



Scopelitis

Garvin Light Hanson & Feary

The Transportation Law Firm

Broker Liability Considerations For Joint Carrier/Broker Enterprises

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Restructuring Brokerage & Carrier Operations

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Broker Liability and Joint Carrier/Broker Operations

- Corporate Structure Considerations



Lopez v. Metrologistics LLC
2023 WL 3165973 (Cal. Ct. App. 2023)

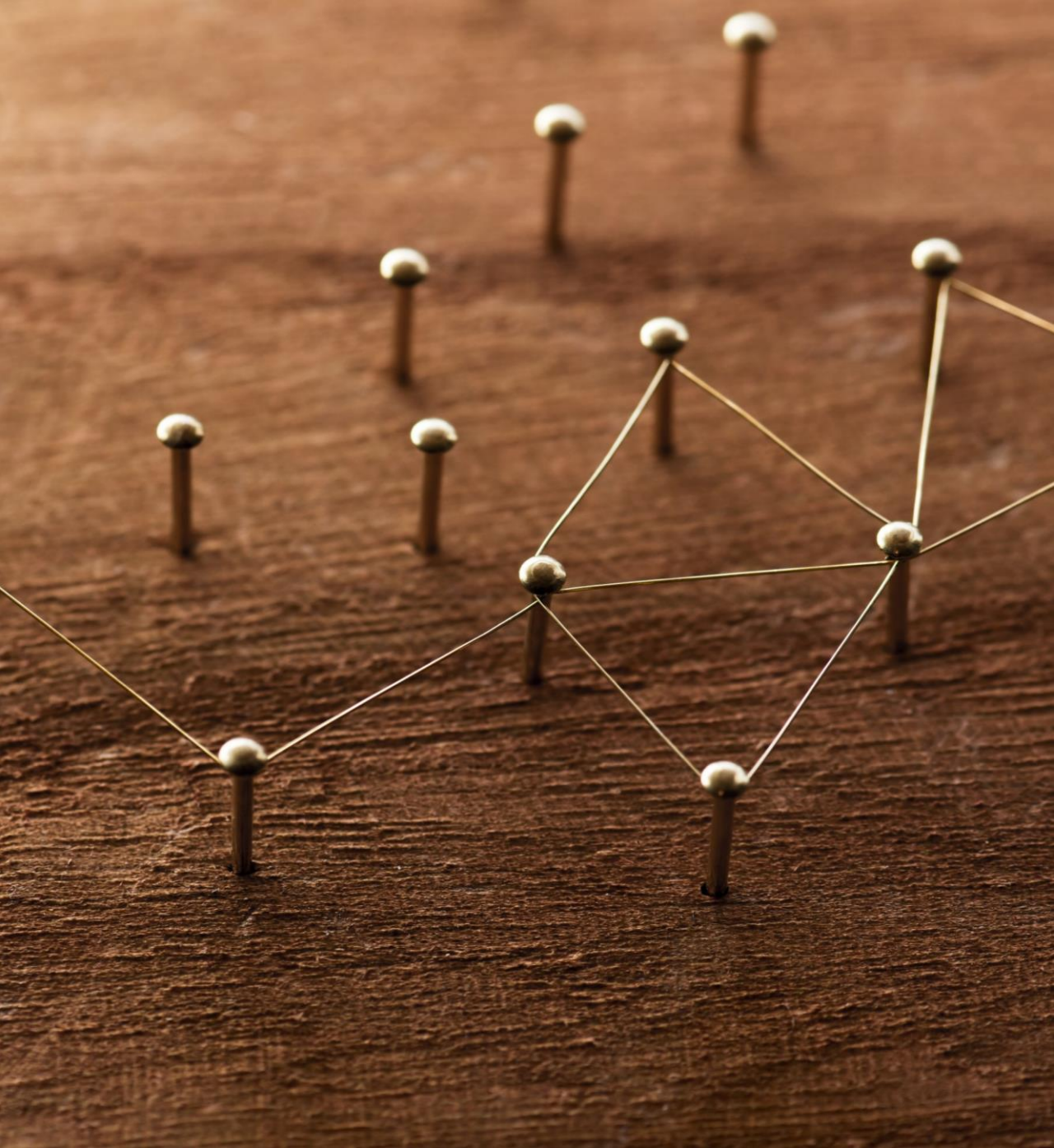
- Court admitted that Metrologistics was authorized as a broker whose business was arranging for transportation
- BOL showed the transporting carrier as “Carrier”, not Metrologistics
- Customer agreement said that the “contracted carrier” (not Metrologistics) would maintain cargo insurance

- Held out as a “Nationwide carrier”
- Advertising with tractor trailers showing company’s name and phone number
- Website referenced “transportation services”
- Customer agreement never used the word “broker”
- Court cited to facts that Metrologistics reserved the right to approve the carrier’s insurer, that Metrologistics paid the carrier directly, and that the carrier not compete with Metrologistics.

“We reverse. The ambiguities in Metrologistics’ contracts with the shipper and other evidence make clear that triable issues remain as to whether Metrologistics acted as a motor carrier and accordingly owed plaintiffs a nondelegable duty.”

How can you
insulate brokerage
from carrier risk?





Form new entity to
house brokerage
operations

Core carrier assets
separating from
brokerage assets

- Customer contracts
- A/R
- Customer accounts
- Sales personnel
- Carrier vetting team
- Carrier dispatch



