluntarily assumes the duty through affirmative conduct (the relationship prong). *Id.* Second, if the relationship prong is satisfied, the duty to preserve evidence exists if a reasonable person in the defendant's position should have foreseen that the evidence was material to a potential civil action (the foreseeability prong). *Id.* Unless both prongs are satisfied, there is no duty to preserve evidence. *Id.*; *Andersen v. Mack Trucks, Inc.*, 341 Ill.App.3d 212, 215 (2d Dist. 2003). Under the second prong of the *Boyd* test, the plaintiff must show that the duty extends to the specific evidence at issue by demonstrating that a reasonable person in the defendant's position should have known the evidence would be material to potential civil litigation. *See Dardeen v. Kuehling*, 213 Ill. 2d 329, 336 (2004). A spoliation plaintiff must satisfy both prongs of the test, otherwise there is no duty to preserve the evidence at issue. *Id.*

If there is no duty to preserve evidence absent a demand, Plaintiff’s usually will argue that Defendants voluntarily undertook a duty in order to satisfy the relationship prong of the duty test. In *Miller v. Gupta*, 174 Ill. 2d 120 (1996), the Illinois Supreme Court gave insight into the sort of special circumstances that give rise to a duty to preserve evidence. In *Miller*, the court allowed the plaintiff to amend the negligent spoliation of evidence claim in her complaint where the record suggested that the evidence at issue had been destroyed after the plaintiff’s attorney had requested it from the defendant and while it was segregated from other similar material for the purpose of producing it. 174 Ill. 2d at 123–24. The *Miller* court did not hold that these facts, if properly pleaded, would give rise to a duty to preserve the evidence; however, it did consider these facts significant in its decision to remand and allow the plaintiff to replead her spoliation claim. Thus, *Miller* gives an additional indication of the sort of special circumstances that give rise to a duty to preserve evidence.

In regards to voluntary assumption of a duty to preserve evidence through affirmative conduct, the First District of the Illinois Appellate Court has provided insight in *Jackson v. Michael Reese Hosp. & Med. Ctr.*, a case with similar facts to *Miller*. In *Jackson*, the plaintiffs alleged that the defendant voluntarily assumed a duty to preserve x-rays that were later lost. The court held, however, that the plaintiffs’ complaint failed to allege affirmative conduct by which the defendant voluntarily assumed a duty to maintain the evidence. 294 Ill. App.3d at 11. Therefore, the court held that the relationship prong had not been properly pled. *Id.* However, although the plaintiffs failed to properly plead the spoliation claim in their Complaint, the court permitted them to amend it because the record suggested that the defendant had segregated the evidence into a special litigation file—an affirmative action that might have established the voluntary assumption of a duty to preserve the evidence. *Jackson*, 294 Ill. App. 3d at 11–12. The *Jackson* court further surmised that had the Complaint been properly pled with these facts, the foreseeability prong would have also been satisfied. *Id.*

4. **Broker exposure or liability for motor carrier negligence**

Illinois Courts have held brokers liable for the negligence of a motor carrier under two theories of liability; negligent hiring, and vicarious liability. Liability based on negligent hiring may arise if the broker acts negligently when selecting a particular motor carrier to transport a load.
The case of *Jones v. Beker*, 260 Ill.App.3d 481, 632 N.E.2d 273 (Ill. App. Ct. 1994) provides insight regarding liability based on negligent hiring. In *Jones*, the Court stated “to show that an employer failed to exercise reasonable care in the selection of an independent contractor, a plaintiff must show that the defendant negligently hired an independent contractor that it knew or should have known was unfit for the job so at to create a danger of harm to the plaintiff. In addition, there must be a connection between the particular unfitness and the independent contractor’s negligent act.” *Jones v. Beker*, 260 Ill.App.3d at 486 (citing *Dimaggio v. Crossings Homeowners Association*, 219 Ill.App.3d 1084, 1090, 162 Ill.Dec. 652, 580 N.E.2d 615).

In a negligent hiring action, the evidence will focus on the particular motor carrier’s fitness, and what actions the broker took in order to ensure the motor carrier was fit for service. Therefore, as a practical matter, in order to avoid a negligent hiring action, brokers need to not only conduct business with reputable, licensed, and qualified motor carriers, but also make reasonable efforts to internally investigate and monitor the selected motor carrier’s general safety statistics.

