Volume 1

CHAPTER 1. THEORIES OF LIABILITY AND FAULT

I. LIABILITY

A. DRIVER LIABILITY

§ 1:1	Negligence
§ 1:1.20	—Rear-end collision
§ 1:1.30	—Motorist's wave-on gesture
§ 1:2	—Violation of statute
§ 1:3	—Violation of regulations
§ 1:4	—Duty to pedestrians
§ 1:5	—Types of bicycle collision cases
§ 1:6	—Bicycle collision cases
§ 1:6.20	— —Expert evidence
§ 1:7	Duty to gratuitous guest—"Guest statutes"
§ 1:8	—Circumventing guest statutes
§ 1:9	Res ipsa loquitur
§ 1:10	Distracted driving—Facts and statistics
§ 1:11	—State laws
§ 1:12	—Decisions on the impact of cell phone use on first party negligence and liability
§ 1:13	—Decisions on the impact of cell phone use on third party negligence and liability
§ 1:14	—Decisions on the impact of cell phone use on
0 1 1 4 50	punitive damages
§ 1:14.50	—Smartphone manufacturer liability for negligence or products liability for failing to implement preventive mechanisms or warn drivers against distracted driving
§ 1:14.60	—Smartphone manufacturer liability for negligence or products liability for failing to implement preventive mechanisms or warn drivers against distracted driving; Plaintiffs' Second Amended Complaint, Meador v. Apple, No. 6:15-cv-715-MHS-KNM, August 30, 2016
§ 1:14.70	Maynard v. Snapchat: Appellant-Plaintiff's Opening Brief.— Liability for negligent design of Snapchat's speed filter

§ 1:14.80 Maynard v. Snapchat: Joint Brief of Amici Curiae Georgia Trial Lawyers Association and American Association for Justice in Support of Appellants-Plaintiffs to urge Court to reverse the Court of Appeals' decision in favor of Appellee-Defendant Snapchat, Inc.—Liability for negligent design of Snapchat's speed filter

B. LIABILITY FOR NEGLIGENT DRIVING OF OTHERS

	OTTENO
§ 1:15	Generally—"Owner liability" statutes
§ 1:16	——Preemption under Graves Amendment; short term car rentals
§ 1:17	—Agency
§ 1:18	 —Employer liability for employee's negligent driving
§ 1:19	— —Family purpose doctrine
§ 1:20	—Negligent entrustment
§ 1:21	—Negligent supervision and training
§ 1:22	—Dangerous instrumentality doctrine
§ 1:23	Negligent entrustment of all-terrain vehicle (ATV)
§ 1:23.40	Motorized wheelchair a "motor vehicle"
§ 1:23.60	Motorized bike a "motor vehicle"
§ 1:24	Liability of passenger; Joint venture liability
§ 1:25	Liability of passenger; gave permission to driver
§ 1:26	Liability of passenger; failing to caution driver about vehicle operation
§ 1:27	Liability of medical professional; failing to warn driver not to drive
§ 1:27.20	Liability of passenger: Distracting driver

C. OTHER GROUNDS OF LIABILITY

§ 1:28	"Dram shop" liability
§ 1:28.50	No "dram shop" liability under common law
§ 1:29	"Dram shop" liability—Social hosts generally
§ 1:30	—Social hosts liable
§ 1:31	—Social hosts not liable
§ 1:32	Products liability and crashworthiness
§ 1:32.50	Negligent motor vehicle repair
§ 1:32.70	Products liability and crashworthiness—Miscellaneous products
§ 1:32.90	Negligent motor vehicle inspection
§ 1:33	Highway design and road hazards
§ 1:34	—Vegetation
§ 1:35	Highway design and other road hazards—Livestock

§ 1:36 Negligent Infliction of Emotional Distress

		1 10 1	
	 . н.	H.IN	3 H.S
11.			SES

§ 1:37	Contributory negligence—Generally
§ 1:38	—Of pedestrian
§ 1:38.20	—Of bicyclist
§ 1:39	Comparative negligence
§ 1:40	Counter-defenses to plaintiff negligence—Last clear chance
§ 1:41	—Aggravated degrees of misconduct; Intentional injuries
§ 1:42	Assumption of risk
§ 1:43	—All-terrain vehicle (ATV)
§ 1:44	Seat belt defense
§ 1:45	Sudden emergency and unavoidable accident doctrines
§ 1:45.40	Sudden emergency shields passerby from liability
§ 1:46	Intra-family immunity—Spousal immunity
§ 1:47	—Parent-child immunity

III. FORMS

- § 1:48 Complaint—Skeleton form of negligence complaint
- § 1:49 —Rear end collision
- § 1:50 —Running through red light
- § 1:51 —Turning across road in front of plaintiff into private drive
- § 1:52 —Collision in attempt to pass automobile on hill
- $\S~1:53~$ —Accident caused by backing out of diagonal parking space
- § 1:54 —Accident caused by cutting in after passing from rear on gravelled road
- § 1:55 —Death of passenger by collision caused by defects in highway
- § 1:56 —Damage to parked automobile by passing automobile
- § 1:57 ——Answer to complaint for damage to parked automobile
- § 1:58 —Motor vehicle/bike collision on shoulder of road; Negligence, wrongful death-survivorship, uninsured motorist; Mary L. Rust v. Steven R. Sickle, 2017 WL 3401082 (Ohio Com.Pl. 2017)
- § 1:59 —Injury to bicyclist by family automobile driven by owner's daughter
- § 1:60 —Claim against operator of motor vehicle and negligent entrustment claim against owner

§	1:61	—By passenger for injuries sustained while alighting from motor vehicle
Ş	1:62	—Injury to minor on crosswalk (action by guardian)
	1:63	——By automobile backing out of driveway
	1:64	——By backing truck while minor was standing at or walking
9	1.01	near curb
§	1:65	—Injury to pedestrian crossing at intersection by collision of automobiles, with count for negligence in driving while intoxicated
§	1:66	—Injury to pedestrian who had fallen on highway (last clear chance)
§	1:67	—Accident resulting from negligent design of roadway
	1:68	—Accident resulting from failure of land owner of property adjacent to highway to trim vegetation
§	1:69	—Wrongful death complaint alleging "Dram Shop Act" and other liability
§	1:70	Checklist of factors to be considered in preparing products liability case
8	1:71	Jury instruction on products liability—General instruction
_	1:72	—Manufacturing defect
_	1:73	—Design defect
	1:74	—Failure to warn
-	1:75	Jury instructions for "Dram Shop Act" and related claims
-		· -
-	1:76	Checklist of traffic rules and violations
Š	1:77	Complaint—Bicycle collision with van alleging individual and employer liability (respondeat superior)
§	1:78	—Bicycle collision with intoxicated motorist alleging individual and dram shop liability
Ş	1:79	—Bicycle collision with uninsured motorist
-	1:80	—Bicycle collision with pedestrian; Wrongful death
-	1:81	—Negligence alleging cell phone use seeking compensatory
o	1.01	and punitive damages
§	1:82	—Negligence alleging cell phone use while driving by employee/employer (respondent superior)
§	1:83	Plaintiff's motion for court order directing Sprint Nextel to release defendant's cellular phone records
§	1:84	Defendant's motion for summary judgment on punitive damages
§	1:85	Plaintiff's memorandum in opposition to defendant's motion for summary judgment on punitive damages
§	1:86	Plaintiff's opposition to defendants' motion for new trial, or, in
		the alternative, for remittitur and renewed motion to disregard and for judgment notwithstanding the verdict
§	1:87	Defendant's memorandum in support of motion in limine for spoliation presumption; cell phone; Costly v. Nissan Motor Company, Ltd, et al.

- § 1:88 Plaintiff's opposition to motion in limine regarding spoliation presumption; cell phone; Costly v. Nissan Motor Company, Ltd, et al.
- § 1:89 Plaintiff's Memorandum of Law Supporting Motion to Amend Complaint to Include Claim for Punitive Damages; Katherine Gori v. Alec James Will and Andrew Will, 2018 WL 8048078 (District Court of Minnesota)
- § 1:90 Defendants' Memorandum in Opposition to Plaintiff's Motion to Amend the Complaint to Include a Claim for Punitive Damages; Katherine Gori v. Alec James Will and Andrew Will, 2019 WL 1645272 (District Court of Minnesota)
- § 1:91 Order Granting Plaintiff's Motion to Amend Complaint; Katherine Gori v. Alec James Will and Andrew Will, 2019 WL 1648741 (District Court of Minnesota)
- § 1:92 Amended_Complaint (to State a Claim for Punitive Damages); Katherine Gori v. Alec James Will and Andrew Will, 2019 WL 1645273 (District Court of Minnesota)

CHAPTER 1A. THE SEAT BELT DEFENSE

I. ANALYSIS

- § 1A:1 Introduction
- § 1A:2 Historic overview—Effectiveness of seat belts
- § 1A:3 —Federal regulations requiring installation of seat belts
- § 1A:4 —State mandatory seat belt use statutes
- § 1A:5 The seat belt defense—Introduction
- § 1A:6 —Common law
- § 1A:7 —After mandatory seat belt use statutes
- § 1A:8 —State statutes prohibiting the seat belt defense
- § 1A:9 —State statutes allowing the seat belt defense
- § 1A:10 —In crashworthiness litigation
- § 1A:11 Elements of the seat belt defense—Introduction
- § 1A:12 —Proof of plaintiff's non-use of seat belt
- § 1A:13 —Use of event data recorder (EDR) to establish nonuse of seat belt
- § 1A:14 —Proof of availability and operability of plaintiff's seat belt
- § 1A:15 —Proof that plaintiff's non-use of seat belt caused or aggravated their injuries
- § 1A:16 —Expert testimony to establish causal link

II. FORMS

- § 1A:17 Pleadings—Answer to complaint
- § 1A:18 Motion to secure and preserve evidence

- § 1A:19 Discovery regarding the seat belt defense—Generally
 § 1A:20 —Requests for Admission
 § 1A:21 —Interrogatories
 § 1A:22 —Requests for Production of Documents
- CHAPTER 2. PARTIES

