
YOUR SHIPMENT HAS BEEN DELAYED: LIABILITY OF SHIPPERS AND CARRIERS FOR LOADING AND SECURING CARGO IN IOWA

ABSTRACT

In the modern mobile economy, shippers and carriers are necessary parties in the transportation of goods across the country. Every day, thousands of trucks and trailers haul massive volumes of cargo along public roadways. When such cargo is not properly loaded or secured, unfortunate accidents can occur. Liability may arise from damage to property, bodily injury, or even death. Iowa has traditionally abided by federal regulations and common law by placing liability on carriers for all but latent defects in loading and securing cargo. However, recent decisions from Iowa courts suggest that this doctrine is becoming disfavored in comparison to general comparative fault principles.

This Note proposes that shippers and carriers should both be held liable for damages resulting from improperly loaded or secured cargo. The modern expertise of both parties and rapid growth of the trucking industry require an equitable standard that promotes economic trade and roadway safety. Therefore, courts should abandon outdated precedent and align cargo-liability actions with comparative fault principles by apportioning liability between both carriers and shippers in consideration of the circumstances.

TABLE OF CONTENTS

I. Introduction	284
II. A History of Carrier–Shipper Liability	286
A. Foundation and Prevalence of Hauling in Iowa.....	286
B. Traditional Hauling Relationships in Iowa	289
C. The <i>Savage</i> Rule.....	291
D. Federal Regulations and Adoption in Iowa	295
III. Modern Shifts to Comparative Fault Liability and Changing Circumstances in Transportation in Iowa	298
IV. Justifying Change in Carrier–Shipper Liability in Light of a Mobile Economy, Evolving Professional Standards, and Public Policy Considerations.....	304
A. Growth and Transformation of the Trucking Industry	305
B. E-Commerce Demonstrates a Continuing Trend Toward a Fundamentally Mobile Economy.....	308
C. The Questionable State of the <i>Savage</i> Rule in the Modern U.S. Economy.....	310
V. Proposal	313

I. INTRODUCTION

Only four chains secured the cargo to the lowboy trailer, jingling lightly as the semi-truck barreled down the highway.¹ The freight in transit was a 32-ton industrial coal auger.² Based upon the weight of the cargo and strength of the chains, federal regulations required additional chains or chocks to ensure the cargo's stability.³ However, neither the carrier nor the shipper intervened to ensure that the auger was sufficiently secured for transportation.⁴ Thus, the carrier proceeded to haul the auger along a public roadway as normal.⁵ Speeding past traffic, the truck driver suddenly applied his brakes while navigating a curve.⁶ At this moment, the auger snapped free of the securing chains and careened across the median into oncoming traffic.⁷ The auger crushed the first passing vehicle in its path before colliding with a second vehicle, causing it to burst into flames.⁸ All three occupants of those vehicles—Carolyn Adkins, Larry Smallwood, and Dudley Williams—died.⁹ This horrific result could have been avoided by proper loading and securing of the cargo.

In these situations, when unsecured cargo causes property damage, injury, or death, who should be held liable: shippers or carriers? Traditionally, carriers have been held strictly liable.¹⁰ For all but latent defects in securing cargo, common law has placed the primary burden on carriers as professionals in the transportation industry.¹¹ Furthermore, a pervasive scheme of federal regulations provides specific guidelines

1. *Williams v. Commonwealth*, No. 2004-CA-000992-MR, 2005 WL 1994240, at *1 (Ky. Ct. App. Aug. 19, 2005).

2. *Id.* Currently, grade 120 cargo chains can be purchased for as little as \$8.49 per foot. *Grade 120 Chain Tie Down Transport 5/16" Per Foot*, MANUFACTURER EXPRESS, INC., <https://www.mfexpress.com/grade-120-chain-tie-down-transport-516-per-foot-p-1956.html> (last visited Dec. 23, 2018). Similarly, a rubber wheel chock currently costs as little as \$9.89. *8" Rubber Wedge-Style Wheel Chock*, US CARGO CONTROL, <http://www.uscargocontrol.com/Vehicle-and-Driver-Safety-Supplies/Wheel-Chocks-For-Trucks-And-Trailers/Rubber-Wheel-Chock-8-x-6-x-4> (last visited Dec. 23, 2018).

3. *Williams*, 2005 WL 1994240, at *1.

4. *Id.*

5. *Id.*

6. *Id.* at *1, *3.

7. *Id.* at *1.

8. *Id.*

9. *Id.*

10. *United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 445 (4th Cir. 1953).

11. *Id.*

and standards carriers must adhere to.¹² However, modern adoption of comparative fault in many jurisdictions has shifted some or all liability to shippers, who have become increasingly viewed as transportation professionals rather than mere lay contractors.¹³ Iowa, like many other states, has struggled to compromise a traditional view of the carrier–shipper relationship with contemporary approaches to tort liability.¹⁴ Now more than ever, when commercial trucking plays an ever-increasing role in the modern mobile economy, it is critical to reevaluate how courts apportion liability in these situations.¹⁵ In Part I, this Note reviews the history of carrier–shipper liability for damages resulting from improperly loaded or secured cargo and the origins of the specialized standard still formally used in Iowa, which puts all liability on the carrier. Part II discusses modern challenges and inconsistencies with this older precedent. The growth of the trucking industry has made transportation fundamental to the U.S. economy and has altered the relationship between carriers and shippers. Now that carriers and shippers often possess comparable knowledge and experience in loading and securing cargo, courts have questioned the reasoning used for holding only carriers liable for damages in most cases.¹⁶ Lastly, Part III proposes courts in Iowa affirmatively abandon strict liability for carriers in favor of a comparative fault analysis. This would align cargo-liability cases with the modern comparative fault framework and equitably apportion responsibility between carriers and shippers in consideration of the circumstances.¹⁷

12. 49 C.F.R. §§ 385, 390–99 (2018) (adopted in Iowa at IOWA ADMIN. CODE r. 761-520.1 (2018)).

13. *See, e.g.,* Smith v. HD Supply Water Works, Inc., No. 10-1459, 2011 WL 6655356, at *3–4 (Iowa Ct. App. Dec. 21, 2011).

14. *See id.* at *4.

15. *Reports, Trends, & Statistics*, AM. TRUCKING ASS'NS, http://www.trucking.org/News_and_Information_Reports.aspx (last visited Dec. 23, 2018) (“The trucking industry is the lifeblood of the U.S. economy. . . . Simply—without trucks, America stops.”); *Why Is Amazon Increasing Focus on Delivery?*, FORBES (Dec. 29, 2015), <https://www.forbes.com/sites/greatspeculations/2015/12/29/why-is-amazon-increasing-focus-on-delivery/#64e8de684c94> (“[A]n increasing number of consumers rely on e-commerce for their shopping needs . . .”).

16. *See Smith*, 2011 WL 6655356, at *1–2.

17. *See id.* at *4 (“A ‘special rule’ derived from federal common law, governing cargo in transport, should not foreclose [a carrier’s] opportunity to have a jury consider the question of [a shipper’s] negligence.”).

II. A HISTORY OF CARRIER–SHIPPER LIABILITY

A. *Foundation and Prevalence of Hauling in Iowa*

The trucking industry touches nearly every aspect of modern, mobile society; Iowa is no exception. In 2016, Iowa Governor Terry Branstad stated, “Our transportation and distribution supply chains have become safer, more efficient and more competitive. If you want to see evidence of the trucking industry’s impact, you need to look no further than the products in your own kitchen, the supplies in your offices, or the clothes on your back.”¹⁸ In fact, Iowa has the fourth highest concentration of heavy tractor–trailer truck drivers in the nation as of 2017.¹⁹ With 66,678 individuals employed in the industry in 2015, Iowa has seen consistent growth in the transportation field since 2009.²⁰ Drivers haul around 350,000 tons of cargo across Iowa on a daily basis.²¹ Annually, commercial trucks traverse nearly 85.2 billion miles within the state combined.²² The industry affects not just employment within the state but roadway safety and the flow of modern trade and economics.²³ More than 70 percent of Iowa communities are entirely reliant on the trucking industry to deliver basic products to their towns.²⁴ Iowa’s largest industries also depend on the success of trucking within the state, as the trucking sector is responsible for 83.7 percent of revenue generated in the

18. Dar Danielson, *Governor Rides in Big Rig to Highlight Trucking Industry*, RADIO IOWA (Sept. 16, 2016), <https://www.radioiowa.com/2016/09/16/governor-rides-in-big-rig-to-highlight-trucking-industry/>. Governor Branstad made this comment while celebrating Trucker Appreciation Week, during which he rode around the state capitol in a semi-tractor. *Id.*

19. *Occupational Employment and Wages, May 2017*, U.S. DEP’T LABOR, <https://www.bls.gov/oes/current/oes533032.htm> (last updated Mar. 30, 2018).

20. EMP’T STATS. BUREAU, IOWA WORKFORCE DEV., 2016 IOWA INDUSTRY PROFILE: TRANSPORTATION & WAREHOUSING 1–2 (2016), https://www.iowaworkforcedevelopment.gov/sites/search.iowaworkforcedevelopment.gov/files/documents/transportation_2016.pdf.

21. Danielson, *supra* note 18.

22. *Freight Shipments by State of Origin*, U.S. DEP’T TRANSP., <https://www.bts.gov/content/freight-shipments-state-origin> (last visited Aug. 25, 2018).

23. See Sean Kilcarr, *Why Amazon Dominates Freight World Discussions*, FLEET OWNER (Feb. 1, 2017), <http://www.fleetowner.com/blog/why-amazon-dominates-freight-world-discussions/>; *Truck Accidents During the Holidays*, GAUGE MAG. (Nov. 21, 2016), <http://gaugemagazine.com/truck-accidents-holidays/>.

