

NEBRASKA

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1. Identify the venues/areas in your State that are considered dangerous or liberal.

By and large Nebraska is a conservative state. This conservatism is generally reflected in the state's jury pools as well. However, Lancaster County and Scotts Bluff County have tended to be more liberal in their jury verdicts. Despite these tendencies, Nebraska is a state with strong conservative principles and the jury verdicts tend to reflect that.

2. Identify any significant trucking verdicts in your State during 2017-2018, both favorable and unfavorable from the trucking company's perspective.

We are not aware of any significant trucking verdicts in the years 2017-2018. However, we note that in a recent case a Lancaster County jury delivered of verdict of over \$7 million dollars in which the plaintiff would receive \$3.5 million. That case was brought under the Federal Employers' Liability Act after an accident occurred on the premises of Defendant Burlington Northern Santa Fe Railroad. *Rohr v. Burlington Northern Santa Fe Railway Company*, found at CI 17 0000620.

3. Are accident animations and/or computer-generated evidence admissible in your State?

Yes, accident animations and/or computer generated evidence is admissible in Nebraska. Nebraska courts treat computer-generated models or simulations like other scientific tests, and condition admissibility on a sufficient showing that: (1) the computer is functioning properly; (2) the input and underlying equations are sufficiently complete and accurate (and disclosed to the opposing party, so that they may challenge them); and (3) the program is generally accepted by the appropriate community of scientists. *Kudlacek v. Fiat S.p.A.*, 244 Neb. 822, 843, 509 N.W.2d 603, 617 (1994).

4. Identify any significant decisions or trends in your State in the past two (2) years regarding (a) retention and spoliation of in-cab videos and (b) admissibility of in-cab videos.

There have been no recent court decisions or trends relating to in-cab videos. However, it is our experience that these videos are clearly discoverable information and are admissible with proper foundation. It is imperative that these videos be preserved following an accident and made known to counsel.

5. What is your State's applicable law and/or regulation regarding the retention of telematics data, including but not limited to, any identification of the time frames and/or scope for retention of telematics data and any requirement that third party vendors be placed on notice of spoliation/retention letters.

At this time, Nebraska has no reported decisions and/or regulations regarding the retention of telematics data. We anticipate that as the law emerges in our state, this data will be treated similarly to Qualcomm and OnStar platforms, which will suggest that it is clearly relevant and discoverable information and that best practice is to have a retention policy in place for such data. With respect to the involvement of third-party vendors who may source the platform or hold the data, we again suggest that best practices will be to send a retention letter if the unit equipped with the technology is involved in an incident likely to result in a claim.

6. Is a positive post-accident toxicology result admissible in a civil action?

Nebraska courts have held that the percentage of alcohol content of body fluids is relevant in a civil case when accompanied by expert opinion evidence of the effect thereof. *Sandberg v. Hoogensen*, 201 Neb. 190, 195, 266 N.W.2d 745, 748 (1978); *see also Raskey v. Hulewicz*, 185 Neb. 608, 177 N.W.2d 744 (1970). A Nebraska court has also stated that: "[w]e realize that the significance of a blood test in a driving under the influence of alcohol (DUI) case is so common that people generally assume a person is intoxicated when that person's blood alcohol content exceeds the limit for DUI" *Tafoya v. Chapin*, No. A-01-1042, 2003 WL 1205181, at 4 (Neb. Ct. App. Mar. 18, 2003). Despite this, the court referenced the above-cited cases which "clearly hold that in a civil case, expert testimony is required." *Id.*

7. Is post-accident investigation discoverable by adverse counsel?

Post-accident investigations are generally protected by the attorney work-product provisions. Thus, for such information to be discoverable, opposing counsel must demonstrate a substantial need and undue hardship. NEB. CT. R. DISC. § 6-326(b)(3); *Podraza v. New Century Physicians of Nebraska, LLC*, 280 Neb. 678, 692, 789 N.W.2d 260, 271 (2010).