I. PLAINTIFFS

§ 2:1 Physically injured parties § 2:2 —Emotional injuries § 2:3 Consortium claims § 2:4 —Spouses § 2:5 -Parent/child § 2:6 Wrongful death and survival actions § 2:7 -Party bringing action § 2:8 -Parties entitled to damages; Beneficiaries § 2:8.50 Equitable adoption Guardians ad litem—Infants § 2:9 § 2:10 —Mentally impaired persons

II. DEFENDANTS

§ 2:11 Generally § 2:12 Imputed negligence § 2:13 -Employers § 2:14 —Joint venturers § 2:15 -"Family" defendants; Family purpose doctrine Partners and partnerships § 2:16 § 2:17 Corporations § 2:18 Federal tort claims State and local governments § 2:19 —School Districts § 2:19.50 Intra-family defendants—Immunity § 2:20 § 2:21 Multiple defendants § 2:21.20 Doctor treating motorist involved in collision

III. FORMS

§ 2:22	Complaint for negligence and loss of consortium, with tort threshold
§ 2:23	Complaint against employer and employee
§ 2:24	—Answer to complaint raising affirmative defense that driver was not agent or employee of corporate defendant
§ 2:25	Complaint for injury to taxicab passenger by sudden stop of cab

TABLE OF CONTENTS

§ 2:26	Complaint for injury to pedestrian hit by cab
§ 2:27	Complaint for injury and damage caused by collision of cab and standing automobile
§ 2:28	Complaint for negligence, infliction of mental distress, and loss of consortium
§ 2:29	Complaint for wrongful death
§ 2:30	—Answer to personal representative's complaint for wrongful death
§ 2:30.10	Complaint for wrongful death and personal injury; Mares Moreno v. Singh, No. 1:16CV00451
§ 2:30.20	Answer to complaint for wrongful death and personal injury; Mares-Moreno v. Singh, 1:16-cv-00451-CG-KBM
§ 2:31	Complaint under survival statute
§ 2:32	Federal court complaint for accident involving federal employee
§ 2:33	Complaint against municipality and employee for injuries resulting from negligent operation of motor vehicle by employee
§ 2:34	Answer of public entity raising affirmative defenses of failure to present claim, sovereign immunity, and qualified immunity
§ 2:35	Counterclaim against plaintiff for injuries and damage in collision
§ 2:36	—Reply to counterclaim for injuries and damage in collision
§ 2:37	Cross-claim of defendant
§ 2:38	Motion for leave to file third-party action
§ 2:39	—Third-party complaint for contribution from owner/driver of other vehicle
§ 2:40	Motion to amend complaint to add additional defendant
§ 2:41	Notice to municipality of claim for injuries— General form
§ 2:42	—Failure to place warning signs on street under repair
§ 2:43	—Claim of minor for defect in street
§ 2:44	—Failure to erect median barrier
§ 2:45	Checklist—Complaint for wrongful death
§ 2:46	—Complaint for personal injuries against a public entity
§ 2:47	—Potential defendants in motor vehicle tort cases

CHAPTER 3. TIME LIMITATIONS

I. IN GENERAL

§ 3:1 Introduction

§ 3:1.50	Determining applicable statute [New]
§ 3:2	Party identification
§ 3:3	Age of parties—Plaintiff
§ 3:4	Jurisdictional conflicts
§ 3:5	Wrongful death actions
§ 3:6	Federal Tort Claims Act
§ 3:6.60	State Tort Claims Acts
§ 3:7	Tolling of limitations period
§ 3:7.05	Miscellaneous
§ 3:7.10	—No-fault
§ 3:7.50	—Dram Shop Act
§ 3:7.55	Miscellaneous
§ 3:7.60	Service of process generally
§ 3:7.70	Service of process under non-resident motorist statutes
§ 3:7.80	Amended complaint not relating back to timely complaint
§ 3:7.90	Action did not fall within statute of limitations
§ 3:7.95	Service of process in Mexico
II. FO	ORMS
0.00	

- § 3:8 Allegation in complaint anticipating defense of statute of limitations—Defendant estopped from relying on statute
- § 3:9 Allegation in answer asserting defense of statute of limitations
- § 3:10 —Statute of limitations of jurisdiction where action arose as controlling
- § 3:11 Allegation in answer asserting defense of statute of limitations following amendment to complaint setting out new cause of action after statute had run
- § 3:12 Reply to answer raising statute of limitations defense—Defendant estopped from relying on statute due to request by defendant's agent to postpone filing of suit
- § 3:13 —Defendant estopped from relying on statute due to promise during settlement negotiations to waive or not to assert statute
- § 3:14 Allegation in plaintiff's reply asserting inapplicability of foreign statute of limitations to cause of action in forum
- § 3:15 Motion to strike defense of statute of limitations based on absence of defendant from jurisdiction as interrupting statute
- § 3:16 —Affidavit in support of motion to strike defense of statute of limitations based on absence of defendant from jurisdiction as interrupting statute

§ 3:17 Motion to dismiss based on bar of statute of limitations apparent from pleadings
 § 3:18 Opposition to motion to dismiss based on bar of statute of limitations—Plaintiff's minority as interrupting statute
 § 3:19 Motion to amend complaint to correct error in name of defendant
 § 3:20 —Affidavit in support of motion to amend complaint to correct error in name of defendant

Volume 1A

CHAPTER 4. COMMENCING REPRESENTATION AND GATHERING INFORMATION

I. IN GENERAL

	1 OLITERAL
§ 4:1	Use of forms in automobile litigation
§ 4:2	Initial client interview
§ 4:3	Use of checklists in case screening and commencement of representation
§ 4:4	Insurance coverages and fee agreement
§ 4:5	Ethical considerations in commencing representation
§ 4:6	Recoverable damages
§ 4:7	—Special damages; "Collateral source" payments
§ 4:8	—General damages
§ 4:9	—Punitive damages

II. FORMS

§ 4:10	Follow-up letter to client regarding initial appointment
§ 4:11	Checklist for preparing for initial interview with client
§ 4:12	Checklist of information to be included in diagram of accident scene
§ 4:13	General client information questionnaire
§ 4:14	—No. 2
§ 4:15	Client questionnaire regarding employment information
§ 4:16	Automobile accident questionnaire
§ 4:17	Attorney's motor vehicle accident checklist
§ 4:18	—No. 2
§ 4:19	Questionnaire/checklist for exemplary damages
\$4:20	Letter confirming limited investigation undertaking

§ 4:21	Employment-rejection confirmation letter
§ 4:22	Attorneys' fee agreement—Unspecified contingent fee
§ 4:23	—Unspecified contingent fee (no. 2)
§ 4:24	—Specified contingent fee
§ 4:25	—Specified contingent fee (no. 2)
§ 4:26	—Graduated contingent fee
§ 4:27	——Provision for declining contingency fee amounts
§ 4:28	——Provisions as to appeals
§ 4:29	——Provision as to advance of costs by attorney
§ 4:30	——Provision for no fee where recovery is less than specified amount
§ 4:31	— Provision for employment of associate counsel
§ 4:32	——Provision as to expenses of attorney
§ 4:33	——Provision as to attorney's lien
§ 4:34	Modified contingent fee agreement (reduced hourly rate plus percentage)
§ 4:35	Association of counsel agreement
§ 4:36	Attorneys' understanding re: Division of fees
§ 4:37	Notice to parties as to attorney's lien
§ 4:38	Instructions for clients
§ 4:39	—No. 2
§ 4:40	Handout to client—What you, as personal injury client, should know
§ 4:41	Monthly report
§ 4:42	Notice of claim to adverse party—No. 1
§ 4:43	—No. 2
§ 4:44	Letter to driver's employer requesting insurance information
§ 4:45	Letter to witness requesting interview
§ 4:46	Letter to police department requesting records
§ 4:47	Letter—Motor vehicle registration
§ 4:48	—United States weather bureau
§ 4:49	—Freedom of Information Act Request
§ 4:50	Authorization to furnish medical records to attorney
§ 4:51	Authorization to furnish medical records to adverse party
§ 4:52	Authorization for release of information to attorney
§ 4:53	Income tax authorization—IRS Form 4506
§ 4:54	Automobile accident investigation checklist
§ 4:55	Checklist for investigating unwitnessed accidents
§ 4:56	Request for Social Security Earnings Information
§ 4:57	Request for Department of Veterans Affairs Records
§ 4:58	FOIA Request to Federal Motor Carrier Safety Administration—Trucking Case
§ 4:59	Evidence Preservation Letter to Trucking Company

- $\S~4:60$ Joint Prosecution Agreement
- § 4:61 Waiver of conflict for joint representation

CHAPTER 5. INSURANCE ISSUES

I. IN GENERAL

§ 5:1	Introduction—Communicating with carriers
§ 5:2	—First-party coverages
§ 5:3	—Third-party carriers
§ 5:4	Communication with insurer's attorneys
§ 5:5	Terms and conditions of coverage—Rules of construction
§ 5:6	Liability coverage
§ 5:6.40	—Coverage under general liability policy
§ 5:6.70	—ATV
§ 5:7	Uninsured and underinsured motorist coverage— Introduction
§ 5:8	—General statutory requirements
§ 5:8.20	—Self-insurers
§ 5:9	—Scope of coverage
§ 5:9.20	— —Equitable estoppel
§ 5:10	—Covered persons
§ 5:11	—Persons "legally entitled to recover"
§ 5:12	—Uninsured motor vehicle
§ 5:12.50	—Underinsured motor vehicle
§ 5:13	—"Hit and run" accidents
§ 5:14	Stacking
§ 5:14.50	—Waiver of stacked insurance
§ 5:15	Exclusions from coverage
§ 5:16	Processing claims—Time limits
§ 5:17	—Exhaustion of third-party coverage; Consent to settlement
§ 5:18	—Effect of judgment in underlying tort action; "Consent to sue" provisions
§ 5:19	Subrogation and setoff
§ 5:20	Arbitration
§ 5:21	Unfair claims practices actions—History
§ 5:22	-Nature of insurer's obligation-Bad faith theories
§ 5:23	— —Tort theory
§ 5:24	—Third-party claims
§ 5:25	— —Third-party excess cases
§ 5:26	—First-party claims
§ 5:27	—Discovery issues