24. Brenda Neville, *Why Trucking Matters to Iowa*, DES MOINES REG. (Sept. 8, 2016), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2016/09/08/why-trucking-matters-iowa/90065542/>. Furthermore, the trucking industry is responsible for delivering 1 out of every 13 paychecks within the state. *Id.*

commercial transportation industry.²⁵ However, the increase in trucks on public roadways has presented challenges to safety. In 2013, out of 317 total fatalities from motor vehicle crashes in Iowa, 69 fatalities involved a large truck or a bus.²⁶ In the interests of growing the economy and maintaining safe roadways, Iowa has closely regulated the relationship between carriers and shippers to ensure vehicle stability and accountability for damages.²⁷

Within the trucking industry, carriers are generally viewed as the professional party and subject to more specific regulations, expectations, and duties.²⁸ Iowa conforms to this standard, with the Iowa Council of Safety Management tasked with promoting “professionalism and safety in the trucking industry” among its network of carriers.²⁹ Iowa’s very definition of a commercial motor carrier is “a person responsible for the safe operation

25. *The Surprising Statistics & Trends of Trucking*, IOWA MOTOR TRUCK ASS’N (Apr. 27, 2017), <http://www.iowamotortruck.com/imta-news-center.cfm/Article/General-Trucking-News/The-Surprising-Statistics--Trends-of-Trucking/2017-4-27>. The remaining transportation sectors generate far less revenue: rail at 5.6 percent, pipeline at 4.6 percent, plane at 3.2 percent, rail intermodal at 1.5 percent, and boat at 1.4 percent. *Id.*

26. IOWA DEP’T TRANSP., CRASH FACTS 2013, at 220–21 (2018), <https://iowadot.gov/mvd/stats/2013CrashFacts.pdf>; IOWA DEP’T TRANSP., IOWA MOTOR VEHICLE CRASHES—1925 TO 2016, at 1–2 (2018), <https://iowadot.gov/mvd/stats/crashhistory.pdf>; U.S. DEP’T OF TRANSP. & FED. MOTOR CARRIER SAFETY ADMIN., 2017 POCKET GUIDE TO LARGE TRUCK AND BUS STATISTICS 36 (2017), <https://rosap.ntl.bts.gov/view/dot/32393>. Fatal accidents are not uncommon with large trucks. Recently, a truck driver from Pleasantville, Iowa, was killed on I-80 when his semi-truck collided with two other semi-trucks. *UPDATE: Fatality Reported in I-80 Crash near West Branch*, KWQC-TV6 (Dec. 29, 2017), <http://www.kwqc.com/content/news/I-80-eastbound-is-closed-from-the-West-Branch-exit-to-the-West-Liberty-exit-in-Iowa-due-to-an-accident-467161783.html>.

27. *See, e.g.*, IOWA ADMIN. CODE r. 761-520.1 (2018).

28. *See, e.g.*, *United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 446 (4th Cir. 1953).

29. *Iowa Council of Safety Management*, IOWA MOTOR TRUCK ASS’N, <http://www.iowamotortruck.com/iowa-council-of-safety-management.cfm> (last visited Dec. 23, 2018). The Iowa Truck Driving Championships is an annual event put on by the Iowa Motor Truck Association specifically to recognize professionalism “among Iowa’s finest drivers.” *Truck Driving Championships*, IOWA MOTOR TRUCK ASS’N, <http://www.iowamotortruck.com/events.cfm?eventid=0F5F2C6D-155D-00D3-0378-9912714B7B7D> (last visited Dec. 23, 2018). As seen in video documentation of the 2018 championship, drivers are tasked with handling simulated safety exercises and given a small gold trophy that can be attached to their trucking caps for their success. *Transp. Topics, Iowa Truck Driving Championships*, YOUTUBE (June 21, 2018), <https://www.youtube.com/watch?v=nvPndv8UaiQ>.

of a commercial motor vehicle.”³⁰ Thus, a carrier is unquestionably tasked with conveying cargo from point A to point B safely. As the perpetual middleman of economics, the transportation industry broadly hinges on the ability of carriers to do their jobs with care and diligence. Carriers such as Heartland Express, Panama Transfer, and TMC Transportation are just a few prominent carriers established in Iowa that must meet stringent standards in their operations.³¹ The *Iowa Truck Information Guide* provides mandatory guidelines on licensing, testing, vehicle dimensions, vehicle weight, registration, fuel, insurance, logbooks, training, inspections, and many more regulations that carriers must comply with.³² The *Information Guide* provided to all carriers by the Iowa Department of Transportation (DOT) contains 82 pages summarizing applicable rules and regulations.³³ Even then, the Iowa DOT disclaims, “[I]t is not possible to include every rule and regulation that may apply.”³⁴

A shipper, on the other hand, is defined only as “a person who tenders property to a motor carrier or driver of a commercial motor vehicle for transportation in interstate commerce.”³⁵ As this dichotomy suggests, shippers have traditionally been viewed in Iowa as lay parties merely contracting with carriers for the safe transportation of their goods.³⁶ This standard was set at a time when shippers were often individuals with no experience in the transportation industry.³⁷ However, modern shippers often assume responsibility for loading and securing their own shipments.³⁸

30. IOWA CODE § 321.1(11)(e) (2017).

31. EMP’T STATS. BUREAU, IOWA WORKFORCE DEV., *supra* note 20, at 3.

32. IOWA DEP’T OF TRANSP., IOWA TRUCK INFORMATION GUIDE 3 (2017), <https://www.iowadot.gov/mvd/motorcarriers/truckguide.pdf>.

33. *Id.* at 1.

34. *Id.*

35. 49 C.F.R. § 390.5 (2018).

36. *See id.*

37. *See* Wiersma v. Chi. & N.W. Ry. Co., 238 N.W. 579, 579–80 (Iowa 1931).

38. Terry Morgan, *Loading and Unloading, Who Is Responsible?*, N. AM. TRANSP. ASS’N, http://ntassoc.com/Loading_and_Unloading_-_Who_is_Responsibile.aspx (last visited Dec. 23, 2018) (“Frequently, the shipper will load the trailer, secure the freight, and apply a seal to the trailer doors. The driver or a representative of the carrier is frequently not present at the time of loading, and many times . . . the shipper may not permit drivers on the loading dock.”). Carriers may insist on a form of indemnity from shippers in these situations known as “shipper’s load and count.” *Id.* However, this does not release carriers from liability to third parties for damages caused by improper loading and securement of cargo. *See* U.C.C. § 7-301(e) (AM. LAW INST. & UNIF. LAW COMM’N 2003).

Carriers routinely are not allowed on loading docks at shipping facilities, receiving no opportunity to inspect cargo before the trailer doors are sealed.³⁹ Even when carriers are permitted to inspect the loading performed by shippers, the shrink-wrapping of goods, the stacking of pallets, and the necessity of a forklift to move certain bundles can preclude carriers from being able to inspect thoroughly.⁴⁰ Moreover, shippers are often more familiar with the fragility of the cargo and best loading procedures to ensure stability.⁴¹ However, despite immense growth and change in the transportation industry, the old dynamic of carriers as professionals and shippers as laymen remains enshrined in the law.⁴²

B. *Traditional Hauling Relationships in Iowa*

The practice of apportioning all liability to the carrier and none to the shipper has remained markedly consistent in Iowa for over a century.⁴³ One of Iowa's earliest cargo-transportation disputes arose in 1928 in *Wiersma v. Chicago & Northwest Railway Co.*⁴⁴ The shipper was a farmer who loaded two box cars with horses to be transported from Sioux City, Iowa, to Fort

39. Morgan, *supra* note 38.

40. *Pre-Loaded Trailers: Tips for Avoiding Liability Issues*, REFRIGERATED TRANSPORTER (Sept. 1, 2008), <http://www.refrigeratedtransporter.com/carriers/pre-loaded-trailers-tips-avoiding-liability-issues>. A common reason to deny carriers access to loading docks is fear of potential liability for injuries that may occur while on the property of the shipper.

41. *Id.* For instance, a tire warehouse that regularly ships tires would likely be more familiar with the various methods of tire securement—on-tread, lacing, and barrel stacking—than any given carrier who hauls a wide variety of cargo. See Martin Depelteau, *Tires on the Tread, Barrel Stacked or Laced: Which Is the Best?*, MARTINS INDUS., <https://martinsindustries.com/en/tires-tread-barrel-stacked-laced-best/> (last visited Dec. 23, 2018).

42. See *United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 445 (4th Cir. 1953); 49 C.F.R. § 392.9 (2018).

43. *Kinnick v. Chi., Rock Island & Pac. Ry. Co.*, 29 N.W. 772, 774 (Iowa 1886). In *Kinnick v. Chicago, Rock Island & Pacific Railway Co.*, a train transporting plaintiff's hogs was delayed, causing many of the hogs to die or become severely injured. *Id.* at 773. The defendant carrier claimed the delay was unavoidable and the plaintiff was at fault for overloading the car. *Id.* However, the court found the carrier strictly liable. *Id.* at 774. The carrier should have loaded the car in such a way as to accommodate any delays. *Id.* Furthermore, the carrier had the final responsibility of examining and sealing the car before departure to ensure safe transportation. *Id.* Therefore, the carrier was at fault for the damages to the plaintiff. *Id.*

44. *Wiersma v. Chi. & N.W. Ry. Co.*, 238 N.W. 579, 579 (Iowa 1931).

Pierre, South Dakota.⁴⁵ The carrier arrived late at night and was only able to inspect the load by lantern light through the slats of the box car.⁴⁶ Upon unloading, it was discovered that several of the horses had died due to overcrowding.⁴⁷ Despite the fact that the shipper had loaded the cargo independently and the overloading of the box cars caused the property damage, the court found, “There was nothing to prevent [the carrier] from seeing the manner in which it was loaded. As [the carrier] received the property under these circumstances, and undertook to transport it to its destination, it should be held to have assumed all the liability of a common carrier.”⁴⁸ In examining the cargo and electing to seal the car for transport, the carrier affirmed the loading done by the shipping farmer and became responsible as a carrier.⁴⁹ Therefore, because the duty of a carrier is to transport property safely, the court held that the carrier in this matter failed to properly transport the horses and was liable for all damages therein.⁵⁰ This result was appropriate given the transportation industry in 1928, when the carrier was a transportation professional and the shipper was a farmer who likely had no expertise in the industry.⁵¹

However, this standard of carrier liability has remained in Iowa despite decades of change in the transportation industry since the time of the *Wiersma* decision.⁵² While the carrier in *Wiersma* was in a better position than the shipping farmer to evaluate the loading procedure, this expert-laymen dynamic is not typical of most modern carrier/shipper dealings.⁵³ In the modern transportation scheme—in which shippers and carriers often possess equal expertise—this practice of placing all liability upon the carrier could be considered harsh.⁵⁴ Despite this change within the industry, widely adopted federal common law and a detailed federal regulatory scheme both reinforce and encourage this specialized standard of liability.⁵⁵

45. *Id.*

46. *Id.* at 580.

47. *Id.*

48. *Id.* (quoting *Kinnick*, 29 N.W. at 774).

49. *See id.*

50. *Id.*

51. *See id.* at 579.

52. *See id.* at 580; *Smith v. HD Supply Water Works, Inc.*, No. 10-1459, 2011 WL 6655356, at *1 (Iowa Ct. App. Dec. 21, 2011).

53. *Wiersma*, 238 N.W. at 579–80; *Morgan*, *supra* note 38.

54. *See Morgan*, *supra* note 38.

55. *See United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 445 (4th Cir. 1953); 49 C.F.R. § 392.9 (2018).

