

## Webcast Logistics

- Please note the start time of today's webcast:

### **Mitigating Accident Liability**

11:00 AM Eastern Time (New York)  
 10:00 AM Central Time (Chicago)  
 9:00 AM Mountain Time (Denver)  
 8:00 AM Pacific Time (Los Angeles)




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## Webcast Logistics

- The webcast "Mitigating Accident Liability" will be starting in a few moments.
- The handout is available to print. You'll find it in the "Webcast Handouts" box on the lower right-hand side of your screen.




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## Webcast Logistics

- Participants' phones will be muted during the webcast.
- Please use the "Q&A" function in the upper right corner of your screen to ask a question or if you need a dial in number.
- Additional Q&A time will be provided at the conclusion of the webcast.




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## Webcast Logistics

- The webcast will be recorded and posted within 7 days at: [www.jjkeller.com/nptcinfo](http://www.jjkeller.com/nptcinfo)
- Register for future J. J. Keller & NPTC webcasts at: [www.jjkeller.com/nptcinfo](http://www.jjkeller.com/nptcinfo)
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## Webcast Logistics

- **AUDIO:** Participants' phones will be muted during the webcast. Listen through your computer's speakers or chat us through the Q&A for a dial in number.
- **QUESTIONS:** Send your questions through the "Q & A" box on your screen. We'll get to as many questions as time permits.
- **HANDOUTS:** Download today's handout in the "Webcast Handouts" box found on the bottom of your screen.
- Thank you for participating in today's webinar!




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Gary Petty  
National Private  
Truck Council

## Mitigating Accident Liability

Gary Petty  
President & CEO  
National Private Truck Council




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## Mitigating Accident Liability

This webcast will cover ...

- An in-depth look at the nuclear jury awards impacting trucking
- Strategies carriers can use to offset their escalating liability
- A case study in implementation
- Question & Answer

### Housekeeping issues:

- You will be muted during the event. Please use the Q&A feature to send questions us. We'll try to answer them during the Q&A period if they are not covered in the presentation.

### Attention Attendees:

- + Thank you for attending!
- + The presentation will start in a few minutes at 10:00 AM Central.
- + You will be muted during the event.
- + Please use the Q&A feature to send in questions to us. We'll try to answer them during the Q&A period if they are not covered in the presentation.
- + The slides and recording will be posted within 7 days at: <http://www.jjkeller.com/nptcinfo>




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## Meet Your Presenters



**Gary Petty**  
President & CEO  
National Private  
Truck Council



**Tom Moore, CTP**  
Senior Vice President  
National Private  
Truck Council



**Tom Bray**  
Senior Transportation  
Management Editor  
J. J. Keller & Associates



**Todd Porter**  
VP, Safety, Environmental  
& Regulatory  
Sentinel Transportation,  
LLC




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**Tom Moore**  
National Private  
Truck Council

## Defining the Challenge... ...and the Opportunity

**Tom Moore CTP**  
Sr. Vice President  
National Private Truck Council




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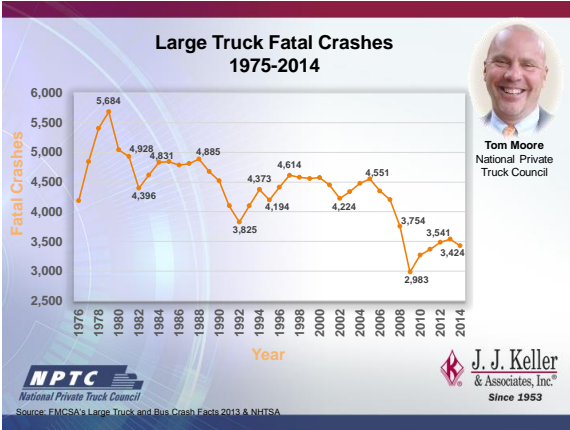
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### Nuclear Jury Verdicts

- 2015, L.A. County Superior Court -- \$34.5 million verdict against the carrier – 19 year old with a single below-the-knee amputation.
- 2015, Santa Fe County, New Mexico – \$165 million verdict in a case resulting in the deaths of a mother and daughter in addition to the death of the truck driver, compensatory damages only. Carrier was held 65% at fault.
- 2015, Sandersville, GA –\$15 million—72 year old old shoulder separation (both) and several broken vertebrae.