II. FORMS

§ 5:28 First notice to insurance carrier—No. 1

§ 5:29	Letter to insurance adjuster requesting policy limits
§ 5:30	Letter to driver's employer requesting insurance information
§ 5:31	Notice of claim for uninsured motorist coverage
§ 5:32	Notice of claim for underinsured motorist coverage
§ 5:33	Letter requesting good faith settlement of claim
§ 5:34	Unfair claim settlement letter
§ 5:35	—No. 2
§ 5:36	Letter to underinsured carrier requesting consent to settlement
§ 5:37	Letter to insurance adjuster denying statement from client
§ 5:38	Letter denying insurer's request for blank authorization
§ 5:39	Authorization limiting access of insurance company to medical records
§ 5:40	Consent by client to submit case to arbitration
§ 5:41	Letter of demand for arbitration—Uninsured motorist claim
$\S 5:42$	Election of plaintiff to submit to arbitration
§ 5:43	Arbitration brief of plaintiffs
$\S 5:44$	Notice of intent to introduce evidence at arbitration
§ 5:45	Arbitrators' award
§ 5:46	—Notice of filing
$\S 5:47$	—Affidavit by attorney of service of notice of filing
§ 5:48	—Judgment enforcing award
§ 5:49	Complaint against driver joined with bad faith complaint against insurance company
§ 5:50	Complaint against driver joined with bad faith claims against plaintiff's insurer and driver's insurer
§ 5:51	Complaint by insurer for construction of indemnity policy and for injunction
§ 5:51.2	Complaint against insurance company alleging breach of contract and bad faith; CO state court
§ 5:51.4	Complaint against insurance company alleging breach of contract, bad faith, breach of fiduciary duty, other claims; OH state court
§ 5:51.6	Complaint against insurance company alleging breach of contract, bad faith, unfair trade practices, other claims; WA state court
§ 5:52	Complaint for determination of coverage under omnibus clause of insurance policy
§ 5:53	Jury instruction—Bad faith insurance practices— First-party claims
§ 5:54	—Third-party claims

CHAPTER 6. SETTLEMENT TECHNIQUES AND STRATEGIES

I. IN GENERAL

§ 6:1	ADR/Mediation—The New Reality		
§ 6:2	How to maximize the value of your case		
§ 6:3	Laying the foundation—Organization		
§ 6:4	Documentation of all claims		
§ 6:5	—Past medical bills		
§ 6:6	—Future medical bills		
§ 6:7	—Loss of income/lost earning capacity		
§ 6 :8	Claims by Third Parties: Liens, Reimbursement, and Subrogation		
§ 6:9	Other items of special damages		
§ 6:10	Establishing value range—Previous verdicts		
§ 6:11	Establishing value range		
§ 6:12	—Client input		
§ 6:13	Legal research—Establishing liability		
§ 6:14	"Independent" Defense Medical Examination		
§ 6:15	"Independent" medical exam—By other healthcare providers		
§ 6:16	—Failure to appear at independent medical examination		
§ 6:17	—Independent medical examination conclusion found sufficient		
§ 6:18	—Independent medical examination conclusion found insufficient		
§ 6:19	—Can plaintiff's attorney attend the independent or other medical examination of his client?		
§ 6:20	—Duty of care IME owes patient		
§ 6:21	—Spoliation		
§ 6:22	—Necessity for examination and grounds for objection		
§ 6:23	"Independent" Plaintiff's Medical Examination		
§ 6:23.40	"Independent" medical examination watchdog (IME watchdog)		
§ 6:24	Initial evaluation of case		
§ 6:25	Analyzing the players		
§ 6:26	Evaluating the parties		
§ 6:27	Evaluating liability issues		
§ 6:28	Evaluating damages		
§ 6:29	—Special damages		
§ 6:30	—General damages		
§ 6:31	—Punitive damages		

§ 6:32	Miscellaneous factors in settlement evaluation
§ 6:33	Obtaining client authority for settlement
§ 6:34	Foundation for negotiating process
§ 6:35	—Settlement brochure and demand letter
§ 6:36	Negotiations—Miscellaneous tips
§ 6:37	Settling with multiple defendants
§ 6:38	Structured settlements
§ 6:39	Finishing touches
II. F	ORMS
§ 6:40	Letter of inquiry to insurer re: Recovery of subrogation lien
§ 6:41	Form letter requesting plan documents for subrogation and lien provisions
§ 6:42	Wage loss verification form
§ 6:43	Attorney's case evaluation checklist—Overview
§ 6:44	—Lost wages and profits
§ 6:45	—Medical expenses of plaintiff
§ 6:46	—Diminished capacity for enjoying life
§ 6:47	—Physical pain and suffering
§ 6:48	—Mental and emotional pain and suffering
§ 6:49	—Loss of earning capacity
§ 6:50	—Loss of consortium
§ 6:51	Form demand letter; Rear-end motor vehicle collision case
§ 6:52	Letter to client recommending acceptance of settlement offer
§ 6:53	Form mediation letter; truck/motor vehicle collision case
§ 6:54	Letter to client recommending rejection of settlement offer
§ 6:55	Checklist for drafting of settlement agreement and release
§ 6:56	Skeleton form of release
§ 6:57	Release in full of all claims—No. 1
§ 6:58	Release and compromise agreement for large case with confidentiality agreement
§ 6:59	Release in full of all claims—No. 2
§ 6:60	—No. 3
§ 6:61	Release after judgment entered
§ 6:62	Release with waiver of statute as to unknown claims
§ 6:63	Release of insurer (property damage)
§ 6:64	Release of insurer (theft coverage), with assignment
§ 6:65	Release of insurer from liability under uninsured motorists provision

§ 6:66	Release by executor or administrator
§ 6:67	Release of claim against city
§ 6:68	Release by husband and wife
§ 6:69	Release of joint tort-feasor
§ 6:70	—Alternative provisions expressly reserving rights against others
§ 6:71	Release of claims for injuries to minor—Receipt by minor and release by parents
§ 6:72	—Release by guardian
§ 6:73	Claims for wrongful death—Release by next of kin
§ 6:74	—Release by administrator
§ 6:75	—Release by heirs of decedent dying intestate
§ 6:76	Release limited to tortfeasor's personal assets and primary liability coverage, preserving claim against excess insurer
§ 6:77	Structured settlement agreement with qualified assignment
§ 6:78	Structured settlement agreement—Periodic sums payable by defendant's insurer
§ 6:79	Notice of dismissal following settlement
§ 6:80	Stipulation of dismissal following settlement
§ 6:81	Sample accounting following settlement
§ 6:82	Settlement disbursement and release of attorney
§ 6:83	Post-settlement evaluation letter and form
§ 6:84	Hold harmless agreement regarding payment of liens and subrogated interests

CHAPTER 6A. ERISA SUBROGATION AND RECOVERIES

I. ANALYSIS

§ 6A:1	Introduction
§ 6A:2	What is ERISA and what is the impact if it applies to your client's health insurance or employer health coverage; Pre-emption
§ 6A:3	When does ERISA apply; Applies to most employee benefits provided by private companies
§ 6A:4	When doesn't ERISA apply; Government employers and church plans
§ 6A:5	When doesn't ERISA apply; No employer "established or maintained" an employee benefit plan
§ 6A:6	ERISA only applies to employees and the entities that provide benefits to employees; Employees covered
§ 6A:7	ERISA only applies to employees and the entities

	that provide benefits to employees; Independent contractors not covered
§ 6A:8	ERISA only applies to employees and the entities that provide benefits to employees; Employer/ employees may or may not be covered
§ 6A:9	Other "plans" that are not ERISA plans; Payroll practices not ERISA plans
§ 6A:10	Other "plans" that are not ERISA plans; Plans where employer no longer involved may or may not be subject to ERISA
§ 6A:11	Determining whether ERISA applies is a question of fact as well as law
§ 6A:12	Limitations on ERISA plan fiduciaries; Limited causes of action; May only seek to enforce the terms of the plan
§ 6A:13	Limitations on ERISA plan fiduciaries; Limited remedies; May only seek an "appropriate equitable remedy"
§ 6A:14	ERISA subrogation and reimbursement law by federal circuit court
§ 6A:15	—First Circuit
§ 6A:16	—Second Circuit
§ 6A:17	—Third Circuit
§ 6A:18	—Fourth Circuit
§ 6A:19	—Fifth Circuit
§ 6A:20	—Sixth Circuit
§ 6A:21	—Seventh Circuit
§ 6A:22	—Eighth Circuit
§ 6A:23	—Ninth Circuit
§ 6A:24	—Eleventh Circuit
§ 6A:25	—D.C. Circuit
§ 6A:26	Obtaining plan documents on behalf of your client/beneficiary
§ 6A:27	Obtaining plan documents on behalf of your client/ beneficiary; Duties of the administrator
§ 6A:28	Enforcing the administrator's duty to provide required information
§ 6A:29	—Statute of limitations
§ 6A:30	—What documents must be provided?
§ 6A:31	—Penalties
§ 6A:32	—Who may be sued under ERISA § 502(c)
§ 6A:33	—De facto plan administrators
§ 6A:34	—Determining the appropriate penalty; factors
§ 6A:35	—Determining the appropriate penalty; sample penalties awarded by federal circuit court
§ 6A:36	Emerging remedies in subrogation recovery disputes—Attorney's fees

§ 6A:37 —RICO counterclaim dismissed

II. FORMS

§ 6A:38	Initial letter to employer as plan administrator requesting copy of the client's employee health benefit plan and related documents
§ 6A:39	Letter to ERISA fiduciary proposing compromise
§ 6A:40	Letter to health benefits plan claims administrator regarding health benefits on client's behalf
§ 6A:41	Complaint for the Enforcement of Rights Under ERISA and for Penalties for Failure to Provide Plan Documents

