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1. Provide an update on current black box technology and simulations in your state and the legal issues surrounding these advancements.

A. Accident animations and computer-generated evidence are admissible evidence in Iowa.

1. In *State v. Mure*, an Iowa State Patrol officer retrieved a vehicle's "black box" following a collision. No. 16-1169, 2017 WL 1735886 at *2 (Iowa Ct. App. May 3, 2017). The officer was allowed to testify to the data contained on the "black box," including the vehicle's speed in the five seconds prior to the collision and the fact that the vehicle's brakes were not applied. *Id.* There were no objections to this testimony on appeal. *Id.* at *2-5.

2. In *Strange v. Glascock*, the court decided whether computer-animated recreations or computer-generated evidence were admissible. No. 03-1884, 2005 WL 156814 (Iowa Ct. App. Jan. 26, 2005). In doing so, the court cited *State v. Sayles*, which confirmed the admissibility of animated, computer-generated evidence. 662 N.W.2d 1, 7 (Iowa 2003) (reasoning that animations are admissible so long as they represent a fair and accurate description of the evidence, and stating that "a witness who authenticates demonstrative evidence need only know about the facts represented or the scene or objects photographed, and once this knowledge is shown he can say whether the [evidence] correctly and adequately portrays these facts") (internal quotations omitted). Similarly, the court in *Strange,* relying on *Sayles,* noted that the admissibility of such computer-generated evidence depends on whether the proponent establishes the proper factual foundation to authenticate the evidence as accurate. 2005 WL 156814, at *2. Furthermore, the court clarified that this determination is a question for the court. *Id.*

After determining the animated evidence was preceded by proper factual foundation to prove its accuracy, the court in *Strange* allowed the evidence to be admitted as it determined the plaintiff had not been prejudiced by such evidence and the proponent party admitted the animated evidence was fair and accurate. *Id*. at *3, 6. The court reasoned the trial court did not abuse its discretion in finding the evidence to be admissible because an "experienced" expert in accident reconstruction prepared the animations based on numerous factors, and the animation incorporated evidence gathered by the Iowa State Patrol. *Id*. at *3.

2. Besides black box data, what other sources of technological evidence can be used in evaluating accidents? Describe the legal issues in your State involving the use of such evidence.

B. Under current Iowa case law, traditional accident investigation tools are generally available absent a district court evidentiary decision to the contrary, including accident reconstructions, 3D laser scanners, GPS mapping, and computer-generated recreations.

3. Describe the legal issues in your State involving the handling of post-accident claims with an emphasis on preservation / spoliation of evidence, claims documents, dealing with law enforcement early and social media.

C. Spoliation of Evidence.

1. 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).

2. 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).

3. Similarly, there have not been any Iowa state courts dealing with the application of spoliation of evidence to onboard equipment like DriveCam. As noted in the above paragraph, the "safer" course of action would be to preserve DriveCam video when a claim is reasonably anticipated. Imposition of sanctions against the owner of the DriveCam video would depend upon whether the DriveCam video was disposed of in the ordinary course of business or whether the DriveCam video was intentionally destroyed for some nefarious purpose.

4. Likewise, Iowa state courts have not yet addressed upstream liability or if there are any limitations on upstream liability for spoliation of evidence. It is unlikely that Iowa courts would allow upstream liability for spoliation.

5. In the federal context, the Eighth Circuit Court of Appeals was faced with the issue of whether a bus company should receive spoliation sanctions when it pulled ECM data from its bus following an accident and sent the ECM data to the manufacturer for analysis, at which point the ECM data was somehow erased. *Greyhound Lines, Inc. v. Wade*, 485 F.3d 1032 (8th Cir. 2007). The Eighth Circuit held that the district court did not abuse its discretion by refusing to order spoliation sanctions on the basis that (A) there was no evidence showing that the bus company destroyed the evidence intentionally, and (B) there was enough evidence preserved to adequately demonstrate the facts surrounding the accident such that the lost evidence did not prejudice the other party. *Id.*

D. Iowa law provides very little guidance regarding social media discovery and spoliation.

1. Iowa appellate courts have not addressed the scope of social media discovery in civil cases. Discovery requests for social media discovery range from requests for entire social media files (e.g., requests for a

Plaintiff's "Facebook activity log") to requests narrowly tailored by time and subject (e.g., "All social media communications and pictures discussing the accident.").

