

FILE NAME: Paccar (PAC)

DATE: 2025 Mar 10

DOC#: PAC002

DOCUMENT DESCRIPTION: Legal - Motion for Spoliation

IN THE CIRCUIT COURT FOR BALTIMORE CITY

IN RE: BALTIMORE CITY
ASBESTOS LITIGATION

* * * * *

ROSALIND MORRIS, Individually,
and as Personal Representative of the
Estate of John Alan Morris, *et al.*,

Plaintiffs,

vs.

BEL AIR AUTO PARTS, INC., *et al.*,

Defendants.

* * * * *

**PLAINTIFFS' MOTION FOR ADVERSE INFLUENCE BASED UPON
SPOILIATION OF EVIDENCE AGAINST DEFENDANT PACCAR, INC.
AND REQUEST FOR HEARING**

Plaintiffs file the following Motion for Adverse Inference Based Upon Spoliation of Evidence against Defendant PACCAR, Inc. (PACCAR). As grounds therefore, Plaintiffs state as follows:

Introduction

As soon as a party becomes aware that litigation is reasonably foreseeable, the party has a duty to “identify, locate, and maintain” all relevant information. *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 521-22 (D. Md. 2010) (Grimm, J.). This duty prevents parties from – intentionally or unintentionally – destroying, discarding or otherwise losing access to information that a jury might find important in evaluating the issues before it. This duty to collect and preserve potentially relevant information is critical to the justice system’s fundamental premise – that

litigation is not a game of hide-and-seek and that parties are bound to tell the truth, even when – especially when – the truth hurts their legal position.

The obligations of parties to “identify, locate, and maintain” all relevant information as soon as litigation becomes foreseeable and to tell the “truth, the whole truth, and nothing but the truth” – even when the truth hurts their position – ensure that when parties provide sworn statements about a case, the truth comes out and the story never changes. As the old saying often attributed to Mark Twain goes: *If you tell the truth, you don't have to have a good memory*. When, as here, parties fail to “identify, locate, and maintain” all relevant information and when they fail to tell “the truth, the whole truth, and nothing but the truth,” the ability of the civil justice system to do justice is gravely impaired.

The evidence in this case demonstrates that PACCAR failed nearly entirely to fulfill its duty to “identify, locate, and maintain” evidence when litigation against it for asbestos disease caused by working with or around its asbestos-containing trucks became reasonably foreseeable. As discussed below, litigation was not just foreseeable, but had begun, no later than 1976 when a 20-year PACCAR dealership mechanic was awarded compensation for developing mesothelioma as a result of his work. **Exhibit A**, PACCAR000076, January 29, 1976, Interoffice Communication re: award of \$93,225.92 to the widow of Joseph V. Jackson.

For decades, PACCAR denied the existence of this claim and feigned innocence and surprise about now being named in personal injury lawsuits. *See e.g.*, **Exhibit B**, PACCAR Answer to Interrogatory No. 16, *Tinker v. A.E. Clevite, Inc., et. al.*, New York, February 4, 1997 (denying any prior compensation claims); **Exhibit C**, PACCAR Answer to Interrogatory No. 13, *Dobson v. A.W. Chesterton, Inc., et. al.*, Missouri, August 22, 2012 (falsely swearing first compensation claim “filed in the early 1990s”).

That same year, 1976, PACCAR's medical director directly acknowledged the ongoing and upcoming product liability lawsuits regarding asbestos and other dangerous products. **Exhibit D**, PACCAR000090-121, at 119, presentation of Dr. J.F. Johanson, PACCAR Corporate Medical Director ("many unions actively support their members in the pursuit of worker's compensation claims or third party suits against product manufacturers.")

Despite this, PACCAR admits that it failed to undertake any meaningful effort to "identify, collect, and maintain" documents relating to its manufacture, distribution and/or sale of asbestos-containing trucks and replacement parts for prior to 1997, a delay of *twenty one (21) years*.¹ **Exhibit E**, 02/14/25 Depo. of PACCAR Designee (Curbo) in *Morris v. Bel Air Auto Parts Inc., et al.*, at pp. 23.20-25.11; 32.21-33.5. PACCAR's testimony in this case regarding the nature and extent of its post-1997 efforts to "identify" and "collect" documents make clear that these decades-too-late efforts were demonstrably ineffective. *Id.* at 69.5-70.13 (admitting that "every time we do a document sweep, we find some documents here or there.")

