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News Story

'Piercing Veil' Increased Settlement In Truck Accident

By Ertel Berry

A trucking company president's remarks during a deposition about who paid his salary opened the door to a piercing the veil claim that ultimately boosted a wreck plaintiff's recovery by more than \$2 million, according to a confidential settlement reported to Lawyers Weekly.

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Raleigh attorneys Donald Strickland and Howard Twiggs obtained a \$4.4 million recovery for a 29-year-old computer engineer who suffered severe brain damage after the car he was riding in was rear-ended and crushed by a tractor-trailer.

Two other passengers were killed in the collision. Their estates settled with the company that owned the tractor-trailer. That reduced the company's already-modest \$3 million in insurance coverage to only \$2.15

million — far less than needed to fund the plaintiff's projected life care plans.

Where did the rest of the \$4.4 million settlement come from?

The trucking company's parent corporation and its two individual shareholders, according to Strickland.

Those defendants were brought into the case after Strickland and Twiggs amended the plaintiff's complaint to include a piercing the veil claim.

"In cases like this, where liability insurance is woefully inadequate to fairly compensate a plaintiff, the plaintiff's counsel has an absolute duty to investigate whether the tortfeasor has assets that can help pay the plaintiff's claims and, if appropriate, go after those assets," said Strickland.

"If the tortfeasor is a corporation, it is imperative that plaintiff's counsel obtain all corporate records during the relevant time period, particularly all the financial, tax and stock transfer

records, and have them analyzed by qualified experts in corporate law, tax and accounting.

"Not every case will give rise to claims of piercing the corporate veil or fraudulent transfer of assets, but the only way to know if these claims exist is to obtain and review all relevant corporate records," Strickland said. "You may be surprised at what you find."

In Strickland's case, the surprise came during a deposition of the trucking company's president.

"During the deposition, it came out that the president and key officials were not paid salaries by the trucking company," Strickland said. "They were all paid by the parent company. Then it appeared there had been a lot of commingling of activities between the parent and the trucking company. None of this was illegal. It just jeopardized the protection of the trucking company and the parent's corporate status.

"I don't think it was apparent to him or their lawyers that we were looking for information that would enable us to file a piercing the veil claim," said Strickland. "He just volunteered it."

The testimony gave Strickland and Twiggs a good faith basis to amend the complaint to sue the parent company and its individual shareholders.

"That gave us a way to discover the business relationships and tax documents," said Strickland.

A redacted copy of the amended complaint stated a litany of alleged facts to show the trucking company was a "mere instrumentality" of the other defendants. Among them:

- The trucking company and its parent had the same physical address and shared the same office space, officers and key administrative employees.
- The two companies had the same three people on their boards of directors.
- The trucking company's president, vice-president and other officers received all their compensation from the parent.
- The parent company's individual shareholders determined when dividends were paid and the amount of those dividends.

Discovery motions eventually produced more than 15,000 pages of financial and business records from the defendants.

The primary defendant, the trucking company, was a sub S corporation "so it paid out all the money it made at the end of the year to its parent," Strickland said. "That's a legal business transaction but it meant that ultimately all the money went to the parent company and then ultimately to the shareholders of the parent."

Said Twiggs: "We looked at the assets of the trucking company to see what there would be in the event of a judgment. The life care plans were far in excess of that. It wouldn't give us what our client needed to live the rest of his life. If we got a judgment against the company, and it went into bankruptcy, it would have been worth very little."

The defendants filed a motion for summary judgment on the piercing the veil claims.

"The trucking company had been in existence since the early 1980s," said Strickland. "They said there were separate offices and officers, they had separate corporate structures and filed separate returns, and that the company was not dominated or controlled by the parent corporation."

A hearing was held on the defendants' motions but the parties settled before the trial judge entered his decision.

"The sad thing about this case for everybody is that this company's CPA had advised it to increase their liability coverage from \$3 million to \$10 million," said Strickland. "The people running the company decided not to do that."

Intra-state truckers are only required to carry a liability minimum of \$750,000, which is "woefully inadequate for these tractor-trailers flying down the highway," according to Strickland.

For interstate rigs, the minimum is still only \$1 million, he said.

— *Questions or comments may be directed to* Ertel.Berry@nc.lawyersweekly.com.

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