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

Pursuant to RCW 46.61.667, drivers of both non-commercial and commercial vehicles may use a mobile telephone in hands-free mode. For commercial drivers, any other type of use constitutes a traffic infraction. See RCW 46.61.667(1)(b). For non-commercial drivers, use of a mobile device only constitutes an infraction if it is held to the person’s ear. See RCW 46.61.667(1)(a).

2. Discovery and admissibility of preventability determinations

There is no Washington case law addressing whether preventability determinations are discoverable or admissible. However, Federal Trucking Regulations preclude use of post-accident reports in civil litigation. 49 U.S.C. § 504(f) provides in pertinent part that:

No part of a report of an accident occurring in operations of a motor carrier, motor carrier of migrant workers, or motor private carrier and required by the Secretary, and no part of a report of an investigation of the accident made by the Secretary, may be admitted into evidence or used in a civil action for damages related to a matter mentioned in the report or investigation.

Post-accident reports are required by the Secretary because each carrier must determine the “preventable accident rate per million miles.” 49 C.F.R. § 385.7. Therefore, a post-accident preventability determination must be made and the results of that determination are inadmissible under the provisions of 49 U.S.C. § 504(f).

There does not appear to be a clear consensus around the country as to whether or not these determinations are discoverable. However, an argument can certainly be made that preventability determinations are not discoverable pursuant to 49 U.S.C. § 504(f).
3. **Spoliation of evidence, specifically related to electronic data and whether there is a duty to preserve evidence absent a specific demand**

The general rule in Washington is that the duty to preserve relevant electronic documents attaches when litigation is reasonably anticipated - just as a party would have a duty to preserve traditional, printed documents under similar circumstances. *See 5 Wash. Prac., Evidence Law and Practice § 402.6 (6th ed.)*.

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

While no precise case law exists in the state of Washington for the exact issue, a broker exposure or liability for motor carrier negligence may be linked to how much control over the motor carries actions the broker had. Through vicarious liability, depending on how much control the broker had, (providing load instructions to re-routing drivers etc.,) the broker may be found liable. RCW 8.86.090.

Additionally a Broker may face liability or exposure through the negligent hiring and negligent retention of unqualified carries. If a broker fails to exercise ordinary care by hiring or retaining motor carries, such as agreeing to insure that carries are insured it opens itself up to liability. *See Evans v. Tacoma Sch. Dist. No. 10*, 195 Wash. App. 25, 46, 380 P.3d 553, 563.

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

Under the theory of apparent of agency there may be liability for a motor carrier when a vehicle bears its ID placard, company name or business logo.

Apparent authority can be inferred only from acts of the principal, which cause the third party to "actually, or subjectively, believe that the agent has authority to act for the principal. *D.L.S. v. Maybin*, 129 Wash. App. 1029 (2005). If a motor carrier represents through a logo or placard that another is his agent and thereby causes a third person justifiably to rely upon to the care or skill of the apparent agent, the motor carrier may be subject to liability to the third person for harm caused by the lack of care or skill of the one appearing to be a servant or other agent as if he were such. *See, Greene v. Rothschild*, 60 Wash. 2d 508, 513, 374 P.2d 566, 570 (1962)

6. **Offers of Judgment**

Yes, pursuant to Washington State Superior Court Rule 68 - at any time more than 10 days before the trial beings, a party defending against a claim may serve upon the adverse part an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the defending party’s offer, with costs then accrued.
7. **Punitive Damages**

   a. **Are punitive damages insurable?**

   There are no punitive damages in the State of Washington except by statute, such as with insurance related claims. *Fluke Corp. v. Hartford Acc. & Indem Co.*, 34 P.3d 809 (2001). Although there is no case on point, where a statute authorizes the award of punitive damages, vicariously assessed punitive damages are likely insurable because directly assessed punitive damages are insurable.

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

   There are no punitive damages in the State of Washington except by statute, such as with insurance related claims. *Fluke Corp. v. Hartford Acc. & Indem Co.*, 34 P.3d 809 (2001).

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

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

   No, a citation for a traffic infraction resulting from an accident is not evidence as to negligence of the cited party or cause of the collision. *Hadley v. Maxwell*, 144 Wash.2d 306, 27 P.3d 600 (2001). Additionally, the citation alone is considered an out-of-court statement of opinion by the office. ER 802. However, the investigating police officer can testify as to the factual foundation for his opinion on liability.

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

   Defendant-insured is entitled to present the jury with facts surrounding a guilty plea of a felony charge. Guilty plea to the negligent driving charge can be brought to show admission of negligence on part at the time in question. *Safeco Ins. Co. of Am. v. McGrath*, 42 Wash. App. 58, 64, 708 P.2d 657, 661 (1985). A Plea of no contest is not admissible under ER 410(2). A criminal conviction after trial may, under certain circumstances be allowed since the trial allowed for full and fair hearing on the issue in question. *Clark v. Baines*, 150 Wash. 2d 905, 913, 84 P.3d 245, 249 (2004).

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

   No recent significant verdicts or decisions.
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?

Plaintiffs may recover the amount charged by the medical providers. As for post-verdict reductions or off-sets, a judge may reduce the amount of damages granted (i.e., remittitur) if the amount awarded was grossly excessive as a matter of law.

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

In order to establish a claim for negligent hiring, the plaintiff must show that (1) the employer knew or, in exercising ordinary care, should have known of its employee's incompetence when the employee was hired, and (2) that the negligently hired employee caused the plaintiff's injuries. *Rucshner v. ADT, Sec. Systems, Inc.*, 149 Wn. App. 665, 204 P.3d 271 (2009). The focus is on the process taken by the employer, rather than upon whether specific questions were asked. *Brown v. Labor Ready Northwest, Inc.*, 113 Wn. App. 643, 54 P.3d 166 (2002). Employment that involves contact with third persons and the possibility of subjecting such persons to risk of harm increases the duty to investigate potential employees. *Rucshner, supra*. However, where the injury arises from circumstances other than those reasonably foreseeable by the employer, no claim for negligent hiring can be sustained. *Betty Y. v. Al-Hellou*, 98 Wn. App. 146, 988 P.2d 1031 (1999) (assault of child not foreseeable from hiring laborer to rehabilitate vacant apartments).

A negligent supervision claim requires showing: (1) an employee acted outside the scope of his or her employment; (2) the employee presented a risk of harm to other employees; (3) the employer knew, or should have known in the exercise of reasonable care, that the employee posed a risk to others; and (4) that the employer's failure to supervise was the proximate cause of the plaintiff's injury. *Garrison v. Sagepoint Financial, Inc.*, 185 Wn. App. 461, 345 P.3d 792 (2015).

A driver’s criminal history can certainly be relevant to a negligent hiring or supervision claim because it may speak to the employer’s knowledge regarding the fact that the employee posed a risk to others. For instance, if a driver has a history of drinking and driving and then causes a major accident, while drunk and on duty, such would be relevant to a claim asserting that the employer was negligent in hiring and retaining the employee. However, if a driver’s criminal history is unrelated to the alleged act, then it may have no bearing on a negligent hiring or supervision claim and could be held inadmissible. *See* ER 403; ER 609.