Furthermore, comparing PACCAR's limited remaining documents and its historic testimony and sworn discovery responses demonstrate not only that PACCAR failed to "identify, locate, and maintain" evidence, but that it has destroyed relevant documents and subsequently denied knowledge of the contents of those documents (which it had previously admitted). In 2004, after years of denying corporate membership in the National Safety Council, PACCAR admitted that, while its records were incomplete, it was a member of the National Safety Council from

¹ PACCAR's first, and demonstrably ineffective, "document sweep" would have been 8 years too late even if one used PACCAR's admitted first date of being sued regarding asbestos disease – 1989 – as the trigger date. **Exhibit F**, PACCAR Answer to Interrogatory Nos. 53 and 72, *Henderson v. ACandS, Inc., et. al.*, South Carolina, January 11, 2001 (asserting first claim was in 1989 and asserting that PACCAR's "first real awareness" of the dangers of asbestos came "near the time of the first filing of a claim against this defendant in 1989.")

August 1, 1944 to July 19, 1996. **Exhibit G**, PACCAR Answer to Interrogatory No. 94, *In re: All Asbestos Litigation Filed By The Simmons Firm*, Madison County, Illinois, July 14, 2004.

Not only have the records from which this extremely precise admission been destroyed, but PACCAR has repeatedly denied any company membership in the National Safety Council in the 21 years since admitting this important fact. See e.g., **Exhibit H**, PACCAR Answer to Interrogatory No. 10, *Dickinson v. PACCAR*, Philadelphia County, Pennsylvania, January 12, 2023 (denying any membership); **Exhibit I**, PACCAR Answer to Master Interrogatory 39 (TID: 73559242).

Not only did PACCAR deny any corporate membership in the National Safety Council in response to Master Interrogatory No. 39, in this case, it failed to admit Mr. Bissonnette's individual membership at the National Safety Council and several other trade organizations, that it had previously acknowledged. See **Exhibit B**, PACCAR Answer to Interrogatory No. 15, *Tinker v. A.E. Clevite, Inc., et. al.*, New York, February 4, 1997 (admitting Bissonnette membership at National Safety Council, American Industrial Hygiene Association and American Society of Safety Engineers). Mr. Curbo, PACCAR's designee in this case, testified that he had never seen any of the documents that reflected this critical information (nor had he ever been provided with PACCAR's 2004 answers to interrogatories). **Exhibit E**, 2/14/25 Depo. of PACCAR (Curbo) at pp. 71.6-73.11.

As a result of PACCAR's failure to timely "identify, locate and maintain" information potentially relevant to asbestos product liability claims against it by no later than 1976, a host of relevant historic information has been lost. Moreover, the absence of historic documentation has permitted PACCAR to repeatedly twist and change its sworn statements regarding a host of relevant issues, as laid out in more detail below.

This egregious misconduct evidence specific, fraudulent intent by PACCAR and requires the strongest of sanction. Denying for decades the information that made notice of likely litigation indisputable (the 1976 compensation claim and the 1976 presentation by PACCAR's medical director discussing product liability lawsuits), including while Mr. Bissonnette, who was actively involved in the 1976 claim and presentation and who was still employed by PACCAR and assisting in responding to discovery is inexcusable and can only be considered deliberate.

Indeed, because the facts are not in reasonable dispute – they are all in the form of sworn testimony – Plaintiffs are entitled to the strongest adverse inference instruction now.

Facts

Discovery in this case, coupled with a painstaking review of PACCAR's prior sworn discovery responses (which PACCAR refused to produce to Plaintiffs), PACCAR's prior corporate designee depositions, and PACCAR's admissions in written discovery and deposition in this case demonstrate PACCAR's systemic and deliberate spoliation of evidence.

PACCAR Was On Notice Of Likely Litigation No Later Than 1976

As discussed above, there is no dispute that PACCAR was aware of the likelihood of litigation against it regarding persons performing mechanical work on its asbestos-containing trucks no later than January, 1976 when PACCAR's corporate industrial hygienist, David Bissonnette, authored his interoffice memorandum reflecting the award of \$93,225.92 to the widow of Joseph V. Jackson. **Exhibit A**, PACCAR000076.