Setting up New Brokerage Co



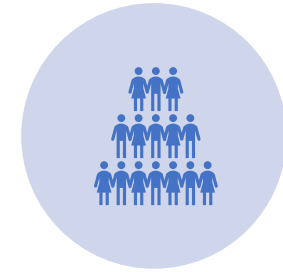
NEW COMMERCIAL
DOCUMENTS



BILLING

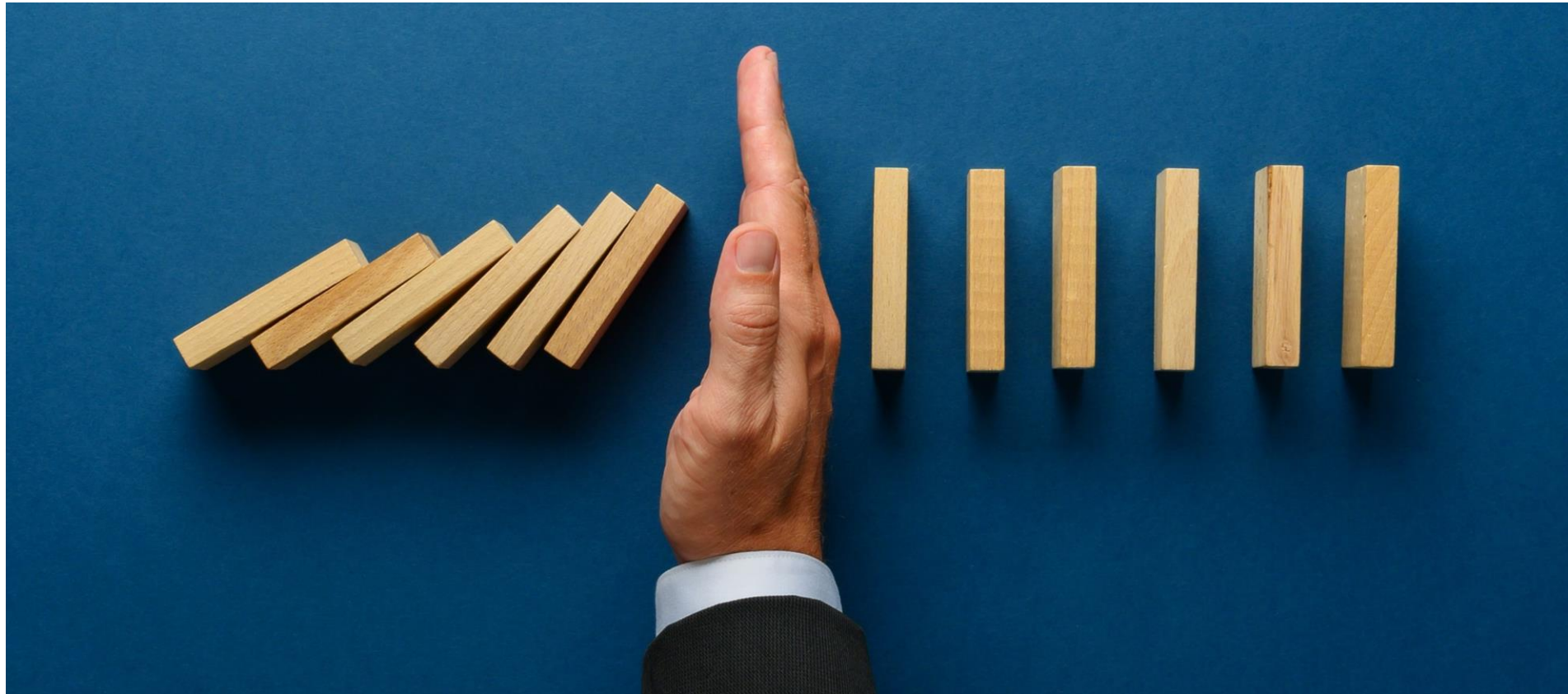


CORPORATE
DOCUMENTS



EMPLOYEES

So, why restructure?





Corporate Veil Defenses

Some veil piercing factors

Same officers,
one
decisionmaker

Undercapitalized

No intercompany
agreements

No corporate
formalities

No employees

No arms-length
terms



- Plaintiff's burden to satisfy
- Heavy lift
- Presumption to preserve veil





Hard part comes after restructuring







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Conditions**

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- Common contract provisions (and how the plaintiff will use them)
 - “Carrier shall”
 - Provide qualified and properly licensed drivers
 - Provide safe equipment
 - Ensure all equipment is operated by safe and properly licensed drivers
 - Ensure that all transportation operations are performed in accordance with applicable laws and motor carrier safety regulations
 - Indemnify against acts and omissions of its “subcontractors” and “independent contractors”

- Other issues Plaintiffs will use to Cause Confusion
 - Shared work force- Carrier employees doing the work of the brokerage
 - Not documenting intercompany transactions including payment flow



- All is not lost
 - Venue matters/judge matters
- Any restructuring is better than no restructuring
 - No way to protect carrier assets/revenue from broker liability if single entity

- But even if you don't restructure . . .
 - 2024 Florida case
- Facts
 - Joint carrier/broker entity
 - Contract allowed carrier to broker
 - Contract said that carrier was liable for persons operating vehicles
 - Carrier argued this provision was to benefit the customer, not third parties
- Defendant won summary judgment on vicarious liability claim
- Court held defendant was not statutorily liable for underlying carrier's driver

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Emerging Technologies Highlight