CHAPTER 6B. MEDICARE LIENS AND SETASIDES

§ 6B:1	Medicare liens—Generally
§ 6B:2	—The basics of the Medicare Secondary Provider (MSP) statute
§ 6B:3	Medicare reimbursement claims—Medicare Part C (Medicare Advantage) and Medicare Part D (Prescription Drug Plan)
§ 6B:4	Medicare Reimbursement Claims—Change, change, change—The only constant is change
§ 6B:5	—Reaction in the legal community
§ 6B:6	—Consequences for not properly considering Medicare's interest
§ 6B:7	Limits on lien recovery in third party settlements— Does <i>Ahlborn</i> apply to Medicare?
§ 6B:8	Medicare recovery rights—Appeals and requests for reduction or waiver of Medicare's claim
§ 6B:9	Medicare liens—Recovery from the estate of a deceased beneficiary
§ 6B:10	Medicare reimbursement claims—Multiple party settlement checks
§ 6B:11	Medicare liens—The Medicare, Medicaid and SCHII Extension Act of 2007: One more thing to worry about in your settlements
§ 6B:12	Medicare set aside analysis under the Medicare Secondary Payer Act

Volume 2

CHAPTER 7. DISCOVERY AND PRE-TRIAL PREPARATION

I. INTERROGATORIES

§ 7:	1 In	errogatories	-When	to	send
------	------	--------------	-------	----	------

- § 7:2 —Definitions
- § 7:3 —Scope/content in general
- § 7:4 —Identity of witnesses
- § 7:5 —Location and nature of documentary evidence
- § 7:6 —Insurance
- § 7:7 —Expert witnesses
- § 7:8 —Individual—Accident and scene
- § 7:9 —Qualifications to drive
- § 7:10 —Agency
- § 7:11 —Employees
- § 7:12 —Family car doctrine
- § 7:13 —Corporations
- § 7:14 —Governmental agencies
- § 7:15 —Intra-family
- § 7:16 Incorporating requests for production
- § 7:17 Action/What to do now?
- § 7:18 Handling objections/compelling more responsive answers
- § 7:19 Supplemental interrogatories

II. REQUESTS FOR PRODUCTION OF DOCUMENTS

- § 7:20 Requests for production—Purpose
- § 7:21 —Relevancy
- § 7:22 —General documents
- § 7:23 —Individual documents
- § 7:24 —Agency documents
- § 7:25 —Employment documents
- § 7:26 —Family car doctrine
- § 7:27 —Corporate documents
- § 7:28 —Federal tort claims
- § 7:29 —State/local government
- § 7:30 —Organization and cataloging
- § 7:31 —How to use requests

III. DEPOSITIONS

§ 7:32 Depositions

xxvi

- § 7:33 —Which depositions to take § 7:34 —Order of depositions § 7:35 —Preparation of client for deposition § 7:36 —Preparation of experts § 7:37 —Attorney preparation for client's deposition § 7:38 —Agent's deposition § 7:39 —Employee's deposition § 7:40 -Family car doctrine issues § 7:41 —Corporate employee depositions § 7:42 —State/local government depositions
- § 7:43 —Fact witness depositions
- § 7:44 —Digesting depositions
- § 7:45 —How to use depositions
- § 7:45.5 Cost of deposition

IV. REQUESTS FOR ADMISSION*

- § 7:46 Requests for admission—Purpose
- § 7:47 —Timeliness
- § 7:48 —Specificity
- § 7:49 —What to use

V. SCHEDULING AND FINAL PREPARATION

- § 7:50 Discovery deadlines—Purpose
- § 7:51 Format
- § 7:52 —Discovery schedule/follow-up systems-use of schedule as strategy
- § 7:53 Completion of discovery
- § 7:54 Internal office trial preparation meeting (120-90 days before trial)
- § 7:55 Internal office preparation meeting (60-45 days before trial)
- § 7:56 Internal office trial preparation meeting (30 days before trial)

VI. FORMS

A. INTERROGATORIES

- § 7:57 General interrogatories to defendant
- § 7:58 —No. 2
- § 7:59 —Requesting detailed explanation of accident
- § 7:60 ——Speed
- § 7:61 —To corporate defendant
- § 7:62 —To dram shop defendant

§ 7:63	—To defendant claiming that driver was independent contractor			
§ 7:64	—To defendant—Bus passenger injured while			
§ 7:65	disembarking To defendant bioyala/auta calligion			
§ 7.65 § 7:66	—To defendant-bicycle/auto collision			
§ 7.66 § 7:67	General interrogatories to plaintiff —No. 2			
§ 7:68	Detailed interrogatories re proposed expert witness			
§ 7:69	Objections to interrogatories			
§ 7:70	Motion for sanctions—Failure to answer			
§ 1.10	interrogatories			
В.	REQUESTS FOR PRODUCTION			
§ 7:71	Request for discovery and/or production of documents and things for inspection, copying and photographing-introduction			
§ 7:72	General request for production to defendant			
§ 7:73	—No. 2			
§ 7:74	—To defendant claiming that driver was independent contractor			
§ 7:75	Motion for order requiring production of, and permitting inspection and copying of, statements, reports and photographs			
§ 7:76	—Affidavit in support of motion			
§ 7:77	—Order for production and inspection			
§ 7:78	Motion to compel further responses to document request			
C.	DEPOSITIONS			
§ 7:79	Notice of intention to take oral deposition—No. 1			
§ 7:80	—No. 2			
§ 7:81	Notice of intent to take deposition by written questions			
§ 7:82	Notice of intent to take video deposition—No. 1			
§ 7:83	—No. 2			
§ 7:84	Motion for recording of deposition on videotape			
§ 7:85	—Supporting affidavit of videotape operator			
§ 7:86	—Order for recording of deposition on videotape			
§ 7:87	Motion for sanctions for failure to produce defendant for deposition			
§ 7:88	Examination of defendant generally			
§ 7:89	Deposition of auto driver-general background			
§ 7:90	—General description of accident			
§ 7:91	—General weather and road conditions			
xxviii				

TABLE OF CONTENTS

§ 7:92	—Actions just prior to the accident			
§ 7:93	—Actions after the accident			
§ 7:94	—General health			
§ 7:95	—Condition of vehicle			
§ 7:96	—Conversations and documents			
§ 7:97	—General witness information			
§ 7:98	—Pleadings			
§ 7:99	—Insurance			
§ 7:100	—Concluding questions			
§ 7:101	Deposition of auto owner—General background			
§ 7:102	—Knowledge of driver and/or occupants of vehicle			
§ 7:103	—Knowledge of the accident			
§ 7:104	—Condition of vehicle			
§ 7:105	—Conversations and documents			
§ 7:106	—General witness information			
§ 7:107	—Insurance			
§ 7:108	—Parent, relative or friend of operator			
§ 7:109	—Employer of operator			
§ 7:110	Deposition of defendant driver—Passing accident			
§ 7:111	—Rear-end collision			
§ 7:112	—Intersection collision			
§ 7:113	—Collision while making turn			
§ 7:114	—Injury to passengers			
§ 7:115	—Injuries to pedestrians			
§ 7:116	—Bus collision			
§ 7:117	Deposition of plaintiff—Passenger			
§ 7:118	—Plaintiff pedestrian			
§ 7:119	—Personal injuries—No. 1			
§ 7:120	——No. 2			
§ 7:121	—Property damage to vehicle			
§ 7:122	Deposition of witness—General background			
§ 7:123	—Description of accident			
§ 7:124	—General road conditions and weather conditions			
§ 7:125	—General information about the accident			
§ 7:126	—Actions just prior to the accident			
§ 7:127	—Activities after the accident			
§ 7:127	—Conversations and documents			
ş 1.120	—conversations and documents			
D.	REQUEST FOR ADMISSIONS			
§ 7:129	Request for admissions—General form			
§ 7:130	—Rear end collision			
§ 7:131	—Injured motorcyclist to defendant city-roadway			
J	negligence			
§ 7:132	——Collision with vehicle			

§ 7:133	—Vehicle operated with permission and route a public highway
§ 7:134	—Genuineness of documents produced
§ 7:135	Reply to request for admissions
E.	DISCOVERY AND PRE-TRIAL PREPARATION CHECKLISTS
§ 7:136	Discovery, generally
§ 7:137	Interrogatories
§ 7:138	Depositions
§ 7:139	Production of documents and inspection of property
§ 7:140	Request for admission of facts and genuineness of documents
§ 7:141	Preliminary motions

CHAPTER 8. EVIDENTIARY MATTERS

I. GENERAL PRINCIPLES OF EVIDENCE

§	8:1	Scope of chapter
§	8:2	Consistency with themes of case
§	8:3	Practical considerations
§	8:4	The "two-edged" sword—The opposing party's use of plaintiff's evidence, and opening the door
§	8:5	Preservation and spoliation of evidence
§	8:6	Electronically stored information
§	8:7	Federal and state rules of evidence
§	8:8	Federal Rules of Evidence: General Provisions
§	8:9	Federal Rules of Evidence: Judicial Notice
§	8:10	Federal Rules of Evidence: Presumptions in Civil
		Cases
§	8:11	Federal Rules of Evidence: Relevance and its Limits
§	8:12	Federal Rules of Evidence: Privileges
§	8:13	Federal Rules of Evidence: Witnesses
§	8:14	Federal Rules of Evidence: Opinions and Expert Testimony
§	8:15	Federal Rules of Evidence: Hearsay and Admissions
§	8:16	Federal Rules of Evidence: Authentication and Identification
§	8:17	Federal Rules of Evidence: Contents of Writings, Recordings, and Photographs

II. ANALYSIS OF PARTICULAR EVIDENTIARY TYPES AND ISSUES

§ 8:18 "Clean" exhibits

TABLE OF CONTENTS

§ 8:19	Accident reports
§ 8:20	Medical bills
§ 8:21	Medical records
§ 8:22	X-rays, CT scans, and MRIs
§ 8:23	Photographs (including photographic slides)
§ 8:24	Video recordings
§ 8:25	—Specific types of video evidence: "Day in the Life" recordings, surveillance video, and video demonstrations/recreations
§ 8:26	—Spoliation
§ 8:27	Maps and drawings
§ 8:28	Social media, text messages, e-mail, and websites
§ 8:29	Satellite maps
§ 8:30	Enlarged exhibits
§ 8:31	Computer animations
§ 8:32	Teaching aids
§ 8:33	—Anatomical charts, models and skeletons
§ 8:34	—Medical illustrations
§ 8:35	—Scale models
§ 8:36	—Courtroom projection systems, presentations, and enlargements

