



On the hook

Understanding legal liabilities in logistics

Last year, a civil case came before the court that had direct bearing on the logistics industry.

The Ontario Superior Court heard the case of Travelers Transportation Services Inc v 141557 Ontario Inc (known as "Platinum Express Worldwide") and others.

The basic story behind the case is this: The plaintiff, Travelers Transportation is a truck operator and carrier who entered into a load brokerage agreement with the defendant, Platinum Express. Traveler carried and delivered the cargo, but Platinum didn't pay the agreed upon \$57,425 for the service. Anthony Persaud is an officer and a director of Platinum. Travelers claims that Platinum breached its obligations under the Truck Transportation Act, and that Persaud is personally liable for the money owed, according to previously established case law.

The outcome of the case is twofold. First, the court dismissed the personal liability claim against Persaud.

Second, the Truck Transportation Act has been repealed and replaced by section 190 of the Ontario Highway Traffic Act which establishes a new statutory regime with similar but more specific obligations relating to the payment of freight monies.

The Travelers case also raises important questions concerning when directors and officers of corporations generally, and of load brokers specifically, can be personally liable for the liabilities of their company.

The good news

Once legally incorporated, a company "has the capacity and the rights, powers and privileges of a natural person". It has a separate legal identity, and is subject to rights and liabilities independent of its members (shareholders), who are exempt from personal liability for its debts, acts and obligations.

The bad news

There are exceptions to the general rule. Here are a few of the main ones.

When the conduct complained of is that of the directors/officers themselves

This would include conduct which is tantamount to fraud, dishonesty, lack of authority or other specific conduct which justifies piercing the corporate veil, where the corporate veil is a sham or where the conduct exhibits a separate identity of interest from the bona fide interests of the corporation.

When the directors/officers are constructive trustees

A director of a corporation may be personally liable as a constructive trustee for breach of trust on one (or more) of three grounds:

Trustee de son tort—where a person, although not appointed trustee, personally takes possession of trust property or assumes the office or functions of a trustee and commits a breach of trust while acting as a trustee

Knowingly assisting in a breach of trust—where the director of a corporation had actual knowledge of the underlying breach of trust by his or her corporation or was reckless or wilfully blind to the facts, and where the director assists with knowledge in the trustee's "fraudulent and dishonest design"

Knowingly receiving trust property—where the director of a corporation receives and becomes chargeable with some part of the trust property.

Where the corporation breaches the statutory trust under section 191.0.1(3) of the Ontario Highway Traffic Act and the directors/officers are constructive trustees.

Subsection 191.0.1(3) of the Ontario Highway Traffic Act (the "Act") creates a statutory trust and provides additional protection for performing commercial motor carriers. It provides:

Money for contract of carriage held in trust

"A person who arranges with an operator to carry the goods of another person, for compensation and by commercial motor vehicle, shall hold any money received from the consignor or consignee of the goods in respect of the compensation owed to the operator in a trust account in trust for the operator until the money is paid to the operator."

Accordingly, any money received by a load broker from consignors or consignees of goods in respect of the compensation owed to the carrier or trucker (the operator of a commercial motor vehicle) pursuant to contracts of carriage entered into by the load broker on behalf of the operator engages this statutory trust.

If the load broker fails to hold the money it received from the consignor or consignee in a trust account for the operator until the money is paid to the operator, it is in breach of its trust obligation and is therefore liable to the operator for the amount in question.

Here is the key point: the directors or officers of the load broker may also be personally liable for the load broker's breach of the statutory trust created by the Act on the basis that they are constructive trustees, particularly if there is sufficient evidence to conclude that they knowingly assisted the load broker in its breach of the statutory trust or knowingly received part of the trust money that should have but was not paid to the operator, as required by the Act.

To minimize the risk of personal liability, directors and officers of a corporation must be diligent and above all, must act honestly and in good faith with a view to the best interests of their corporation

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