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

Currently there is no existing law outlining the requirements for use of hands free devices in Iowa. However, pending legislation has recently received bipartisan approval amongst Iowa lawmakers. This statute would ban cellphone use while driving, yet carve an exclusive exception for hands-free devices. See H.F. 85, 87th Assembly § 5 (2017) (disallowing cellphone use while driving “unless the mobile telephone is specifically designed and configured to allow hands-free listening and talking and is used in that manner while driving”).

2. Discovery and admissibility of preventability determinations

Iowa courts have not specifically addressed the issue of whether preventability determinations are discoverable or admissible. As a general rule, if documents are “created in essentially similar form irrespective of the litigation,” it is discoverable and not protected by the work-product privilege. Wells Dairy, Inc. v. American Ind. Refrigeration, 690 N.W.2d 38 (Iowa 2004) Further, Iowa courts have refused to recognize a common law “self-critical-analysis” privilege and have held that any such privilege must come from the Iowa legislature. Id. Thus, preventability determinations are likely discoverable under existing Iowa rules and case law. However, to combat admissibility, one can argue that the prejudicial impact of such reports outweigh the probative nature of the reports. Further, a post-accident preventability determination could be characterized as a subsequent remedial measure which, even if discoverable, should not be admissible at trial.

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

In Iowa, spoliation of evidence occurs when: “(1) the evidence was ‘in existence’; (2) the evidence was ‘in the possession of or under control of the party’ charged with its destruction; (3) the evidence ‘would have been admissible at trial’; and (4) ‘the party responsible for its destruction did so intentionally.’” Iowa v. Hartsfield, 681 N.W.2d 626, 630 (Iowa 2004) (quoting Iowa v. Langlet, 283 N.W.2d 330, 335 (Iowa 1979)).
In *Meyn v. State*, the Iowa Supreme Court refused to adopt a “negligent spoliation of evidence theory.” 594 N.W.2d 31, 34 (Iowa 1999). Rather, the destruction of evidence must be “intentional, as opposed to merely negligent or . . . the result of routine procedure.” *Lynch v. Saddler*, 656 N.W.2d 104, 111 (Iowa 2003) (citing *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 719 (Iowa 2001)). Currently, the remedies available for spoliation of evidence include (1) discovery sanctions; (2) barring duplicate evidence where fraud or intentional destruction is indicated and/or (3) instructing on an unfavorable inference to be drawn from the fact that evidence was destroyed. *Hendricks v. Great Plain Supply*, 609, N.W.2d 486, 491 (Iowa 2000).

No Iowa court has directly addressed the issue of whether electronic data must be preserved absent a specific demand for preservation. While it is likely the “safer” course to preserve electronic data when a claim is reasonably anticipated, a defendant can argue against the imposition of sanctions by demonstrating that the electronic data was disposed of during routine and ordinary procedures or that the failure to preserve the electronic data was merely negligent as opposed to intentional. *Phillips v. Covenant Clinic*, 625 N.W.2d 714 (Iowa 2001).

4. Broker exposure or liability for motor carrier negligence

No Iowa case directly touches on broker exposure or liability for motor carrier negligence. Nevertheless, under Iowa Code § 325B.1, indemnification provisions in motor carrier contracts are strictly prohibited. See Iowa Code § 325B.1 (2017). Iowa Code § 325B.1 (2017) reads as follows:

> Notwithstanding any provision of law to the contrary, a motor carrier transportation contract, whether express or implied, shall not contain a provision, clause, covenant, or agreement that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, a promisee from or against any liability for injury, death, loss, or damage resulting from the negligence or intentional acts or omissions of that promisee, or any agents, employees, servants, or independent contractors who are directly responsible to that promisee. This prohibition applies to any provisions or agreements collateral to or affecting a motor carrier transportation contract. Any such provisions, clauses, covenants, or agreements are void and unenforceable. If any provision, clause, covenant, or agreement is deemed void and unenforceable under this section, the remaining provisions of the motor carrier transportation contract are severable and shall be enforceable unless otherwise prohibited by law.

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

Iowa courts have not addressed or set forth clear guidance relating to logo or placard liability. However, the United States District Court for the Northern District of Iowa has held that a carrier/lessee of a leased semi-tractor trailer bears “complete responsibility for operation of the leased equipment during the term of the continuous lease.” *Lyons v. Andersen*, 123 F. Supp. 2d 485, 504 (N.D. Iowa 2000). The court clarified this liability is not “governed by the existence or lack thereof of [lessee’s] placard on the vehicle.” Id. The Court further noted that Iowa’s
vicarious liability statute (Iowa Code 321.493(1)) and the FCC regulations are in “clear harmony” and that the carrier/lessee is liable for any negligence attributable to the owner/lessor.