As reflected in the memorandum, Mr. Jackson was employed for 20 years at PACCAR's Edmonton, Ontario branch. While PACCAR now admits that all records of this claim have been lost or destroyed other than six pages of documents (**Exhibit J**, March 4, 2025, 4:13 p.m. email

from E. Hawkins to J. Ruckdeschel), those six pages make clear that Mr. Jackson was a mechanic who performed brake repair on trucks. *Id.*; **Exhibit K**, PACCAR000079-83.

Notwithstanding Mr. Bissonnette’s “doubt that Mr. Jackson had any significant exposure at our branch in Edmonton” expressed in his January 29, 1976 memorandum, the claim was granted – and even if it had not been, PACCAR would still have been on notice of the likelihood of litigation – something it’s medical director discussed in a presentation that same year.

Once in active litigation in the United States, however, PACCAR denied the existence of the Jackson claim for many years, even while Mr. Bissonnette was still employed by PACCAR and actively participating in PACCAR’s preparation of discovery responses. The 1997 interrogatory responses from the *Tinker* case in New York specifically note that Mr. Bissonnette, then PACCAR’s “Manager, Industrial Hygiene and Safety” provided information used in responding to the Interrogatories – which specifically deny any prior workman’s compensation claims related to the asbestos components of PACCAR’s trucks – precisely what Mr. Jackson’s claim related to. **Exhibit B**, PACCAR Answers to Interrogatory Nos. 1 & 16, *Tinker v. A.E. Clevite, Inc., et. al.*, New York, February 4, 1997.

PACCAR’s inexcusable failure to identify the 1976 Jackson claim for decades after it was in active tort litigation is not the only time PACCAR has misrepresented its litigation history in an attempt to make its delay in collecting relevant information seem less egregious. In 2001, PACCAR admitted in answers to interrogatories in South Carolina that it was first sued in an asbestos case in 1989. **Exhibit F**, PACCAR Answer to Interrogatory Nos. 53 and 72, *Henderson v. ACandS, Inc., et. al.*, South Carolina, January 11, 2001 (asserting first claim was in 1989). In those same Interrogatory responses, however, PACCAR simultaneously falsely claimed that its “first real awareness” of the dangers of asbestos came “near the time of the first filing of a claim

against this defendant in 1989” notwithstanding the fact that it had been found liable for compensation to the widow of its employee, Mr. Jackson, 23 years earlier.

Notwithstanding this sworn admission that PACCAR had been sued by 1989, as recently as September 2023, PACCAR’s counsel and its Designee, Mr. Curbo, falsely represented in deposition that PACCAR was first sued in an asbestos case in 1997-1998 – conveniently aligning with the date it claims it first performed any structured “document sweep” to locate relevant information.

Q. · When PACCAR first got sued in 1997-1998 in an asbestos case, did it just say, We found everything we're going to find and we'll stop looking?

A. · No. My -- best I understand is we did a document search in that '97 time frame. I believe there was one done around 2002, I think around 2005, 2010, 2016, 2021.

Q. · And --

A. · Those are the major document searches. · Some of those were broad, but somewhat limited. · But then I would say we've probably done hundreds of very specific -- looking-for-very-specific-information searches.

Exhibit L, 9/26/23 Depo. of PACCAR (Curbo) at p. 393.10-393.23. This testimony – in response to questioning by PACCAR’s own counsel – is simply false. More than two decades earlier, PACCAR swore, under oath, that it was first sued in 1989. PACCAR’s corporate designee was first deposed in 1993. **Exhibit M**, 8/26/93 Depo. of PACCAR (Degenstein). PACCAR’s continued misrepresentation of the date it was first sued to falsely align it with the first time PACCAR actually made any deliberate attempt to conduct a “document sweep” dramatically confirms the willful nature of PACCAR’s failure to meet its obligation to “identify, locate, and maintain” relevant information.

The consequences of PACCAR’s failure to fulfil its obligation to timely “identify, locate and maintain” relevant information are wide ranging. As discussed above, PACCAR was

indisputably on notice of the likelihood of claims against it by people performing mechanical work on their trucks by no later than the filing of the Jackson compensation claim – which ended in Mrs. Jackson’s favor by no later than January 29, 1976. In the 23 years, between the conclusion of the Jackson claim and PACCAR’s first incomplete “document sweep,” and between that first incomplete sweep and now, many documents have been lost or become unavailable.