III. WITNESSES

§ 8:37	Competency
§ 8:37.50	—Witness testimony about speed of vehicles, force of impact, existence or extent of any resulting injuries in automobile accident
§ 8:38	Testimonial privileges
§ 8:39	Credibility and character testimony
§ 8:40	Similar facts and transactions; other accidents
§ 8:41	Selection and planning
§ 8:42	—Contact
§ 8:43	—Evaluation and conferences
§ 8:44	—Guidelines
§ 8:45	—Dress
§ 8:46	—Explanation of role in case
§ 8:47	—Trial preparation
§ 8:47.20	Expert witness testimony—Biomechanical engineer
§ 8:47.60	—Human factors engineer

IV. FORMS

§ 8:48	Evidence chart overview
§ 8:49	Sample evidence chart
§ 8:50	Chart—Types of demonstrative evidence

§ 8:51	Checklist—Preparing evidence for admission
§ 8:52	Checklist of possible types of physical evidence
§ 8:53	Witness statement checklist
§ 8:54	Checklist for selection, evaluation and preparation of witnesses
§ 8:55	Plaintiff's spoliation letter in trucking accident case
§ 8:56	Motion in limine—Video of tests
§ 8:57	Daubert challenges—Motion to preclude trial testimony of defense biomechanical engineer in rearend collision case
§ 8:58	—Defendant's memorandum of law in opposition to motion to preclude trial testimony of defense biomechanical engineer in rear-end collision case

CHAPTER 9. PRESENTATION AND PROOF OF DAMAGES

I. IN GENERAL

xxxii

§	9:1	Introduction
§	9:2	Property damage and measures of loss
§	9:3	Compensable elements of bodily injury—Medical bills
§	9:3.20	—Future medical expenses
§	9:4	Lost wages and impaired earning ability
§	9:5	General damages
§	9:6	Wrongful death and survival damages
§	9:6.50	Punitive damages
§	9:7	Factors in evaluating economic loss
§	9:8	Damages for loss of homemaker services
§	9:8.40	Damages for loss of child's services
§	9:9	Soft tissue injuries; "whiplash" or hyperextension- hyperflexion injury
§	9:10	—Use of medical literature
§	9:11	—Documenting soft tissue injuries
§	9:12	—Mechanism of injury
§	9:13	—Enigma of pain
§	9:14	—Objective findings
§	9:15	—Causation
§	9:16	—Treatment
§	9:17	Proving pain and suffering
§	9:17.60	Facts and circumstances tending not to prove pain and suffering
§	9:17.80	Loss of enjoyment of life
§	9:18	Nonmedical testimony

TABLE OF CONTENTS

§ 9:19	Use of "My day" statement
§ 9:20	Use of demonstrative evidence in proof of damages
§ 9:21	Preexisting conditions—Asymptomatic
§ 9:22	—Symptomatic
§ 9:22.1	· -
§ 9:22.1	· · · · · · · · · · · · · · · · · · ·
§ 9:22.2	
§ 9.22.2 § 9:23	Damages in final argument
8 9.20	Damages in imai argument
II. F	ORMS
§ 9:24	Letter requesting information from health-care
	providers
§ 9:25	Letter to medical provider requesting copies of medical bills
§ 9:26	Letter requesting pharmacy records
§ 9:27	Letter requesting detailed medical report
§ 9:28	—No. 2
§ 9:29	Letter requesting supplemental medical report
§ 9:30	Letter requesting psychological report
§ 9:31	Sample letter requesting certified copy of medical bills
§ 9:32	Itemized list of charges for medical services
§ 9:33	Client in-take form with questions relating to the
	circumstances of accident and injury
§ 9:34	Client in-take form; Job information
§ 9:35	Injury and pain questionnaire
§ 9:36	Wage loss verification form
§ 9:37	Checklist of factors in computing lost earnings
§ 9:38	Instructions to client for creating "My day" statement
§ 9:39	Monthly report from client
§ 9:40	Attorney's evaluation checklist—Property damage and
	loss of use of automobile
§ 9:41	—Wrongful death damages
§ 9:42	Attorneys' summary of damages
§ 9:43	Letter to client requesting lay damage witnesses with
	questionnaire
§ 9:44	Letter and questionnaire to lay witness
§ 9:45	Jury instructions on itemized damages
§ 9:46	Special verdict form—Itemized damages
§ 9:47	Jury instruction on wrongful death damages
§ 9:48	Special verdict form—Itemized damages for wrongful death
§ 9:49	Jury instruction on preexisting condition—
	Asymptomatic
§ 9:50	—Symptomatic
§ 9:51	—Eggshell plaintiff

CHAPTER 10. TRYING THE CASE

I. IN GENERAL

xxxiv

1. 111 01	
§ 10:1	Theme of case
§ 10:2	—Development of theme
§ 10:3	—Identification of theme
§ 10:4	—Liability themes
§ 10:5	—Damages themes
§ 10:5.60	—Damages themes; impermissible topics
§ 10:6	—Use in jury selection
§ 10:6.30	— — Using voir dire to your client's advantage from the
0	start
§ 10:7	—Limitations on voir dire
§ 10:8	—Use in opening statement
§ 10:9	—Case-in-chief generally
§ 10:9.20	——Bifurcated vs. unified trial
§ 10:10	— — Medical testimony
§ 10:11	——Lay witness testimony
§ 10:12	— — Reconstruction testimony at trial
§ 10:13	— —Testimony of plaintiff
§ 10:14	—Cross-examination
§ 10:15	——Impeachment of adversary party
§ 10:16	——Control of opposing witnesses
§ 10:17	—Summation
§ 10:18	——Liability issues
§ 10:19	——Damages issues
§ 10:20	— — Rebuttal
§ 10:21	—Addressing problem areas
§ 10:22	— —Intervening negligence
§ 10:23	——Dispute on causation
§ 10:24	——Prior condition
§ 10:25	Use of expert witnesses
§ 10:26	—Preparation of attorney
§ 10.20 § 10:27	—Locating and evaluating
§ 10:28	Expert before trial—Preparation and being prepared
§ 10:28.20	—Expert proffered must be able to satisfy the three prongs of Daubert
§ 10:29	Presentation of expert at trial
§ 10:29.20	—Testimony precluded/stricken due to spoliation of
6 10 60	evidence
§ 10:30	Cross-examination of opposing expert
§ 10:31	—Planning examination
§ 10:32	—Indexing depositions

TABLE OF CONTENTS

§ 10:33	—Use of depositions
§ 10:34	—Use of textual material
§ 10:35	—Use of voir dire exam
§ 10:36	—Impeachment by showing bias or prejudice
§ 10:36.10	Preparing to impeach by demonstrating bias and/or motive of defendant's doctor
§ 10:37	Cross-examination of opposing expert— Psychological factors
§ 10:38	—Using opponent's expert
§ 10:39	Ten commandments of cross-examination
§ 10:40	Cross-examination of defense medical expert
§ 10:41	Presenting scientific reconstruction to jury— Attorney preparation
§ 10:42	—Qualifications of reconstructionist
§ 10:43	—Presenting qualifications and process
§ 10:44	—Laying factual foundation
§ 10:45	—Demystifying accident reconstruction
§ 10:46	Drafting jury instructions—Using pattern instructions
§ 10:47	—Using imagination while drafting instructions
§ 10:48	—Brevity and clarity
§ 10:49	—General and specific instructions
§ 10:50	—Avoiding questionable or argumentative instructions
§ 10:51	—Citations and brief in support
§ 10:52	—Testing instructions on lay people
§ 10:53	—Mechanics of submission
§ 10:54	—Strategy of submission
§ 10:55	—Instruction conference; objections
§ 10:56	—Using language of instructions during trial
§ 10:57	Verdict forms

II. FORMS

1. JURY INSTRUCTIONS

§ 10:58	Face sheet
§ 10:59	General instruction
§ 10:60	Burden of proof
§ 10:61	—Defined
§ 10:62	Direct and circumstantial evidence
§ 10:63	Expert witnesses
§ 10:64	Negligence defined
§ 10:65	Duty of ordinary care
§ 10:66	Ordinary care defined
§ 10:67	Proximate cause—Defined

§ 10:68	—More than one
§ 10:69	Assuming others will use due care
§ 10:70	Sudden incapacity
§ 10:71	Falling asleep at wheel
§ 10:72	Sudden emergency
§ 10:72.20	Unavoidable accident and emergency
§ 10:73	Vehicle leaving road
§ 10:74	Skidding vehicle
§ 10:75	Violation of statute—No. 1
§ 10:76	—No. 2
§ 10:77	—No. 3
§ 10:78	Duties imposed by law—Prefatory instruction
§ 10:79	Proper distance between cars—Statute
§ 10:80	Control
§ 10:81	Lookout
§ 10:82	—Plain sight
§ 10:83	Lookout to rear
§ 10:84	Speed
§ 10:85	—Too slow
§ 10:86	Assured clear distance
§ 10:87	Superior right of forward vehicle
§ 10:88	Vehicle proceeding on preferred street
§ 10:89	Right-of-way defined
§ 10:90	Vehicle entering road
§ 10:91	Vehicle entering road from private road or driveway
§ 10:92	Right of way at yield intersection
§ 10:93	Right of way at uncontrolled intersection
§ 10:94	Turning or changing course
§ 10:95	Signalling stop or slowing
§ 10:96	Keeping in lane
§ 10:97	Entering intersection with light—No. 1
§ 10:98	—No. 2
§ 10:99	Entering intersection with stop sign
§ 10:100	Left turning vehicle
§ 10:101	—Opposing driver yields
§ 10:102	Leaving disabled vehicle
§ 10:103	Displaying headlights
§ 10:104	Duty to maintain vehicle
§ 10:105	Intoxication—No. 1
§ 10:106	—No. 2
§ 10:100	Duty of pedestrian—Generally
§ 10.107 § 10:108	Duty of pedestrian in place of safety
§ 10.108 § 10:109	Duty of pedestrian in place of safety Duty of pedestrian crossing road
8 10.109	Duty of pedestrian crossing road

