

BROKER HELD RESPONSIBLE FOR WORKERS COMPENSATION LIABILITY OF CARRIER

Frances Atiapo, Plaintiff vs. Goree Logistics, Inc. and Owen Thomas, Inc., North Carolina Industrial Commission 2015 N.C. App. LEXIS 219 Court of Appeals North Carolina March 2015.

This is an appeal from a decision against among others, the Broker, Owen Thomas, Inc. by the North Carolina Industrial Commission finding it liable as a “statutory employer” under North Carolina Gen. Stat. § 97-19.1.

Owen Thomas was a licensed transportation broker , incorporated in Florida, who entered into a Broker/Carrier agreement with Goree Logistics, Inc. to arrange for transportation of freight on behalf of Sunny Ridge Farms. The agreement provided that Goree would exercise full control over transportation of the goods as well as full responsibility for payment of all taxes on employment and worker’s compensation and related fees.

Frances Atiapo, Plaintiff was the tractor trailer driver for Goree. Plaintiff Atiapo was involved in an accident and was injured. The Carrier, Goree did not have worker’s compensation insurance.

The commission found under North Carolina statutes that the Plaintiff Atiapo was an employee of Goree the motor carrier. It further found that Owen Thomas, the Broker, was a “principle contractor” within the meaning of North Carolina statute § 97-19(a) and ordered it to pay the Plaintiff temporary total disability compensation together with all medical expenses including costs of the hearing which is believed to be about \$78,868.00.

After finding that the Plaintiff was an employee of Goree, the Commission further concluded that the use of the term “Broker” was a distinction without a difference, and that since Owen Thomas was able to use his own judgment in selecting a carrier for its client and retaining a portion of the compensation, that it was a “principal contractor” under North Carolina statutes. Because it was a principal contractor under North Carolina statutes and because the carrier did not have worker’s compensation coverage, it held Thomas liable pursuant to the statute. The statute, North Carolina General Statute § 97-19.1 included in relevant part language, that “...Any principal contractor who employs three or more employees, who contracts with an individual in the interstate carrier industry who operates a truck..... shall be liable as an employer under this article for the payment of compensation and other benefits on account of injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of or in the course of the performance of the work covered by such contract.”

On appeal the only question according to this Court was whether the commission correctly found and held Owen Thomas as a principal contractor. In support of its findings the court opined that Thomas had discretion in selecting the carrier, provided 1099 Forms to Goree, it controlled not only the outcome of the task, namely the delivery of the goods but also the method by which the task would be performed including how frequently Goree would report to

Owen Thomas and provided specifications on the temperature that would be maintained during transport. The Court held that Thomas acted as a contractor, and Goree the subcontractor which was without worker's compensation, and was therefore liable to the Plaintiff under the statute.

Owen Thomas argued that the matter was pre-empted by Federal Statute 49 USC 14501(c) (1) which prohibits states from imposing laws or liability on carriers (and brokers) related to a price, route, or service. The Court rejected the argument arguing that under the subsection 49 USC 145010(c)(1) there was an exception for financial requirements related to insurance.

Other issues in the case involve the liability of Goree and its principal who were also liable for the judgment in this case. They argued that the statute that provided penalties did not apply because it had fewer than 3 employees. The court rejected the argument stating that the liability of statute applied regardless of the number of employees it had.

Interestingly the Court stated that Owen Thomas went beyond his role as a Broker and acted as a contractor by ensuring the shipment of the shippers goods, employed Goree to perform the work, and that by doing so it was no longer a Broker but a general contractor who'd contracted with a motor carrier. "Owen Thomas was in effect a motor carrier despite the fact the company itself owned no vehicles. The decision against the Broker, was upheld. It is obvious that there was nothing that the broker could do to avoid liability. The result is a "deep pocket" decision allowing recovery where the carrier failed to have workers compensation insurance. If there is a "takeaway" here it is that proof of workers compensation insurance be required when vetting carriers, AND that if a state allows an "opt out", further research is required. An assumption that the "opt out" will shield a broker from liability may be misplaced! As a practical matter in the fast moving brokerage business there would likely not be enough time to research whether a particular state recognized the opt out provisions. If the broker decided to go ahead and hire without conducting the research, then broker has assumed the risk shown in this case. Typically in a case such as this the brokers workers compensation insurance company would pay the claim and then charge the broker with higher premiums in order to collect.

Respectfully submitted;

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