2. Due to the absence of guidance from Iowa courts and statutes, attorneys often dispute the scope of social media discovery requests. When arguing these disputes to trial judges, cases from other jurisdictions are influential.

3. For purposes of advising clients regarding preservation of social media evidence, clients should be advised to preserve social media at the beginning of the case. This firm uses particular software to obtain as much social media from opposing parties as possible at the very beginning of the case, so if opposing parties delete social media evidence after our involvement, we will know it. The safest course of action when advising our own clients is to instruct them to preserve social media evidence immediately based on the assumption that opposing counsel is taking similar actions to obtain our clients' social media information.

4. Although there is little case law regarding the scope of social media discovery, Iowa courts have offered some assistance with the issue of authenticating social media evidence. The Iowa Court of Appeals has explained that "[i]nformation on social networking websites may be authenticated in the same manner as more traditional kinds of evidence." *In re A.D.W.*, No. 12-1060, 2012 WL 3200891 at *6 (Iowa Ct. App. Aug. 8, 2012). Attorneys should keep in mind that they will not be able to offer their own testimony to authenticate social media evidence they locate; therefore, attorneys should have procedures in place whereby a trusted third-party obtains this information in a manner that allows them to testify to its authenticity.

4. Describe the legal considerations in your State when defending an action involving truck drivers who may be considered Independent Contractors, Borrowed Servants or Additional Insureds.

a. A vehicle's owner is liable for damages caused by the driver's negligence. Iowa Code § 321.493.

b. Unless an applicable exception to the general rule of independent contractors applies, an employer will likely be able to escape liability for negligent actions taken by its independent contractor.

i. Recent Iowa law has noted that the primary focus, among other things, in determining whether an individual is an independent contractor or an

employee, is the extent of control the employer has over the details of the alleged employee's work. *Perez v. CRST International, Inc.*, 355 F. Supp. 3d 765, 771 (N.D. Iowa 2018). In most instances, the general rule states that once a driver is considered an independent contractor, the employer of the independent contractor will not be liable for the negligence of that contractor. *Kragel v. Wal-Mart Stores, Inc.*, 537 N.W.2d 699, 702 (Iowa 1995). This would likely result in liability for negligent acts by an independent contractor to be placed entirely on the contractor, allowing an employer to remain liability-free in an action involving truck drivers who are considered to be independent contractors.

ii. However, the following exceptions can result in the employer becoming liable for the independent contractor's actions: (1) negligence on the part of the employer in supervising, selecting, or instructing the independent contractor; (2) non-delegable duties of the employer, which arise out of some relation toward the particular plaintiff or the public; and (3) work that is peculiarly, specially or "inherently" dangerous. *Id.* at 703 (citing Restatement (Second) of Torts § 409 (1965)).

5. What is the legal standard in your state for allowing expert testimony on mild traumatic brain injury (mTBI) claims and in what instances have you had success striking experts or claims?

a. Expert testimony is testimony "in the form of an opinion or otherwise" where "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." Iowa R. Evid. 5.702. Although Iowa courts serve a general "gatekeeper" function and may, at times, exclude offered expert testimony on the basis that it is not expert testimony that satisfies the standard in Iowa Rule of Evidence 5.702, these arguments generally have far less success in Iowa state courts than under under the *Daubert* standard in federal courts. Consequently, if faced with the opportunity to remove a case from Iowa state court to the United States District Court for the Northern District of Iowa or the United States District Court for the Southern District of Iowa, strong consideration should be given to removal, particularly when the issue of excluding expert testimony may be present.

b. The best chance of success for striking or limiting expert testimony is to identify ways in which opposing counsel failed to comply with Iowa's expert disclosure requirements, including the disclosure requirements in Iowa Rule of Civil Procedure 1.508. Failure to abide by expert report requirements or disclosure deadlines often results in courts limiting or altogether prohibiting expert testimony.