For example, PACCAR admits that only 6 pages of documents remain regarding the Jackson claim – Mr. Bissonnette’s one-page memorandum and 5 pages related to the one set of dust tests PACCAR had performed at the PACCAR dealership where Mr. Jackson worked. **Exhibit K**, PACCAR000079-83. No documents regarding the litigation of the claim, regarding Mr. Jackson’s work history, witness statements, medical records, or the findings of the tribunal remain. Similarly, the follow-up dust tests requested by Mr. Bissonnette are unexplained. No documents remain regarding Mr. Bissonnette’s evaluation of those results, his purpose in ordering the tests, or his communication of any conclusions to others at PACCAR. And – as discussed in Plaintiffs’ Motion in Limine to Preclude Incompetent Hearsay and Improper Opinion Testimony of Corporate Designee Witnesses – there are no documents that reflect or evidence PACCAR making any decisions about whether to warn or take other measures to control potential exposures based upon these tests.² Had PACCAR abided by its legal obligation to “identify, locate, and maintain” information in 1976, all these documents would exist.

Given a seven-year general document retention policy, had PACCAR complied with its obligations and performed a systematic, comprehensive search for potentially relevant information regarding its use of asbestos, its knowledge of the dangers of asbestos, and its distribution of

² Plaintiffs incorporate their Motion in Limine to Preclude Incompetent Hearsay and Improper Opinion Testimony of Corporate Designee Witnesses into this pleading by reference pursuant to Maryland Rule 2-303(d).

asbestos containing trucks and replacement parts, a complete record going back to at least 1969 would exist today. But it does not, because PACCAR did nothing. In the wake of PACCAR's decades-too-late and ineffective attempts to "identify, locate, and maintain" relevant information is just a slew of false and inconsistent sworn statements by PACCAR in depositions and written discovery.

PACCAR's 1997 New York Interrogatory responses specifically deny prior workman's compensation claims. **Exhibit B**, at Interrogatory 16. PACCAR's 2001 South Carolina Interrogatory responses deny any claims related to products prior to 1989. **Exhibit F**, at Interrogatory No. 53. PACCAR's 2004 Interrogatory responses from Madison County, Illinois do not identify the 1976 Jackson compensation claim and do not identify prior personal injury claims. **Exhibit G**, at Interrogatories 89 & 90. PACCAR's 2012 Interrogatory responses from Missouri do not identify the 1976 Jackson compensation claim, or any claim prior to "the early 1990s." **Exhibit C**, at Interrogatory 13.

The loss of historic documentation has similarly led to inconsistent sworn statements by PACCAR regarding its employment of doctors and industrial hygienists and their identities – information that is often critical in proving knowledge relevant to Plaintiff's negligence claims. PACCAR's 1993 corporate designee deposition denied PACCAR ever had any industrial hygienist responsible for its Kenworth division. **Exhibit M**, 8/26/93 Depo. of PACCAR (Degenstein) at p. 68.³

PACCAR's 2001 South Carolina Answers to Interrogatories deny PACCAR's employment of a medical director prior to 1984 (**Exhibit F** at Interrogatory Nos. 63 & 64) and

³ PACCAR operated its Kenworth and Peterbilt brands as unincorporated divisions of PACCAR. Neither brand was a separate company. Accordingly, any post-hoc attempt by PACCAR to claim now that its answers to these questions were confined to "Kenworth" ignore the fact that "Kenworth" was not a separate company.

deny any industrial hygienists between 1930 and 2001 (**Exhibit F** at Interrogatory Nos. 65 & 66). PACCAR's 2012 California General Order 129 Interrogatories state that PACCAR "has at various points in time employed a medical director. PACCAR is not able to reconstruct with any particularity the details of any specific individual's employment" and fails to identify any doctor prior to 1984. **Exhibit N**, PACCAR GO129 Interrogatory Responses (California) 2012, at Interrogatory No. 23. PACCAR's 2012 Missouri Interrogatory identify Dr. Johanson "as a medical director in the 1970s" and identified Mr. Bissonnette as an Industrial Hygienist for PACCAR from 1974-2000 and others. **Exhibit C**, at Interrogatory 10. Even now, PACCAR's story is changing. In this case, PACCAR's discovery responses hedge and say that PACCAR "*may have*" employed Mr. Bissonnette from 1974 to 2000 and that it "*is informed and believes* that it employed Dr. J.F. Johanson as a medical director *in the 1970s*." **Exhibit I**, PACCAR Answers to Master Interrogatory No. 30 (TID: 73559242)(emphasis added).