**NPTC**  
National Private Truck Council

**J. J. Keller & Associates, Inc.**  
Since 1953




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### Nuclear Jury Verdicts, cont.

- March, 2015 – Arizona State Court jury awarded \$19.25 million for the death of a driver and substantial injuries to three other passengers who included driver's wife and daughter
- Decedent lost control when a tire on his car blew out and he impacted carrier's parked tractor trailer

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### Why Are These Verdicts Happening?

- Juries' inflated perception of acceptable award
- Plaintiffs' attorneys asking for amounts never seen in history
- Higher settlement demands
- Better caliber plaintiffs' attorneys
  - Tech imbalance in the Courtroom—Plaintiffs go Hollywood
  - Transportation companies insurers too cheap
- Judges and jury pools increasing liberal
- Reptile theory



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Truck Council




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### Why Are Trucking Cases Different?

- Experienced litigants
- Document-intensive
- Public opinion of large trucks
- Highly regulated industry



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### Navigating the Regulations

- Mere compliance is not enough
- Day-to-day issues
- Accident/Post-accident issues
- Best practices



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### FMCSR Requirements

- Record of Duty Status
- Driver Qualification File
- Criteria for employment
- Pre-employment investigations
- Road tests
- Physical qualifications
- Pre-employment drug and alcohol screening
- State-specific regulations



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### Why Keeping Up with the Documents Matters

- Spoliation of Evidence
- Destruction or material alteration of evidence, or the failure to preserve property for another's use as evidence, in pending or reasonably foreseeable litigation
- Big questions:
  - When to preserve?
  - For how long?
- Documents can be critical
- Discrepancy in documents can lead to big award



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### Accident Issues – At the Scene

- Assume everything is discoverable
- 24/7 response team
- Preservation of evidence
- Tailor the investigation in terms of the types of claims that are likely to arise (ex: If the driver was speeding, those are going to be the documents to look for - this is different than if the driver was stopped at the time or if the driver was drinking at the time)



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**Accident Requirements**

**Thomas Bray**  
Sr. Editor, Transportation Management  
J. J. Keller & Associates, Inc.



**Tom Bray**  
J. J. Keller & Associates, Inc.

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**Federal Requirements**

- All accidents meeting the definition of an accident in §390.5 must be recorded on the carrier's "accident register"
  - Fatality
  - Injury requiring immediate treatment away from the scene
  - A vehicle being towed away due to disabling damage



**Tom Bray**  
J. J. Keller & Associates, Inc.

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**Federal Requirements**

- Drug and alcohol test if...
  - The vehicle being driven required a CDL to operate
  - There was a fatality
  - The driver was cited for a moving violation related to the crash in the case of an injury or towaway accident



**Tom Bray**  
J. J. Keller & Associates, Inc.

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### Federal Requirements

- **Alcohol test must be done within 2 or 8 hours**
  - Driver cannot consume alcohol until test is completed, or 8 hours have passed
- **Drug test must be done within 32 hours**
- **“Clock” starts ticking at the time of the accident**
- **Carrier is responsible for making sure driver is tested**
- **If fatality or citation occurs after these times, the tests are not required**



Tom Bray  
J. J. Keller & Associates, Inc.




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### State Requirements

- **Stop and protect the scene!**
  - Move to safe area to prevent additional accidents if possible
  - Turn on 4-ways and place out warning devices (state and federal requirement)
- **Call the authorities**
  - Notify them of the cargo being carried!
- **Follow instructions from the authorities**
- **Complete police accident report**
- **Scene clearance (get vehicle and cargo off the road)**



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J. J. Keller & Associates, Inc.




