

Date

To: Trucking Company

**RE: Notice of Representation and Request to Preserve
Our Client:
Date of Incident/Loss:**

To whom it concerns at (name of trucking company):

Please be advised that this firm has been retained as co-counsel by (plaintiff name) relating to any and all claims arising out of a collision which occurred on or about (accident date) in (location of accident). This letter is a formal request that you preserve and not alter any and all equipment that was involved in the collision, along with photographs, video recordings, recorded audio or computer media, measurements, real evidence, documents, materials, and all other evidence and things relating to the crash which are presently in your possession or the possession of your employee or agent. This includes, but is certainly not limited to all documents, whether paper, electronic or otherwise stored, relative to the driver and truck company in general, as well as anything that shows if the company or the driver either contributed to the cause of the crash or did nothing to contribute to the cause of the crash.

IF YOU BELIEVE THAT DOCUMENTS EXIST THAT SHOW THAT THE COMPANY OR THE DRIVER HAD NO FAULT FOR THE WRECK, SOME FAULT, OR COMPLETE FAULT, YOU MUST SAVE THOSE DOCUMENTS UNTIL THE TRIAL OR SETTLEMENT OF THIS MATTER SO A FULL ANALYSIS OF THE CAUSE OF THIS WRECK CAN BE MADE AND THE PERCENTAGE OF FAULT OF EACH PARTY CAN BE DETERMINED. IF YOU FAIL TO SAVE THESE DOCUMENTS IT WILL PROVE THAT YOU DELIBERATELY DESTROYED THE DOCUMENTS TO HIDE YOUR FAULT FOR THIS WRECK. (See FMCSR 379, App. A(F)(2)(a) and Note A)

You should save all documents that show you were a safe company and that you fully complied with the Federal Motor Carrier Safety Regulations and properly hired, supervised, trained, and retained the driver and maintained the vehicle.

More specifically the law states that if you fail to properly secure and preserve this important evidence it will give rise to the legal presumption that the evidence would have been harmful to your side of the case. Further, if you fail to preserve and maintain this evidence, we will seek any sanctions available under the law.

In addition to the above, we specifically request that you preserve:

1. **The front and back of the driver's daily logs** and his co-driver's logs (if any) for the day of the collision, and the six month period preceding the collision, together with all material required by 49 C.F.R. 395.8 and 395.15 for the driver(s) involved in the above matter together with the results of any computer program used to check logs as well as all results of any audit of the logs by your company or a third party. This specifically includes any electric on board computers (AOBRD's, EOBR's, etc...) and the audit trail for those entries. We require you to put any vendor which stores or audits this information on notice of the need to preserve this data.
2. The tractor and trailer involved in this collision.
3. Bills of lading for any shipments transported by the driver and co-driver, for the day of the collision and the thirty (30) day period preceding the collision.
4. Any oversized permits or other applicable permits or licenses covering the vehicle or load on the day of the collision.
5. The driver's complete driver qualification file, as required by 49 C.F.R. 391.51, including but not limited to:
 - a) Application for employment
 - b) CDL license
 - c) Driver's certification of prior traffic violations
 - d) Driver's certification of prior collisions
 - e) Driver's employment history
 - f) Pre-employment MVR
 - g) Annual MVR
 - h) Annual review of driver history
 - i) Certification of road test
 - j) Medical examiner's certificate
 - k) HAZMAT or other training documents

In addition please also preserve:

- l) All drug and alcohol testing records of the driver
 - m) All inquiries and responses regarding the driver's employment history
6. All documents normally used to determine whether a wreck was preventable or non-preventable, whether or not such determination was actually made in this case, to include but not be limited to:

