1. Minimum liability limits

The minimum policy limits for automobile liability insurance under Washington law is $25,000 per person / $50,000 per accident for bodily injury or death and $10,000 for property damage. RCW 46.29.090. The minimum policy limits for for-hire vehicles are $100,000 per person, $300,000 per accident for bodily injury or death and $25,000 for property damage. RCW 46.72.040.

2. Negligence laws (Is the jurisdiction a pure contributory negligence state; what type of comparative fault is applicable, etc?)

Washington uses a pure comparative model, and the plaintiff’s damages will be reduced by his own percentage of fault. RCW 4.22.070. The only circumstance where a plaintiff’s comparative fault will bar his claim is if he is intoxicated and more than 50% at fault.

3. Bodily Injury Statute of Limitations

The statute of limitation for negligence is three (3) years. In accidents involving a minor, the statute of limitation is tolled until they reach the age of majority. RCW 4.16.080(2).

4. Property Damage Statute of Limitations

The statute of limitation for negligence is three (3) years. RCW 4.16.080(2). However, when considering property damage claims, carriers need to be mindful of the Washington Administrative Code provisions. Carriers have an affirmative duty to make a good faith effort to settle those claims where liability has become reasonably clear. WAC 284-30-330(6)

5. Are punitive damages insurable in the jurisdiction?

Washington does not permit punitive damages, with very limited exceptions. Fisher Properties, Inc. v. Arden-Mayfair, Inc. 726 P.2d 8 (1986). There are circumstances where punitive damages are authorized by statute, such as with insurance related claims. Fluke Corp. v. Hartford Acc. & Indem. Co., 34 P.3d 809 (2001). Because punitive damages are not available on personal injury claims, it is difficult to project how this body of law would develop if punitive damages suddenly became available.
6. **Is there an intra-family immunity defense?**

Washington has abolished intra-family tort immunity. Spouses can sue each other for negligence while married. *Freehe v. Freehe*, 81 Wn.2d 183, 500 P.2d 771 (1972) (overruled on other grounds).

Parental immunity is available as a defense in Washington, but there are three exceptions: 1) where a parent negligently operates an automobile; 2) where a parent injures the child while engaging in a business activity; and 3) where a parent engages in willful or wanton misconduct.

Even with the stated rule the courts make a case by case determination as to whether to apply parental immunity. Generally the court concerns itself with whether the purported negligence was allowing participation in the activity by the child versus negligent conduct by the parent while the child participated in the activity. *Woods v. H.O. Watersports*, 183 Wn. App. 145 (2014).

7. **Is there a bodily injury damage threshold? If so, what is it?**

There is no bodily injury damage threshold in the state of Washington.

8. **What are the quick rules on Subrogation MP/PIP?**

Washington permits MP/PIP subrogation, but the right to seek that recovery is secondary to the plaintiff being “made whole” by the tortfeasor either through settlement or judgment. Typically a MP/PIP lienholder’s claim is extinguished if there the tortfeasor has insufficient policy benefits to make the plaintiff “whole.” Carriers that seek reimbursement of the MP/PIP from the claimant must pay their share of costs and fees in proportion to the total recovery. This is true even when the plaintiff recovers either all or a portion of the MP/PIP benefits from the same policy under the UIM provisions of the policy.

9. **Are there no fault laws in the jurisdiction?**

Washington is not a mandatory no-fault state. Insurers in Washington can offer Medical Payments and PIP coverage that is no-fault. Worker’s compensation laws constitute “no-fault” laws for injuries during the course and scope of employment.

10. **Is the customer’s insurance primary?**

Generally, the insurance of the at-fault party is primary with the exception of PIP/Medical Payments coverage.
11. **Is there a seat belt defense?**

Although seat belts are required to be worn in Washington, evidence of failure to wear a safety belt assembly is not admissible as evidence of negligence in a civil action. RCW 46.61.688(6). Seatbelt use can be admissible in crashworthiness cases.

12. **Is there a last clear chance defense?**

The last clear chance doctrine was considered to be subsumed by Washington’s adoption of pure comparative fault.

13. **Is there an assumption of risk defense?**

The doctrine of assumption of risk has two classifications: express and implied primary. Express and implied primary assumption of the risk arises when the plaintiff consented to relieve the defendant of a duty owed regarding specific known risks. *Scott v. Pacific West Mountain Resort*, 119 Wn.2d 484, 834 P.2d 6 (1992). Because of the assumption of the risk, it is a bar to plaintiff’s recovery when the injury results from an assumed risk. To be successful in this defense, it must be demonstrated the plaintiff (1) had full subjective understanding, (2) of the presence and nature of the specific risk, and (3) voluntarily chose to take the risk. *Kirk v. Washington State University*, 109 Wn.2d 448, 746 P.2d 285 (1987).