Vicarious liability, holding a broker liable for the motor carrier’s negligence, is entirely dependent on the broker’s exercise, or right to exercise, control over the motor carrier. Stated differently, a broker may be held liable for a motor carrier’s negligence if the broker controls, or has the right to control, the manner in which the motor carrier operates.

The case of *Sperl v. C.H. Robinson Worldwide, Inc.*, 946 N.E. 2d 463, 470 (Ill.App.Ct. 3d Dist. 2011) is directly on point to this issue. There, the Court held the broker liable based on the broker’s right to control the manner of work performance of the motor carrier. In so holding, the Court determined the following factors indicated control: (1) the broker provided load instructions and dispatching services; (2) the broker required drivers to check in daily; (3) the broker provided fuel advances and issued bills of lading to the motor carrier; and (4) the broker imposed fines for late deliveries. The Court held that the extensive requirements of the broker, coupled with the fine-based compliance, dictated the motor carrier’s conduct during the transportation process.

With regard to vicarious liability, the single most important thing a broker can do to avoid liability is to vest almost exclusive control in the motor carrier. The broker’s ability to effectively assert that it has insisted upon, or put in place, little to no restrictions on the motor carrier is essential in overcoming a claim based on vicarious liability.

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**

Illinois Courts have consistently held carriers liable under a theory of logo or placard liability without regard to whether at the time in question, the vehicle was being used in the business of the motor carrier. In *Kreider*, a motor carrier and a driver-owner entered into a lease agreement with an oral agreement that the driver-owner could operate the leased vehicles for her own use on the side. *Kreider*, 76 Ill.2d at 537-42. While the driver-owner was operating the vehicle for her own operations, an accident occurred. *Id.* The Court held the motor carrier liable because the motor carrier’s ICC number had not been removed or concealed. *Id.*

Although the Interstate Commerce Commission amended its regulations in 1986, eliminating the motor carrier’s affirmative duty to remove its identification from leased vehicles at the expiration of the lease, Illinois Courts have been slow to acknowledge this change. As recently as 2009, Illinois Courts expressed a willingness to continue to recognize the doctrine of logo liability citing to the “overarching purpose” of the original ICC regulations.

6. **Offers of Judgment**

There is no Offer of Judgment rule recognized by the Illinois Courts.

7. **Punitive Damages**

   a. **Are punitive damages insurable?**


   b. **Any limitations or how much may be awarded as punitive damages?**

   Illinois’ statutory limit on punitive damages was declared unconstitutional in *Best v. Taylor Mach. Works, Inc.*, 689 N.E. 2d 1057 (Ill. 1997). There is currently no cap on the amount of punitive damages available in the state of Illinois.

8. **Admissibility of citations or criminal convictions resulting from a motor vehicle accident**

In Illinois, evidence of a driver’s arrest for a traffic violation is inadmissible in a subsequent civil case. *Miyatovich v. Chicago Transit Authority*, 112 Ill. App. 2d 437, 442 (1st Dist. 1969). However, a plea of guilty to a traffic citation may be admissible in a subsequent civil case as evidence that the driver was at-fault whereas a conviction for the same offense following a not-

Oftentimes in trucking litigation, the truck driver involved in the accident resides outside of Illinois and chooses to plead guilty in mailing in his plea to avoid having to incur personal expenses to travel back to Illinois to attend the hearing to contest the citation. Illinois courts have rejected the argument that an individual charged with a traffic citation is likely to plead guilty as a convenience. *Young v. Forgas*, 308 Ill. App. 3d 553, 565 (4th Dist. 1999). To differentiate a guilty plea and a not-guilty plea, Illinois courts hold that a plea of guilty to a traffic offense is admissible as an “admission against interest” or as an admission from a party opponent. *Wright*, 167 Ill. App. 3d at 892. Illinois courts have reasoned that a guilty plea is “a concrete fact within the party’s peculiar knowledge.” *Sohaney v. Van Cura*, 240 Ill. App. 3d 266, 280 (2nd Dist. 1992). Lastly, a plea of nolo contendere entered may not be used as an admission in a civil case. *In re Eaton*, 14 Ill. 2d 338, 341 (1958). However, a conviction based on such a plea may be received as evidence. Id. at 341.