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

a. Positive post-accident alcohol tests are generally admissible in civil actions involving automobile accidents.

i. Iowa law states that "evidence of the alcohol concentration or the presence of a controlled substance or other drugs in the person's body at the time of the act alleged as shown by a chemical analysis of the person's blood, breath, or urine is admissible," in both criminal and civil proceedings, so long as the proceedings "arose out of acts alleged to have been committed by a person while operating a motor vehicle in violation of section 321J.2 or 321J.2A." Iowa Code § 321J.15 (emphasis added) (Section 321J.2 is the statute addressing the charge of operating while under the influence, while section 321J.2A specifically addresses persons under age 21 operating under the influence).

ii. The statute further states that if it is established at trial that "an analysis of a breath specimen was performed by a certified operator using a device intended to determine alcohol concentration and methods approved by the commissioner of public safety, no further foundation is necessary for introduction of the evidence." Iowa Code § 321J.15 (emphasis added).

b. Courts may exclude a positive post-accident drug test if this test is the sole evidence regarding drug use near the time of the auto accident and if expert testimony establishes that the positive drug test could be the result of drug use several days or more prior to the accident at issue.

i. Iowa courts have long recognized that evidence of intoxication is relevant in an auto accident case. *See Yost v. Miner*, 163 N.W.2d 557, 561 (Iowa 1968) ("[e]vidence of an intoxicated condition is properly admissible as one of the circumstances surrounding conduct showing a lack of due care under the circumstances."). However, relevancy on its own is not sufficient for admitting blood tests that are positive for drug use. "A party seeking the admission of blood test results must lay a proper foundation by showing (1) the specimen was taken by an authorized person, (2) that person used sterile equipment, (3) the specimen was properly labeled and preserved, (4) the specimen was properly transported and stored, and (5) the identity of the person processing the blood sample." *Duncan v. City of Cedar Rapids*, 560 N.W.2d 320, 322 (Iowa 1997). "An adequate foundation is laid when the proponent of the evidence shows it is reasonably probable no tampering, contamination or substitution occurred." *Id.* at 323.

ii. Assuming the proponent is able to lay the necessary foundation, the next hurdle for admitting the evidence is Iowa Rule of Evidence 5.403, which allows a court to exclude evidence "if its probative value is substantially outweighed by a danger of…unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Iowa courts will generally exclude a drug test under Rule 5.403 unless the drug test is corroborated with additional evidence of either (A) an extensive history of drug use, or (B) a direct causal relation between the drug use and the auto accident at issue.

In *Bellville v. Farm Bureau Mutual Insurance Company*, the plaintiff in an auto accident had no outward signs of drug use or intoxication in his post-accident interviews with police. No. 02-0263, 2003 WL 1968847 at *2 (Iowa Ct. App. Apr. 30, 2003). However, a urine test was "positive for marijuana at a level in excess of 135 nanograms per milliliter." *Id.* Experts testified that "this level is consistent with marijuana use up to three days prior to the test." *Id.* The plaintiff's medical records also demonstrated that he had a history of marijuana use, although the extent of that history is not clear. *Id.* The trial court allowed the defense to question the plaintiff regarding the positive urine test but prohibited the defense from discussing the plaintiff's history of marijuana use (including the plaintiff's medical records regarding marijuana use). *Id.* The trial court also gave the following jury instruction:

> There has been test evidence that [the plaintiff] had marijuana metabolites in his urine after the collision. The concentration was in violation of the law. In considering the import of such evidence, you should consider all other evidence in the case, or lack thereof, in determining whether marijuana use was a proximate cause of any acts or omissions causing the collision. Marijuana use on any prior occasion other than close enough in time to the collision to be such proximate cause may not influence your deliberation on any issues in this case.

Id. at *5.