Although Washington historically recognized implied reasonable and implied unreasonable assumption of risk where a plaintiff is aware of, and chooses voluntarily to encounter, a risk created by the defendant’s negligence, they have been subsumed in, and retain no independent significance from, comparative fault. *Tincani v. Inland Empire Zoological Soc.*, 124 Wn.2d 121, 875 P.2d 621 (1994); WPI 13.00

14. **Is there a UM requirement?**

Yes, every new auto related policy must include Uninsured/Underinsured Motorist benefits, unless rejected in writing. The UM/UIM limits will be the same as the liability limits unless set forth in writing. RCW 48.22.030(4).

15. **Is there a physical contact requirement?**

No. Claims for damages arising out of a “phantom vehicle” can be made so long as the accident was reported within 72 hours of the occurrence and there is corroborating evidence other than the testimony of the claimant. In other words there must be admissible evidence of the accident other than an insured averring it occurred. RCW 48.22.030(8)

16. **Is there a mandatory ADR requirement?**

There is not a state-wide mandatory ADR requirement. ADR is required in superior court cases filed in King, Pierce, Mason, Yakima and Cowlitz Counties. Settlement conferences
are required in Kitsap, Benton, Franklin, Pacific and Wahkiakum Counties. Settlement conferences and/or ADR are encouraged and can be compelled in other Washington counties.

17. Are agreements reached at a mediation enforceable?

Yes, as long as the agreement is in writing and signed by the attorneys. See Civil Rule 2A. A “CR2A Agreement” is nearly universally done at the end of every mediation to ensure enforceability.

18. What is the standard of review for a new trial?

Civil Rule 59 provides the foundation for a new trial and a motion requesting one should be granted where the following materially affects the substantial rights of a party: 1) irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial; 2) misconduct of prevailing party or jury; 3) accident or surprise which ordinary prudence could not have guarded against; 4) newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial; 5) damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice; 6) error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property; 7) that there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law; 8) error in law occurring at the trial and objected to at the time by the party making the application; and 9) that substantial justice has not been done.

A motion for a new trial must be brought within 10 days after the entry of the judgment, order, or other decision.

19. Is pre-judgment interest collectable? If so, at what rate?

Pre-judgment interest is collectable if the claim is “liquidated.” Hansen v. Rothaus, 107 Wn.2d 468, 472, 730 P.2d 662 (1986). A liquidated claim exists when the amount of pre-judgment interest can be determined from the evidence with exactness and without reliance on opinion or discretion.” Hansen, 107 Wn.2d at 472. Special damages are generally not considered liquidated because the trier of fact has to determine whether the medical bills and treatment were reasonable and necessary and the determination requires expert opinion. If the claim is liquidated, the highest rate of interest is 12% per year. RCW 19.52.020

20. Is post-judgment interest collectable? If so, at what rate?

Yes, post-judgment interest for judgments founded on the tortious conduct of individuals is collectable at the rate of “two percentage points above the prime rate, as published by the board of governors of the federal reserve system on the first business day of the calendar month immediately preceding the date of entry.” RCW 4.56.110(3)(b). If the judgment is not founded on tortious conduct, the highest rate of interest is 12% per year. RCW 19.52.020
21. **Is there a workers compensation exclusive remedy defense?**

Yes, RCW Ch. 51 provides employers with an exclusive remedy defense. Unless the injured worker alleges intentional tortious conduct, other than workers’ compensation benefits, the employer is immune from liability. *Birklid v. Boeing Company*, 127 Wn.2d 853 (1995).

22. **Is the doctrine of joint and several liability applicable?**

Washington “abolished” joint and several liability with several exceptions. RCW 4.22.070. The most significant and common exception is when the plaintiff is fault free and multiple defendants cause the harm; if a judgment is entered against those defendants, they are jointly and severally liable for the damages. *Id.*

Another exception frequently seen in auto related claims is where there are successive accidents. If the plaintiff demonstrates an indivisible harm as a result of multiple occurrences, the burden shifts to the defendants to segregate the injuries and care associated with each defendant’s occurrence. If the defendants cannot segregate injuries and care, then the defendants are jointly and severally liable for the damages.

23. **Is there a self-critical analysis privilege?**

There are no state decisions addressing admissibility of preventability determinations. But the topic falls within the broader category of critical self-analysis reports that are often generated following serious accidental injuries, and a privilege for those has not been recognized in the state court.

A similar issue was discussed in the 9th Circuit Federal court in *Dowling v. American Hawaii Cruises, Inc.*, 971 F.2d 423, LEXIS 17590 (1992), where the court considered the admissibility of a post-accident safety investigation. The trial judge concluded the report inadmissible based on a privilege of “self-critical analysis.” The appellate court disagreed and found the report was admissible.

The federal rule and Washington rule are essentially the same. A state judge will likely consider the similarities of the rule and the *Dowling* decision in determining admissibility.

24. **Is accident reconstruction data admissible?**

Yes, Washington Rule of Evidence 702(a) provides: “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.”