Had PACCAR complied with its obligations to "identify, locate, and preserve" relevant information as of 1976, none of these issues would be in doubt. And, while PACCAR has identified some individuals who "may have" been its industrial hygienists and physicians, PACCAR's demonstrable inability to tell a consistent story make it impossible to have any assurance that the information now provided is anywhere close to complete.

Another example of information lost because of PACCAR's failure to "identify, locate, and maintain" relevant information beginning in 1976 is PACCAR's rebranding of asbestos-containing replacement parts. PACCAR's carefully scripted defense attempts to craft the image that it was merely an innocent conduit for asbestos-containing products manufactured and sold by others. Part of this defense has been PACCAR's decades-long denial that it "rebranded" asbestos-containing replacement parts such as brakes – that it put the Kenworth or Peterbilt names on

replacement parts being sold into the market. For example, PACCAR's 1997 New York Interrogatories, 2001 South Carolina Interrogatories, 2009 California GO129 Interrogatories and 2012 GO129 Interrogatories all deny rebranding or any knowledge or record of rebranding agreements. *See e.g.*, **Exhibit B**, at Interrogatory 9; **Exhibit F**, at Interrogatory 40; **Exhibit N**, at Interrogatory 14.

But documents – PACCAR documents – obtained from asbestos brake lining manufacturer Pneumo Abex LLC (“Abex”) demonstrate that these denials of rebranding were untrue and that any denials of documentation of agreements of rebranding were the result of PACCAR's failure to “identify, locate, and maintain” its rebranding agreements and other documentation from the 1970s and beyond. While PACCAR belatedly (and half-heartedly) acknowledged in **Exhibit O**, PACCAR's January 3, 2025 Supplemental Response to Rosalind Morris' Interrogatory No. 9 (TID: 75371743) that “upon further information and belief, Abex *may have* applied labels with the names “Kenworth” and/or “Peterbilt” on some boxes containing Abex brake products.” (emphasis added). PACCAR's failure to “identify, locate, and maintain” the documents regarding its rebranding agreement and other communications with Abex – according to PACCAR itself – prevent it from acknowledging that this rebranding actually occurred, let alone to provide any details regarding the true nature and extent of that relationship. This is particularly important because the question of who made the decision of whether to place an asbestos warning on retail boxes of replacement brakes bearing the Kenworth and Peterbilt names is important evidence regarding PACCAR's recognition of the potential danger and there is evidence that Abex required companies refusing to put caution labels on brakes in the late 1970s to instruct it in writing of that choice.

And as discussed in Plaintiffs’ Motion in Limine to Preclude Incompetent Hearsay and Improper Opinion Testimony of Corporate Designee Witnesses, all documentation regarding PACCAR’s claim that it placed into every truck and into master maintenance manuals warnings it received from component suppliers has been lost due to PACCAR’s failure to timely “identify, locate, and maintain” relevant documents and evidence. PACCAR admits that no documents exist that reflect or evidence PACCAR’s recently fabricated claim regarding placing the 1978 Rockwell manual into the glove box and/or sleeper compartment of every truck, let alone its claim it started so doing in 1976.

All these, as well as the issues documented in the introduction, are examples of areas of relevant information where PACCAR’s failure to timely “identify, locate, and maintain” relevant information starting no later than 1976 has led to the loss of information prejudicial to the Plaintiffs’ ability to prove their case. This includes PACCAR’s recent amnesia and apparent destruction of documents regarding its admission in 2004 of a half-century corporate membership in the National Safety Council.

One additional area is also worth discussing. Notwithstanding the certainty that PACCAR would have litigation against it regarding asbestos exposures sustained by individuals working with and around its trucks by no later than 1976, PACCAR went ahead and transferred the “build sheets” for its trucks to microfilm, indexed only by VIN number. Now, PACCAR claims that, without a VIN number, it is a practical impossibility to search its build sheets – which it has for every truck it built during the time relevant to this case. Given PACCAR’s protestations that it is extraordinarily difficult to locate information in these files without the VIN number for the truck at issue, PACCAR’s decision to convert these files into images that are difficult, if not impossible, to search could well be considered spoliation.