- a) The driver's post-collision alcohol and drug testing results.
 - b) Documents used to determine if the driver was on a cell phone or other electronic device at the time of the wreck.
 - c) Documents used to determine whether the driver was texting at the time of the wreck.
 - d) Driver Log Audit and Violation Reports – Whether paper or electronic, whether daily, weekly, monthly, quarterly, cumulatively, and for all other time periods.
 - e) Reports electronically available through RAIR, JJ Keller, or other services.
 - f) The GPS location data for six months prior to the wreck for the driver.
7. The accident register maintained by the motor carrier as required by federal law for the one (1) year period preceding this collision. (FMCSR 390.15)
 8. All OmniTRAC, Qualcomm, MVPC, QTRACS, OmniExpress, TruckMail, TrailerTRACS, SensorTRACS, JTRACS, and other similar systems data for the six (6) months prior to the collision and the day of the collision, for this driver, truck, and trailer.
 9. Cargo pickup or delivery orders prepared by motor carriers, brokers, shippers, receivers, driver, or other persons, or organizations for thirty (30) days prior to the date of the collision as well as the day of the collision.
 10. Accounting records, cargo transportation bills and subsequent payments or other records indicating billings for transportation or subsequent payment for the transportation of cargo, with both the front and back of cancelled checks for cargo transported by the driver and/or truck involved in the collision for thirty (30) days prior to the date of the collision as well as the day of the collision.
 11. The entire personnel, discipline, and training files of the driver involved in this collision.
 12. All letters, reports, and written material from a government entity involving safety, and safety ratings for the company and driver to include, but not be limited to, Department of Transportation audits by the state or federal government, the Federal Motor Carrier Safety Administration, or material generated on your company or driver pursuant to SAFERSYS or CSA 2010. The request is limited to one (1) year prior to the wreck and any subsequent document, report, letter, or other material (to include electronically transmitted information) that includes the date of the wreck or the driver.
 13. All existing driver vehicle inspection reports required under 49 C.F.R. 396.11 for the vehicle involved in the above collision, to include all existing daily inspection reports for the tractor and trailer involved in this collision.

14. All existing maintenance, inspection and repair records or work orders on the tractor and trailer involved in the above collision.
15. All annual inspection reports for the tractor and trailer involved in the above collision, covering the date of the collision.
16. Photographs, video, computer generated media, or other recordings of the interior and exterior of vehicles involved in this collision, the collision scene, the occurrence, or relating to any equipment or things originally located at or near the site of the occurrence.
17. Any lease contracts or agreements covering the driver or the tractor or trailer involved in this collision.
18. Any interchange agreements regarding the tractor or trailer involved in this collision.
19. Any computer data from the tractor or trailer to include but not be limited to: any data and printout from on-board recording devices, including but not limited to the ECM (electronic control module), any on-board computer, tachograph, trip monitor, trip recorder, trip master, Hours of Service (HOS) or other recording or tracking device for the day of the collision and the six (6) month period preceding the collision for the equipment involved in the collision.
20. Any post-collision maintenance, inspection, or repair records or invoices in regard to the tractor and trailer involved in the above collision.
21. Any weight tickets, fuel receipts, hotel bills, tolls, or other records of expenses, to include expense sheets and settlement sheets regardless of type (to specifically include Comdata or similar vendor reports), for the truck driver pertaining to trips taken for the day of the collision and thirty (30) days prior to the collision.
22. Any trip reports, dispatch records, trip envelopes regarding the driver or the tractor or trailer involved in this collision for the day of the collision and the thirty (30) day period preceding this collision.
23. Any e-mails, electronic messages, letters, memos, or other documents concerning this collision.
24. All drivers' manuals, guidelines, rules or regulations, safety messages, safety and training materials for the safe operation of a tractor trailer given to drivers such as the one involved in this collision.
25. Any reports, memos, notes, logs or other documents evidencing complaints about the driver in the above collision at any time.