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### Additional Considerations

- **High-visibility clothing!**
- **Discuss rendering aid with the drivers**
  - Only to the best of your ability and training
  - Do not move injured unless they will die where they are
- **Driver must follow company procedures**
- **Driver must know to document the scene for the company**



Tom Bray  
J. J. Keller & Associates, Inc.




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### Additional Considerations

- Having a notification or call “tree”
  - Make sure the right person is notified
- Having a “go team” to deal with serious accidents
  - Include legal counsel on the “go team”
- Having an accident checklist that includes the regulatory requirements and the company procedures



Tom Bray  
J. J. Keller & Associates, Inc.




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### The Sentinel Experience

Todd Porter – VP, Safety, Environmental & Regulatory, Sentinel Transportation, LLC



Todd Porter  
Sentinel Transportation




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### Sentinel Transportation is the Private Fleet of Phillips 66 and Chemours...

**Vision**

- Preferred by our Parent Companies
- Safest truck operator in industry
- Valued by employees
- Respected by trucking industry

**Purpose**

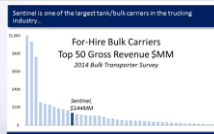
- Safety, service & cost performance
- Specialized & hazardous services
- Diverse trucking insight & leverage

**Size & Scope**

- 770 Employees
- 600 Truck Drivers
- 450 Power Units
- 1,200 Trailers
- 30MM Miles
- 38 Terminals
- 21 States
- Crude Oil Transportation
- Fuel Transportation
- Lube Transportation
- Chemical Transportation
- Local Transportation
- Waste Transportation
- Trailer Rental



Todd Porter  
Sentinel Transportation




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### Sentinel Diversified Experience Enables Us To Provide Unmatched Customer Value...

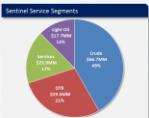


**Todd Porter**  
Sentinel Transportation

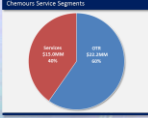
**Business by Parent Company**



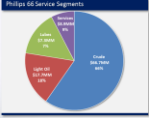
**Sentinel Service Segments**





**Chemours Service Segments**



**Phillips 66 Service Segments**




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### What is Their Objective?

**Convince the judge or jury that:**

1. Driver was negligent,
2. That negligence caused the accident, and in some cases
3. That the plaintiff is not barred from recovery due to their own negligence – based on jurisdictional law.



**Todd Porter**  
Sentinel Transportation

**Establish damages:**

- **Compensatory – compensate plaintiff for damages**
  - Economic damages – medical bills, lost wages, property damages, etc...
    - Fairly easy to define and determine through evidence & documents
  - Pain & suffering – compensate the plaintiff for the pain, disfigurement, and other suffering.
    - Very subjective and open to interpretation. With few limitations, the jury can award what they feel is reasonable and appropriate.





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### What Is Their Real Objective?

- **Punitive damages = \$\$\$\$\$\$**
  - Behavior is considered exceptionally reckless or hazardous
  - Malice or willful disregard for others' safety, health, and rights.
  - Punitive damages are to punish the tortfeasor.
  - Very open and generally very large dollar amounts if awarded.
  - Courts have very tight laws around these types of damages, so they are not awarded very often and only in the worst of cases.
- **So if punitive damages are so hard to get, what else can I do to increase the award...?**



**Todd Porter**  
Sentinel Transportation


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### What Is Their Real Objective?



Todd Porter  
Sentinel  
Transportation

- **Make the jury angry and afraid**
  - Create anger and fear in jury – incite bigger awards
  - Company does not care – so needs to be punished.
  - Convince the jury - driver and/or company willingly or negligently disregard safety rules or regulations and must be punished for it.
  - Turn their fear into a belief that the only way companies are going to be incited to follow the rules is to hurt them in the pocketbook.
  - Create fear and anger in the jury –
    - You share the road with these big bad trucking companies.
    - They disregard the rules and their own policies.
    - These companies are putting you and your family at risk every day.
    - Something needs to be done about it, so punish them by giving this innocent injured person a big award to show them that they can't get away with it.