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Partner, Scopelitis

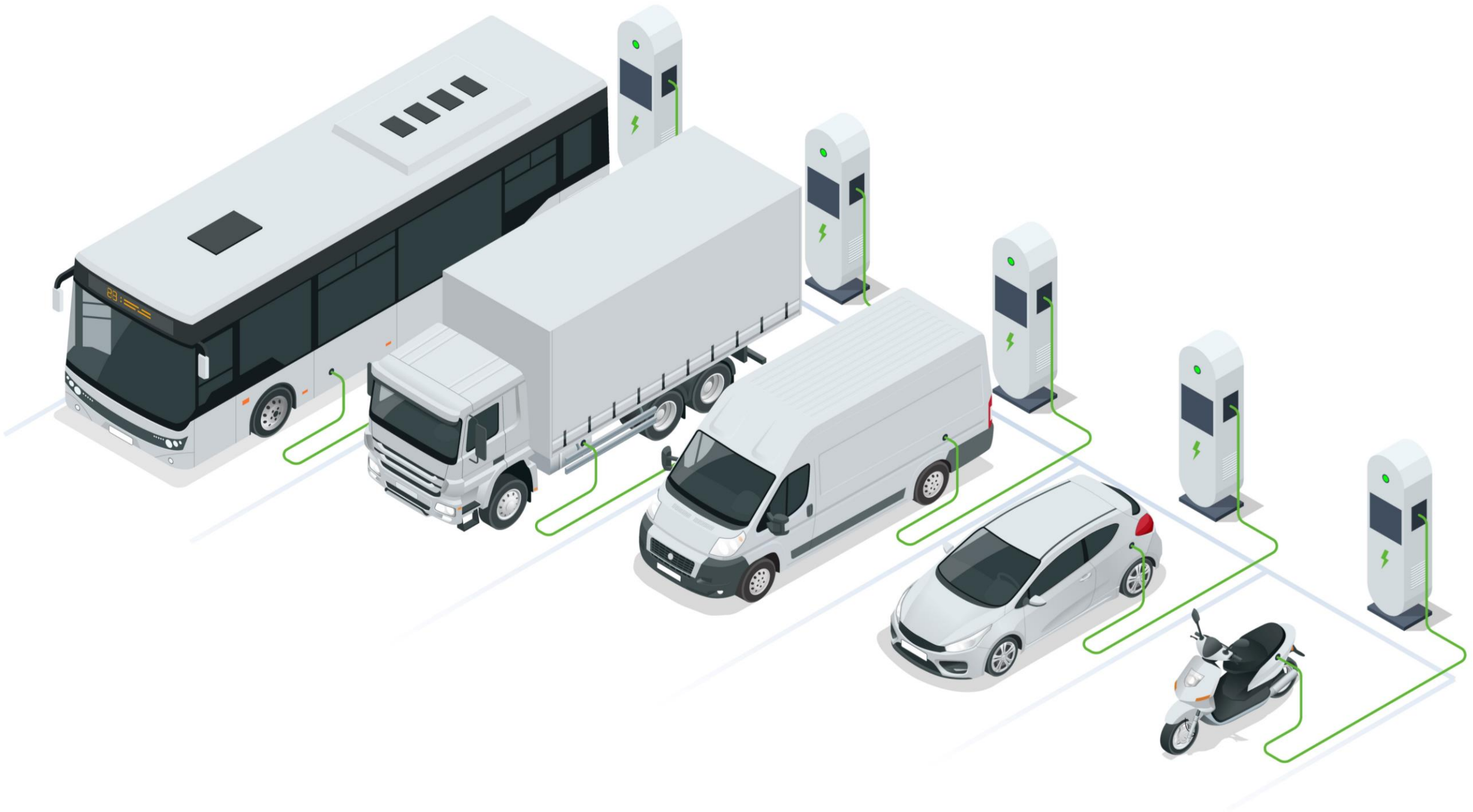
Emerging Technologies

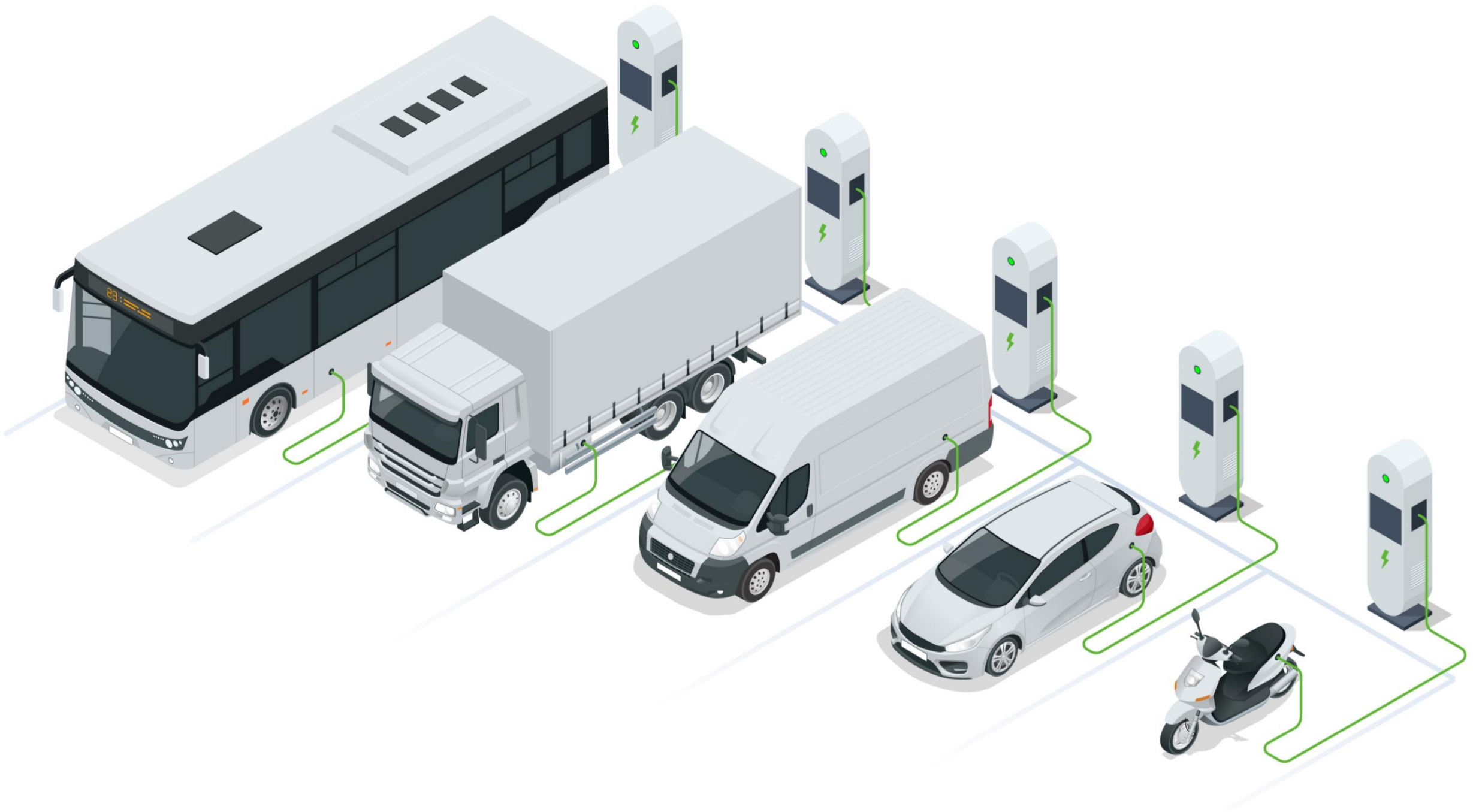
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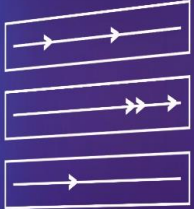
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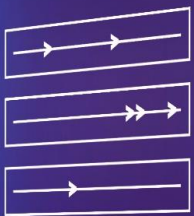
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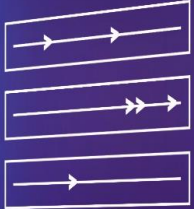
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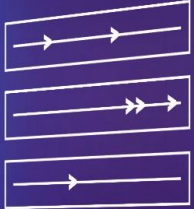
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The Transportation Law Firm