Spoliation – Duty And Consequences

The duty to preserve evidence stems from common law and begins “the moment that litigation is reasonably anticipated.” *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 521 (D. Md. 2010) (Grimm, J.) (citing *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 591 (4th Cir. 2001)). The duty “includes an obligation to identify, locate, and maintain” relevant information. *Id.* at 522 (citations omitted). Critically, the duty exists independent of any request from an adverse party and is not limited to the scope of a particular request that might have been made.

Maryland courts have long recognized the maxim *omnia praesumuntur contra spoliatem*: “All things are presumed against the spoliator.” *Miller v. Montgomery Cty.*, 64 Md. App. 202, 214 (1985); *Love v. Dilley*, 64 Md. 238, 246 (1885). Two related propositions support the rule: (i) “one does not ordinarily withhold evidence that is beneficial to one’s case;” and (ii) “one maintains evidence that one believes will be beneficial to one’s case.” *Anderson v. Litzenberg*, 115 Md. App. 549, 562 (1997). Neither fraudulent intent nor bad faith are required to find spoliation. *Id.* A court must merely balance the degree of fault on the part of the spoliator against the level of prejudice stemming from the evidence’s destruction. *Cumberland Ins. Group v. Delmarva Power*, 226 Md. App. 691, 699 (2016).

In *Anderson*, a defendant argued that consciousness of guilt is a prerequisite for an adverse inference instruction. *Anderson*, 115 Md. App. at 560. The trial court disagreed, and its adverse inference instruction was upheld. *Id.* at 560-63. Defendant Anderson drove a dump truck owned by another defendant, Bramble. Bramble’s truck was equipped with a tarp covering system from a third defendant, Cramaro Tarpaulin Systems. *Id.* at 557. The tarp loosened and struck a vehicle, which veered head-on into the plaintiff’s pickup. *Id.* A Bramble employee admitted to potentially

anticipating a claim based on the tarp system's failure, but nevertheless discarded almost the entire tarp covering system. *Id.* at 558-59.

Bramble argued that its employee had not evinced consciousness of guilt in destroying the tarp system, but the trial court gave an adverse inference instruction and the Court of Special Appeals affirmed. "Simply put, one does not ordinarily withhold evidence that is beneficial to one's case." *Id.* at 562. The "converse is equally true: one maintains evidence that one believes will be beneficial to one's case." *Id.* Applying *Miller v. Montgomery County*, the appellate court concluded that an adverse presumption "may arise against the spoliator even if there is no evidence of fraudulent intent." *Id.* at 561.

The level of intent displayed by spoliator's actions controls the permissible inferences a jury can make. In *Miller*, an allegedly defective traffic signal component was purportedly altered by a defendant. *Miller*, 64 Md. App. 202, 214 (1985). The appellate court reasoned that two levels of inferences can be drawn when evidence is altered or lost. *Id.* at 214-215. If a jury finds evidence altered with fraudulent intent to conceal, such conduct may be taken as an indication of consciousness of the weakness of the defendant's case. *Id.* at 215. Together with other evidence, that "could lead to a further inference that [the defendant] tampered with the evidence because it was guilty of the wrong of which it was accused." *Id.*

Even if a jury concludes a defendant's decision to discard evidence was the product of innocent mistake, the jury may still presume the evidence was unfavorable to the defendant. *Id.* See also *Larsen v. Romo*, 254 Md. 220 (1969) (even with no indication of bad faith, a spoliating defendant's discarding of evidence raised an inference that the missing evidence did not support the defendant's theory of the case); *Maszczenski v. Myers*, 212 Md. 346 (1957) (recognizing

inference that suppressed evidence would be unfavorable even though the court found no indication that evidence was discarded intentionally).

Courts consider both a spoliator's degree of fault and the level of prejudice stemming from the destruction of evidence. *Cumberland Ins. Group v. Delmarva Power*, 226 Md. App. 691, 698-99 (2016). In *Cumberland Insurance*, the evidence destroyed by the plaintiff was so vital to the defendant's theories that a more severe sanction – dismissal, as opposed to an adverse inference instruction – was proper. *Id.* at 700-06. In their endorsement of adverse inferences deriving from either fraudulent or negligent spoliation, *Anderson*, *Miller*, and *Cumberland Insurance* align with Maryland's pattern adverse inference instruction. Maryland Civil Pattern Jury Instruction 1:16 (5th ed. 2018) provides:

The destruction of or the failure to preserve evidence by a party may give rise to an inference unfavorable to that party. If you find that the intent was to conceal the evidence, the destruction or failure to preserve must be inferred to indicate that the party believes that his or her case is weak and that he or she would not prevail if the evidence was preserved. If you find that the destruction or failure to preserve the evidence was negligent, you may, but are not required to, infer that the evidence, if preserved, would have been unfavorable to that party.