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### So What Can We Do To Protect Ourselves?



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Sentinel  
Transportation

- **Diffuse their arguments...**
- **Don't give them any ammunition**
  - Ensure that you are a safe, compliant carrier.
- **Absolute minimum – be in compliance!**
  - Driver qualifications
  - Training requirements
  - Equipment safe & compliant
  - Good equipment records – maintenance
  - Driver logs
  - Etc...
- **Better – go beyond compliance.**




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### Mitigating Accident Liability Starts Well Before the Incident...



Todd Porter  
Sentinel  
Transportation

- **Strong safety culture & commitment**
- **Good driver hiring**
- **Exceptional driver training**
  - Compliance issues
  - Company safety policies & procedures
- **Clear documented safety policies & procedures**
  - Compliance with regulations is minimum
- **Enforcement of policies & procedures**
  - Documented & consistent
  - Processes to monitor driver compliance
- **Safe equipment**
- **Appropriate use of technology**
- **Clear & detailed emergency response process**




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### Mitigating Accident Liability When The Incident Occurs...



Todd Porter  
Sentinel  
Transportation

- Implement emergency response procedures quickly and effectively
- Get the right people involved early –
  - Company emergency response team,
  - Insurance company,
  - Attorneys (if appropriate), and
  - Accident reconstruction expert (if appropriate).
- Secure evidence
- Document your findings




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### Strong Safety Culture & Commitment



Todd Porter  
Sentinel  
Transportation

- Organizational commitment –
  - Top management adopting and demonstrating safety as core value.
  - Visible demonstrated commitment to safety by management.
- Empowering employees to promote safety and take action.
- Reporting system to evaluate levels of safety and identify areas for improvement.
- Consistent communication supporting safety.
- Participation and buy-in from all departments.
- Education and training on how to do things right – safe & compliant.
- Correct unsafe behaviors consistently & quickly.
- All employees must be engaged and involved in safety.




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### Level of Safety Commitment Is the Differentiator



Todd Porter  
Sentinel  
Transportation

- Intense commitment to safety at all levels of the organization.
- Everyone in our organization is committed to safety- front line drivers to senior leaders.
- Safety is part of everyone's goals from drivers to senior leaders.
- Safety is the first thing we think about when looking at new business, new processes, vehicle design, etc...
- Willingness to put safety first, even if it means temporarily sacrificing productivity...
  - Pulling trucks during poor weather,
  - Sending a driver home if not up to par, or
  - Getting rid of unsafe driver, even if it means we will be short staffed.
- Safety is at the core of everything we do.




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## Good Driver Hiring Process

- Train supervisors & managers in how to:
  - Interview well – identify red flags
  - Perform thorough road test
- Hire good drivers who have strong commitment to safety.
- Establish strict hiring criteria and stick to it.
- Be up front regarding safety expectations.



**Todd Porter**  
Sentinel  
Transportation




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## Enforce Stringent Hiring Standards...