Labor & Employment

2024 Scopelitis Transportation Law Seminar
April 14 - 16, 2024

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Sara Pettinger
Partner

Steven Stanaszak
Partner

Noncompete Agreements: An Ever-Shifting Landscape

David D. Robinson

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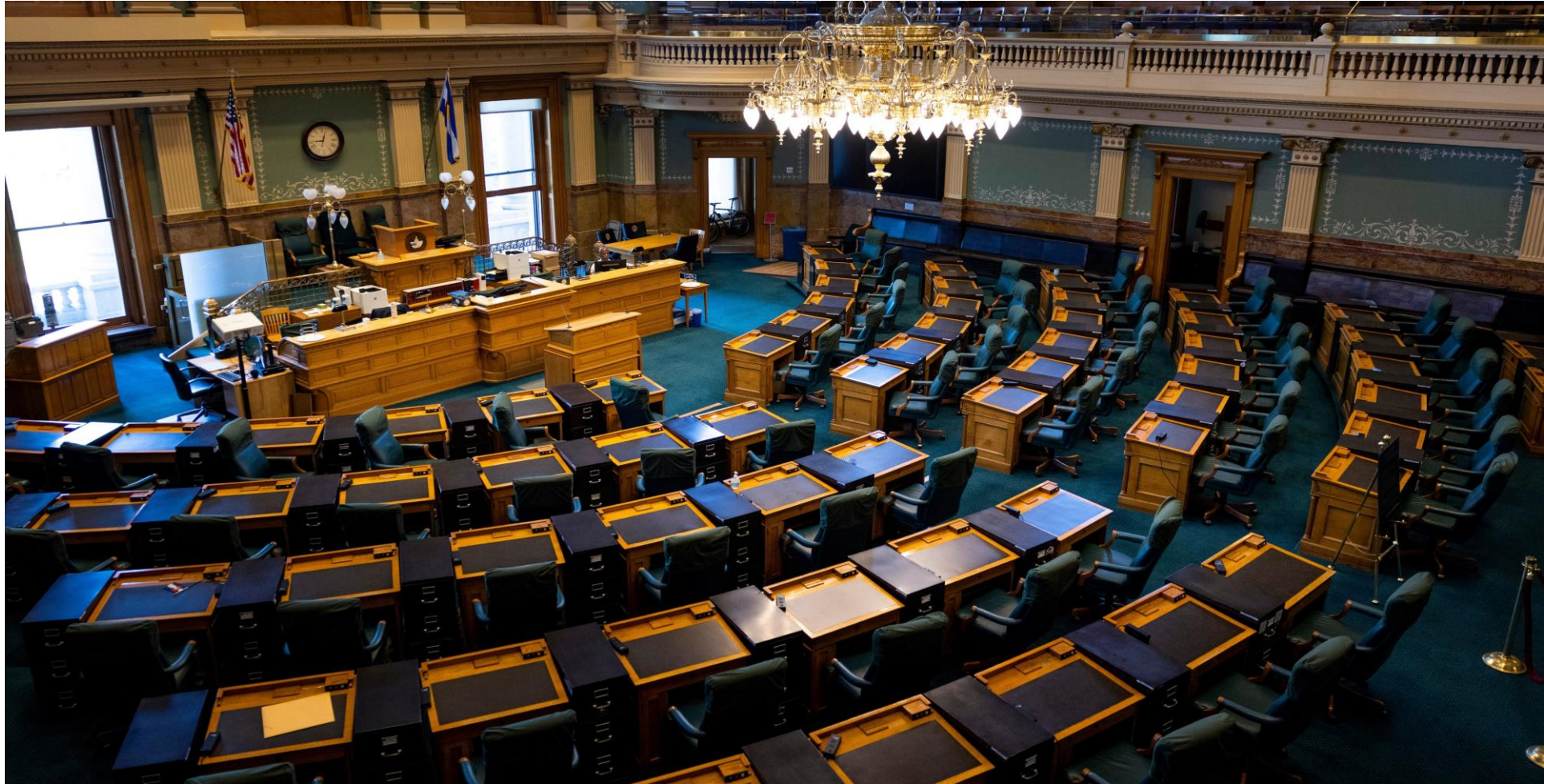
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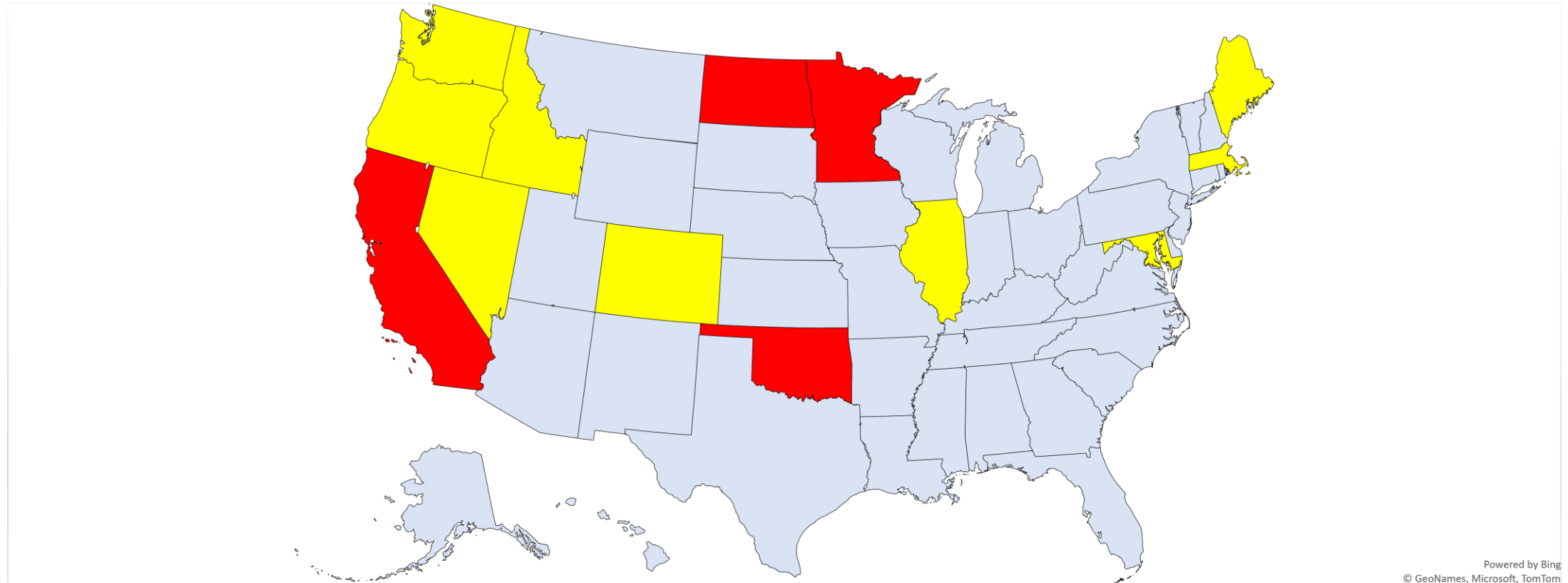
Early Judicial Disfavor