xxxvi

TABLE OF CONTENTS

§	10:109.	pedestrian was crossing not in conflict with duty of
2	10.110	pedestrian to obey walk lights when crossing road
_	10:110	Duty of pedestrian walking on road
_	10:111	Assumption of risk—Comparative negligence
_	10:112	Last clear chance
_	10:113	—Comparative negligence
_	10:114	Duty of driver where children present
_	10:115	Negligence of passenger
_	10:116	Negligence imputed to passenger
_	10:117	Respective duties of driver and bicyclist
_	10:118	Standard of care—Child
_	10:119	Child presumed incapable of negligence
_	10:120	Standard of care—Child engaged in adult activity
_	10:121	Seat belt defense—Negligence
_	10:122	—Mitigation of damages
_	10:123	Negligent entrustment
_	10:124	—Incompetency defined
_	10:125	—Limiting instruction
_	10:126	Joint enterprise liability
	10:127	Vicarious liability of employer
	10:128	Damages—Personal injury
_	10:129	Preexisting condition—Asymptomatic
_	10:130	—Symptomatic
	10:130.	
_	10:131	Loss of consortium
§	10:132	Defendant's liability for negligence in treating injury
§	10:133	Defendant's liability for enhanced injuries
§	10:134	Instructions regarding deliberations
	2.	VERDICT FORMS WITH INSTRUCTIONS
§	10:135	Instructions accompanying special verdict form— Negligence
Ş	10:136	Special verdict form—Negligence
	10:137	—Negligence (No. 2)
_	10:138	Instructions accompanying special verdict form—
3	10.100	Damages
§	10:139	Special verdict form—Damages
§	10:140	—Vicarious liability of employer
	3.	CHECKLISTS AND OUTLINES
Ş	10:141	Jury selection and jury instructions
	10:142	Opening statement

§ 10:143	Direct examination
§ 10:144	Cross-examination
§ 10:145	Closing argument
4.	MISCELLANEOUS
§ 10:146	Sample case preparation memorandum
§ 10:147	Trial memorandum
§ 10:148	Motion requesting that voir dire be recorded
§ 10:149	Voir dire—Sample questions
§ 10:150	Motion for separate entry of final judgment

Volume 3

CHAPTER 11. ACCIDENT RECONSTRUCTION

§	11:1	Introduction
§	11:2	What is traffic accident reconstruction?
§	11:3	Recognizing a qualified reconstructionist
§	11:4	Deciding on the need for a reconstructionist
§	11:5	Newton's laws of motion
§	11:6	Newton's laws and the basics of accident reconstruction
§	11:7	How vehicles behave in a collision
§	11:8	Vehicle damage
§	11:9	Occupant behavior in collisions
§	11:10	Ejections and rollovers
§	11:11	Torque
§	11:12	Drag Factor v. Coefficient of Friction
§	11:13	Acceleration rates
§	11:14	Speed, velocity & acceleration
§	11:15	Critical velocity
§	11:16	Airborne movement and equations
§	11:17	Pedestrian collisions
§	11:17.20	Animal collisions
§	11:17.40	Bicycle collisions
§	11:18	The basics of conservation theories
§	11:19	Specific problems in linear momentum analyses
§	11:19.20	Line of sight calculations
§	11:19.30	Blind spots
§	11:20	Kinetic energy
§	11:21	Computer software for accident reconstruction
§	11:22	Supporting evidence

xxxviii

§ 11:22.20	—Evidence supporting expert accident reconstructionist's opinion must be competent and part of the record
§ 11:23	Pre-trial
§ 11:24	Cross examination of the expert witness
§ 11:25	Types of cases and the solutions
§ 11:26	Trucking accident cases
§ 11:27	Definitions
§ 11:28	References

CHAPTER 11A. MOTOR VEHICLE "BLACK BOXES"

I. INTRODUCTION (BLACK BOXES ARE EVERYWHERE)

- § 11A:1 In General
- § 11A:2 Development of the "Black Box"
- § 11A:3 Effect of Federal Regulations

II. BASIC ENGINEERING CONCEPTS OF AUTOMOTIVE DATA RECORDERS

- § 11A:4 Generally§ 11A:5 Airbag Sensor Systems
- § 11A:6 Crash Pulse Input Vectors and Airbag Sensors
- § 11A:7 Crash-Related Data
- § 11A:8 Retrieving Crash-Related Data
- § 11A:9 Testing the Data Recorder
- § 11A:10 Discovery Regarding Automotive Data Recorders
- § 11A:11 Use of Electronic Data in Court

III. USE OF AUTOMOTIVE EVENT DATA RECORDERS IN LITIGATION

A. INTRODUCTION

- § 11A:12 Generally
- § 11A:13 Technological developments leading to black box technology
- § 11A:14 Purpose of Automotive Event Data Recorders

B. VARIOUS TYPES OF AUTOMOTIVE EVENT DATA RECORDERS AND HOW TO READ THEM

§ 11A:15 Automotive Powertrain Control Module (PCM) or Engine Control Module (ECM)

§ 11A:16 A	ntilock Braking System (ABS)
§ 11A:17 A	irbag Computer
§ 11A:18 D	ynamic Suspension Control Systems
C. Da	ATA FROM AUTOMOBILE COMPUTERS
§ 11A:19	Generally
§ 11A:20	Paperwork Generated From The Automotive Event Data Recorder
§ 11A:21	Limitations of Automotive Event Data Recorders
§ 11A:22	Use of Automotive Event Data In Litigation
§ 11A:22.10	Use of automotive event data in litigation—Getting the data
§ 11A:22.30	—Allegations of spoliation of evidence included in Amended Complaint for Wrongful Death; Campbell v. Tesfamariam, and Gigi Logistics, LLC, No. 2:16-CV- 00024, December 20, 2016 (M.D.Tenn.) (Trial Pleading)
§ 11A:22.40	—Plaintiffs' allegations asserting that any alteration, destruction, disposal, repair or failure to preserve information, documents and electronic data will constitute spoliation of evidence, included in Plaintiffs' Original Petition, Cuevas v. German Pellets Texas, LLC; Texas Pellets, Inc. & German Pellets Holding USA, Inc., 2017 WL 5616590 (Tex.Dist.) (Trial Pleading)
§ 11A:22.50	—Sanctions for spoliation
§ 11A:22.60	—Reconstructing the collision scene
§ 11A:22.70	—Failure to preserve EDR data—Spoliation
§ 11A:23	Problems In Using the Automotive Event Data Recorder

D. REFERENCES

§ 11A:24 Generally

IV. HEAVY TRUCK ELECTRONICS

§ 11A:25	Generally
§ 11A:26	Information Available From Different
	Manufacturer's Engines—Caterpillar
§ 11A:27	—Cummins Engine Company
§ 11A:28	—Detroit Diesel Corporation
§ 11A:29	—Mack
§ 11A:30	—Freightliner Trucks
§ 11A:31	Radar Driver Warning Devices
§ 11A:32	Satellite Tracking Equipment
§ 11A:33	Antilock Braking Systems (ABS)
	- ·

V. LOCOMOTIVE EVENT RECORDERS

- § 11A:34 Generally § 11A:35 The Technology of Land
- § 11A:35 The Technology of Locomotive Event Data Recorders
- § 11A:36 Downloading Event Recorder Data
- § 11A:37 Analyzing Locomotive Event Recorder Data
- § 11A:38 Issues Relating to The Reliability of Locomotive Event Recorder Data, Generally
- § 11A:39 —Hardware Problems
- § 11A:40 —Accuracy Problems
- § 11A:41 —The Problem of Impartiality
- § 11A:42 —Actual Case Summary

VI. FORMS

A. AUTOMOTIVE EVENT DATA RECORDERS

- § 11A:43 Plaintiff's Interrogatories (Not Manufacturer Specific)
- § 11A:44 Plaintiff's Request for Production of Documents.
 (Not Manufacturer Specific)
- § 11A:45 Plaintiff's Interrogatories (General Motors Vehicle Specific)
- § 11A:46 Plaintiff's Request for Production of Documents. (General Motors' Specific)
- § 11A:47 Plaintiff's Request for Admissions (General Motors' Vehicle Specific)

B. HEAVY TRUCK ELECTRONICS

§ 11A:48 Plaintiff's Request for Production of Documents

C. LOCOMOTIVE-EVENT RECORDER

- § 11A:49 Plaintiff's Interrogatories
- § 11A:50 Plaintiff's Request for Production of Documents

D. PLEADINGS, MOTIONS, MEMORANDA, ORDERS REGARDING EDRS/EDR DATA

- § 11A:51 Defendants' opposition to plaintiff's motion in limine to strike accident reconstructionist testimony based on engine control module data and physical evidence; Daubert analysis; Bailey v. Golden State Food Corp., No. 4:14-cv-01631-RLW
- § 11A:52 Memorandum and order denying plaintiffs' motion in limine to strike accident reconstructionist testimony; Daubert analysis; P's disagreement with opinions and simulation of

collision created with inter alia data from engine control module and physical evidence not basis for disqualifying D's expert; Bailey v. Golden State Food Corp., No. 4:14-cv-01631-RLW

CHAPTER 11B. LOCOMOTIVE CAMERA SYSTEMS

I. ANALYSIS

§ 11B:1	Introduction—What they are and what they do
§ 11B:2	History of locomotive camera systems
§ 11B:3	Current locomotive camera systems
§ 11B:4	Discovery of locomotive camera system video and
	data—Request for production
§ 11B:5	—Railroad arguments opposing discovery
§ 11B:6	—Plaintiff's arguments for discovery
§ 11B:7	Court rulings on the discoverability of locomotive
	camera videos

II. FORMS

§ 11B:8 Plaintiff's motion to compel discovery of locomotive camera system video and data from railroad court

