1. **Spoliation**

   a. **What is the rule regarding spoliation of evidence in your state?**

   If a party to a civil case destroys relevant evidence in bad faith, the fact of that destruction is normally admissible in court and raises an inference that the evidence would have been harmful. To show bad faith, one must establish that the destruction is willful and done with an improper motive. *Anderson v. Tyrrell* 80 Wash. App. 592, 910 P.2d 522 (1996).

   b. **Is there a duty to preserve evidence absent a specific demand?**

   Yes. When it becomes apparent that litigation will follow, there is a duty to preserve relevant information. *Homework Construction Inc. v. Wells*, 133 Wash. App. 892, 138 P.3d 654 (2006)

   c. **What is the rule of spoliation of evidence specifically relating to electronic data?**

   There are no appellate cases in Washington on point. Washington will likely follow the general rule that a duty to preserve arises when litigation is reasonably anticipated.

   d. **What has been your experience with its application to onboard equipment like DriveCam?**

   We have not experienced spoliation in this context. It is expected the same general rules mentioned above, would apply.

   e. **Does your state allow direct actions against responsible parties for spoliation?**

   In Washington, spoliation is a rule of evidence. There would be no basis for cause of action based upon spoliation.

   f. **Is there any limitation on upstream liability for spoliation?**

   We have no Washington cases addressing this point.
2. **Citations or criminal convictions resulting from an accident.**

   a. **Are citations admissible in the civil litigation?**


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


3. **Can a plaintiff maintain a negligent hiring/supervision/training claim where the employer admits scope and course of employment?**

   Probably not, although the employer may still be liable for the negligence of his driver on a respondeat superior basis.

4. **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?**

   The medical billings charged are the measure of damages. There is no basis for post-verdict reductions or offsets.

5. **What were the significant trucking verdicts or rulings in your state last year?**

   In a recent unpublished opinion, *MacMillan v. Employment Security Department*, the Washington State Court of Appeals addressed the question of whether a drayage company (MacMillan) qualified for a statutory independent contractor exemption from unemployment taxes when it entered into contracts with owner-operators to haul freight. The governing Washington statute is entitled RCW 50.04.140(1).

   In this case, the owner-operators provided the trucking equipment and drivers to perform drayage services for MacMillan. Those owner-operators hauled freight using MacMillan’s operating authority. The particular owner-operator contracts included numerous provisions addressing the obligations of the owner-operator and setting a number of requirements dictated by MacMillan.
The Washington State Employment Security Department conducted an audit and determined that 69 owner-operators should be reclassified as employees, rather than independent contractors under the Employment Security Act. A tax assessment was issued to MacMillan in the amount of $130,440.81. This assessment was upheld on appeal with the Court determining that MacMillan was not exempt because the owner-operators performed personal service for wages which benefited MacMillan and MacMillan exerted extensive control and direction over the methods and details of how the driving services were to be performed.

6. **What is the discoverability of insurance adjuster file materials in your state when outside counsel has not been retained.**

   Statements made by an insured to an insurance adjuster for his insurance company are protected. The balance of file materials may be discoverable, depending on the nature of the cause of action.

7. **Does your jurisdiction follow Carmack or are there jurisdictional specific rules regarding cargo liability?**

   Carmack will preempt state claims and supersede all state regulations. See *Hoskins v. Bekins Van Lines, Inc.* 343 F. 3d 769, 778 (5th Cir. 2003). (The court held that congress intended for the Carmack amendment to provide the exclusive cause of action for loss or damages to goods arising from the interstate transportation of those goods by a common carrier). The impact of this amendment is that state common law claims such as conversion, fraud, or a breach of contract are preempted by the federal law and not available in light of the Carmack amendment. See also *Hall v. North American Van Lines Inc.*, 476 F. 3d 683 (9th Cir. 2007).

8. **Does your jurisdiction require pre-trial disclosure of surveillance/social media investigations? If so, when are you required to make disclosures?**

   In Washington, there is no requirement for pre-trial disclosures except in response to specific interrogatories.