*Spoliation Notice In a Commercial Trucking Case*

May 1, 2021

**VIA CERTIFIED MAIL**

Progressive Insurance

747 Alpha Drive

Highland Heights, OH 44143

S&J Courier, Inc. (also send to driver personally)

555 Old Town Road

Big City, GA 30228

**RE:** Claim No.: 21-34343434

Our Client: Martin Smith

Date of Loss: April 28, 2021

**NOTICE OF REPRESENTATION**

**AND DEMAND FOR PRESERVATION OF EVIDENCE**

Dear Progressive Insurance/S&J Courier, Inc.

Please be advised that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Law, LLC has been retained to represent the legal interests of Mr. Martin Smith. as a result of injuries sustained from a collision with a Freightliner Truck which occurred on or about April 28, 2021 on or near the intersection of \_\_\_\_\_\_\_\_\_\_\_ Blvd. and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Rd. in Big City, Big Co., GA. Enclosed, please find a copy of the police report drafted by the Big City Police Department concerning the incident at hand involving your driver, Mr. Bad Driver. In light of a potential legal matter involving S&J Courier and/or Mr. Driver, we ask that S&J Courier (hereafter S&J), Mr. Driver, and their insurance company preserve any and all records noted below as evidence in this case.

This letter is to formally demand the preservation of certain evidence related to this collision. If you fail to properly secure and preserve these important pieces of evidence, it may give rise to the legal presumption that the evidence would have been harmful to your side of the case, also known as spoliation of evidence. It is necessary to preserve all of the evidence below in order for our client to be able to make a determination about the culpability and punitive exposure of any party to this action. We are not allowed to serve discovery in this matter since there has been no lawsuit filed and thus, must rely on this correspondence to you to preserve evidence in this case. We specifically request that the following evidence be maintained and preserved, and not be destroyed, modified, altered, repaired, or changed in any manner, and further that you immediately put any third party vendor that has or controls this information, material, or documentation, on notice to maintain and preserve without change:

1. Bills of lading for any shipments transported by the driver and/or co-driver, for the day of the collision and the thirty (30) day period preceding the collision.
2. Any oversized permits or other applicable permits or licenses covering the vehicle or load on the day of the collision.
3. The driver’s complete driver qualification file, as required by 49 C.F.R.391.51, including but not limited to:
4. Application for employment
5. CDL License
6. Driver’s certification of prior traffic violations
7. Driver’s certification of prior collisions
8. Driver’s employment history
9. Pre-employment MVR
10. Annual MVR
11. Annual review of driver history
12. Certification of road test
13. Medical examiner’s certificate
14. HAZMAT or other training documents

In addition, please also preserve:

1. All drug and alcohol testing records of the driver
2. All inquiries and responses concerning the driver’s employment history
3. The driver’s post-collision alcohol and drug testing results.
4. The accident register, or similar documentation and records, maintained by the motor carrier as required by federal law for one (1) year period preceding this collision. (FMCSR 390.15)
5. All OmniTRAC, Qualcomm, MVPC, QTRACS, OmniExpress, TruckMail, TrailerTRACS, SensorTRACS, JTRACS, and other similar system date for the six (6) months prior to the collision and the day of the collision, for the driver, truck, and trailer.
6. Cargo pickup or delivery orders prepared by motor carries, 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.
7. Accounting records, cargo transportation bills and subsequent 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.
8. The entire personnel file of the driver involved in this collision.
9. All letters, reports, and written material from a government entity involving safety, and safety ratings for the company and driver to include, but not limited to, Department of Transportation audits by the state or federal government, the Federal Motor 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 driver.
10. 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. 395.15 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.
11. All existing driver vehicle inspection reports required under 49 C.F.R. 396.11 for the vehicle involved in the above collision.
12. All existing maintenance, inspection and repair records or work orders on the tractor and trailer involved in the above collision.
13. All annual inspection reports for the tractor trailer involved in the above collision, covering the date of the collision.
14. 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.
15. Any lease contracts or agreements covering the driver or the tractor or trailer involved in this collision.
16. Any interchange agreements regarding the tractor or trailer involved in this collision.
17. Any computer data from the tractor or trailer to include but not 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 six (6) month period preceding the collision for the equipment involved in the collision.
18. Any post-collision maintenance, inspection, or repair records or invoices in regard to the tractor and trailer involved in the above collision.
19. 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.
20. 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.
21. Any e-mails, electronics messages, letters, memos, or other documents concerning this collision.
22. Any driver’s manuals, guidelines, rules or regulations given to drivers such as the one involved in this collision.
23. Any reports, memos, notes, logs, or other documents evidencing complaints about the driver in the above collision at any time.
24. Any DOT or PSC reports, memos, notes or correspondence concerning the driver or the tractor or trailer involved in this collision.
25. Any and all communications via CB radio, mobile or satellite communications 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.
26. 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.
27. 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.
28. 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.
29. All correspondence and documents regarding any safety issue for the driver to include but not limited to the initiation, investigation and final conclusion of any:
30. Warning letters,
31. Targeted roadside inspections
32. Any documents that stated the driver was unfit.
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 to, or asking for a correction of, any BASIC measurements 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 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, witness 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.
40. All e-mails, and information about e-mails (including message contents, header information and logs of e-mail system usage) sent or received by the driver and co-driver involved in the collision for period of time involving the collision and the seven (7) days before and after the collision.
41. All other e-mail and information about e-mail (including message contents, header information and logs of e-mail system usage) containing information about or related to company safety and safety policies, the collision, the driver(s), the truck, the trailer, witness to the collision, the plaintiff(s), the load, the facts of the collision, preventability determinations, GPS data, dispatcher data for this driver(s), this truck, and this trailer. 40. All databases (including all records and fields and structural information in such databases), containing and reference to and/or information about or related to company 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, dispatcher data for this driver(s), this truck, and this trailer.
42. All electronic documents and the storage media on which they reside which contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists, we will seek all documents in their electronic form along with information about those documents contained on the media. We also will seek paper printouts of only those documents that contain unique information after they were printed out (such as paper documents containing handwriting, signatures, marginalia, drawing, annotations, highlighting and redactions) along with any paper documents for which no corresponding electronic files exist.
43. Our discovery requests will ask for certain data on the hard disks, floppy disks and backup media used in your computers, some of which data are not readily available to an ordinary computer user, such as “deleted” files and “file fragments.” As you may know, although a user may “erase” or “delete” a file all that is really erased is a reference to that file in a table on the hard disk; unless overwritten with new data, a “deleted” file can be as intact on the disk as nay “active” file you would see in a directory listing.

In order to assure that your obligation to preserve documents and things is met, please immediately forward a copy of this letter to all persons and entities with custodial responsibility for the items referred to in this letter, to specifically include third parties and vendors. If you have any questions, please do not hesitate to contact our office at 404-618-0960. Thank you for your time and assistance in this matter.

Very truly yours,

Attorney at Law