Modern Legislative Restrictions



States That Have Enacted **Bans** or **Restrictions**



Federal Agency Attacks



Whistleblower Protections and Driver Fatigue

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So Your Driver Is Late for a Pick Up



Whoa There, Trigger



But He Just Wants To Get Out of Driving!



What Did the Driver Actually Say?



What Did the Driver Actually Say?





So, What Can We Do?

BOTTOM LINE



NLRB Updates - The Bad Gets Worse

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Biden walks picket line

“I meant what I said when I said I’m going to be...the most pro-union president in American history. And I make no apologies for it.”







Quickie Election Rules are Back

TIME

TO

VOTE!



Quickie Election Rules are Back

TIME

TO

VOTE!





Handbooks Under Attack

- If employee could reasonably interpret rule to have coercive meaning
- If Rule has reasonable tendency to chill employee's section 7 rights



Handbooks Under Attack

- If employee could reasonably interpret rule to have coercive meaning
- If Rule has reasonable tendency to chill employee's section 7 rights

An illustration on a blue background. On the left, a man in a blue shirt and dark vest walks away carrying a cardboard box. In the center, a large purple circle contains a white document with the title 'SEVERANCE AGREEMENT' and several lines of text. On the right, a man in a brown suit points towards the document while holding a red folder.

SEVERANCE AGREEMENT



Systemic Enforcement by the EEOC - What Can Employers Expect?

Sari Pettinger
Partner

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A photograph of a desk with a blue notebook, a pen, and a document titled 'EEOC'. The notebook has a red tassel bookmark. The pen is black with gold accents. The document is white with the text 'EEOC' in large, bold, black letters. Below the title, the text 'Equal Employment Opportunity Commission' is visible, separated by a horizontal line.

EEOC

Equal Employment Opportunity Commission

EEOC

Equal Employment Opportunity Commission













Cruising with Caution: Balancing Dash Cams and Privacy

Steven F. Stanaszak

Partner

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Decreased Collision Frequency

60% reduction in the number of incidents when implementing a dashcam solution with driver feedback.



CASE CLOSED

Decreased Accident-Related Costs

- operations
- legal
- insurance
- customer support
- delayed delivery or service
- human resources

HELLO
I AM...

A LAWYER



Privacy

Privacy

undisturbed or alone a res
anonymity, the wish to re
protect their privacy in th
unnoticed or unidentified

David Cox

Sunday, October 30, 2022 at 4:14 pm

I've had forward cams for 8 years and driver facing for over 2 years. I haven't had to change my behavior or be different. I see them both as positives. You'll not have to be grilled by insurance companies. They'll have seen the video, no questions needed.

Bobby Bibbs

Monday, October 31, 2022 at 9:25 am

Ok. Why in the hell would you create another avenue for an attorney to attack? Oh right screw the driver. Find anyway you can to put this on the driver. Let's put them in the sleeper. At what point do you hire and train drivers to behave correctly. Nuclear verdicts are a product of our society, of "oh they have insurance. They can afford it mentality." We need reform in the courts. Just go ahead and fire all drivers and go autonomous. Profit is all your dream. Thx for destroying an industry.



SAFETY VS PRIVACY

BEST PRACTICES FOR PRIVACY COMPLIANCE STRATEGY

- KNOW WHAT THE DEVICE IS DOING - CONFIGURATION IS KEY
 - It's not just about inward and outward cam choices
 - Audio, video, AI algorithms, in-cab alerting and more
 - Is the manufacturer reserving rights to use content for its purposes
- GIVE NOTICE AND OBTAIN WRITTEN CONSENT
 - Driver consent is key. Consider decals with the cameras to put drivers and vehicle occupants (or potentially people outside the vehicle) on notice that it's a recording device.
- CONSIDER FURTHER NOTICES
 - Consider putting references to the use of cameras in privacy policies, carrier contracts and consumer contracts.
- THE CAMERAS WORK BEST WITH COACHING
 - Make sure you have a workable plan to review and coach drivers.
- BE AWARE OF STATE-SPECIFIC PRIVACY STATUTES SUCH AS IL & CA
 - Modify your policies and procedures based on where your fleet operates.