C. *The Savage Rule*

United States v. Savage Truck Line, Inc. established the common law approach to carrier–shipper liability in loading and securing cargo in 1953, a standard still applied throughout the nation and in Iowa today.⁵⁶ In *Savage Truck Line, Inc.*, the carrier executed a contract with the shipper, the federal government, to transport six airplane engines encased in cylindrical containers, each weighing 5,000 pounds.⁵⁷ However, the cargo was not properly secured to the bed of the trailer.⁵⁸ While the truck rounded a curve, the engines shifted and pulled the truck into the oncoming lane of traffic.⁵⁹ The driver hastily corrected back into the proper lane, whipping one of the engines off the trailer.⁶⁰ The cargo then struck an oncoming semi-truck with such force that it crashed through the side of the vehicle and knocked the entire semi-truck on its side.⁶¹ The driver—Bernard Harris of Brooks Transportation—was killed on impact.⁶²

Finger-pointing immediately ensued between the carrier and the shipper as to who was liable for the destruction to the airplane engine, vehicular damage, and, most importantly, the wrongful death resulting from the poorly secured cargo.⁶³ The court examined the terms of the contract between the parties, the scheme of federal regulations, and common law rules regarding the carrier–shipper relationship.⁶⁴ Finding no apportionment of liability in the contract, the court defaulted to the federal regulations in force at the time.⁶⁵ The controlling statute, 49 U.S.C. § 20(11) (a less detailed predecessor to current transportation regulations), held common carriers liable to shippers for any loss, damage, or injury resulting during transportation.⁶⁶ This standard of absolute statutory liability to carriers had

56. *Savage Truck Line, Inc.*, 209 F.2d at 445; e.g., *Smith*, 2011 WL 6655356, at *1–2.

57. *Savage Truck Line, Inc.*, 209 F.2d at 443.

58. *Id.* at 443–44.

59. *Id.* at 443.

60. *See id.*

61. *Id.* at 444.

62. *Id.* at 443.

63. *See id.* at 444.

64. *Id.* at 445.

65. *Id.*

66. *Id.*; 49 U.S.C. § 20(11) (1953).

only a few common law exceptions: “acts of God, acts of the public enemy, the inherent nature of the goods, and acts of the shipper.”⁶⁷

The factual findings in *Savage Truck Line, Inc.* indicate that the government shipper loaded the engines onto the trailer and secured the cargo when the carrier was not present.⁶⁸ Despite this fact, the court noted, “It has been held in sweeping terms that the duty rests upon the carrier to see that the packing of goods received by it for transportation is such as to secure their safety.”⁶⁹ The court leans on the inherent nature of the services a carrier provides—the safe transportation of goods.⁷⁰ By contracting as a carrier, a party implicitly certifies that it is capable of safely hauling the shipper’s property from one destination to another.⁷¹ The court concluded:

The primary duty as to the safe loading of property is therefore upon the carrier. When the shipper assumes the responsibility of loading, the general rule is that he becomes liable for the defects which are latent and concealed and cannot be discerned by ordinary observation by the agents of the carrier; but if the improper loading is apparent, the carrier will be liable notwithstanding the negligence of the shipper.⁷²

While the shipper failed to reasonably secure the engines, the carrier similarly failed to reasonably inspect the cargo while “having knowledge of the nature of the cargo and the method of its loading and securing.”⁷³ Not only does the inherent nature of carriers render absolute liability, but the court implies that carriers are a more professional party with experience in transportation.⁷⁴ The carrier in this case should have been aware of the dangers of transporting airplane engines and reflected that risk in its

67. *Savage Truck Line, Inc.*, 209 F.2d at 445. Courts have been remiss to exercise these exceptions, refusing to include obstruction by domestic criminals as “acts of the public enemy” or unusually heavy rains resulting in floods as an “act of God.” *See* S. Pac. Co. v. Loden, 508 P.2d 347, 349 (Ariz. Ct. App. 1973) (detailing how a shipment of cucumbers perished when the carrier was delayed by flooding); *David Crystal, Inc. v. Ehrlich–Newmark Trucking Co.*, 314 N.Y.S.2d 559, 560 (Civ. Ct. 1970) (discussing how a truck driver failed to deliver cargo after his truck was hijacked in New York City).

68. *Savage Truck Line, Inc.*, 209 F.2d at 445.

69. *Id.*

70. *See id.*

71. *See id.*

72. *Id.*

73. *Id.* at 446.

74. *Id.* (stating the cargo was “entrusted” to the carriers who have a greater knowledge of the nature of the cargo and methods of loading and securing such cargo).

inspection and driving.⁷⁵ Carriers, according to the *Savage Truck Line, Inc.* court, are in a better position to identify issues in the loading and securing of goods to prevent property damage, injury, and loss of life.⁷⁶

When discussing indemnity, the court acknowledged that the “equitable principle of contribution is generally recognized except where the wrongdoers commit an intentional wrong or an action which is *malum in se*.”⁷⁷ *Malum in se* is defined as being “inherently and essentially evil, that is, immoral in its nature.”⁷⁸ This legal concept dates back to 1400s England as a category of crimes which kings could not absolve, as the acts themselves were offensive to the eternal law of God.⁷⁹ The *Savage Truck Line, Inc.* court, finding that the “gravity of the faults” strongly weighed against the carrier, deemed it equitable to “throw the whole loss” upon the carrier and deny contribution.⁸⁰

The *Savage* rule has since become the common law baseline for liability throughout the nation, including Iowa.⁸¹ In *Vargo-Schaper v. Weyerhaeuser Co.*, a truck driver was killed after opening the doors of his truck at the end of his route and being struck by falling pallets of cargo that had shifted in transit.⁸² The cargo consisted of 52 bundles of flattened cardboard boxes,

75. *Id.* The court’s analysis here begs a few questions: Was the shipper, the U.S. government, not also aware of the risks involved in this transportation? Was it wrong of the shipper to trust the judgment of the government that the load was secure? Beyond simple examination of the carrier–shipper dynamic, is the knowledge and experience between the parties in this case so disparate as to place all the fault on the carrier? *Id.*

76. *See id.*

77. *Id.* (citing *Wash. Gaslight Co. v. District of Columbia*, 161 U.S. 316, 327–28 (1896)). If this statement is true, shippers should be liable as contributors unless the carrier commits an intentional wrong or an action of high moral turpitude. Is it fair to say that either of these exceptions occurred in the *Savage Truck Line, Inc.* case or in the failures of carriers broadly to properly inspect the loading and securing of cargo? *Id.*

78. *Malum in se*, BLACK’S LAW DICTIONARY (6th ed. 1990). Murder, rape, robbery, and other crimes of intimate violence are often grouped within this category. Stephen P. Garvey, *Was Ellen Wronged?*, 7 CRIM. L. & PHIL. 185, 195 (2013).

79. WILLIAM HAWKINS, A TREATISE OF THE PLEAS OF THE CROWN 625 (Arno Press ed. 1972) (1721).

80. *Savage Truck Line, Inc.*, 209 F.2d at 447.

81. *E.g.*, *Vargo-Schaper v. Weyerhaeuser Co.*, 619 F.3d 845, 848–49 (8th Cir. 2010).

82. *Vargo-Schaper*, 619 F.3d at 847–48. The circumstantial evidence suggested that the driver—Mitchell Schaper—was fatally wounded by the falling cargo but managed to climb back into the cab of his truck where he was found unconscious. *Id.* Schaper died of his injuries days later. *Id.*

each of which contained 600 boxes and weighed around 372 pounds.⁸³ Despite the fact that the banded cardboard did not form an exact cube, the shipper who loaded the bundles had not secured the bundles to the pallets.⁸⁴ The court applied the *Savage* rule, stating that the doctrine “reflects the practice and understanding in the trucking industry as to carriers having final responsibility for the loads they haul.”⁸⁵ The carrier, failing to evidence any latent and undiscoverable defect in the loading and securing of the cargo, was therefore absolutely liable for the death of the driver.⁸⁶ While the shipper was negligent in its loading, the defect was obvious and should have been corrected by the carrier before transport.⁸⁷

While the original *Savage* rule listed very limited exceptions, common law has whittled away at the often harsh standard.⁸⁸ As the court in *Vargo-Schaper* explained, courts often consider the experience of the carrier, assurances given by the shipper that the load is safe for transit, and acts of the shipper in failing to inform the driver.⁸⁹ For instance, a driver who regularly hauls shipments of bicycles would bear a higher burden due to his or her presumed knowledge of proper loading and securing procedures for bicycles.⁹⁰ Likewise, a shipper who repeatedly assures a carrier that a cargo load is adequately stable or refuses to allow the carrier thorough inspection opens itself up to greater liability.⁹¹ These exceptions do not negate the duty placed on carriers but instead serve to lower the harsh standard intended to compel carriers to take greater care in inspecting cargo before departure.⁹² These factors also reflect the reality of modern shipping practices: that carriers and shippers have differing levels of experience and rely on the representations of one another concerning the load’s stability.⁹³ While this may be a more equitable solution, it could be argued that carriers would be less incentivized to send qualified carriers under these circumstances and shippers would be deterred from communicating with carriers about the

83. *Id.* at 847.

84. *Id.* at 847–48.

85. *Id.* at 849.

86. *Id.*

87. *Id.*

88. *See id.*

89. *Id.*

90. *See id.*

91. *See id.*

92. *See id.*

93. *See id.*

status of the cargo. Consideration of these factors shows that the common law may have taken a step away from full implementation of the *Savage* rule in recent years, but federal and state regulations have contrastingly retained strict regulations on carriers.⁹⁴

D. Federal Regulations and Adoption in Iowa

The Iowa Department of Transportation has officially adopted the carrier regulations created by the Federal Motor Carrier Safety Regulations in 49 C.F.R. Parts 385 and 390 through 399.⁹⁵ These federal statutes apply to motor carriers, defined as “person[s] engaged in the transportation of goods . . . for compensation.”⁹⁶ The adopted 49 C.F.R. § 392.9 states, “A driver may not operate a commercial motor vehicle . . . unless . . . [t]he commercial motor vehicle’s cargo is properly distributed and adequately secured.”⁹⁷ Cargo is considered secure when it is immobilized, is sufficiently close to the vehicle’s walls or other articles, or uses appropriate securing devices such that the cargo cannot “shift or tip to the extent that the vehicle’s stability or maneuverability is adversely affected.”⁹⁸

Furthermore, a driver must ensure cargo is adequately secured, inspect the cargo and securing devices within the first 50 miles, periodically reexamine the cargo, and make any adjustments necessary to prevent the cargo from shifting or falling.⁹⁹ Such reexaminations must occur when the driver makes a change of his or her duty status, the vehicle has been driven for three hours, or the vehicle has been driven for 150 miles, whichever occurs first.¹⁰⁰ However, these rules do not apply when the cargo is sealed and the driver is not given an opportunity to inspect the cargo or when inspection of the cargo is impracticable.¹⁰¹ Cargo must be firmly immobilized

94. See IOWA ADMIN. CODE r. 761-520.1 (2018); 49 C.F.R. § 392.9 (2018).

95. IOWA ADMIN. CODE r. 761-520.1.

96. 49 C.F.R. § 390.5.

97. *Id.* § 392.9(a)(1).

98. *Id.* § 393.102(c). Note that these regulations focus less on the protection of property and more so on ensuring road safety. See generally *id.* Federal regulations primarily seek to enable a system of safe interstate commerce while leaving issues of property to private contracts. See generally *United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 445 (4th Cir. 1953).

99. 49 C.F.R. § 392.9(b)(2).

100. *Id.* § 392.9(b)(3).