Minimum Driver Qualification Standards	Federal Regulation	"Generic" Carrier	Sentinel Transportation
Minimum age	21	21	21
Applicable CDL qualifications and applicable vehicle endorsements	Mandatory	Mandatory	Mandatory
DOT Physical	Mandatory	Mandatory	Mandatory
Pre-employment history	---	1-Year 3 Year Within Past 2 Years	+ 10-Years + 3-Years Within Past 5-Years
Previous driving experience	---	Mandatory	Mandatory
Criminal background investigation	---	Mandatory	Mandatory
Pre-employment drug screen	---	Mandatory	Mandatory
Pre-employment road test	---	---	Mandatory
Maximum allowed moving violations convictions or non-preventable accidents	---	3 W/in Past 3 Years 3 W/in Past 3 Years	+ 2 Within Past 3 Years 0
Maximum allowed preventable accidents	---	3 W/in Past 3 Years	0 Within Past 3 Years
Maximum allowed suspensions, revocations or cancellations of operating licenses or endorsements	---	3 W/in Past 3 Years	0 Within Past 3 Years
Required qualifications for school/overhead substance related conviction while operating CMV	---	---	+ Mandatory Lifetime Ban
Pre-employment physical	---	---	+ Mandatory
Verification of only one current license	---	---	+ Mandatory
Neat and clean appearance	---	---	+ Mandatory




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## Allow Necessary On-boarding And Training .

Sample Training Plan				# Weeks						
Milestone	Start	End	Duration	1	2	3	4	5	6	7
1.0 Classroom, Office Training	Week-1	Week-2	2 Weeks							
1.1 Welcome and initial classroom training	Week-1	Week-1	1 Week							
1.2 Computer based training module	Week-1	Week-1	1 Week							
1.3 Dispatch office training	Week-2	Week-2	1 Week							
1.4 Mechanics/Shop training	Week-2	Week-2	1 Week							
1.5 Video training	Week-2	Week-2	1 Week							
2.0 On The Track Training	Week-3	Week-8	6 Weeks							
3.0 Ride Along and Observations	Week-8	Week-12	4 Weeks							
3.1 Trainer Assessments	Week-8	Week-8	1 Week							
3.2 Manager site visit with coaching and feedback	Week-10	Week-10	1 Week							
3.3 Other observations with coaching and feedback	Week-11	Week-12	2 Weeks							

**Commit to Training**  
Expectation is to never short cut training to expedite a driver into the truck.  
We commit anywhere from 2-8 weeks before a new hire is able to drive without a trainer.  
The more complex, risky operations will require the driver complete up to 12 weeks of training before operating solo.  
Frequent observations, both announced and unannounced, are standard for new hires.

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## Technology – The Double Edged Sword



Todd Porter  
Sentinel  
Transportation

- The great debate – *Do the benefits of technology outweigh the risk of data and potentially damning evidence?*
- Remember – *Technology documents your successes and your failures.*
- If you commit to using the technology, have clear effective policies to support the technology and hold people accountable.
- Our experience shows that the value far outweighs the potential risk.

**Don't get into the technology if you are not going to do it right!**




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## Safety Management Systems (as it relates to technology)



Todd Porter  
Sentinel  
Transportation

- **Simple Definition – Policies, procedures and processes that, at a minimum, identify:**
  - How a technology is going to be used and managed;
  - Management/employee accountabilities related to the technology;
  - Consequences of unsafe behaviors.
- **Ultimately the policies and procedures must be created to ensure that we are properly using technology to improve safety, protect our drivers and protect the public.**
- **Consistent enforcement of policies is critical.**




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## Enter Technology – Information Super-Highway



Todd Porter  
Sentinel  
Transportation

- **New Technologies have opened our industry to amazing amounts of data.**
- **Some examples:**
  - **Vehicle Data Monitoring Systems**
    - Fast Starts/Stops
    - Speed Data
    - More Accurate MPG Data
    - Electronic Logging – Hours of Service
  - **GPS Systems**
    - Speed Data
    - Routing
  - **In Cab Cameras**
    - Vehicle Forces
    - Driver Behaviors
- **Best Friend or Greatest Enemy**
  - **Best Friend**
    - Our eyes & ears in the field
    - Used as teaching opportunity
    - Action taken & corrections made
    - Proactive vs Reactive
  - **Greatest Enemy**
    - No policies on how technology will be used and managed
    - No data destruction policy
    - Data ignored or no action taken
    - No documentation of actions taken




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### Mitigating Accident Liability When The Incident Occurs...