TRANSPARENCY IN PURPOSE IS KEY





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LEASE PURCHASE HIGHLIGHT

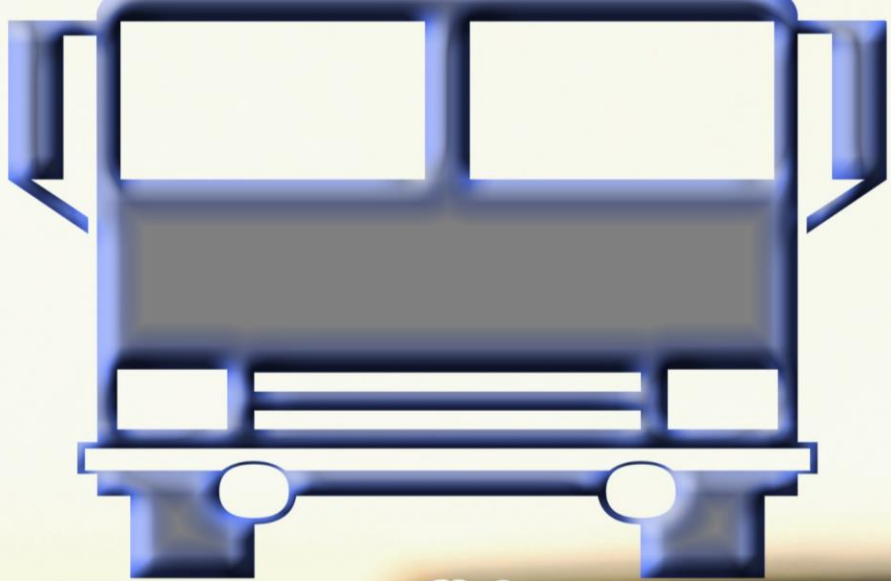


Lease Purchase Programs

Jeff Jackson
Partner

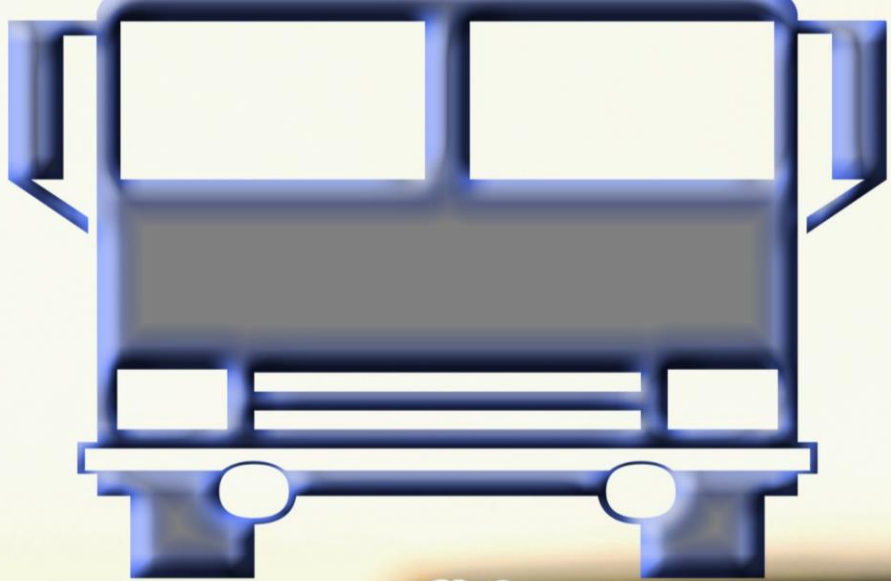
jjackson@scopelitis.com
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LEASING





LEASING









**BEST
PRACTICES**

Lease Purchase Program - Best Practices

✓ Do not facilitate OO purchases/leases of equipment in:

Arizona

Arkansas

California

Colorado

Connecticut

Illinois

Kansas

Louisiana

Maryland

Michigan

Minnesota

New Jersey

Oklahoma

Oregon

Pennsylvania

South Carolina

Virginia

West Virginia

Wisconsin



F A I R



**CODE OF FEDERAL
REGULATIONS
CFR**



KEEP in
Mind !!

KEEP in
Mind !!



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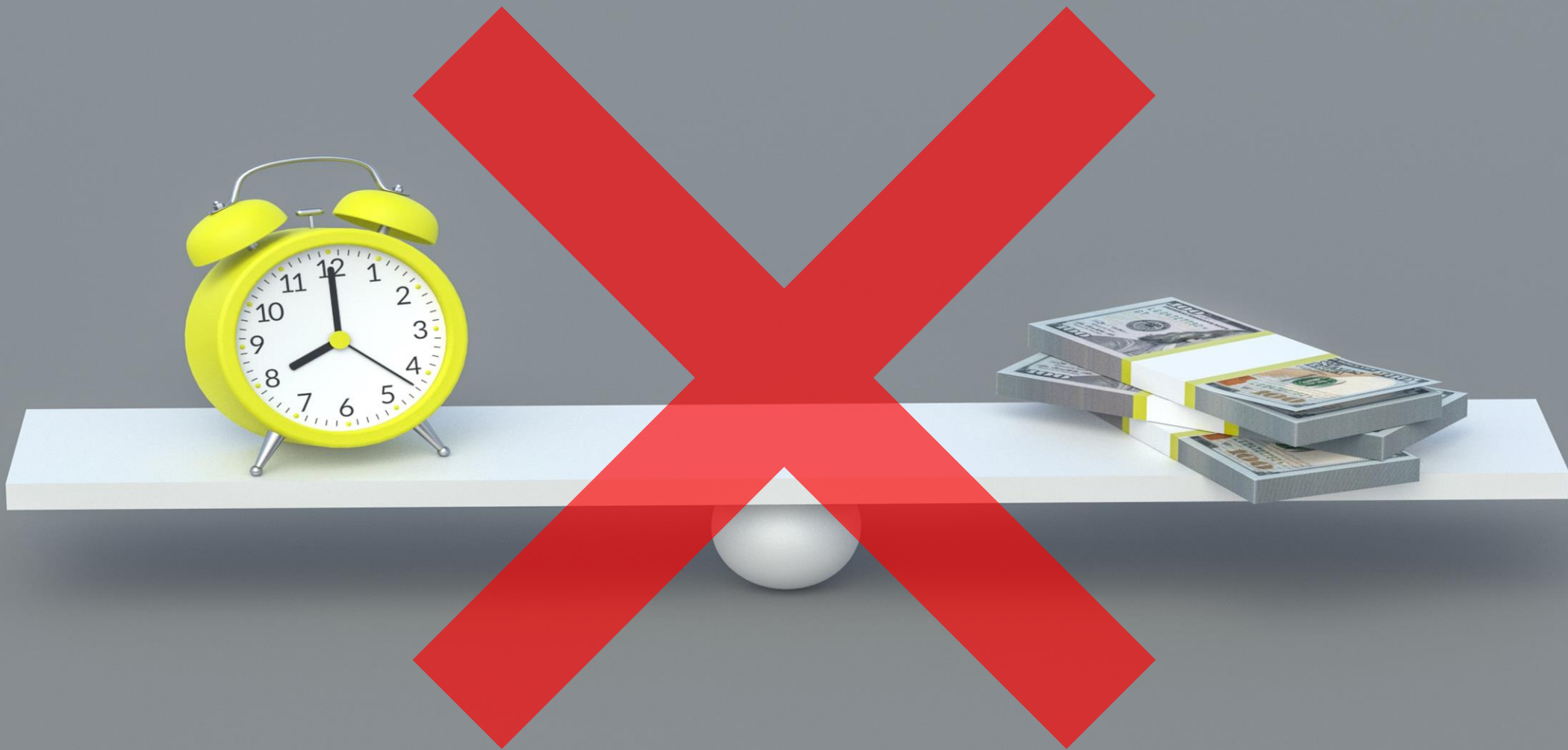
The Transportation Law Firm

