



ARTICLE OF THE MONTH

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Preservation Starts at the Moment of Impact - New York Spoliation Lessons for Trucking Defense

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When an organization investigates an incident, reviews video or data, or generates an incident report, a New York court may find that litigation was reasonably foreseeable, triggering a duty to preserve and exposing the party to spoliation sanctions if routine retention settings later overwrite relevant evidence.

In trucking defense litigation, evidence preservation questions arise early, often before counsel is retained. While preservation or litigation-hold letters help define what an opposing party wants preserved, New York courts do not treat those letters as the starting point. Instead, the duty to preserve arises when a party reasonably anticipates litigation. In transportation matters, that trigger is simply the happening of an accident in the first place, especially when a carrier's own response reflects that a claim is possible.

The *Battle* Decision: When the Duty to Preserve Begins

A decision from earlier this year in the Second Department highlights how an entity's actions immediately after an incident can determine whether a preservation duty has been triggered. Although it is not a trucking case, *Battle v. Fulton Park Site 4 Houses, Inc.*, 245 A.D.3d 667 (2d Dep't 2026), provides a straightforward roadmap for how New York courts evaluate preservation failures and the spoliation penalties that could result.

In *Battle*, the plaintiff was allegedly injured when a glass door shattered as he exited a building. Later that same day, a building security guard learned of the incident, reviewed surveillance footage depicting what occurred, and prepared an incident report. The guard did not save the video, and the footage was later overwritten under the building's routine auto-deletion settings. Importantly, the defendant had not received a preservation letter, or any formal notice of a claim, before the footage was deleted.

After these facts surfaced in discovery, plaintiff's counsel moved for spoliation sanctions under CPLR 3126, and the trial court granted the motion. The Second Department affirmed, holding that the defendant was responsible for spoliation even though the relevant events occurred before any preservation demand was made or any notice of claim at all was received.

The court's reasoning was simple: a party must preserve evidence once it is on notice that the evidence may be needed for future litigation—i.e., when litigation is reasonably foreseeable. In *Battle*, the guard's response (investigating the incident, reviewing the footage, and generating an incident report) demonstrated internal recognition that the event was significant. That was enough to trigger a duty to preserve the video rather than allow it to be overwritten. The fact that the video was deleted as part of the surveillance system's routine operation was *not* a defense; the Second Department held that, as soon as the defendant was on notice of the event and that it was captured on film, they had an affirmative duty to stop the system's routine deletion procedures.

Applying *Battle* to Trucking and Transportation Litigation

Battle did not change New York law, but it illustrates how courts analyze whether a party acted reasonably once an incident occurs. The decision underscores that internal recognition of an incident's seriousness, through investigation, video review, and report creation, can itself establish notice of potential litigation and the corresponding duty to preserve relevant evidence.

Just as importantly, *Battle* reinforces that preservation obligations often attach well before either side retains counsel. Although *Battle* is not a transportation case, its principles translate directly to trucking litigation. In trucking matters, that duty can extend to the people and departments who respond first, safety, risk management, operations, dispatch, terminal management, as well as third-party administrators and vendors who control camera, telematics, or messaging platforms.

In most motor vehicle accidents, the accident itself, combined with the carrier's immediate response, will make litigation reasonably foreseeable. That is particularly true where the company investigates, reviews onboard video or telematics, or prepares an accident report. And because key trucking evidence is often stored in systems with short retention windows, routine overwrite cycles can erase critical materials unless preservation steps begin immediately. Common examples include: dashcam footage; terminal/yard CCTV; ELD and telematics data; ECM/event recorder downloads; and dispatch communications (including Qualcomm/Omnitracs messages, texts, and emails).

A Practical Preservation Checklist for Transportation Companies

Law firms such as us at Lucosky Brookman LLB are often retained immediately after an accident is reported. However, sometimes law firms are not retained until significant time passes, including not until formal litigation is underway. As *Battle* illustrates, however, the duty to preserve arises much earlier; when a claim becomes reasonably foreseeable. For that reason, transportation companies, big and small, need to ensure that they have incident-response processes that initiate preservation at first notice of a significant event.

The list of suggested processes to have in place depend on the specifics of each operation, but includes, and certainly are not limited to:

Within the first 24 hours:

- Identifying and preserving all video sources: forward-/inward-facing dashcam, trailer/side cameras, terminal/yard cameras, and nearby third-party footage where available;
- Immediately suspending or extending auto-deletion settings for camera platforms, DVR/NVR systems, and any cloud-hosted video accounts;
- Preserving vehicle and driver data: ECM/ACM/other event recorder downloads, ELD logs, GPS/telematics records (speed, braking, hard events, etc.), and relevant sensor data;
- Preserving dispatch communications: Qualcomm/Omnitracs messages, texts, emails, load updates, route instructions, and call logs were maintained in the ordinary course;
- Securing core physical documents: driver logs, DVIRs, trip sheets, and post-accident drug/alcohol testing documentation;
- Documenting the driver's account promptly and retaining scene photos, witness contact information, and responding personnel notes; and
- Creating a specific, centralized preservation folder and recording who collected what, when, and from which system/custodian.

Within the first week:

- Collecting haul and load documents: bills of lading, load tender/rate confirmations, shipper/receiver communications, seals, weight tickets, and load-securement documentation or photos;
- Ensuring possession and completeness, of all ECM/ACM/other event record data, ELD logs, GPS/telematics records, sensor data, and all other movement data related to the vehicle, both from the date of loss, as well as a reasonable period of time into the past;
- Preserving maintenance and inspection records for the tractor and trailer: scheduled maintenance, repairs, brake/tire records, recalls, and pre-/post-trip inspection forms;
- Preserving all documents related to the driver, such as the entire personnel file, training materials, and records, etc.;
- Confirming retention with vendors/TPAs (camera, telematics, ELD, messaging) and obtaining written confirmation that data holds are in place;
- Begin interacting with the relevant police agencies to ensure that all investigations and documents related to the same are obtained;
- Identifying and interviewing key witnesses and preserving any available third-party footage before it is overwritten; and
- If a claim is asserted or appears likely, issuing a formal litigation hold to relevant custodians and begin tracking their acknowledgements of the same.

Final Takeaway: The Duty to Preserve Starts with the Accident

The defendant in *Battle* was never accused of acting maliciously or doing anything intentionally to “hide” any sort of evidence. Instead, the problems faced by the defendant in *Battle* were all the result of them simply not doing anything proactively. The *Battle* defendant simply failed to appreciate the likelihood that a claim would materialize and failed to stop its surveillance systems from performing their standard automatic override of data. As a result of simply standing idly by in the face of a likely claim, the plaintiff in that case was granted the ability to present an adverse inference charge to the jury, the practical effect of which is sometimes worse than the video itself would have been.

The true takeaway and reminder that *Battle* should give everyone in the trucking/transportation defense industry is that the duty of preservation is not, in any way, dependent on an injured claimant formally making a claim. Instead, it is triggered by the event itself. By proactively ensuring that systems are in place to immediately put in motion all the necessary steps to preserve evidence at the instant that it is reasonably foreseeable that a claim may materialize, which, as a practical matter in today’s environment, is essentially every trucking/transportation accident, entities can best be in a position to defend themselves when that claim finally does come in.

If you have any questions concerning the procedures and systems to put in place to best prepare your company to handle all aspects of evidence preservation in the event of an incident, or require counsel to handle a specific matter, please do not hesitate to contact our Lucosky Brookman team at info@lucbro.com.