101. *Id.* § 392.9(b)(4). As is often the case, carriers bring an empty truck (colloquially referred to as a *deadhead*) to a shipping facility where warehouse employees load and secure the cargo. *Everything Truck Drivers Need to Know About Deadhead*, TRUCKER

by structures of adequate strength, dunnage, dunnage bags, tiedowns, shoring bars, or a combination of these.¹⁰² Furthermore, “Articles of cargo that are likely to roll must be restrained by chocks, wedges, a cradle or other equivalent means to prevent rolling.¹⁰³ The means of preventing rolling must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit.”¹⁰⁴

The requirements of the Federal Motor Carrier Safety Administration (FMCSA) are reflected throughout the industry. The FMCSA has partnered with the American Association of Motor Vehicle Administrators (AAMVA), a nongovernmental, nonprofit educational association, in order to implement safety education on a state level.¹⁰⁵ The groups aim to “[r]aise the safety bar to enter the industry[,] [r]equire high safety standards to operate, [and r]emove high-risk carriers, drivers, and vehicles from the road.”¹⁰⁶ Through this program, uniform safety guidance on prominent issues such as cargo securement has been provided to carriers in all 50 states and territories.¹⁰⁷ Testing in Iowa to acquire a commercial driver’s license to operate a truck or bus is based on the information included in the *Commercial Driver’s License (CDL) Manual* provided by the AAMVA.¹⁰⁸

PATH (Jan. 20, 2017), <https://truckerpath.com/blog/what-is-deadhead/>. Carriers routinely are not permitted entrance to shipping facilities for liability reasons and either allowed inspection only upon completion of the loading process or not at all. Morgan, *supra* note 38. It is often impracticable to assess the security of cargo once a truck is already full, since there is no room to navigate inside of the truck or even see cargo that has been entirely obstructed. *Id.* Therefore, shippers are liable in these situations for either fully assuming the loading and securing of the cargo or preventing reasonable inspection by the carrier. *Id.*

102. 49 C.F.R. § 393.106(b).

103. *Id.* § 393.106(c)(1).

104. *Id.*

105. ANNE FERRO, FED. MOTOR CARRIER SAFETY ADMIN., FMCSA & AAMVA PARTNERSHIP UPDATE 3 (2013), https://www.aamva.org/uploadedFiles/MainSite/Content/EventsEducation/Event_Materials/2013/2013_Region_I_Conference/Tuesday_July_16/1%20-%20A.%20Ferro%20-%20AAMVA_Region%20I%20Conference_71613_final%20version.pdf; *Who Is AAMVA?*, AM. ASS’N MOTOR VEHICLE ADMINS., <https://www.aamva.org/about-aamva/> (follow “General Information” hyperlink) (last visited Nov. 15, 2018).

106. FERRO, *supra* note 105, at 3.

107. *See, e.g.*, AM. ASS’N OF MOTOR VEHICLE ADM’RS, COMMERCIAL DRIVER LICENSE MANUAL (2010), <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/2005%20CDL%20DRIVER%20MANUAL%20FINAL%20July%202010.pdf>.

108. *Commercial Driver’s Manual in Iowa*, IOWA DEP’T MOTOR VEHICLES, <https://www.dmv.com/ia/iowa/cdl-manual> (last updated Nov. 2, 2017).

According to the Iowa Department of Motor Vehicles, this manual “provides the information you need to know in order to pass your tests and drive safely” in addition to helping carriers “drive responsibly and safely.”¹⁰⁹ Like the FMCSA federal regulations, the *CDL Manual* places the primary burden of loading and securing cargo upon the carrier, the party most easily regulated:¹¹⁰

If you load cargo wrong or do not secure it, it can be a danger to others and yourself. . . . Whether or not you load and secure the cargo yourself, you are responsible for: [i]nspecting your cargo[,] [r]ecognizing overloads and poorly balanced weight[,] [k]nowing your cargo is properly secured and does not obscure your view ahead or to the sides[,] [k]nowing your cargo does not restrict access to emergency equipment.¹¹¹

The manual goes on to elaborate on specific securing procedures, inspections, and equipment necessary to ensure cargo safety.¹¹² These guidelines are issued with every trucking license in Iowa, showing a public policy favoring safe roadways and diligent hauling within the state.¹¹³

The professional dynamic between carriers and haulers has historically saddled carriers with liability.¹¹⁴ Both the common law *Savage* rule and federal regulations have reflected these values, which have been adopted in Iowa.¹¹⁵ Carrier liability has been firmly established by history, the courts, and the legislature.¹¹⁶ This clear approach to carrier–shipper liability in cargo-related injuries and deaths has withstood the test of time. However, in

109. *Id.*

110. AM. ASS’N OF MOTOR VEHICLE ADM’RS, *supra* note 107, at 3-1; *see* 49 C.F.R. § 392.9(1) (2018).

111. AM. ASS’N OF MOTOR VEHICLE ADM’RS, *supra* note 107, at 3-1.

112. *Id.*

113. *See Commercial Driver’s Manual in Iowa, supra* note 108. Last year, Iowa Governor Kim Reynolds created a CDL education app for smartphones in an effort to encourage more people to enter the trucking industry and keep existing drivers well trained. *Gov. Reynolds Unveils New App for Commercial Driver’s License Testing Prep*, IOWA.GOV, <https://governor.iowa.gov/2018/01/gov-reynolds-unveils-new-app-for-commercial-driver%E2%80%99s-license-testing-prep> (last visited Dec. 24, 2018).

114. *See Kinnick v. Chi., Rock Island & Pac. Ry. Co.*, 29 N.W. 772, 774 (Iowa 1886).

115. *See* IOWA ADMIN. CODE r. 761-520.1 (2018); *United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 445 (4th Cir. 1953); 49 C.F.R. § 392.9(1).

116. *See* IOWA ADMIN. CODE r. 761-520.1; *Savage Truck Line, Inc.*, 209 F.2d at 445; 49 C.F.R. § 392.9(1).

recent years, courts have shied away from a default focus on the carrier, providing for some consideration of the circumstances involved.¹¹⁷ Furthermore, wide adoption of comparative fault principles has spurred further debate about the validity of the *Savage* rule.¹¹⁸ In Iowa and other states that have reevaluated their fundamental approach to civil liability, stale doctrines such as the *Savage* rule are currently undergoing reevaluation, reinterpretation, and outright abandonment.¹¹⁹

III. MODERN SHIFTS TO COMPARATIVE FAULT LIABILITY AND CHANGING CIRCUMSTANCES IN TRANSPORTATION IN IOWA

The Iowa Court of Appeal's analysis of the *Savage* rule in *Smith v. HD Supply Water Works, Inc.* strongly indicates a judicial trend toward comparative fault and away from the *Savage* rule of liability for unsecured cargo.¹²⁰ In *Smith*, a carrier delivered a bundle of large fiberglass pipes to the shipper, HD Supply.¹²¹ The bundle consisted of eight pipes, weighing 690 pounds each.¹²² An employee of HD Supply used a forklift to unload the entire bundle of pipes from the flatbed, bring seven pipes into the stockyard, and then reload a single pipe back onto the flatbed for delivery to a second facility.¹²³ The employee then left without securing the pipe in any fashion.¹²⁴ The driver for the motor carrier began to use tie-down straps to secure the pipe by latching the straps on one side of the bed and then throwing them over the pipe to the other side of the bed.¹²⁵ The driver then crawled underneath the trailer to the other side to synch the strap tightly on the opposite side of the bed.¹²⁶ As the driver peeked out from below the side of the trailer, he realized the pipe was slowly rolling off the bed.¹²⁷ Despite scrambling to avoid the falling cargo, the driver was unable to escape.¹²⁸ The

117. *Vargo-Schaper v. Weyerhaeuser Co.*, 619 F.3d 845, 849 (8th Cir. 2010).

118. *Smith v. HD Supply Water Works, Inc.*, No. 10-1459, 2011 WL 6655356, at *1 (Iowa Ct. App. Dec. 21, 2011).

119. *See, e.g., id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* (describing how an employee rushed inside because it was "cold out").

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

pipe landed on his torso, pinning him to the ground.¹²⁹ While the driver survived, his legs were crushed.¹³⁰

The *Smith* court refers to the *Savage* rule as a “half-century-old federal common-law rule” and states that it “runs counter to the modern tort principles adopted by our supreme court and the comparative fault provisions enacted by our legislature.”¹³¹ The court then distinguishes *Savage* as an indemnity case, focusing on active versus passive negligence.¹³² However, the Iowa Supreme Court has previously determined that indemnity based upon active–passive negligence “does not fit within our statutory network of comparative fault. . . . [L]iability should be assessed and apportioned according to fault Additionally, it is difficult to decide what constitutes active negligence versus passive negligence. Our comparative fault principles more accurately apportion the loss to the responsible party.”¹³³ The court found that questions of negligence and liability are typically left to the fact finder in Iowa, citing authority that modifies the traditional interpretation of the *Savage* rule.¹³⁴

However, the *Smith* court pads its outcome with factual distinctions that make its ultimate conclusion on the validity of the *Savage* rule unclear.¹³⁵ The decisions in *Savage* and its progeny were partly rendered under federal regulations requiring carriers to ensure the stability of cargo before transit.¹³⁶ However, the carrier in *Smith* was still at the shipper’s facility and had not

129. *Id.*

130. *Id.*

131. *Id.* Even harsher criticism of the *Savage* rule exists elsewhere. The Supreme Court of Missouri expressed that even if the *Savage* case was not distinguishable from the case before it, “we do not agree with the decision and would not care to follow it because it, in large part, is based upon the principle that the joint tort-feasor who had the last clear chance to avoid the casualty should indemnify the other. That principle has never been followed in this state and, in fact, was expressly rejected” *Johnson v. Cal. Spray-Chem. Co.*, 362 S.W.2d 630, 635 (Mo. 1962).

132. *Smith*, 2011 WL 6655356, at *3.

133. *Am. Tr. & Sav. Bank v. U.S. Fid. & Guar. Co.*, 439 N.W.2d 188, 190 (Iowa 1989).

134. *Smith*, 2011 WL 6655356, at *3 (citing *Spence v. ESAB Grp., Inc.*, 623 F.3d 212, 220 (3d Cir. 2010) (“*Savage* did not hold that the *exclusive* duty to secure cargo against movement during transit rests with the carrier. Instead, it recognized that the carrier, the party in the best position to know about the handling characteristics of its vehicles, has the *primary* obligation”)).