Owner-Operator Update



- 1. Opportunity for Profit or Loss**
- 2. Investment**
- 3. Degree of Permanence**
- 4. Control**
- 5. Integral Part of Business**
- 6. Skill and Initiative**












**OWNER-
OPERATOR
CORP**











DEDUCTION





FUEL CARD

CARDHOLDER NAME



IMPORTANT

**NOTICE OF
TERMINATION**





INCENTIVES





18:01 PM

SPEEDOMETER v0.1

4

19.0 C

BOOST



6554	555 56.524
4321	555 41.221
34	5678
2244	55.62
09.12	42145
6666	55.524
0202	0555
9090	2.4
2450	1.22451
00.2	56245
00.12	42145
6554	555 56.524
4321	555 41.221
34	5678
2244	55.62
09.12	42145
6666	55.524
0202	0555
9090	2.4
2450	1.22451
00.2	56245
00.12	42145

DASHBOARD



2500 5000 10000 12500 15000 17500 20000











Breach of contract





Contractor Non-Competition Agreement

Whereas in consideration of _____
providing services to Taal school of Dance and the Indian Arts)

Whereas Teacher and or Independent contractor will have access to the company, its affiliates and subsidiaries, and any subsidiaries or affiliates which hereafter acquired;

(the Independent contractor) interested in Taal School of Dance and the Indian arts.

WHEREAS Company will consider Teacher and or Independent contractor will apply to provided that consultant/teacher should have access to the Indian arts;

the Company and the Independent contractor's Business;



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123-4567-123

DECAL WRAP GRAPHICS

DECAL WRAP GRAPHICS



COACHING





OWNER-OPERATOR CORPORATION



SUBLEASE AGREEMENT

This is an agreement to sublet real property according to the terms specified below. The sublessor agrees to sublet and the subtenant agrees to take the premises described below. Both parties agree to keep, perform and fulfill the promises, conditions and covenants specified below. Both parties agree to the following:

1. The premises is: _____
2. The subtenant is: _____
3. The term of this sublease is: _____
4. The monthly rent is: \$ _____
5. The security deposit is: \$ _____
6. All charges for utilities and other expenses shall be paid by the subtenant in accordance with the terms of the master lease.