Here, the fault on the part of PACCAR – which has failed to preserve and also destroyed evidence material to the case is grievous and clearly reflects a deliberate attempt by PACCAR to conceal damaging evidence. And the consequences of PACCAR's failure are grave and infect nearly every issue in this case, as discussed above and in Plaintiffs' Motion in Limine to Preclude Incompetent Hearsay and Improper Opinion Testimony of Corporate Designee Witnesses.

The facts in this regard are not in reasonable dispute. PACCAR now admits that it was held responsible by no later than January 1976 the Jackson case for workman's compensation benefits to Mrs. Jackson for the death of her husband from mesothelioma. Mr. Jackson worked as a truck mechanic at a PACCAR dealership. PACCAR similarly admits that its belatedly identified

medical director gave a presentation in 1976 emphasizing the need for increased focus on occupational health due to, among other things, unions supporting their members in workman's compensation and product liability lawsuits. Having just been held liable for workman's compensation benefits for a mechanic working on its trucks developing mesothelioma, PACCAR had actual knowledge that claims were already being made against it – not just that claims could begin in the future. PACCAR's duty to "identify, locate, and maintain" relevant information and documents began no later than 1976.

It is also not disputed, however, that PACCAR made no systemic attempt to "identify, locate, and maintain" relevant information and documents until 1997, twenty-one (21) years later and 8 years after PACCAR admitted in 2001 that it was first sued. While PACCAR's designee, in response to questions from PACCAR's counsel including the date, falsely testified as recently as 2023 that PACCAR was first sued in 1997-1998, that testimony cannot be reconciled with PACCAR's 2001 sworn admission that claims began in 1989. Nor does PACCAR have any explanation as to how it could, based on its incomplete records, identify to the day the dates of its half-century of corporate membership in the National Safety Council in Interrogatory responses in Illinois in 2004, and yet have no such documents, and not admit any corporate or individual memberships in the National Safety Council in this case.

These facts are not in dispute – they are all based upon PACCAR's own sworn statements which Plaintiffs painstakingly hunted down from lawyers around the country. The facts show a massive and deliberate failure to "identify, locate, and maintain" relevant information that has persisted for 49 years, that has resulted in the loss of massive amounts of relevant information, and that PACCAR has attempted to use to its advantage in litigation with constantly shifting and irreconcilable sworn claims about relevant issues – such as whether and how it warned its

customers. This deliberate violation of PACCAR's responsibilities must be met with the strongest of available sanctions and instructions to the jury.

WHEREFORE, Plaintiffs request that the Court GRANT Plaintiffs' Motion and that the Court Instruct the Jury that PACCAR violated its legal obligation to "identify, collect, and maintain" documents and other relevant information, that the evidence demonstrates that PACCAR's violation was willful and ongoing, and included the destruction of documents that were in existence as late as 2004, that the law presumes that parties will maintain documents and evidence that are helpful to the party's position and, therefore, that the jury should conclude that the information PACCAR failed to preserve would have been damaging to PACCAR's case and helpful to the Plaintiffs' case and that PACCAR's failure is evidence that PACCAR is conscious of its fault in this case.

Plaintiffs further request that the Court instruct the jury that PACCAR's spoliation, coupled with its numerous sworn statements that are incomplete, false and conflicting, are evidence of PACCAR's culpability in this case.

Respectfully submitted,

/s/ Jonathan Ruckdeschel
Jonathan Ruckdeschel
CPF: 9712180133
ruck@rucklawfirm.com
The Ruckdeschel Law Firm, LLC
8357 Main Street
Ellicott City, MD 21043
T. (410) 750-7825
F. (443) 583-0430

Attorneys for Plaintiffs

REQUEST FOR HEARING

Plaintiffs respectfully request a hearing on the foregoing Motion.

/s/ Jonathan Ruckdeschel
Jonathan Ruckdeschel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March 2025, a copy of the foregoing was served upon all counsel of record via File & ServeXpress.

/s/ Jonathan Ruckdeschel
Jonathan Ruckdeschel