CHAPTER 12. VEHICLE CRASHWORTHINESS

I. UNDERSTANDING VEHICLE CRASHWROTHINESS

§ 12:1 Crashworthiness Defined
§ 12:2 Impact Phase
§ 12:3 Crash Phase
§ 12:4 —Roll-over
§ 12:5 Injury Phase

II. COMMON CRASHWORTHINESS CLAIMS

§ 12:6	Categories of Claims
§ 12:7	Related Issues
§ 12:8	Seat Belts, Generally
§ 12:9	—The Comfort Feature
§ 12:10	—Passive Belts
§ 12:11	—Rear Seat Lap Only Seat Belts
§ 12:12	Seat belts, generally—Buses

§ 12:13	Seats
§ 12:14	Interior Padding
§ 12:15	Airbags
§ 12:16	Sample complaint for exploding air bag, alleging strict liability/negligence against automobile manufacturer and air bag manufacturer; negligence/fraud against automobile seller; and negligent entrustment by owner to negligent/unqualified minor driver; Sheckler v. Honda Motor Co., Takata Corporation, et al.
§ 12:17	Roof Strength
§ 12:18	Door Strength, and Door Latches
§ 12:19	Glazing
§ 12:20	Fuel Fed Fires
§ 12:21	Child Restraints
§ 12:22	Underride and Conspicuity
§ 12:22.50	Sudden and unintended vehicular acceleration
§ 12:23	Miscellaneous motor vehicle defects

III. PRE-LAWSUIT INVESTIGATION OF A CRASHWORTHINESS CASE

§ 12:24	In General
§ 12:25	Whenever Possible Obtain Custody of the Vehicles Involved
§ 12:26	Visit, Photograph and Survey the Accident Scene
§ 12:27	Interview the Investigating Officer
§ 12:28	Interview Medical Personnel
§ 12:29	Interview Fire and Rescue Crews
§ 12:30	Interview and Take Statements From Witnesses
§ 12:31	Interrogate Black Box Data Where Available
§ 12:32	Retain Experts
§ 12:33	On Line Sources of Information

IV. FILING SUIT

§ 12:34 Jurisdiction and Venue
§ 12:35 Identifying the Proper Defendants
§ 12:36 Legal Theories

V. DISCOVERY

§ 12:37	In General
§ 12:38	Protective Orders
§ 12:39	Written Discovery
§ 12:40	Deposition Discovery

VI. PREEMPTION

- § 12:41 In General
- § 12:42 Principles of Federal Preemption*
- § 12:43 The Safety Act Does Not Expressly Preempt Common Law Claims
- § 12:44 The Problem of Implied Preemption
- § 12:45 Implied Preemption and Geier
- § 12:46 Crashworthiness After Geier
- § 12:47 Supreme Court in *Williamson v. Mazda* makes it harder for defendants to prove implied preemption in auto safety cases

VII. FORMS

- § 12:48 Complaint 1
- § 12:49 Complaint 2
- § 12:50 Application to preserve evidence
- § 12:51 Petition to investigate claim
- § 12:52 Sample Plaintiff's interrogatories to defendant; Seat Belt Case
- § 12:53 —Seat Belt Case
- § 12:54 —Rollover Case
- § 12:55 Plaintiff's requests for admissions to defendant Toyota Motor Corporation, Set one
- § 12:56 Motion for ruling on petition to investigate claim
- § 12:57 Notice of petition and hearing to investigate claim
- § 12:58 Sample preemption brief arguing; 1) federal performance regulation cannot preempt manufacturer's duty to build a crashworthy cars involved in roll-over collisions; 2) performance regulation is not a design regulation; and 3) compliance with federal standard does not preempt common law crashworthiness claims
- § 12:59 Sample preemption brief arguing; 1) impossibility does not impliedly preempt liability for manufacturer not installing forward collision technology; and 2) a denial of rulemaking does not lead to implied obstacle preemption
- § 12:60 Sample complaint alleging defective design/ manufacture of door latch against component supplier
- § 12:61 Sample complaint alleging failure to warn and defective design/testing/manufacture of door latch against automobile manufacturer and component supplier
- § 12:62 Sample complaint alleging defective roof structure and glazing against automobile manufacturer

§ 12:63	Sample complaint alleging failure to warn and defective design/manufacture of glass and seat belt system
§ 12:64	Sample complaint alleging failure to warn, defective design/manufacture of fuel system/frame against automobile manufacturer and component supplier
§ 12:65	Sample complaint alleging failure to warn and defective design/manufacture of fuel system causing fuel fed fire against automobile manufacturer
§ 12:66	Bus crashworthiness; preemption, lack of passenger seat belts, laminated glazing—Brief on the Merits of Appellant MCI Sales and Service, Inc.
§ 12:67	—Brief on the merits of cross-petitioner hinton
§ 12:68	Sample complaint alleging fire due to defective design and manufacture of fuel tank
§ 12:69	Sample complaint against motorist and automobile manufacturer alleging defective car seat design/manufacture/marketing causing seat back to disengage and suddenly/violently drop backward and downward
§ 12:70	Plaintiff's motion in limine to exclude evidence of or relating to the cause of the collision; Wickersham v. Ford Motor Company
§ 12:71	Response by Ford Motor Company to plaintiff's motion in limine to exclude evidence of or relating to the cause of the collision; Wickersham v. Ford Motor Company

CHAPTER 12A. ROLLOVER LITIGATION

I. IN GENERAL

§ 12A:1	Introduction
§ 12A:2	Influence of vehicle geometry
§ 12A:3	Dynamic effects on geometry
§ 12A:4	Side forces
§ 12A:5	Tire limits
§ 12A:6	How does a tire reach its limits?
§ 12A:7	Static friction vs. dynamic friction
§ 12A:8	Tire data
§ 12A:9	Influence of handling characteristics
§ 12A:10	How does a suspension affect handling characteristics?
§ 12A:11	Rollover resistance safety ratings
§ 12A:12	Electronic stability control
§ 12A:13	Conclusion

II. FORMS

§ 12A:14	Sample complaint for a Ford Super Duty Truck rollover accident alleging handling, stability, seat belt, and roof strength concerns
§ 12A:15	Sample complaint for a Chrysler Jeep rollover accident alleging seat belt and roof strength concerns
§ 12A:16	Sample complaint for a Ford F-150 Truck roll over accident alleging handling, stability, seat belt, and roof strength concerns
§ 12A:17	Sample Interrogatories
§ 12A:18	Sample Interrogatories for a Chrysler Jeep rollover accident
§ 12A:19	Sample Interrogatories for a Ford F-150 rollover accident
§ 12A:20	Sample Request for Production for a Ford rollover accident
§ 12A:21	Sample Request for Production for a Ford Super Duty Truck rollover accident
§ 12A:22	Sample Request for Production for a Chrysler Jeep rollover accident
§ 12A:23	Sample Request for Production to a dealership for a Ford F-150 rollover accident

Volume 4

CHAPTER 13. TRUCKING ACCIDENT LITIGATION

I. ANALYSIS

Introduction and scope of chapter
Truck accident autopsy team
Electronic control modules (ECMs)
How a trucking company works
Federal Motor Carrier Safety Regulations (FMCSRs)
Coverage of the FMCSRs
Applicability of the FMCSRs
FMCSRs and State law
Commercial driver's license (CDL) and manual
Commercial driver's license (CDL)—Standard of care required of driver holding
Qualification of drivers

xlvi

§ 13:11	Alcohol and drug use and testing
§ 13:12	Hours of service (HOS) regulations
§ 13:12.20	-Evidence of violation sufficient to prove gross negligence
§ 13:12.40	of driver/driver's employer Hours of service (HOS) regulations'; Whether certain NY state agencies were enforcing electronic logging device (ELD) rule prior to its incorporation into state law; Answer No
§ 13:13	Inspection, maintenance, and repair of vehicles
§ 13:14	Minimum insurance requirements
§ 13:15	Identifying and investigating potential defendants
§ 13:16	Common types of trucking accidents
§ 13:17	Common negligence claims asserted against trucking companies
§ 13:18	Preservation letter
§ 13:19	FOIA letter
§ 13:20	Complaint
§ 13:21	Interrogatories to trucking company
§ 13:21.50	Alternate version; Interrogatories to trucking company
§ 13:22	Interrogatories (to the driver)
§ 13:23	Request for production to trucking company
§ 13:23.50	Alternate version; Request for production to trucking company
§ 13:24	Request for Production to driver
§ 13:25	Requests for admission to trucking company
§ 13:25.50	Alternate version; Requests for admission to trucking company
§ 13:26	Requests for admission to driver
§ 13:27	Miller v. C.H. Robinson Worldwide, Inc., et al., Brief of the American Association for Justice as Amicus Curiae in Support of Plaintiff-Appellant and Reversal, No. 19-15981, August 14, 2019, On Appeal from the United States District Court for the District of Nevada, Case No. 3:17-cv-00408-MMD-WGC

CHAPTER 13A. SLEEP APNEA IN TRUCKING ACCIDENT LITIGATION

I. ANALYSIS

§ 13A:1	Sleep apnea—Definition, prevalence, diagnosis, and
	treatment
§ 13A:2	Risks created when CMV driver suffers fatigue from
	sleep apnea
§ 13A:3	Federal regulations relevant to sleep apnea
§ 13A:4	Trucking industry awareness of dangers associated
	with apnea

§ 13A:5	The North American Fatigue Management Program (NAFMP)
§ 13A:6	Lawsuits for injuries from collisions caused by untreated sleep apnea
§ 13A:7	Pre-suit investigation and discovery in the sleep apnea case
§ 13A:8	Identifying CMV drivers with risk factors for obstructive sleep apnea
§ 13A:9	Police report of collision may contain relevant evidence
§ 13A:10	Requesting the CMV driver's Medical Examiner's Certificate
§ 13A:11	Requesting the CMV driver's Commercial Driver's License
§ 13A:12	Deposition of CMV driver
§ 13A:13	Timing your request for the CMV driver's medical records
§ 13A:14	Examining defendant CMV driver by an Independent Medical Examination
§ 13A:15	Discovery of the commercial motor carrier
II FOI	PMC

