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GARDNER WILLIS
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ATTORNEYS AT LAW

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TRUCKING

Gardner, Willis, Sweat & Handelman, LLP hopes you find the information in this newsletter helpful. This information is intended to be general in nature and is not a substitute for competent legal advice. Because every issue is unique, we do not recommend that you apply the information in this newsletter without first seeking appropriate legal advice.

We publish various newsletters regarding other areas of law. Please contact us for more information or email us at gwsh@gwsh-law.com if you prefer to receive our newsletters electronically.

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At Gardner, Willis, Sweat & Handelman, we offer a wide range of services including Banking; Bankruptcy; Business Law; Construction Law; Employment Law; Estate and Tax Planning; General Litigation and Appeals; Governmental Law; Real Estate; Trucking Litigation, and Workers' Compensation. Sherman Willis, our Managing Partner, is available to speak with you about your unique needs in these and other areas. For a consultation with Sherman, please call at 229-883-2441, or e-mail him at:

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All inquiries are confidential.

Importance of Emergency Response to Tractor-Trailer Accidents

The importance of investigating the scene of an accident as soon as possible after the accident occurs cannot be understated. Gardner, Willis, Sweat & Handelman, LLP offers emergency response assistance to aid in investigating the accident scene in order to determine the facts, preserve evidence, and protect our clients. Our Emergency Response Team takes care of every aspect of the investigation. It is important to have photographs of the scene from all angles, including the resting position of all vehicles involved, with and without reference points. We document all damage to the vehicles, pre-accident travel paths of each vehicle, fluid trails associated with each vehicle, and areas where any parts fell from a vehicle. Most of this evidence is extremely temporary and can be lost if not immediately preserved. Leaving that task to an untrained driver or to law enforcement officials whose motivations may be contrary to our interests and those of our driver is risky.

It is also important to establish an early relationship with law enforcement, as well as to identify any witnesses at the scene including: the officer in charge of the scene, any Department of Transportation representatives, drivers and occupants of other vehicles, witnesses, the wrecker services, EMTs, and hospital destinations. We also gather abandoned documents and personal effects if needed. We can assist in coordinating with an accident reconstructionist to measure the skid marks on the road, the distances between vehicles, the distances from reference points, and to gather all information necessary for a later complete reconstruction of the event. Finally, but most importantly, we protect our driver. It is critical to have legal representation at the scene to prevent the driver from making uninformed and ill-advised statements to law enforcement officers. Only if we are present on the scene can we properly advise the driver on how best to proceed considering the circumstances of the situation. Our Emergency Response Team is here to assist you and your drivers with all of your accident investigating needs in the event of a serious collision.

**SENTRY SELECT INSURANCE COMPANY et al. v. TREADWELL
COURT OF APPEALS OF GEORGIA • Decided November 28, 2012**

Spoliation of Evidence

On December 9, 2006, Martin Treadwell, Jr. was towing a vehicle behind his pickup truck with his wife, Essie Treadwell. Tony Martin, a truck driver, ran into the back of the vehicle Mr. Treadwell was towing. On November 17, 2008, Mrs. Treadwell (Plaintiff) filed suit against Mr. Martin, J.H.O.C., Inc. d/b/a Premier Transportation, and Sentry Select Insurance Company (Defendants), seeking damages for injuries she sustained during the accident. The Plaintiff moved to strike the Defendants' Answer due to spoliation of evidence. The trial court granted the Plaintiff's motion, finding that the Defendants had destroyed the driver's logbooks, ECM data, GeoLogic data, and results of the investigation. The Defendants appealed.

Spoliation occurs when a party destroys or fails to preserve evidence that is necessary for contemplated or pending litigation. The Defendants argued that the trial court erred in finding spoliation because there was no evidence that they were aware of any contemplated litigation. The Court of Appeals found no error in the trial court's finding that spoliation had occurred. The Court of Appeals noted that there was ample evidence that the Defendants were aware of the contemplated litigation including a letter from the Treadwells' attorney, results from their investigation, knowledge that accidents such as these involve claims, and knowledge that these particular Claimants were adversarial.

In this case, the Court of Appeals found that the trial court was authorized to impose sanctions for spoliation of the logbooks and GeoLogic data. Therefore, the Court of Appeals sent the case back to the trial court with instructions that the court determine what the proper sanctions should be under the particular circumstances of this case and the applicable law.

**HOWARD et al. v. ALEGRIA
COURT OF APPEALS OF GEORGIA • Decided March 13, 2013**

Preservation of Evidence

On September 10, 2008, Alegria lost control of his pick-up truck and came to a stop on Interstate 20. A tractor-trailer driven by Howard and owned by ACT collided with Alegria's truck, resulting in permanent injury to Alegria. Approximately ten (10) days after the accident, Alegria's attorney sent a letter to ACT advising them to preserve and maintain the tractor-trailer in its post-collision condition, and to pursue and maintain any downloadable computer data/business records, and other materials. Two years later, Alegria filed suit against Howard and ACT for his bodily injuries. Howard and ACT answered the suit and filed a counterclaim for property damage to the tractor-trailer. During discovery, ACT admitted that it had begun repairs on the tractor-trailer five (5) days after the collision, that requested documents had been destroyed, and that there was no on-board computer on the tractor-trailer on the date of the collision. After attempting to retrieve the requested documents for over six (6) months, Alegria filed a Motion for Sanctions against ACT for fraud, discovery abuse, and spoliation of material evidence. After this motion was filed, ACT revealed that there was an SRS module on-board the tractor-trailer at the time of the accident that could contain crash data.

The trial court agreed with Alegria's arguments and sanctioned ACT by striking and dismissing ACT's answer and counterclaim, which essentially removed ACT's ability to defend the case. Because of ACT's actions, the Court of Appeals agreed with the trial court that ACT's answer and counterclaim should be dismissed.

Significance: It is always important to preserve any evidence that could be relevant to the claim after a collision involving another person or their property. The tractor-trailer's condition should be maintained until the other party has had an opportunity to inspect it. All on-board computer devices and related reports or documents should be preserved. A party has two years after the collision to file a lawsuit. Therefore, this evidence should be protected for at least two years after the accident or until a lawsuit is completed, if one is filed.

This newsletter was prepared by our associates, Amanda Goff, Amy Purvis, Kimberly Guthrie, and Cara Fiore. If you have any questions, please do not hesitate to contact Mark Pickett, who represents clients in the trucking industry.