Oftentimes, the disposition of a driver’s traffic citation occurs well prior to suit is filed and prior to defense counsel being assigned to defend the matter. In cases where defense counsel is notified of the accident on or near the date of loss, it would wise for defense counsel to confer with the trucking company and/or insurer to have an attorney retained on behalf of the driver to avoid a plea of guilty from being entered. Further, it is important for trucking companies to be aware of this evidentiary standard to avoid drivers from entering guilty pleas on their own behalf and outside the knowledge of the carrier.

9. Recent and significant trucking verdicts in each state

In April 2016, Clifford Law Offices received a $22,700,000.00 verdict on behalf of a widow and her son after her husband (age 31) was killed in a trucking accident in 2012. The case was pending in the Law Division of the Circuit Court of Cook County. This rear-end case contained some rather inflammatory facts on liability in that the driver was found to have illegal drugs in his system, the driver had a history of speeding tickets, and because the accident occurred in a construction zone where decedent was stopped. As to the $22,700,000.00 verdict, $10,000,000.00 was awarded for grief and sorrow and $10,000,000.00 for loss of society. The case was tried before Judge Thomas Lipscomb by partners Kevin Durkin and Colin Dunn.

In March 2015, Salvi, Schostok & Pritchard received a $17,900,000.00 verdict in a Cook County case where Plaintiff, a 47-year old school teacher, was hit on October 23, 2012 by a truck driver that was alleged to have failed to yield Plaintiff’s right-of-way. The Plaintiff suffered a C6 incomplete spinal cord injury leaving her unable to return to work. The case was tried before Judge Clare Elizabeth McWilliams. Prior to the verdict being rendered, Plaintiff’s attorneys and defense counsel reached a settlement of $14,000,000.00.

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 off-sets

In Illinois, a plaintiff is permitted to “blackboard” all medical bills even if some of the bills have been paid, and even if some of the providers took payment in full from a collateral source. *Wills*
In Illinois, in order to get medical bills into evidence, plaintiff must establish three prongs; (1) Relatedness (establishing that the medical bills are related to the defendant’s conduct and the alleged injuries, (2) Necessity (the bills represent necessary medical treatment for the injuries alleged), and (3) Reasonableness (the amounts are reasonable for the treatment rendered and are usual and customary charges for the same or similar services by this provider and/or others in the community).

**a. Admission of medical bills into evidence**

In Illinois, a fully paid bill will be admitted as prima facie evidence of the reasonableness of the medical expense, whereupon the jury can consider the bill. An unpaid bill will need testimony that the bill is related, necessary, and reasonable. The testimony of what constitutes a “fair and reasonable” bill must be provided from an individual with proper foundation, typically a treating physician from that specific provider, a non-treating physician disclosed as an expert with the knowledge of what constitutes fair and customary charges for that treatment, or an employee of the medical provider such as a credit manager or records custodian.

Oftentimes, though, a plaintiff will serve an Illinois Supreme Court Rule 216 request to admit seeking admissions that the amounts of the bills are reasonable and represent usual and customary charges for the services rendered in the community, and that the bills represent treatment that was necessary to treat plaintiff. Illinois courts have found that such inquiries to reasonableness are proper subject of requests to admit. *Szczublewski v. Gossett*, 342 Ill. App. 3d 344, 348 (5th Dist. 2003).

In *Oelze v. Score Sports Venture*, 401 Ill. App. 3d 110, 927 N.E. 2d 137 (1st Dist. 2010), the defendant in the case responded to each request by stating that, having “made reasonable inquiry and the information known or readily available within the Defendant’s control is insufficient to admit or deny” the request; asserting a lack of foundation since the defendant in this case was not a physician or a provider. Thereafter, the plaintiff in Oelze filled a “motion to deem admitted” the requests to admit, asserting that the responses were deficient because the defendant did not set forth a good faith detailed reason why the requests could not be admitted. The First District held that a defendant must in essence establish grounds for the inquiry made since most defendants have insurance, and that their carrier has some knowledge as to what is necessary and reasonable. *Id.*