6. Offers of Judgment

Offers to confess judgment are provided for in chapter 677 of the Iowa Code. See Iowa Code § 677 (2017). Iowa permits offers to confess to be placed either prior to or after the action is brought. See Iowa Code § 677.1 (2017); see also Iowa Code § 677.4 (2017). The nonacceptance of an offer to confess “shall not be treated as an admission of the cause of action or amount to which the plaintiff was entitled, nor be given in evidence.” Iowa Code § 677.3 (2017); see also Iowa Code § 677.6 (2017).

7. Punitive Damages

a. Are punitive damages insurable?

Yes, punitive damages are insurable in Iowa. See Skyline Harvestore Systems, Inc. v. Centennial Ins. Co., 331 N.W.2d 106, 109 (Iowa 1983). “[U]nless the insurance policy specifically exclude[s] punitive damages from coverage,” an insurance policy provides coverage for both compensatory and punitive damages. Id.

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

Caps on punitive damages depend on “[w]hether the conduct of the defendant was directed specifically at the claimant, or at the person from which the claimant’s claim is derived.” Iowa Code § 668A.1(1)(b) (2017). If so, the full amount of punitive damages awarded will be given directly to the claimant. See Iowa Code § 668A.1(2)(a) (2017). However, if not, no more than 25% of the awarded punitive damages will be given to the claimant “with the remainder of the award to be ordered paid into a civil reparations trust fund administered by the state court administrator.” Iowa Code § 668A.1(2)(b) (2017).

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

a. Are citations admissible in the civil litigation?

Under long-standing Iowa law, conviction judgments are not admissible in a civil case. See, e.g., In re Johnston’s Estate, 261 N.W. 908 (Iowa 1935). Moreover, in Simmons v. Eisentrager, the driving records and accident history of a truck driver were inadmissible in a civil action as evidence of habit. See 2002 WL 1071381, *2 (Iowa Ct. App. May 31, 2002). The court reasoned seven citations and three accidents over a twelve year period were “not numerous enough and not substantially similar enough to establish a habit or a routine practice to make that evidence admissible.” Id.

b. How does a guilty plea or verdict impact civil litigation? Plea of no contest?
Guilty pleas are admissible as an admission of liability in a civil matter. *Liddle v. Hyde*, 247 N.W. 827, 828-29 (Iowa 1933). No Iowa case law specifically addresses the impact or admissibility of a “no contest” plea in civil litigation. However, given Iowa’s approach to the inadmissibility of conviction judgments and a “no contest plea” in Iowa allows for a conviction without an admission of guilt, strong arguments can be made that a “no contest” plea is not an admission of guilt or fault.

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

Not applicable.

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 set-offs**

Under Iowa law, an injured party is entitled to recover the “reasonable” value of necessary medical care. The amount actually paid for medical services is considered to be prima facie evidence of “reasonable value.” However, the Iowa Supreme Court has rejected the argument that an injured party’s recovery for past medical services should be limited to the amount actually paid for medical services. *See Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 157 (Iowa 2004). However, in order to place the total amount billed into evidence (as opposed to the amount actually paid), the injured person bears the burden to prove the reasonable value of the services rendered. *See Id.* at 156. The injured party fulfills this burden by providing expert testimony as to the reasonableness of the charges. *See Id.* at 157. The opposing party can counter this testimony by introducing evidence of the amount actually paid.

As Iowa has adopted the collateral source rule, evidence of payments made pursuant to any federal program for an injured person’s actual economic loss is now precluded. *See Id.* at 157 (citing Iowa Code § 668.14 (2015)).

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

In Iowa, an employer possesses a duty to exercise reasonable care in hiring individuals who, through their employment, may pose a risk of injury to the public. The elements of a claim of negligent hiring include: (1) the employer knew or should have known of the employee’s unfitness at the time of hiring; (2) that, through the negligent hiring of the employee, the employee’s incompetence, unfitness or dangerous characteristics proximately caused resulting injuries; and (3) that there is some employment or agency relationship between the tortfeasor and the defendant employer. Iowa also recognizes causes of action for negligent retention and negligent supervision. The elements of a such claims mirror the elements of a negligent hiring claim except that the knowledge element concerns what the employer knew at the time of the negligent conduct as opposed to the time of hiring.

Notably, Iowa also recognizes claims for reckless hiring in the transportation context and, in *Briner v. Hyslop*, 337 NW2d 858 (Iowa 1983), the Court found an employer vicariously liable for reckless hiring, when among other factors, the truck driver was unfit and the principal was
reckless in employing him. Although no Iowa case has directly addressed the issue of a driver’s
criminal history, it appears that the courts would deem a driver’s criminal history to be relevant
if the criminal history related to dangerous characteristics proximately causing the plaintiff’s
injuries.