25. **What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?**

The plaintiff is entitled to submit the total bill but must support the bill with expert testimony that the amount charged was reasonable and necessary. *Patterson*, 84 Wash. App. at
543. The collateral source rule prevents a defendant from admitting evidence on the reduction of medical bills due to insurance agreements. *Cox v. Spangler*, 141 Wash. 2d 431, 439, 5 P.3d 1265 (2000). The defense can submit expert testimony that the amounts charged were not reasonable or necessary. Recent attempts to submit the amount paid versus the amount charged have not been successful.

26. **What is the jurisdiction’s rule on offers of judgment?**

An offer in judgment is of limited impact. A defendant may make an offer of judgment more than 10 days before the trial begins, giving the opposing party 10 days to accept. If the offer of judgment is not accepted and the final judgment does not exceed the offer, the plaintiff must pay the taxable costs incurred by the defendant after making the offer. CR 68. Although the rule provides for taxable costs, the courts have severely limited the recoverable costs making the threat of them virtually meaningless.

27. **What is the jurisdiction’s rule on spoliation of evidence?**

Spoliation is typically considered to be the intentional destruction of evidence. When spoliation is alleged the threshold question is whether the party had a duty to preserve the evidence. If not, a finding of spoliation is unwarranted. *Marshall v. Bally's Pacwest, Inc.*, 94 Wn. App. 372, 382-83, 972 P.2d 475 (1999). If a party's destruction of evidence was both willful and improper, a number of consequences may follow: 1) an instruction of an inference that the evidence, had it not been destroyed, would be have been unfavorable to the party that destroyed it; 2) a limitation or exclusion of other evidence offered by the party that destroyed evidence; or 3) sanctions under CR 37 for discovery abuse.

The determination as to the penalty for spoliation includes consideration of (1) the potential importance of the missing evidence; and (2) the culpability or fault of the adverse party. *Henderson*, 80 Wash. App. at 607.

28. **Are there damages caps in place?**

No. Prior legislative efforts to cap non-economic damages in personal injury claims have been rejected as unconstitutional as a violation of the right to trial by jury by the Washington Supreme Court. *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636 (1989).

29. **Is CSA 2010 data admissible?**

Washington courts have not yet addressed the admissibility of CSA data.

30. **Briefly, does the jurisdiction have any unique rules on electronic discovery?**

CR 34(a) states the scope of document production includes the production of electronically stored information (“ESI”). The response to the request for ESI may state an objection to a requested from for producing electronically stored information. If the responding party objects to the form or forms-or if no form was specified in the request-the responding party...
must state the form or forms it intends to use. Unless otherwise stipulated or ordered by the
court, a party who produces ESI is required to produce it as it is usually kept in the course of
business or shall organize and label it to correspond with the categories of the request. If a
request does not specify a form for producing ESI, a party must produce it in a form or forms in
which it is ordinarily maintained or in a reasonably usable form or forms; and unless otherwise
stipulated or ordered by the court, for good cause shown, a party need not produce the same ESI
in more than one form. CR 34(b)(3)(D) and CR 34(b)(3)(F).

The federal court for the Western District of Washington currently requires parties to
confer, under Local Rule 26(f)(1), regarding whether the case will involve the preservation and
production of ESI and, if so, the nature, location, and scope of discoverable ESI and whether the
parties agree to adopt the Model Agreement Regarding Discovery of ESI in Civil Litigation.
Under the Rule, attorneys have a duty to review and understand how their client’s data and ESI
are stored and retrieved before the Rule 26(f) conference. Generally, each party is responsible
for their own discovery costs, but the court may apportion the costs related to ESI upon a
determination of good cause.

There is no duty to preserve ESI absent a demand or specific regulation. However, a trial
court will likely evaluate ESI production on a case-by-case basis.

31. **Is the sudden emergency doctrine recognized in the jurisdiction?**

Yes. An individual, who is suddenly confronted with an emergency through no fault of
his own and is compelled to decide instantly how to avoid injury, is not negligent even though
his decision at that moment was not the best choice. *Humes v. Fritz Companies, Inc.*, 125 Wn.

32. **Are there any rules prohibiting or limiting the use of the reptile theory at trial?**

Golden Rule arguments are not permissible in Washington. Any reference to sending the
jury a message or asking the jury to place themselves in the position one of the parties is not

Evidence Rules 401, 403 and 404 provide trial judges considerable discretion regarding
Reptile arguments on the general topic of safety. Washington appellate courts have not yet
published an opinion on the scope of permissible Reptile arguments.

33. **What are the jurisdictional limits of the jurisdiction’s civil courts – i.e. Small
Claims, District Court, Superior Court?**

Small claims have a jurisdictional limit of $5,000.00. Attorneys may not participate
without special permission.

The state’s district courts have a jurisdictional limit of $100,000.00.
The Superior Court has unlimited jurisdiction. However, matters filed in the Superior Court (in most venues) with a value of $50,000.00 or less must go through mandatory arbitration.

34. Are state judges elected or appointed?

Judges at all levels within the state are elected. A midterm vacancy can be filled by special election or appointment by the Governor.