The parties did not appeal the issue of whether the trial court properly allowed the defense to question the plaintiff regarding the positive THC test. *See id.* The primary issues on appeal were whether the above jury instruction was proper and whether the trial court erred by prohibiting the defense from inquiring further into the plaintiff's history of marijuana use. *Id.* at *3-5. The Court of Appeals held that this jury instruction was proper

and that the trial court properly refused to allow the defense to discuss the plaintiff's extended history of marijuana use. *Id.*

In *Duncan*, the plaintiff was hit by a bus. 560 N.W.2d at 321. Blood tests showed that the plaintiff was under the influence of drugs and alcohol at the time. *Id.* at 322. The trial court allowed the defense to admit the blood test for the purpose of arguing that the plaintiff's intoxication and drug use caused him to fall into the bus's path. *Id.* The trial court also allowed the defense to admit evidence of the plaintiff's extended history of alcohol and drug use for the purpose of countering the plaintiff's claim that the blood test was inaccurate. *Id.* The Iowa Supreme Court affirmed on appeal. *Id.* 322-325. The Court held that the admission of the blood test was proper because (A) the defense laid a proper foundation, and (B) corroborating evidence demonstrated that the plaintiff's drug and alcohol use contributed to the accident. *Id.* at 323-25. This corroborating evidence included eyewitness testimony that the plaintiff fell into the bus. *Id.* at 325.
The Court did, however, explain that if the plaintiff had not contested the blood test's accuracy, "other instances of intoxication…would not be admissible…to prove [the plaintiff] was intoxicated…at the time of the accident." *Id.* at 325. The Court explained that under Iowa Rule of Evidence 5.404(b), evidence of "other acts" is generally not admissible to prove that the person acted in accordance with this history of "bad acts." *Id.* However, "[b]y questioning the reliability and accuracy of [the blood test results], the [plaintiff] opened the door to corroborative evidence that the results of those tests were consistent with [the plaintiff's] customary state of inebriation and consequent loss of control…." *Id.*

In *Ward v. Loomis Brothers, Inc.*, the plaintiff fell from a lift and sued several defendants. 532 N.W.2d 807, 809 (Iowa Ct. App. 1995). The trial court admitted a post-accident urine test that was positive for marijuana. *Id.* at 810. Expert testimony stated that the positive urine test meant that "marijuana use could have been from three hours to thirty days prior to the time of the test." *Id.* Other testimony suggested that on the day of the accident, the plaintiff was behaving in a manner that was consistent with marijuana use, including displaying a general lack of attention and concern for safety. *Id.* The Court of Appeals affirmed the trial court's admission of the urine test on the basis that the test was corroborated by additional evidence demonstrating that the plaintiff's behavior on the day of the incident was consistent with marijuana use. *Id.* at 811.

The trial court in *Ward* also admitted evidence that the plaintiff "was a long-time [i.e. twelve year] marijuana user and he had been known to smoke marijuana while working." *Id.* at 810-811. The Court of Appeals affirmed on the basis that "[the plaintiff's] use of marijuana, particularly his extended use, is relevant on the issue of his projected future earnings and the question of loss of value to his estate." *Id.* at 811.

In *Putnam v. Kalber*, the plaintiff was in an auto accident. No. 12-1040, 2013 WL 1223648 at *1 (Iowa Ct. App. Mar. 27, 2013). A post-accident urine test showed "67 ng/mL of THC in [the plaintiff's] system." *Id.* The plaintiff's expert witness testified that this test merely demonstrated that the plaintiff had used marijuana sometime in the last month. *Id.* The trial court excluded the test under Iowa Rule of Evidence 5.403. *Id.* at *2. The Court of Appeals affirmed. *Id.* The Court explained that "there [was] no evidence that [the plaintiff] was a long-time marijuana user prior to the accident, or that he was known to use marijuana and drive." *Id.* at *3. The Court also rejected the argument that testimony regarding the plaintiff speeding and changing lanes just prior to the collision was sufficient corroborating evidence of marijuana use to justify admitting the post-accident urine test. *Id.* The Court did not provide much explanation for this, and instead simply concluded, "We disagree that this evidence is indicative of impairment." *Id.*