26. Any DOT or PSC reports, memos, notes or correspondence concerning the driver or the tractor or trailer involved in this collision.
27. Any and all communications via CB radio, mobile or satellite communication systems, email, cellular phone, pager or other in cab communication device to include the bills for the devices for the day before, the day of, and the two days after the collision.
28. Any and all computer, electronic, or e-mail messages created in the first forty eight hours immediately after the incident, by and between the defendant and any agents or third parties relating to the facts, circumstances, or actual investigation of the incident as well as any computer messages which relate to this particular incident, whether generated or received.
29. If not previously listed, all documents required by Federal Motor Carrier Safety Regulation 395.8, specifically those items identified in the Department of Transportation's interpretation of the regulation in its Answer to Question 10, a copy of which is attached.
30. Any other items associated in any way with the wreck, documents, database, or other piece of evidence concerning or reflecting upon the driver, the collision, the truck, or the trailer.
31. All correspondence and documents regarding any safety issue for the driver to include but not be limited to the initiation, investigation and final conclusion of any:
 - (1) warning letters,
 - (2) targeted roadside inspections
 - (3) any document that stated the driver was unfit.
32. All correspondence and documents regarding any safety issue for the company to include but not be limited to the initiation, investigation and final conclusion of:
 - (1) any off-site investigation,
 - (2) any on-site investigation,
 - (3) any cooperative safety plan,
 - (4) any notice of violation,
 - (5) any notice of claim/settlement agreement,
 - (6) any document that stated the company was unfit, and
 - (7) any document that the company was to be subjected to targeted roadside inspections.
33. Any document that found the driver or the company deficient in any BASIC (Behavior Analysis and Safety Improvement Categories) category.

34. The BASIC measurements for the trucking company and driver for the three years prior to the collision.
35. Any correspondence regarding the company or the driver objecting to, or asking for a correction of, any BASIC measurement or FMCSA intervention.
36. The Pre-Employment Screening Program (PSP) report on the driver for each month for the three years prior to the collision.
37. Any documents showing inquiry by the trucking company for any PSP reports of the driver for the three years prior to the collision
38. Copy of the carrier profile maintained by MCMIS (Motor Carrier Management Information System) for the three years prior to the collision.
39. All logs of activity (both in paper and electronic formats) on computer systems and networks that have or may have been used to process or store electronic data containing information about or related to safety and safety policies, the collision, the driver(s), the truck, the trailer, witnesses to the collision, the plaintiff(s), the load, the facts of the collision, preventability determinations, GPS data, Hours of Service (HOS) data, dispatcher data for this driver(s), this truck, and this trailer.

Please retain all this evidence. A number of court decisions have permitted court sanctions or “destruction of evidence” lawsuits where a party permanently alters important evidence after receiving written notice of a claim which also requests preservation of evidence. ***Unless I have your written explanation to the contrary, in writing, within five business days from the date of this letter, I will presume you will strictly abide by all requests outlined above.***

In regard to the tractor and trailer involved in this collision, we would like to set up a mutually convenient time for our expert to inspect, examine, and conduct tests on the unit. We specifically request that you make no repairs or adjustments to the tractor or trailer until this inspection is completed. Please contact us to discuss the scheduling of an inspection. We request a non-destructive examination of the interior and exterior of the truck and trailer specifically including, but not limited to, access to the subject vehicle for inspection, and that you permit the following:

1. Provide access to the vehicle to include the ignition key and other keys or access codes as may be necessary to examine the truck and trailer, their mechanical components, storage compartments and allow recording or downloading of mechanical or electronic on-board recording Electronic Control Module (ECM) or Event Data Recorder (EDR) commonly known as a “black box” or any other computer or data link of the subject vehicle to include but not be limited to devices such as Cummins Celect™, Cummins

Quik-Link®, NEXIQ Pro-Link®, Detroit Diesel Pro Driver®, Detroit Diesel DDEC III® & DDEC IV®, Caterpillar Fleet Information System®, Caterpillar ADEM® or any similar device (if your vehicles are so equipped).

2. Provide access to the vehicle to start the engine, charge the air reservoirs and allow brake system examination and testing.
3. If the vehicle's engine cannot be started or the air brake system has been compromised so it will not retain air pressure, remote air pressure supply may be used to charge the system for examination and testing.
4. Air pressure supply lines and air pressure gauges may be inserted at points that will not change adjustment of the foundation brakes of the subject vehicle.
5. The vehicle may be moved or lifted onto portable scales for the purpose ascertaining the vehicle weight after the black box is downloaded.
6. Items of evidence located that may be lost, contaminated or destroyed will be identified, photographed and turned over to appropriate representatives of the parties using reasonable evidence storage practices.

Accordingly, please contact my office to arrange for a mutually convenient time for the examination of the subject truck. If the subject truck is not under the control of (trucking company), please provide information as to its last known whereabouts, and take all reasonable measures to ensure its preservation.

Very truly yours,