135. *Id.*

136. *Id.*

yet begun transporting the pipe.¹³⁷ Therefore, the driver may not have had a “sufficient opportunity to fulfill his ‘final responsibility’ to examine the load.”¹³⁸ Thus, the case in *Smith* was not decided under the scheme of applicable statutory regulations typically applied to carrier–shipper liability and falls short of affirmatively invalidating *Savage* in Iowa.¹³⁹ However, the court still recognized that doctrines requiring “special assignment of liability,” such as the *Savage* rule, must be reevaluated in light of Iowa’s “recent embrace of the Restatement (Third) of Torts,” which states the “general rule that every person owes a duty to exercise reasonable care to avoid injuring others.”¹⁴⁰

In its ruling, the *Smith* court refers directly to its decision in *Thompson v. Kaczinski* in 2009 (just two years earlier), which formally adopted a scheme of comparative fault within the state.¹⁴¹ The *Thompson* case affirmatively established the *Restatement (Third) of Torts* approach to civil liability, dispelling with many special liability standards and antiquated common law distinctions.¹⁴² Instead, the court established that liability for failure to exercise reasonable care is determined by considering three factors: “(1) the relationship between the parties, (2) reasonable foreseeability of harm to the person who is injured, and (3) public policy considerations.”¹⁴³ However, this general duty can be modified in exceptional cases which demonstrate “an articulated countervailing principle or policy [which] warrants denying or limiting liability in a particular class of cases.”¹⁴⁴ The Iowa Court of Appeals found no such “countervailing principle” in cargo-liability actions and therefore applied

137. *Id.*

138. *Id.*

139. *See id.*

140. *See id.* at *4. The dissent, however, found the *Savage* rule to be controlling. The dissent further found the shipper was not liable because the fact that the pipe was not secured to the bed was open and obvious, not latent. *Id.* at *4 (Eisenhauer, J., dissenting).

141. *Id.* at *4 (majority opinion).

142. *Thompson v. Kaczinski*, 774 N.W.2d 829, 835 (Iowa 2009); *see also* *Koenig v. Koenig*, 766 N.W.2d 635, 638, 644 (Iowa 2009) (noting U.S. courts have been replete with arbitrary doctrines and distinctions best done away with).

143. *Thompson*, 774 N.W.2d at 835 (quoting *Stotts v. Eveleth*, 688 N.W.2d 803, 810 (Iowa 2004)).

144. *Id.* (quoting RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL HARM § 7(b) (AM. LAW INST. 2005)).

comparative fault principles as opposed to a specialized standard of liability like the *Savage* rule.¹⁴⁵

While the Iowa Court of Appeals indicated in *Smith* that a comparative fault analysis is incompatible with a traditional application of the *Savage* rule, Missouri has found the two approaches to be consistent.¹⁴⁶ In *Aragon v. Wal-Mart Stores East, LP*, the court reasoned that the *Savage* rule (in conjunction with applicable FMCSA regulations) simply establishes the existence of a duty on the part of the carrier.¹⁴⁷ This interpretation suggests the duty on a carrier does not necessarily preclude a duty on the part of a shipper.¹⁴⁸ The court noted, “‘A duty to exercise care can be imposed by a controlling statute or ordinance,’ but the existence of such a duty does not relieve the other party of liability where comparative fault is to be assessed.”¹⁴⁹ While Missouri maintains the common law *Savage* rule with all its exceptions, the court allows the framework of comparative fault to water down the liability-shifting effect of the doctrine.¹⁵⁰ However, this approach is inconsistent with the historical application and underlying basis of the *Savage* rule: that carriers, as professionals, assume liability for the loads they haul and shippers are no more than innocent contractors.¹⁵¹ Instead, the court in *Aragon* sees the *Savage* rule as a mere basis for carrier liability.¹⁵² While this approach appears equitable in light of modern comparative fault, such an interpretation makes the *Savage* rule redundant of federal regulations that already establish a duty on the part of the carrier.¹⁵³ Iowa could follow Missouri in compromising these approaches, but the *Savage* rule would ultimately be weakened regardless, whether by formal invalidation or adopting a contorted interpretation of the doctrine.

145. *Smith*, 2011 WL 6655356, at *4.

146. *Id.*; *Aragon v. Wal-Mart Stores E., LP*, 924 F. Supp. 2d 1066, 1072–73 (E.D. Mo. 2013).

147. *Aragon*, 924 F. Supp. 2d at 1072–73. The case revolved around a driver who was injured upon opening the doors to his truck and being struck by a pallet of plastic containers. *Id.* at 1068.

148. *See id.*

149. *Id.* at 1071 (quoting *Scheibel v. Hillis*, 531 S.W.2d 285, 288 (Mo. 1976)).

150. *See id.* at 1072–73.

151. *See United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 446 (4th Cir. 1953).

152. *Aragon*, 924 F. Supp. 2d at 1071.

153. *See Savage Truck Line, Inc.*, 209 F.2d at 446; 49 C.F.R. § 392.9 (2018).

The court in *Smith* also distinguished its holding on the basis that *Savage* revolved around issues of indemnity.¹⁵⁴ However, even indemnity cases between shippers and carriers that are similar to *Savage* and apply its holding have not rendered the same result. For instance, in *Symington v. Great Western Trucking Co.*, the court considered all the relevant circumstances and apportioned fault between the shipper and carrier equally.¹⁵⁵ In *Symington*, the shipper improperly loaded barrels of a chemical hardening agent into the carrier's vehicle.¹⁵⁶ When it was discovered the barrels were leaking from the truck during transit, the driver continued down the highway to a nearby truck stop.¹⁵⁷ The trail of chemicals caused substantial property damage to the roadway and truck stop, resulting in an indemnity lawsuit between the shipper and carrier.¹⁵⁸ While the carrier inspected and approved of the load, the court expressed skepticism as to the defective loading, asserting that the failings may have been latent or concealed.¹⁵⁹ Additionally, the court found the shipper—who had been manufacturing the chemical for over 20 years—did not properly express the danger presented by the cargo such that its new carrier had proper motivation to perform a careful inspection.¹⁶⁰ Had the driver known of the devastation the chemical could cause, he likely would not have continued to drive the truck and park at the truck stop, thus exacerbating the damage.¹⁶¹ On the other hand, the court also criticized the carrier for failure to train its drivers on spillage accidents and negligence in mitigating damages by

154. *Smith v. HD Supply Water Works, Inc.*, No. 10-1459, 2011 WL 6655356, at *3 (Iowa Ct. App. Dec. 21, 2011).

155. *Symington v. Great W. Trucking Co.*, 668 F. Supp. 1278, 1281–85 (S.D. Iowa 1987).

156. *Id.* at 1279.

157. *Id.* at 1280.

158. *Id.* at 1281.

159. *Id.* at 1283.

160. *Id.* at 1279, 1284. The shipper, Uniroyal, was originally founded as Naugatuck Chemical Company in 1892. Robert J. Baptista, *Naugatuck Chemical Company, Naugatuck, Connecticut*, COLORANTS HIST., <http://colorantshistory.org/NaugatuckChem.html> (last updated May 19, 2009). The company had success in producing many products through chemical treatment, chiefly among them rubber. *Id.* The company became Uniroyal in 1961, but “gained independence” in 1966 before merging with another company to form Chemtura in 2005. *Id.* Last year, Chemtura was acquired by Lanxess AG of Germany for \$2.5 billion. *Chemtura to Be Acquired by LANXESS in ~\$2.5 Billion All-Cash Transaction*, BUS. WIRE (Sept. 25, 2016), <https://www.businesswire.com/news/home/20160925005044/en/>.

161. *Symington*, 668 F. Supp. at 1284.

continuing to operate the vehicle despite the leakage.¹⁶² The court therefore concluded, “[T]he difference in fault does not justify imposing all liability for the accident on [one party].”¹⁶³ Even under the harsh *Savage* rule, the court identified a need to examine and weigh the responsibilities of the parties instead of applying a specialized standard.¹⁶⁴ In consideration of the goods being transported, manner of defect causing injury, experience of the parties, and degree of fault of the parties, the court came to a balanced holding in contravention of winner-take-all cases like *Savage Truck Line, Inc.*¹⁶⁵

While the Iowa Court of Appeals came just short of affirmatively invalidating the *Savage* rule in *Smith*, other recent cases in Iowa indicate the state is broadly abandoning special liability rules and antiquated common law distinctions.¹⁶⁶ For example, in *Koenig v. Koenig*, the Iowa Supreme Court grappled with the common law distinction of invitees and licensees in premises-liability cases.¹⁶⁷ The court found this distinction to be based in antiquated legal concepts, inherently confusing, and permissive of inequitable results.¹⁶⁸ Similar to the *Smith* court’s rejection of the *Savage* rule as an outdated and arbitrary legal standard, the court in *Koenig* rejected the distinction between invitees and licensees.¹⁶⁹ “The use of a general standard of reasonable care under all the circumstances . . . will bring this area of the law into conformity with modern tort principles by allowing increased jury participation and the use of contemporary standards.”¹⁷⁰ The *Koenig* court was also convinced that abandoning the distinction between invitees and licensees would promote public safety over property rights.¹⁷¹ Thus, the court held, “[T]he advantages of abolishing the distinction . . . outweigh the value of its retention.”¹⁷² The court chose to trust juries in apportioning liability,

162. *Id.* at 1285.

163. *Id.*

164. *Id.*

165. *Id.* at 1281–85; *United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 445 (4th Cir. 1953).

166. *E.g.*, *Koenig v. Koenig*, 766 N.W.2d 635, 644 (Iowa 2009).

167. *Id.* at 644–45.

168. *Id.* at 644.

169. *Id.* at 643; *Smith v. HD Supply Water Works, Inc.*, No. 10-1459, 2011 WL 6655356, at *1 (Iowa Ct. App. Dec. 21, 2011).

170. *Koenig*, 766 N.W.2d at 644 (quoting Michael Sears, Comment, *Abrogation of the Traditional Common Law of Premises Liability*, 44 U. KAN. L. REV. 175, 184–85 (1995)).

171. *Id.* at 645.

172. *Id.* at 643.

finding “no merit in the argument that the duty of reasonable care is difficult for a fact finder to understand and apply.”¹⁷³ This same rationale is directly applicable to the current state of the law in regard to carrier and shipper liability for improperly loaded or secured cargo.¹⁷⁴

Whether the *Savage* rule has been formally abandoned in Iowa is at best ambiguous.¹⁷⁵ However, based on the *Smith* case, the doctrine is markedly disfavored.¹⁷⁶ Contemporary decisions further highlight Iowa’s gravitation toward equitable common law principles that allow for modifications and exceptions to the rule.¹⁷⁷ In the modern comparative fault framework adopted by the State, the *Savage* rule and the scheme of federal regulations regarding carrier liability for injuries and deaths resulting from unsecured cargo must be reevaluated. This advancement in the law is further bolstered by the growth of the trucking industry and the rise of e-commerce.¹⁷⁸ All of these factors necessitate review of liability for loading and securing cargo between carriers and shippers to better ensure the safety of the public, promote economic efficiency, and achieve equity in the courts.

IV. JUSTIFYING CHANGE IN CARRIER–SHIPPER LIABILITY IN LIGHT OF A MOBILE ECONOMY, EVOLVING PROFESSIONAL STANDARDS, AND PUBLIC POLICY CONSIDERATIONS

The state of the law in Iowa is currently uncertain on apportionment of liability between carriers and shippers in loading and securing cargo. While *Smith* and other contemporary holdings have evidenced a desire to apply comparative fault principles, the *Savage* rule and federal regulations still maintain that carriers are at least primarily, if not solely, liable for injuries resulting from unsecured cargo.¹⁷⁹ In determining the best path forward, courts must emphasize the priorities of effective commerce, roadway safety, and fundamental fairness. The U.S. economy is becoming increasingly dependent on transportation, propelled by the growth of e-

173. *Id.* at 645 (quoting *Heins v. Webster County*, 552 N.W.2d 51, 57 (Neb. 1996)).