Todd Porter  
Sentinel  
Transportation

- **Implement emergency response procedures quickly and effectively**
  - Notify authorities - always
  - Get key team members to the accident site
  - Outside adjuster & legal involvement early (when appropriate)
  - Have the right tools to investigate effectively – camera, measuring tape, sampling media if needed, etc...
- **Secure evidence – avoid spoliation**
  - Electronic data – video, speed reports, driver's logs, etc...
  - Driver's training and personnel folder
  - Equipment purchase and maintenance records




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### Investigate Quickly & Thoroughly



Todd Porter  
Sentinel  
Transportation

- **Contact insurance adjuster and/or legal counsel immediately for larger claims**
  - Most carriers have people on call 24 hours to respond
  - Contact an accident reconstruction expert for larger claims
- **Investigate quickly and thoroughly**
  - Local management must be ready and prepared
    - Investigate immediately while facts are still clear and evidence has not changed
  - Have necessary equipment ready – camera, measuring tape, witness forms, etc...
  - Look for any other video cameras in the area and secure the footage immediately – traffic cameras, outside security cameras, atm's, gas stations, etc...




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### Evidence Destruction (Spoliation)



Todd Porter  
Sentinel  
Transportation

- **Spoliation of evidence** - intentional, reckless, or negligent withholding, hiding, altering, fabricating, or destroying of evidence relevant to a legal proceeding.
- **Potential consequences of spoliation:**
  - **Negative Inference** – when a party destroys evidence, it may be reasonable to infer that the party motivation to avoid the evidence. Finder of fact can review all evidence uncovered in as strong a light as possible against the spoliator and in favor of the opposing party.
  - Courts may limit evidence you can submit.
  - Courts can bar you from certain defenses.
  - Might block certain expert testimony which could help your case.
  - Worse case – default.




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## Evidence Protection – the Records Hold Order



Todd Porter  
Sentinel  
Transportation

### • Records hold order

- Company must preserve records
  - Pending or imminent litigation, or
  - Litigation is reasonably anticipated.
- Litigation hold prevents spoliation (destruction, alteration, or mutilation of evidence) which can have a catastrophic impact on the defense
- An attorney may issue a litigation hold letter or a company may issue a hold order internally
  - Failure to receive formal hold order by other party does not absolve company of requirement to preserve evidence.
- The order applies not only to paper-based documents but also to electronically-stored information (esi)
- May have to suspend your normal records retention policies




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## Evidence Protection – What to Protect



Todd Porter  
Sentinel  
Transportation

### • Lock down all paperwork related to:

- Accident (statements, pictures, diagrams, video, etc...)
- Driver (DQ file, discipline, personnel...)
- Equipment (repair and maintenance...)
- Load (BOL, delivery receipt...)

### • Secure the vehicle in question

- Serious accidents – secure third party location
- Do not repair or alter the vehicle
- Must give other side reasonable amount of time to inspect
- Work with legal counsel to determine when to release vehicle

### • Secure data

- Notify 3<sup>rd</sup> parties to save data or have data downloaded




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## Mitigating Accident Liability Starts Well Before the Incident...



Todd Porter  
Sentinel  
Transportation

### • Our goal is to convince the jury that the company

- Is absolutely committed to safety,
- Complies with the appropriate rules and regulations,
- Has gone above and beyond to protect the public and ensure that their drivers are as safe as possible on the road, and
- Has preserved and shared all required evidence.

### • You may still be found negligent, but you severely reduce the potential for a nuclear verdict.

### • The less they like you, the bigger any potential award will be, so get them to like you by doing the right things.




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### Question & Answer Session



**Gary Petty**  
National Private  
Truck Council



**Tom Moore, CTP**  
National Private  
Truck Council



**Tom Bray**  
J. J. Keller &  
Associates, Inc.



**Todd Porter**  
Sentinel  
Transportation

Please continue to submit your questions.



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### Thank you for participating!



**Gary Petty**  
National Private  
Truck Council

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