8. Describe any laws in your State which regulate automated driving systems (autonomous vehicles) or platooning.

In the spring of 2018, the Nebraska Legislature passed LB-989, a bill that allows autonomous vehicles to operate on public roads as long as the vehicle includes safety features, follows state road rules and is properly insured. The bill allows for a driverless vehicle to operate on public roads in the state without a conventional human driver physically present in the vehicle, as long as the vehicle meets the following conditions: (1) The vehicle is capable of achieving a minimal risk condition if a malfunction of the automated driving system occurs that

renders the system unable to perform the entire dynamic driving task within its intended operational design domain, if any; and (2) While in driverless operation, the vehicle is capable of operating in compliance with the applicable traffic and motor vehicle safety laws and regulations of this state that govern the performance of the dynamic driving task, including, but not limited to, safely negotiating railroad crossings, unless an exemption has been granted by the department of motor vehicles.

Furthermore, before an automated-driving-system-equipped vehicle may operate on the public roads, a person must submit proof of financial responsibility that shows that the vehicle is covered by insurance. The bill also clarifies responsibilities in the event of a crash or collision: (1) The automated-driving-system-equipped vehicle shall remain on the scene of the crash or collision and the owner of the automated-driving-system-equipped vehicle, if capable, or a person on behalf of the automated-driving-system-equipped vehicle owner, shall report any crash or collision.

Later in 2018, the Nebraska Legislature passed Resolution LR424, which had the purpose of designating a study to be conducted regarding the operation of autonomous vehicles as well as autonomous vehicle platooning in the state of Nebraska.

9. Describe any laws or Court decisions in your State which would preclude a commercial driver from using a hands-free device to have a conversation over a cell phone.

We are not aware of any Nebraska law or court decisions that would preclude a commercial driver from using a hands-free device to have a conversation over a cell phone. Nebraska, like many states, has enacted a law that prohibits the use of a handheld wireless device to read, write, or send communication while operating a motor vehicle.

10. Identify any Court decisions in your State precluding Golden Rule and/or Reptile style arguments by Plaintiffs' counsel.

To our knowledge, Nebraska courts have not addressed reptile theory arguments. However, Nebraska courts have addressed the Golden Rule. In *Paro v. Farm & Ranch Fertilizer, Inc.*, the Supreme Court of Nebraska held stated that "an invitation to jurors to put themselves in the place of a party is improper argument." 243 Neb. 390, 399, 499 N.W.2d 535, 542 (1993).

11. Compare and contrast the advantage and disadvantages of Federal Court versus State Court in your State.

Procedurally, Nebraska State Courts have less stringent case progression standards than those in the Federal Court. Further, the Federal Court system draws its jury pool from the metropolitan areas of Lincoln and Omaha. Thus, depending on the geographic location and claims involved, one must consider the applicable jury makeup. Notably, the Lincoln area is more liberal and tends to be more Plaintiff friendly than western areas of the state.

12. How does your State handle the admissibility of traffic citations (guilty plea, pleas of no contest, etc.) in subsequent civil litigation?

Nebraska addresses the admissibility of traffic citations in subsequent civil litigation by statute. NEB. REV. STAT. § 60-693 reads: “No evidence of the conviction of any person for any violation of any provision of the Nebraska Rules of the Road shall be admissible in any court in any civil action. *See also Stevenson v. Wright*, 273 Neb. 789, 733 N.W.2d 559 (2007) (holding that “evidence of conviction for a traffic infraction, including a conviction for violation of a municipal ordinance, is not admissible in a civil suit for damages arising out of the same traffic infraction.”).

13. Describe the laws in your State which regulate whether medical bills stemming from an accident are recoupable. In other words, can a plaintiff seek to recover the amount charged by the medical provider or the amount paid to the medical provider? Is there a basis for post-verdict reductions or offsets?

Nebraska has adopted the collateral source rule, making evidence of any discounts to medical bills by independent sources, such as health insurance, inadmissible. As such, plaintiffs put on evidence of the retail value of their medical expenses. *Strasburg v. Union Pac. R.R. Co.*, 286 Neb. 743, 839 N.W.2d 273 (2013).

14. Describe any statutory caps in your State dealing with damage awards.

Nebraska is a state with minimal statutory damage caps. Nebraska does not cap pain and suffering, or non-economic damages. However, Nebraska does place a statutory cap on medical malpractice claims. For medical malpractice actions, Nebraska limits recover for all damages to \$2.50 million – including lost wages, pain and suffering, medical bills and anything else that results from a doctor or other medical provider’s negligence. NEB. REV. STAT. § 44-2825. Further, Nebraska is a “modified comparative fault” state, which limits an injured party’s damage recovery in proportion to their degree of fault—if a party is 50 percent or more at fault, they cannot recover at all.