In *Shawhan v. Polk County*, the plaintiff was in an auto accident. 420 N.W.2d 808, 809 (Iowa 1988). The trial court admitted deposition testimony regarding the plaintiff's past use of drugs despite there being no evidence that the plaintiff had used drugs at the time of the accident. *Id.* The Iowa Supreme Court reversed on the basis that "[t]here was no showing whatsoever that her use of illegal drugs had any relation to the car accident, and there was no evidence that [the plaintiff's] adolescent drug use, which has since been discontinued, will have any significant effect on her life expectancy." *Id.* at 810. Additionally, "[i]n contract to the lack of probative value, the potential this evidence has for causing unfair prejudice is high." *Id.*

The best way to reconcile these cases is to recognize that courts will generally exclude a positive drug test if this test is the sole evidence regarding drug use near the time of the auto accident and if expert testimony establishes that the positive drug test could be the result of drug use several days or more prior to the accident at issue. Courts recognize that in this situation, the drug test alone does not demonstrate a causal relation between drug use and the auto accident to such a degree as to overcome the strong prejudicial effect the drug test is likely to have on jurors. On the other hand, in situations where the drug test is corroborated by either (A) additional evidence of an extended history of drug use, or (B) additional evidence demonstrating that drug use likely played a causal role in the auto accident at issue, courts will admit evidence of the positive drug test. Also keep in mind that if the other party contests the drug test's accuracy/validity, this would open the door to evidence of the other driver's history of drug use for the purpose of bolstering the drug test's validity.

7. **What are some considerations for federally-mandated testing when drivers are Independent Contractors, Borrowed Servants, or Additional Insureds?**

a. Although no Iowa courts have addressed what impact federally-mandated testing would have on independent contractors, a failure to submit to a mandated drug or alcohol test will likely result in implications for the independent contractor, but not for the employer.

i. Unless a driver is deemed to be an employee, or falls within one of the exceptions to the general rules for liability of independent contractors, liability for failure to submit to a mandated test will likely be placed on the independent contractor.

b. Iowa courts have held that independent contractors are not excluded from operation of the automobile consent statute. *Iowa Mutual Insurance Co. v. Combes*, 131 N.W.2d 751, 755 (Iowa 1964). Under the statute, any person who operates a motor vehicle in the state of Iowa is deemed to have given consent to a chemical test of breath, blood, and/or urine. Iowa Code § 321J.6. The test shall be administered if there are reasonable grounds to believe that an individual is driving while intoxicated, and if one of the subsequent conditions listed in the code section, such as being involved in a motor vehicle accident or collision causing injury or death, are met. The consequences of refusing to submit to a test include, among other things, license revocation and a civil penalty. Iowa Code § 321J.9.

i. Therefore, if a peace officer has reasonable grounds to believe that a driver may be intoxicated after getting into an accident, a drug/alcohol test may be administered. As a result, if the driver was an independent contractor of a company, any repercussions based on a refusal by the driver to submit to a drug/alcohol test will only implicate the driver. Liability will only be placed on the employer if it is found that the driver was an employee of the company for whom they were driving, or if the driver falls within one of the exceptions for independent contractor liability.

8. Is there a mandatory ADR requirement in your State and are any local jurisdictions mandating cases to binding or non-binding arbitration?

a. No, there is no mandatory ADR requirement in Iowa and there are no local jurisdictions mandating cases to binding or non-binding arbitration.

9. Can corporate deposition testimony be used in support of a motion for summary judgment or other dispositive motion?

a. Yes, corporate deposition testimony can be used in a summary judgment motion, pursuant to Iowa R. Civ. P. 1.981.