II. FURMS

§ 13A:16	Form pleadings
-	Complaint
§ 13A:18	Interrogatories to motor carrier.
§ 13A:19	Request for production of documents to motor
	carrier.
§ 13A:20	Truck driver deposition questions

CHAPTER 14. RAIL-HIGHWAY GRADE-**CROSSING LITIGATION**

I. INTRODUCTION

- § 14:1
- Evaluation of a rail-highway grade-crossing claim § 14:2

II. RAILROAD'S DUTIES

A. SOURCES OF RAILROAD'S DUTIES

- § 14:3 Common law
- § 14:4 State statutes and regulations
- § 14:5 Federal regulations and preemption of state law
- § 14:6 Railroad operating rules

xlviii

B. RAILROAD'S DUTIES AT PUBLIC CROSSINGS

§	14:7	Railroad's duty to install traffic control devices at rail-highway grade crossings
§	14:8	—Passive warning devices
§	14:9	—Active warning devices
§	14:10	Railroad's duty to maintain traffic control devices at rail-highway grade crossings—Passive warning devices
§	14:11	—Active warning devices
§	14:12	Railroad's duty to properly construct and maintain the surface of rail-highway grade crossings
§	14:13	Railroad's duty to remove sight obstructions at or near rail-highway grade crossings
§	14:14	Railroad's duty to install, inspect, test, and maintain locomotive equipment (horn, headlamp, auxiliary lights, and event recorder)
§	14:15	—Audible warning device
§	14:16	—Headlights and external auxiliary lights
§	14:17	—Event recorder
§	14:18	Railroad's duty to maintain proper lookout and take steps to avoid a collision
§	14:19	Railroad's duty to operate at a reasonable train speed during the approach to rail-highway grade crossings
§	14:20	Railroad's duty to increase railcar conspicuity or illuminate a grade crossing
§	14:21	Railroad's duty to close ultra-hazardous crossings
	C.	RAILROAD'S DUTIES AT PRIVATE CROSSINGS
§	14:22	In general

III. PUBLIC HIGHWAY AGENCIES' DUTIES

§ 14:23	In general
§ 14:24	Public highway agency's duty to install traffic control devices at rail-highway grade crossings, generally
§ 14:25	—Passive warning devices
§ 14:26	—Active warning devices
§ 14:27	Public highway agency's duty to maintain traffic control devices at rail-highway grade crossings
§ 14:28	Public highway agency's duty to properly construct and maintain the roadway approaches to rail- highway grade crossings
§ 14:29	Public highway agency's duty to remove sight obstructions on its right-of-way at or near rail-

IV. MOTORIST'S DUTIES

§ 14:30 Uniform vehicle code

V. DISCOVERY IN RAIL-HIGHWAY GRADE-CROSSING LITIGATION

§ 14:31	In general
§ 14:32	Spoliation of evidence
§ 14:33	Dispatcher tapes
§ 14:34	Event recorder data and RailView
§ 14:35	Geometry car videotapes
§ 14:36	Claims manual
§ 14:37	Investigation file
§ 14:38	
§ 14:39	—Attorney-client privilege
§ 14:40	— — Waiver of the asserted privileges—Failure to
	provide a privilege log
§ 14:41	———Review of privileged documents in
	preparation for deposition
§ 14:42	Section 409 privilege
§ 14:43	Documents relating to prior accidents
§ 14:44	Sworn discovery responses
§ 14:45	Requests for admissions
§ 14:46	Depositions—Misconduct during depositions, generally
§ 14:47	—Ex parte conferences during deposition breaks
§ 14:48	—Speaking objections
§ 14:49	—Instructing a witness not to answer
§ 14:50	—Sanctions
§ 14:51	—Use of depositions at trial
§ 14:52	Supplementation of discovery responses
§ 14:53	Motion to compel and/or for sanctions
§ 14:54	Evidence

VI. TRIAL OF A RAIL-HIGHWAY GRADE-CROSSING CASE

A. EXPERT WITNESSES

§ 14:55	Introduction
§ 14:56	Traffic engineer expert
§ 14:56.50	Expert report and resume of traffic engineer/safety expert—Motor vehicle collision with railway maintenance
	vehicle at grade crossing
§ 14:57	Train handling expert
§ 14:58	Signal system expert

TABLE OF CONTENTS

§	14:59 14:60 14:60.20	Track expert Audiology or visual expert Human factors expert
8		•
	В.	USE OF DEMONSTRATIVE EVIDENCE
§	14:62	Introduction Types of demonstrative evidence Admissibility issues
	C.	PUNITIVE DAMAGES
		In general Jury questions
V	II. F	ORMS
§	14:66	Complaint
§	14:67	Plaintiff's motion to require defendant railroad to secure and preserve evidence
§	14:68	[Proposed] order on plaintiff's motion to require defendant railroad to secure and preserve evidence
§	14:69	Plaintiff's motion for permission to file more than [limit] interrogatories to defendant railroad
§	14:70	[Proposed] order on plaintiff's motion for permission to file more than [limit] interrogatories to defendant railroad
§	14:71	Plaintiff's first set of interrogatories propounded to defendant railroad
§	14:71.50	Alternate version; Plaintiff's first set of interrogatories propounded to defendant railroad
§	14:72	Plaintiff's first request for production of documents propounded to defendant railroad
§	14:72.50	
§	14:72.60	
§	14:73	Notice to take deposition of defendant's Rule 30(b)(6) representative(s)
§	14:74	Plaintiff's notice to defendant railroad regarding use of depositions at trial
§	14:75	Plaintiff's notice of portions of depositions to be introduced as part of his case-in-chief
§	14:76	Jury instructions for rail-highway grade-crossing case—Relationship of employer and employee
§	14:77	—Crossbuck statute

§ 14:78	—Railroad duties regarding hazards at a crossing
§ 14:79	—Railroad's duties at an ultra-hazardous crossing
§ 14:80	—Railroad's duty to clear vegetation at crossings
§ 14:81	-Railroad's duty to maintain a lookout
§ 14:82	—Railroad's duty to sound locomotive horn
§ 14:83	Motorist's duties
§ 14:84	—Punitive damages

CHAPTER 15. TORT REFORM AND NO-FAULT LEGISLATION

I. TORT REFORM AND NO-FAULT LEGISLATION

§	15:1	Introduction
§	15:2	—History of "questions of fact" determinations
§	15:3	—Common law recoverable tort damages
§	15:4	—Common law recoverable tort damages; Economic damages
§	15:5	—Common law recoverable tort damages;
		Nonpecuniary harm/noneconomic damages
§	15:6	—Common law recoverable tort damages; Punitive damages
§	15:7	—Burden of proof and common law bars to recovery
§	15:8	Joint and several liability
§	15:9	—Historical significance of joint and several liability and the impetus for reform
§	15:10	—Modern-day reforms to joint and several liability
§	15:11	Rationale for and modifications to the collateral source rule
§	15:12	—What constitutes a collateral source
§	15:13	—Justifications for the collateral source rule
§	15:14	—Tort reform critiques of the collateral source rule
§	15:15	—Modern-day reforms of the collateral source doctrine
§	15:16	Limitations on damages for noneconomic loss
§	15:17	—Initial rationale for caps
§	15:18	-Modern-day reforms on noneconomic losses
§	15:19	—Effect of caps on tort law objectives
8	15:20	Punitive damages reform
§	15:21	—Heightened standard of conduct to recover punitive damages
§	15:22	—Required burden of proof to recover punitive damages
§	15:23	—Tort reform limits for punitive damages
§	15:24	No-fault legislation introduction and history

§ 15:25	—Types of no-fault systems
§ 15:26	Overcoming the no-fault threshold; Procedural
	barriers
§ 15:27	—Relevant case notes
§ 15:28	Overcoming the no-fault threshold; Substantive barriers
§ 15:29	—Relevant case notes
§ 15:30	Overcoming the no-fault threshold—Evidence sufficient
§ 15:31	—Evidence insufficient

II. FORMS

§ 15:32	Intake questionnaires
§ 15:33	Sample request to conduct medical examination
§ 15:34	Negligence complaint with tort threshold allegation
§ 15:35	Bill of particulars regarding "serious injury"
§ 15:36	Medical affidavit in support of serious injury claim
§ 15:37	Evidence checklist

CHAPTER 16. MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD)

I. OVERVIEW OF THE MUTCD

§ 16:1	Introduction
§ 16:2	History of the MUTCD
§ 16:3	Legal authority for the MUTCD
§ 16:4	Use of the MUTCD in litigation

II. 2023 EDITION OF THE MUTCD

§ 16:5	Part 1—General provisions of the 2023 MUTCD
§ 16:6	Part 2—Traffic, regulatory, and warning signs
§ 16:7	Part 3—Pavement markings
§ 16:8	Part 4—Highway traffic signals
§ 16:9	Part 5—Traffic control device considerations for
	automated vehicles
§ 16:10	Part 6—Temporary traffic control
§ 16:11	Part 7—Traffic control for school areas
§ 16:12	Part 8—Traffic control for railroad and light rail
	transit grade crossings
§ 16:13	Part 9—Traffic control for bicycle facilities

III. USE OF THE MUTCD IN LITIGATION

§ 16:14 The version of the MUTCD relevant to your lawsuit

- § 16:15 General use of MUTCD in litigation
- § 16:16 State immunity
- § 16:17 Cases addressing the MUTCD

CHAPTER 17. FEDERAL PREEMPTION IN TRANSPORTATION LITIGATION

- $\S 17:1$ General principles of federal preemption
- § 17:2 Preemption under Federal Motor Vehicle Safety Standards—Overview
- § 17:3 —Crashworthiness—Restraint Devices: Seatbelts, airbags, and child seats
- § 17:4 ——Roof strength
- § 17:5 Windshields and windows
- § 17:6 —Conspicuity
- § 17:7 —Miscellaneous issues and components
- § 17:8 Preemption in trucking litigation—Overview
- § 17:9 —Underride and trailer collisions
- § 17:10 —Workers' compensation
- § 17:11 —Miscellaneous issues
- § 17:12 Preemption for leased automobiles
- § 17:13 Preemption in rail-highway grade crossing litigation

Table of Laws and Rules

Table of Cases

Key Number Table

Index