174. *See Smith*, 2011 WL 6655356, at *1.

175. *See id.*

176. *Id.*

177. *See, e.g., Thompson v. Kaczinski*, 774 N.W.2d 829, 835 (Iowa 2009).

178. *See id.*; U.S. DEP’T OF TRANSP. & FED. MOTOR CARRIER SAFETY ADMIN., *supra* note 26, at 7; Aaron Smith & Monica Anderson, *Online Shopping and E-Commerce*, PEW RES. CTR. (Dec. 19, 2016), <http://www.pewinternet.org/2016/12/19/online-shopping-and-e-commerce/>.

179. *See Smith*, 2011 WL 6655356, at *1; 49 C.F.R. § 392.9 (2018).

commerce.¹⁸⁰ Policies must be established that promote this growth while also holding parties fairly accountable for injuries caused by their negligence. The evolved professional relationship between shippers and carriers also warrants change in the law to reflect modern transportation practices.¹⁸¹ Courts have regularly created exceptions and interpretations of the *Savage* rule that allow consideration of the circumstances between the carrier and the shipper.¹⁸² Now is the time—while the state of the law in Iowa is ambiguous following the *Smith* decision—to change the law to reflect the modern professional relationship between shippers and carriers by adopting comparative fault in cargo-liability actions.¹⁸³ Not only would this approach hold parties actually accountable for their proportional negligence, but it would bring cargo-liability actions in line with modern values of the judicial system.¹⁸⁴

A. Growth and Transformation of the Trucking Industry

Since the time of the *Savage* decision in 1953 and adoption of federal regulations regarding cargo safety, the trucking industry has grown into a cornerstone of the national economy.¹⁸⁵ In 1953, only 9.5 million commercial trucks were registered to provide carrier services.¹⁸⁶ Including both urban and rural mileage, these carriers covered around 100,000 million miles of travel each year between 1953 and 1957.¹⁸⁷ By contrast, 11.2 million trucks were registered to do business in the United States in 2015.¹⁸⁸ Collectively,

180. *Smith & Anderson, supra* note 178.

181. *See Morgan, supra* note 38.

182. *See Vargo-Schaper v. Weyerhaeuser Co.*, 619 F.3d 845, 849 (8th Cir. 2010); *Aragon v. Wal-Mart Stores E., LP*, 924 F. Supp. 2d 1066, 1072–73 (E.D. Mo. 2013).

183. *See Smith*, 2011 WL 6655356, at *4; 49 C.F.R. § 392.9.

184. *See Thompson v. Kaczinski*, 774 N.W.2d 829, 835 (Iowa 2009); U.S. DEP'T OF TRANSP. & FED. MOTOR CARRIER SAFETY ADMIN., *supra* note 26, at 7; *Smith & Anderson, supra* note 178.

185. *See Trucking Industry*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/history/united-states-and-canada/us-history/trucking> (last visited Nov. 17, 2018).

186. U.S. BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1957, at 462 (1960), https://www2.census.gov/library/publications/1960/compendia/hist_stats_colonial-1957/hist_stats_colonial-1957.pdf.

187. *Id.* at 463.

188. U.S. DEP'T OF TRANSP. & FED. MOTOR CARRIER SAFETY ADMIN., *supra* note 26, at 7. Note that these statistics include both combination and single-unit trucks. Bureau of Transp. Statistics, *Number of U.S. Aircraft, Vehicles, Vessels, and Other Conveyances*, U.S. DEP'T OF TRANSP., <http://www.bts.gov/content/number-us-aircraft-vehicles-vessels-and-other-conveyances> (last visited Dec. 24, 2018).

these trucks traversed 279.8 trillion miles that year and carried nearly 11.4 trillion tons of freight.¹⁸⁹ Sheer data demonstrates that more trucks are on the road, traveling longer distances and carrying more tonnage per truck.¹⁹⁰

Volume is not the only thing to have changed within the industry during this time; the professional relationship between carriers and shippers has also shifted. In Iowa specifically, the *Wiersma* and *Smith* cases show this distinct change that warrants reconsideration of liability apportionment.¹⁹¹ In *Wiersma*, the shipper was a lone farmer, who presumably had no experience in the transportation industry or familiarity with shipping cargo.¹⁹² The farmer was reliant on the defendant, a professional common carrier, to inspect the cargo and ensure its safe transportation.¹⁹³ In a society less familiar with long-distance travel and more localized economics, a carrier in 1930s Iowa reasonably had a higher degree of liability for cargo securement because of its professional nature.¹⁹⁴ However, the circumstances had greatly changed by the time of the 2011 *Smith* decision.¹⁹⁵ In *Smith*, two professional business entities were involved, both of which had regular and ongoing contact with the trucking industry.¹⁹⁶ The shipper routinely engaged in shipping activities as a part of his job as a warehouse employee and was likely familiar with modern transportation procedures.¹⁹⁷ The knowledge and expertise between the parties in *Smith* (a carrier and a warehouse employee) is more equal than that of the parties in *Wiersma* (a carrier and a farmer).¹⁹⁸ This dynamic is often true of modern transportation relationships, as most shippers tend to be professional entities or those with some familiarity with the transportation industry.¹⁹⁹ While it is not

189. U.S. DEP'T OF TRANSP. & FED. MOTOR CARRIER SAFETY ADMIN., *supra* note 26, at 7, 15.

190. *See generally id.*

191. *See Wiersma v. Chi. & N.W. Ry. Co.*, 238 N.W. 579, 579–80 (Iowa 1931); *Smith v. HD Supply Water Works, Inc.*, No. 10-1459, 2011 WL 6655356, at *1 (Iowa Ct. App. Dec. 21, 2011).

192. *See Wiersma*, 238 N.W. at 579.

193. *See id.* at 580.

194. *See id.*

195. *See Smith*, 2011 WL 6655356, at *1.

196. *Id.*

197. *Id.*

198. *See id.*; *Wiersma*, 238 N.W. at 579.

199. *See, e.g., Spence v. ESAB Grp., Inc.*, 623 F.3d 212, 219–20 (3d Cir. 2010) (involving the shipment of welding supplies, wherein the experienced shipper gave assurances to a novice carrier).

universally true that all shippers in Iowa today are professional parties, modern courts should account for relationships of equal responsibility rather than portraying modern shippers as guiltless parties like the farmer in *Wiersma*.²⁰⁰ Decisions such as *Symington* and *Vargo-Schaper* show that modern courts struggle to find ways around the *Savage* rule to consider the circumstantial relationship between carriers and shippers.²⁰¹

An affirmative shift to comparative fault is therefore warranted in the interests of roadway safety and fundamental fairness. In the modern dynamic between shippers and carriers, it is not certain that carriers are in a better position to prevent cargo accidents; shippers regularly assume responsibility for loading and securing cargo and often have greater knowledge regarding specific securement procedures.²⁰² Therefore, the standard for liability should shift to hold parties proportionally responsible in order to provide sufficient motivation to both shippers and carriers to exercise their best judgment.²⁰³ Furthermore, parties should be held liable when their actions contribute to the injury of another.²⁰⁴ Even the *Savage Truck Line, Inc.* court noted this core maxim, stating that exceptions should only be granted for intentional wrongs or *malum in se* crimes.²⁰⁵ While improper cargo loading and securement can have horrific results,²⁰⁶ it typically only rises to the level of negligence.²⁰⁷ This area of the law contains no “countervailing principle” that warrants exempting it from principles of contribution and liability.²⁰⁸ In light of the changes in the trucking industry and evolution of the carrier–shipper relationship, Iowa must adapt its legal analysis in this area of the law.

200. See *Wiersma*, 238 N.W. at 579; *Smith*, 2011 WL 6655356, at *1.

201. See *Vargo-Schaper v. Weyerhaeuser Co.*, 619 F.3d 845, 849 (8th Cir. 2010); *Symington v. Great W. Trucking, Co.*, 668 F. Supp. 1278, 1281–85 (S.D. Iowa 1987).

202. See *Morgan*, *supra* note 38.

203. See *Wiersma*, 238 N.W. at 579; *Smith*, 2011 WL 6655356, at *4.

204. See *Thompson v. Kaczinski*, 774 N.W.2d 829, 835 (Iowa 2009).

205. *United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 446 (4th Cir. 1953).

206. See *Williams v. Commonwealth*, No. 2004-CA-000992-MR, 2005 WL 1994240, at *1 (Ky. Ct. App. Aug. 19, 2005) (“[A] coal auger . . . came off the low boy truck [the appellant] was driving and struck two cars with three persons, all of whom died as a result.”).

207. See *Smith*, 2011 WL 6655356, at *1.

208. See *id.* at *4; *Thompson*, 774 N.W.2d at 835 (quoting RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL HARM § 7(a) (AM. LAW INST. 2005)).

*B. E-Commerce Demonstrates a Continuing Trend Toward a
Fundamentally Mobile Economy*

The vast majority of the goods flowing into Iowa's economy are transported by the trucking sector.²⁰⁹ Cargo of all types is therefore put at risk when loading and securement procedures fail. In the past three years alone, cargo accidents across U.S. highways have involved freight such as avocados,²¹⁰ furniture,²¹¹ bees,²¹² explosives,²¹³ vodka,²¹⁴ soap,²¹⁵ eels,²¹⁶ gravel,²¹⁷ nickels,²¹⁸ and doughnut glaze.²¹⁹ U.S. culture has always embraced travel and expansion, as reflected in the now sprawling economic network

209. See *General Trucking News—The Surprising Statistics & Trends of Trucking*, IOWA MOTOR TRUCK ASS'N (Apr. 27, 2017), <http://www.iowamotortruck.com/imta-news-center.cfm/Article/General-Trucking-News/The-Surprising-Statistics—Trends-of-Trucking/2017-4-27>.

210. *Truck Carrying 20 Tons of Avocados Catches Fire, Shutting Down I-35E in Ellis County*, DALLAS NEWS (Dec. 28, 2017), <https://www.dallasnews.com/news/traffic/2017/12/28/truck-carrying-20-tons-avocados-catches-fire-shutting-35e-ellis-county>.

211. *Furniture, Household Goods Strewn Along I-85 When Box Truck OvertURNS*, WYFF 4 (Mar. 6, 2015), <http://www.wyff4.com/article/furniture-household-goods-strewn-along-i-85-when-box-truck-overtURNS/7013332>.

212. *Semi-Truck Carrying Millions of Bees Crashes in Auburn*, FOX 40 (Nov. 2, 2017), <http://fox40.com/2017/11/02/semi-truck-carrying-thousands-of-bees-crashes-in-auburn/>.

213. Ian Smay, *Truck Carrying Explosives Crashes Outside of Potlatch*, DAILY EVERGREEN (Oct. 18, 2017), <https://dailyevergreen.com/19051/news/truck-carrying-explosives-crashes-outside-of-potlatch/>.