10. What are the rules in your State for contribution claims and does the doctrine of joint and several liability apply?

a. Iowa is not a pure contributory negligence state. *See* Iowa Code § 668.3(1)(a). Rather, the claimant may not recover damages if "the claimant bears a greater percentage of fault than the combined percentage of fault attributed to [all] defendants . . . ." *Id*. "Any damages allowed shall be diminished in proportion to the amount of fault attributable to the claimant." *Id*.

b. Iowa also applies the doctrine of joint and several liability. Nevertheless, the rule does not apply to defendants who are found "to bear less than fifty percent of the total fault assigned to all parties." Iowa Code § 668.4. However, a defendant who is found to only bear fifty percent or more of fault "shall only be jointly and severally liable for economic damages and not for any noneconomic damage awards." *Id.*

11. What are the most dangerous/plaintiff-friendly venues in your State?

a. As of 2017, and according to US Law, the following Iowa counties are considered to be liberal: Polk, Warren, Dallas, Johnson, Washington, Muscatine and Scott. *State Judicial Profiles by County*, US Law Network, https://www.uslaw.org/files/JuryProfiles/2017-18%20USLAW%20NETWORK%20State%20Judicial%20Profiles%20by%20County.pdf.

According to a database by the Iowa State Bar Association Young Lawyers Division, the following counties may be dangerous as they have had substantial plaintiff's verdicts within the last several years: Black Hawk, Cerro Gordo, Jefferson, Muscatine, Linn, Johnson, Polk. *Iowa Civil Jury Verdict Reporter*, https://www.iowabar.org/page/JuryVerdictReporter.

Story County is the home of Iowa State University. Johnson County is the home of the University of Iowa. These counties draw from a higher number of younger, more liberal jurors than other counties in Iowa.

12. Is there a cap on punitive damages in your State?

a. 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). If the defendant's conduct is directed specifically at the claimant, the full amount of punitive damages awarded will be given directly to the claimant. *See* Iowa Code § 668A.1(2)(a). 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).

b. Iowa recently passed a law creating a statutory cap on damages for medical malpractice suits. Before this, Iowa did not have any statutory caps on damages.

i. Effective July 1, 2018, noneconomic damages in such cases will be limited to $250,000, "unless the jury determines that there is a substantial or permanent loss or impairment of a bodily function, substantial disfigurement, or death, which warrants a finding that imposition of such a limitation would deprive the plaintiff of just compensation for the injuries sustained." Iowa Code Ann. § 147.136A. This cap does not apply if the defendant acted with actual malice. *Id*.

13. Admissible evidence regarding medical damages – can the plaintiff seek to recover the amount charged or the amount paid?

a. In *Pexa v. Auto Owners Ins Co.*, the court held the trial court erred in "limiting the plaintiff's proof of the reasonable value of his medical expenses to the amount paid to and accepted by the medical providers." 686 N.W.2d 150, 156 (Iowa 2004). The court rejected the argument that "an injured party's recovery for past medical services should be limited to the amount actually paid for medical services." *Id*. at 157. The court noted that if the plaintiff could have provided an adequate evidentiary basis for the medical bills charged, the jury could have awarded the reasonable value of billed charges and not just those paid to the medical provider. *Id.*

In Iowa, the common-law collateral source rule is that "a plaintiff's recovery of damages against a tort defendant are not reduced by sums the plaintiff has received *or will receive from another source* (a collateral source)." *Midland Mut. Life Ins. Co. v. Mercy Clinics, Inc.,* 579 N.W.2d 823, 828 (Iowa 1998) (emphasis added). The court has held that insurance policies, employment benefits, gratuities, and social legislation benefits do not reduce the plaintiff's recovery. *Id.*

Iowa authorizes insurance policies that expressly offset coverage to avoid duplication of insurance and other benefits. Iowa Code § 516A.2(1). Such offsets are not mandatory, but permissive; thus, an insurance policy language is controlling as to what is covered and what may be offset. *Greenfield v. Cincinnati Ins. Co.*, 737 N.W.2d 112, 117 (Iowa 2007). In *Greenfield*, the court allowed damages awarded by a jury special verdict, particularly lost wages and medical expenses, to be offset by worker compensation benefits. *Id.* at 124. The court analyzed the insurer's policy as to reduction of benefits and found that the policy would not make duplicative "payments for the same "element of loss' covered by workers' compensation benefits." *Id*. at 123. The plaintiffs conceded that the damages for lost wages and past medical expenses were "duplicative" of "elements of loss" as they were covered by plaintiffs' workers compensation settlement. *Id.* at 124.