ONBOARDING

PROCESS









WORK INJURY

1 WORKER'S DETAILS

Title

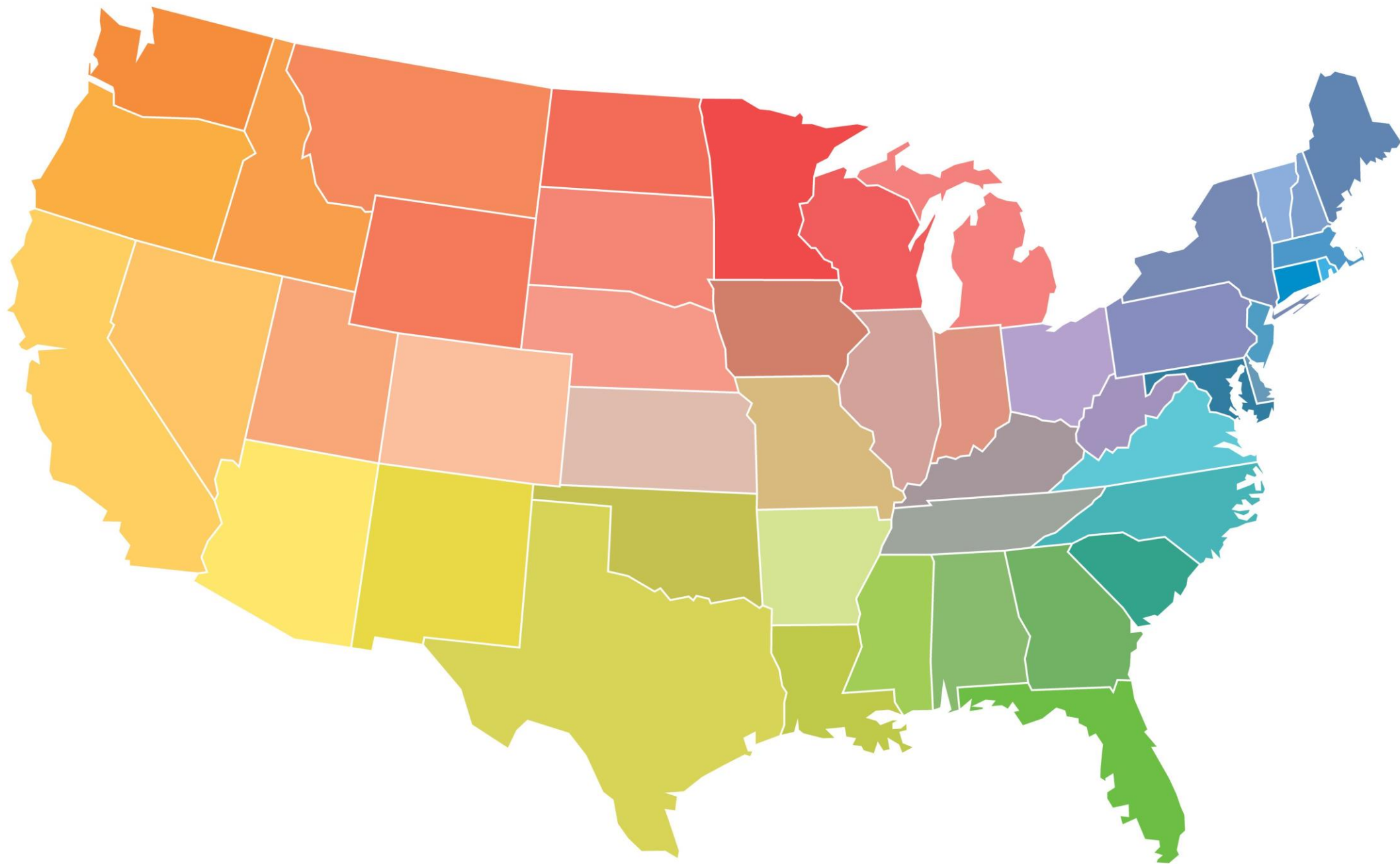
Family name



Code

WORKER'S INJURY DETAILS

Condition, and which parts of your body are affected?

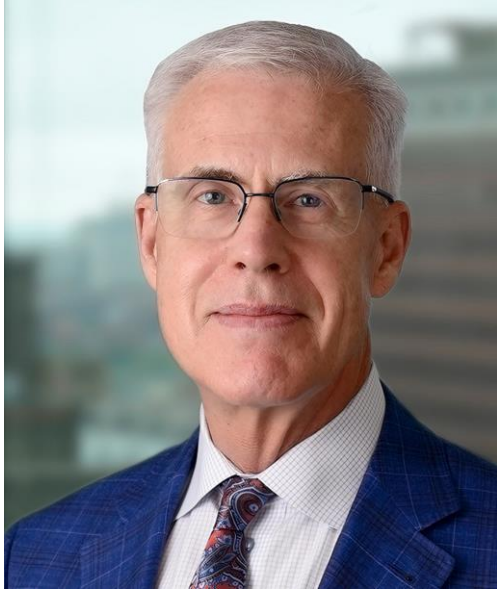








Questions?



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Unclaimed Property Highlight

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Unclaimed Property

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UNCLAIMED FUNDS







**EXPOSURE TO
LIABILITY**

REDUCE

RISK



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Garvin Light Hanson & Feary

The Transportation Law Firm

Warehousing Trends

Scopelitis Seminar

April 15, 2024

Kevin M. Phillips
Partner

Eric J. Meyers
Partner

Warehouse Legal Liability

Retained counsel for International Warehouse Logistics Association (IWLA), Global Cold Chain Alliance (GCCA) and International Association of Refrigerated Warehouses (IARW).

- Drafting, negotiating, and reviewing warehousing contracts and documents
- Business Disputes
- Recovery of unpaid storage charges
 - Instituting and enforcing the warehouse lien
- Lender Lien Waivers/Bailee Agreements
- Product damage claims
 - Infestations of products involving multiple distribution centers
 - Claims involving chemical contamination of food-grade products
 - Food spoiliation
 - Cross contamination
- Improper record keeping
- Inventory shortage claims against distribution centers

Contract and Litigation Trends

- Payment Terms, Payment Disputes, Term and Termination Issues
- Timely Notice of Claims
- Piercing the Corporate Veil
- Choice of Law/Venue Provisions
- 4PL
- Warehouse Lien Preservation/Enforcement
- Defending Against Customer Claims
- Record Retention
- Infestation
- Demurrage
- Automation and Systems Integration
- Data Privacy





Damage From a Customer's Product

CONTRACT

THIS AGREEMENT made this _____ day of _____, 20____
by _____ (First Party)
and between _____ (Second Party),
and _____

BY AND BETWEEN

the OWNER: _____

And the CONTRACTOR: _____

WITNESSETH:

WHEREAS it is the intent of the Owner to make improvements at _____ generally described as follows;

hereinafter referred to as the Project.

NOW THEREFORE in consideration of the mutual covenants hereinafter set forth, OWNER and CONTRACTOR agree as follows:

Article 1 - Work

It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the CONTRACTOR by the OWNER, CONTRACTOR shall faithfully furnish all necessary labor, equipment, and material and shall fully perform all necessary work to complete the Project in strict accordance with this Contract Agreement and the Contract Documents.

Article 2 - Contract Documents

CONTRACTOR agrees that the Contract Documents consist of the following: this Agreement, General Provisions, Supplementary Provisions, Specifications, Drawings, all issued addenda, Notice-to-Bidders, Instructions-to-Bidders, Proposal and associated attachments, Performance Bond, Payment Bond, Wage Rate Determination, Insurance certificates, documents incorporated by reference, documents incorporated by attachment, and all OWNER authorized change orders issued subsequent to the date of this agreement. All documents comprising the Contract Documents are complementary to one another and together establish the complete terms, conditions and obligations of the CONTRACTOR. All said Contract Documents are incorporated by reference into the Contract Agreement as if fully rewritten herein or attached thereto.



When Can an Insurer Deny a Claim for Untimely Notice?





Choice of Law and Venue: Maintain Homefield Advantage



The Warehouse Lien



Retaining Records and Preserving Evidence





TERMINATION

The word mortgage is a French-Latin term meaning

is attached to real property through the use of a mortgage note which evidences the existence of the loan and the acknowledgment of that reality through the granting of a mortgage which secures the loan. However, in practice usage, it most often refers to a loan mortgage loan.

A home loan or similar loan which financing is often either to purchase or secure against the property from a financial institution, such as a bank or credit union, either directly or indirectly through intermediaries. Evidence of mortgage is as the case of the loan, usually at the time, interest rate, method of paying off the loan, and other administrative and legal considerations. In many jurisdictions, though not all, interest rates are restricted. It is a normal mortgage loan document. Some individuals have through savings or gift funds to enable them to purchase property outright, in countries where the borrower has some ownership in highest, being common mortgage loan document.

The word mortgage is a French-Latin term meaning "death contract", meaning that the pledge ends (dies) when either the obligation is fulfilled or the property is taken through foreclosure (2)

by the "mortgage" document, generally, the two are assigned together, but if they are split traditionally



Signature: [Name] (optional, but if they are split traditionally)

Rail Disputes



Systems Integration: Who's Responsible for What?

Automation: A Case Study