**b. Contesting a Rule 216 request**

If a Rule 216 request to admit the reasonableness and necessity of medical bills is served, defense counsel has several options. First, defense counsel can simply deny each request; however, this route runs the risk of the court imposing Rule 219 (b) sanctions against defense counsel which allows a court to award reasonable attorney’s fees to a requester for having to prove up the matters of the request. A more preferred option is for the defendant to state that it cannot admit or deny the reasonableness and/or necessity of plaintiff’s medical bills in providing a thorough explanation of the reasons an admission or denial cannot be provided. Here, oftentimes, defense counsel can retain an expert economist who can provide an affidavit explaining why the expert cannot formulate an opinion as to whether a medical bill is reasonable.
and customary; a strategy that evidences to the court that a good-faith and diligent attempt was made to answer each request.

11. Criminal history of a driver and its relation to negligent hiring and supervision claims

Illinois law recognizes a cause of action against an employer for negligently hiring, or retaining in its employment, an employee it knew, or should have known, was unfit for the job so as to create a danger of harm to third persons." Van Horne v. Muller, 185 Ill. 2d 299, 311 (Ill. 1998). "An action for negligent hiring or retention of an employee requires the plaintiff to plead and prove (1) that the employer knew or should have known that the employee had a particular unfitness for the position so as to create a danger of harm to third persons; (2) that such particular unfitness was known or should have been known at the time of the employee's hiring or retention; and (3) that this particular unfitness proximately caused the plaintiffs injury." Id. Further, with respect to a claim of negligent hiring or retention, the proximate cause of the plaintiff’s injury is the employer’s negligence in hiring or retaining the employee, rather than the employee’s wrongful act. Id.

In Campbell, a trucking accident case that occurred in 2008 in Ford County, Illinois, plaintiff amended her complaint to add a count against RAP Trucking alleging negligent hiring, training and/or supervision premised on various allegations including but not limited to RAP Trucking’s alleged failure to perform an adequate background check which would have revealed the driver’s extensive criminal history. Defendants filed motions in limine to exclude evidence that the driver was charged with or convicted of procuring a minor for prostitution and to bar mention of other solicitation of prostitute charges and convictions. Campbell v. RAP Trucking, 2011 U.S. Dist. 100446. The Campbell court disagreed with plaintiff and held that conduct relating to prostitution and the driver’s status as a sex offender is not probative to a negligent hiring count since the charges and convictions were unrelated to the operation of a motor vehicle. Id. The Court further held that charges and convictions and status as a sex offender were highly prejudicial and substantially outweighed the probative value of this evidence. Id. Here, it was evident that the Campbell court held that the unrelated charges and convictions were not relevant to a truck driver’s fitness to operate a tractor-trailer.

Illinois Rule of Evidence 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” See Illinois Rule of Evidence 401. Here, in Illinois, defense counsel should assess each criminal charge and/or conviction to assess its relevance to the case at bar. In working under the context of a standard truck accident involving another vehicle or a pedestrian; Illinois courts would be inclined to hold the following criminal convictions relevant; speeding citations, driving under the influence, various traffic citations such as failing to yield-the-right of way of another, etc; all citations that speak to ones fitness to safely and lawfully operate a tractor-trailer. Defense counsel should expect plaintiff’s attorneys to attempt to admit evidence of any and all convictions related to operating a vehicle. To oppose such, defense counsel should rely heavily on prong (3) above in formulating arguments to oppose the causative connection between the conviction and its relationship to the unfitness that is alleged to have proximately caused plaintiff’s injury.
Effect of Admitting Respondeat Superior: In *Gant*, a case where plaintiff was rear-ended by the defendant’s truck, plaintiff filed a negligence count under a theory of respondeat superior and a count alleging negligent hiring against the trucking company. *Gant v. L.U. Transport*, 770 N.E. 2d 1155 (1st Dist. 2002). The issue presented on appeal is whether a plaintiff who is injured in a motor vehicle accident can maintain a claim for negligent hiring against an employer, in this case a trucking company, where the employer admits responsibility for the conduct of the employee under a respondeat superior theory. Id. The Gant court held that a plaintiff may not proceed against the employer on a theory of negligent hiring once an employer admits responsibility under respondeat superior. Id. Here, in Illinois, defense counsel must consider disposing of a negligent hiring count against an employer in admitting respondeat superior where the facts overwhelming hold that the driver was acting within the scope of his employment.