214. Associated Press, *Vodka Truck OvertURNS, Spills Cases of Alcohol on Philadelphia Interstate*, PRESS CONNECTS (Dec. 7, 2017), <http://www.pressconnects.com/story/news/local/pennsylvania/2017/12/07/vodka-truck-overtURNS-philadelphia-interstate/108393038/>.

215. *College Student Killed After Truck Carrying 20K Lbs. of Soap OvertURNed onto Her Car*, ABC 7 (Apr. 27, 2016), <http://abc7chicago.com/traffic/college-student-killed-after-soap-truck-overtURNed-onto-her-car/1309557/>.

216. *Clean-Up, Aisle 101: Truck Carrying 7,500 Lbs. of Slime Eels OvertURNS on Highway*, KATU 2 (July 13, 2017), <http://katu.com/news/local/oregon-state-police-eel-truck-overtURNS-on-hwy-101-apparently-covering-road-in-slime>.

217. Megan Morris, *Semi-Truck Carrying Gravel Spills All over I-25, Temporarily Closing Highway*, 9NEWS (Oct. 19, 2017), <http://www.9news.com/article/traffic/semi-truck-carrying-gravel-spills-all-over-i-25-temporarily-closing-highway/73-484567692>.

218. SA Rogers, *Mess on the Motorway: 15 Weird Truck Accident Spills*, WEB URBANIST (Nov. 9, 2009), <https://weburbanist.com/2009/11/09/mess-on-the-motorway-15-weird-truck-spills/>.

219. *Id.*

touching every state.²²⁰ However, the growing role of e-commerce has propelled the spread of the trucking industry at a rate never seen before.²²¹

In the last 15 years, e-commerce employment has surged by 334 percent, while industries such as retail and department stores have declined and stagnated.²²² The industry accounts for 24.3 percent of retail sales (when excluding food), with companies such as Amazon reporting \$43.7 billion in revenue.²²³ Statistics show that 71 percent of U.S. shoppers over the age of 18 make at least one purchase on Amazon a month.²²⁴ Amazon has grown so fast that it has begun to develop its own transportation network, including a fleet of delivery drones.²²⁵ The company has chosen to build this infrastructure due to the strain its business alone puts on the trucking industry, both in volume and speed.²²⁶ As Americans buy more online, problems of cargo loading and securement naturally become more prevalent. Issues crescendo around the holiday season, with consumers spending more than \$63.1 billion on online shopping.²²⁷ Presently, e-commerce shows no signs of slowing down.²²⁸ In 2017, sales were projected

220. See generally HOWARD J. SHATZ, KARIN E. KITCHENS, SANDRA ROSENBLOOM & MARTIN WACHS, RAND CORP., *HIGHWAY INFRASTRUCTURE AND THE ECONOMY: IMPLICATIONS FOR FEDERAL POLICY* (2011), https://www.rand.org/content/dam/rand/pubs/monographs/2011/RAND_MG1049.pdf.

221. See Kilcarr, *supra* note 23.

222. Robert Gebeloff & Karl Russell, *How the Growth of E-Commerce Is Shifting Retail Jobs*, N.Y. TIMES (July 6, 2017), <https://www.nytimes.com/interactive/2017/07/06/business/e-commerce-retail-jobs.html>.

223. Kilcarr, *supra* note 23; Eugene Kim, *Amazon Shares Soar After Massive Earnings Beat*, CNBC (Oct. 26, 2017), <https://www.cnbc.com/2017/10/26/amazon-earnings-q3-2017.html>.

224. Kilcarr, *supra* note 23.

225. *Id.* While the use of drones promises to revolutionize the transportation industry by completing delivery within 30 minutes of purchase, complications with aviation law and privacy concerns have slowed growth in this area. Marguerite Reardon, *Amazon 'Drones' Stir Up Privacy Concerns Among Lawmakers*, CNET NEWS (Dec. 2, 2013), <https://www.cnet.com/news/amazon-drones-stir-up-privacy-concerns-among-lawmakers/>.

226. Kilcarr, *supra* note 23.

227. *Holiday Season E-Commerce—Statistics & Facts*, STATISTICA, <https://www.statista.com/topics/1103/holiday-season-e-commerce/> (last visited Dec. 24, 2018); *Truck Accidents During the Holidays*, *supra* note 23. Truckers claim to “log more miles over the holidays than Santa’s sleigh;” one driver stated, “In 12 years of trucking, I have only been home for Christmas Day once.” *Trucking During the Holidays*, AM. TRUCKER (Dec. 21, 2017), <http://www.trucker.com/drivers/trucking-during-holidays>.

228. See generally Kilcarr, *supra* note 23.

to grow by 10 percent over the previous year.²²⁹ The accessibility of smartphones has made purchasing online even easier, with 35 percent of Americans placing an order using their mobile device in 2017.²³⁰ These industry figures all correlate with continued growth in the transportation sector, resulting in more trucks with more cargo on the roads.

These trends indicate that now, more than ever, fair standards must be adopted to encourage safety in cargo hauling and accountability for cargo-related injuries. The increase in goods traveling on public roadways in Iowa not only presents more danger but shows just how professional the transportation industry has become for both carriers and shippers. Trucking is now a central part of the U.S. economy which must operate smoothly to keep the exchange of goods flowing. In light of these developments, standards should be reevaluated to ensure that parties are held responsible and treated fairly for their own negligence in loading and securing cargo.²³¹

C. *The Questionable State of the Savage Rule in the Modern U.S. Economy*

As reflected by the court in *Smith*, the *Savage* rule has been harshly criticized, with some jurisdictions heavily altering the doctrine or abandoning it entirely.²³² The common law stance of placing liability on the carrier for all but latent defects has significant detriments that have been thoroughly noted by a variety of courts.²³³ First, this approach to liability gives little to no incentive to the shipper to secure the goods they load.²³⁴ This can slow down the entire hauling process by forcing carriers to fully load their trailers.²³⁵ The shipper in *Smith*, for instance, made no effort to ensure that the fiberglass pipe was secure before leaving the yard.²³⁶ Safety would be enhanced if shippers could be held liable for this negligence and

229. Amy Gesenhues, *2017's Holiday E-Commerce Sales Projected to Grow 10% over Last Year's Holiday Season*, MARKETING LAND (Aug. 24, 2017), <https://marketingland.com/2017s-holiday-e-commerce-sales-see-10-growth-rate-last-years-holiday-season-222476>.

230. *Id.*

231. *See Smith v. HD Supply Water Works, Inc.*, No. 10-1459, 2011 WL 6655356, at *1 (Iowa Ct. App. Dec. 21, 2011).

232. *See, e.g., id.*; *Aragon v. Wal-Mart Stores E., LP*, 924 F. Supp. 2d 1066, 1072–73 (E.D. Mo. 2013).

233. *See, e.g., Aragon*, 924 F. Supp. 2d at 1072–73; *Smith*, 2011 WL 6655356, at *1.

234. *See Smith*, 2011 WL 6655356, at *1.

235. *See id.*

236. *Id.*

thus incentivized to ensure proper loading.²³⁷ With more people evaluating the cargo, defects are naturally less likely.

Second, the *Savage* rule deters shippers from even attempting to load their vehicles in order to avoid latent defects that may create liability.²³⁸ The factors considered in *Vargo-Schaper* further caution shippers against offering any assurances on the status of the cargo.²³⁹ This prevents effective and open communication between the parties and does not further the goal of public roadway safety.²⁴⁰ Shippers often times have more professional expertise loading a particular type of cargo than the carrier.²⁴¹ Roadway safety is better ensured by encouraging both parties to communicate their knowledge and expertise openly without fear of exposing themselves to liability.²⁴² When both parties are already potentially liable, both are incentivized to load cargo cooperatively and with care.

Third, the distinction between open and obvious and latent defects is often unclear and the subject of litigation.²⁴³ This analysis often turns on the experiences and knowledge of the parties at the time of loading.²⁴⁴ As discussed in *Spence v. ESAB Group, Inc.*, the latency of a defect is highly circumstantial; courts must consider both the actual blocking and securing of the cargo and the knowledge of the shipper and carrier.²⁴⁵ Saddling one party with liability for the whole accident based on this unclear standard could be considered inequitable.²⁴⁶ Modern court systems that have disregarded the *Savage* rule consider the circumstances holistically instead of narrowly focusing on whether the defect was readily identifiable to the parties.²⁴⁷

237. *See id.* at *3.

238. *See Vargo-Schaper v. Weyerhaeuser Co.*, 619 F.3d 845, 849 (8th Cir. 2010).

239. *See id.*

240. *See, e.g., Symington v. Great W. Trucking Co.*, 668 F. Supp. 1278, 1284 (S.D. Iowa 1987).

241. *See Morgan, supra* note 38.

242. *See Vargo-Schaper*, 619 F.3d at 849; *Fritz v. Parkison*, 397 N.W.2d 714, 716 (Iowa 1986) (“Every motorist . . . has the continuing and primary obligation to exercise reasonable care for his or her own safety and for the safety of others travelling on the road.”).

243. *See Smith v. HD Supply Water Works, Inc.*, No. 10-1459, 2011 WL 6655356, at *3–4 (Iowa Ct. App. Dec. 21, 2011).

244. *See Vargo-Schaper*, 619 F.3d at 849.

245. *See Spence v. ESAB Grp., Inc.*, 623 F.3d 212, 221 (3d Cir. 2010).

246. *See id.*

247. *See, e.g., Smith*, 2011 WL 6655356, at *1.

Lastly, common law has slowly shifted toward circumstantial considerations and exceptions to avoid the inequity of the *Savage* rule.²⁴⁸ As discussed above, it is often the case that both parties are professionals in the hauling industry and capable of contributing to the safety of cargo loading and securement.²⁴⁹ In light of this shift, numerous exceptions and deviations have been created by the courts to make the *Savage* rule workable in the modern trucking industry.²⁵⁰ After decades of slowly chipping away at the all-or-nothing scheme of *Savage*, justice may be better served by affirmatively abandoning the doctrine. Adopting a standard that allows both carriers and shippers to equally participate in the loading and securing process promotes road safety and would align this area of the law with the modern values of comparative fault.²⁵¹

On the other hand, the *Savage* rule does present several benefits that could be lost by an affirmative switch to comparative fault in cargo-liability actions. The harsh standard levied against the carrier strongly incentivizes the carrier to protect against all possible loading and securing defects.²⁵² While comparative fault may extend this incentive to shippers, neither party would be as thoroughly motivated to identify mistakes.²⁵³ The bright-line standard established by federal common law and regulations sets a clear and definitive approach to liability in these situations.²⁵⁴ Abandoning this certainty for circumstantial apportionment of liability prevents parties from being able to anticipate loss and liability.²⁵⁵ Moreover, such a standard may lead to further litigation, thus increasing the costs of actions resulting from falling cargo.²⁵⁶ Additionally, by passing regulations and delegating authority to the Department of Transportation, Congress has expressed a clear intent to hold carriers accountable.²⁵⁷ Iowa has affirmatively adopted these same regulations.²⁵⁸ Allowing the courts to disregard evident legislative intent

248. See *Vargo-Schaper*, 619 F.3d at 849.

249. See, e.g., *Spence*, 623 F.3d at 219–20.

250. See *Vargo-Schaper*, 619 F.3d at 849.

251. See *Smith*, 2011 WL 6655356, at *4.

252. See *United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 445 (4th Cir. 1953).

253. See *id.*

254. See *id.*; 49 C.F.R. § 392.9(1) (2018).

255. See *Smith*, 2011 WL 6655356, at *4.

256. See *Vargo-Schaper v. Weyerhaeuser Co.*, 619 F.3d 845, 849 (8th Cir. 2010).

257. See IOWA ADMIN. CODE r. 761-520.2 (2018).

258. *Id.* r. 761-520.1.

could be considered improper judicial activism.²⁵⁹ Furthermore, in light of the fact that courts have already softened the impact of the *Savage* rule by considering some circumstantial factors, an affirmative shift in the law may be unnecessary.²⁶⁰

V. PROPOSAL

Iowa should formally abandon the *Savage* rule in order to better foster a growing interstate economy and protect public roadways. Allowing a comparative fault analysis in cargo-liability cases would more equitably assign liability in accord with other similar tort actions within the state.²⁶¹ As held by the Iowa Supreme Court in *Thompson*, comparative fault standards should be upheld in the majority of cases unless exceptional countervailing principles are articulated.²⁶² The *Savage* court offered no distinction as to why cargo-liability actions should be differentiated from other civil causes of action related to the trucking industry.²⁶³ Cargo-related accidents can rarely be considered intentional wrongs or rise to the level of *malum in se*, as discussed by the Fourth Circuit.²⁶⁴ Therefore, general principles of contribution should be adopted in evaluating cargo-liability actions.

Additionally, such a shift would be consistent with the changing and more professional practices of the hauling industry. Adopting comparative fault in this area would further encourage both parties—carriers and shippers—to carefully inspect cargo before driving on public roadways.²⁶⁵ Combining the expertise of both parties—carriers’ superior knowledge of trucking and transportation with shippers’ familiarity with the cargo being transported—offers a more comprehensive evaluation of cargo securement. When both can be held liable, both have a more effective incentive to communicate and ensure the stability of any cargo being transported. By

259. *C & J Leasing II Ltd. P’ship v. Swanson*, 439 N.W.2d 210, 212 (Iowa 1989) (“In construing these statutes, the court’s goal is to effectuate the intent of the legislature. We are obliged to uphold the purposes of a statute and engage in a reasonable and liberal construction of the law to effect, rather than defeat, its purposes.” (citing *State v. Foster*, 356 N.W.2d 548, 550 (Iowa 1984))).

260. See *Vargo-Schaper*, 619 F.3d at 849; *Smith*, 2011 WL 6655356, at *4.

261. See *Smith*, 2011 WL 6655356, at *1.

262. *Thompson v. Kaczinski*, 774 N.W.2d 829, 835 (Iowa 2009).

263. See *United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 446 (4th Cir. 1953).

264. *Id.* (citing *Wash. Gaslight Co. v. District of Columbia*, 161 U.S. 316, 327–28 (1896)).

265. See *Smith*, 2011 WL 6655356, at *1.

promoting this thorough review, accidents such as those witnessed in *Savage* can be avoided and lives can be saved.²⁶⁶

This shift would also bring Iowa in line with the modern approach to liability for loading and securing cargo practiced in a growing number of jurisdictions throughout the country.²⁶⁷ Clarity and consistency in the law would also be promoted in Iowa by abandoning arbitrary and outmoded common law distinctions.²⁶⁸ Both *Thompson* and *Koenig* evidence that Iowa courts have made efforts to abandon legal precedent where the context for such precedent has dissipated.²⁶⁹ Due to the expertise that has developed in the trucking industry and the continuing growth of transportation resulting from e-commerce, standards should be modified.²⁷⁰ Instead of continuing to create circumstantial distinctions and loopholes, cargo-liability actions should be simplified and brought into conformity with general tort principles.

The alleged benefits of the *Savage* rule would not be lost in a transition to comparative fault. While carriers would perhaps be less incentivized to identify errors in loading and securing, adequate incentives would still be present.²⁷¹ Carriers would still be open to liability for errors and have a desire to protect their professional reputation for safe hauling.²⁷² While the *Savage* rule may appear to afford clear liability to carriers, modern exceptions and distinctions have already erased this allegedly bright-line standard.²⁷³ Furthermore, while clarity is desirable, equity should be prioritized in the law.²⁷⁴ While more litigation may initially result from a shift to comparative fault, a standard that incentivizes both carriers and shippers to inspect cargo

266. See *Savage Truck Line, Inc.*, 209 F.2d at 443.

267. See *Smith*, 2011 WL 6655356, at *4.

268. See *id.*; *Koenig v. Koenig*, 766 N.W.2d 635, 638, 644 (Iowa 2009).

269. *Koenig*, 766 N.W.2d at 638, 644; *Thompson v. Kaczinski*, 774 N.W.2d 829, 835 (Iowa 2009).

270. *Smith & Anderson*, *supra* note 178; compare *Smith*, 2011 WL 6655356, at *4, with *Wiersma v. Chi. & N.W. Ry. Co.*, 238 N.W. 579, 579 (Iowa 1931).

271. See *Smith*, 2011 WL 6655356, at *4.

272. See *id.*; John Hausladen, *Reputation Is Everything*, MINN. TRUCKING ASS'N (July 1, 2014), <http://www.mntruck.org/blogpost/992042/191822/Reputation-is-Everything> (stating that “truckers earn their reputation one mile at a time” and discussing the media fallout of a truck driver in the wake of a crash with comedian Tracy Morgan).

273. See *Vargo-Schaper v. Weyerhaeuser Co.*, 619 F.3d 845, 849 (8th Cir. 2010).

274. *Thompson*, 774 N.W.2d at 838 (noting courts should adopt standards that accommodate fairness).

aims to lessen the amount of cargo-related accidents in the first place. With more thorough inspections of cargo securement, it is likely that less litigation would ultimately ensue.²⁷⁵ The intent of Congress and the Iowa legislature would also still be respected by holding carriers accountable.²⁷⁶ This precautionary measure would only be extended by comparative fault principles, thus promoting the ultimate legislative goals of road safety and economic productivity.²⁷⁷ Lastly, the factors considered by most courts to diminish the *Savage* rule show that modern courts have trended toward comparative fault principles.²⁷⁸ Abandoning the *Savage* rule would only complete this trend and properly align cargo-related actions with other similar causes of action.²⁷⁹

Current statutes in force, both at the federal and state level, must change to accommodate this new framework. In Iowa, this could be accomplished in a number of different ways: (1) a formal amendment to the Iowa Administrative Code, which adopts a comparative fault analysis;²⁸⁰ (2) adding comments to the provisions currently in force to clarify that the existence of a duty on the part of the carrier does not preclude a shipper's liability for negligence;²⁸¹ or (3) case law from the Iowa Supreme Court could affirmatively abandon the *Savage* rule and apply a general comparative fault analysis in a subsequent cargo-liability dispute.²⁸² Given the judiciary's recent opinion on the *Savage* rule and trend of overturning outdated common law precedent, the third option appears to be the most likely outcome.²⁸³ However, in order to nudge subsequent cases toward this result,

275. See *Smith*, 2011 WL 6655356, at *1. For instance, had the shipper assisted or monitored the securing of the fiberglass pipe, it is less likely an injury would have occurred. See *id.*

276. See IOWA ADMIN. CODE r. 761-520.1 (2018); 49 C.F.R. § 392.9 (2018).

277. See *Smith*, 2011 WL 6655356, at *1.

278. See *Vargo-Schaper*, 619 F.3d at 849.

279. See *Smith*, 2011 WL 6655356, at *1.

280. See IOWA ADMIN. CODE r. 761-520.2.

281. See *Aragon v. Wal-Mart Stores E., LP*, 924 F. Supp. 2d 1066, 1072–73 (E.D. Mo. 2013).

282. See *Koenig v. Koenig*, 766 N.W.2d 635, 638, 644 (Iowa 2009); *Smith*, 2011 WL 6655356, at *1.

283. See *Smith*, 2011 WL 6655356, at *3 (citing *Spence v. ESAB Grp., Inc.*, 623 F.3d 212, 219–20 (3d Cir. 2010)).

scholarship and discussion on this topic are vital.²⁸⁴ While Iowa courts appear primed to overturn the *Savage* rule and apply comparative fault, legal advocacy has a role to play in urging any change in the law.²⁸⁵

The trucking industry has evolved. From the relationship between carriers and shippers to the dramatic increase in interstate commerce, the trucking industry has greatly changed since the time of the *Savage Truck Line, Inc.* decision.²⁸⁶ Iowa specifically has made significant strides in recent years to unify its approach to civil liability under comparative fault principles.²⁸⁷ In order to promote consistency in the law, safety on the roads, and economic productivity, Iowa is best advised to formally abandon the *Savage* rule and corresponding regulations in favor of a comprehensive analysis of the circumstances that apportions liability accordingly.²⁸⁸ This approach to improper loading and securing of cargo is better designed to prevent cargo-related accidents on the roads—whether the cargo is a coal auger,²⁸⁹ horses,²⁹⁰ an airplane engine,²⁹¹ toxic chemicals,²⁹² or a fiberglass pipe.²⁹³ Now, after the distinction made in *Smith*, courts in Iowa should take one step further and recognize liability for both carriers and shippers for loading and securing cargo.²⁹⁴

Jackson G. O'Brien*

284. See Chad Flanders, *Toward a Theory of Persuasive Authority*, 62 OKLA. L. REV. 55, 65, 72 (2009) (stating scholarly writing has the power to change the law and can often be more persuasive than antiquated common law precedent).

285. See *id.*; *Smith*, 2011 WL 6655356, at *1.

286. See *General Trucking News—The Surprising Statistics & Trends of Trucking*, *supra* note 209.

287. *Koenig*, 766 N.W.2d at 638, 644; *Thompson v. Kaczinski*, 774 N.W.2d 829, 835 (Iowa 2009).

288. See *Thompson*, 774 N.W.2d at 835; U.S. DEP'T OF TRANSP. & FED. MOTOR CARRIER SAFETY ADMIN., *supra* note 26, at 26; *Smith & Anderson*, *supra* note 178.

289. *Williams v. Commonwealth*, No. 2004-CA-000992-MR, 2005 WL 1994240, at *1 (Ky. Ct. App. Aug. 19, 2005).

290. *Wiersma v. Chi. & N.W. Ry. Co.*, 238 N.W. 579, 579 (Iowa 1931).

291. *United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 443 (4th Cir. 1953).

292. *Symington v. Great W. Trucking Co.*, 668 F. Supp. 1278, 1279 (S.D. Iowa 1987).

293. *Smith v. HD Supply Water Works, Inc.*, No. 10-1459, 2011 WL 6655356, at *1 (Iowa Ct. App. Dec. 21, 2011).

294. See *id.*

* B.A., Morningside College, 2016; J.D. Candidate, Drake University Law School, 2019. Dedicated to the Author's brother, Jensen Uhl O'Brien, for his love and support.