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COURT OF APPEALS  
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STATE OF WASHINGTON

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NO. 43894-1-II

(Pierce County Superior Court Cause No. 11-2-07869-3)

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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LANDSTAR INWAY, INC.,

Appellant,

v.

FRANK SAMROW and JANE DOE SAMROW and the marital  
community comprised thereof, OASIS PILOT CAR SERVICE LLC  
and CJ CAR PILOT, INC.,

Respondents.

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**BRIEF OF APPELLANT**

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**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. ASSIGNMENTS OF ERROR ..... 3

III. STATEMENT OF THE CASE ..... 4

IV. ARGUMENT..... 11

    A. Standard of Review ..... 11

    B. There are Genuine Issues of Material Fact Regarding the  
        Personal Liability of Frank Samrow..... 11

        1. Frank Samrow intentionally used the corporate form  
           of Oasis to evade contractual duties..... 13

        2. Frank Samrow intentionally used the corporate form  
           of Oasis to avoid his extra-contractual duties under  
           the independent duty doctrine..... 16

        3. Frank Samrow should not be dismissed as a  
           defendant when he personally made the  
           misrepresentations that resulted in Landstar’s harm ..... 19

        4. Piercing the corporate veil is necessary to prevent  
           unjustified loss to Landstar..... 21

        5. Piercing the corporate veil is a question of fact that  
           should not be decided as a matter of law..... 22

V. CONCLUSION ..... 22

**TABLE OF OF AUTHORITIES**

**Cases**

*Affiliated FM Ins. Co. v. LTK Consulting Svcs., Inc.*,  
170 Wn.2d 442, 453, 243 P.3d 521 (2010)..... 18

*Chadwick Farms Owners Assoc. v. FHC, LLC*,  
166 Wn.2d 178, 207 P.3d 1251 (2009)..... 19

*Crescent Mfg. Co. v. Hansen*,  
174 Wash. 193, 198, 24 P.2d 604 (1933) ..... 21

*Donatelli v. D.R. Strong Consulting Engineers, Inc.*,  
163 Wn. App. 436, 261 P.3d 664 (2011)..... 17

*Eastwood v. Horse Harbor Foundation, Inc.*,  
170 Wn.2d 380, 241 P.3d 1256 (2010)..... 17

*Ellis v. City of Seattle*,  
142 Wn.2d 450, 13 P.9d 1065 (2000)..... 11

*Johnson v. Harrington-Peach Land Dev. Co.*,  
79 Wn.2d 745, 489 P.2d 923 (1971)..... 20

*Kim v. O'Sullivan*,  
133 Wn. App. 557, 137 P.3d 61 (2006)..... 11

*Meisel v. M&N Modern Hydraulic Press Co.*,  
97 Wn.2d 403, 410, 645 P.2d 689 (1982) ..... 12, 13

*Ranger Ins. Co. v. Pierce County*,  
164 Wn.2d 545, 552, 192 P.3d 886 (2008)..... 10

*State v. Ralph Williams' N.W. Chrysler Plymouth*,  
87 Wn.2d 298, 322, 553 P.2d 423 (1976)..... 14

*Truckweld Equip. Co. v. Olson*,  
26 Wn. App. 638, 642, 618 P.2d 1017 (1980)..... 15

*Weatherbee v. Gustafson*,  
64 Wn. App. 128, 132, 822 P.2d 1257 (1992)..... 11

**Statutes**

RCW 25.15.060 .....12, 19  
RCW 25.05.120 ..... 13  
RCW 46.44.090 .....17

**Regulations and Rules**

WAC 468-38-100 .....17, 18, 21  
CR 56 (c) .....11

## **I. INTRODUCTION**

This case involves the intentional misrepresentations that Frank Samrow (“Samrow”) made as a partner of Oasis Pilot Car Service, LLC (“Oasis”) that caused Appellant Landstar Inway, Inc. (“Landstar”) to enter into a contract with Oasis. Samrow and his partner Terrence Walker (“Walker”) formed an LLC because they could not obtain insurance to cover their pilot car business. Samrow and Walker entered into a contract with Landstar, knowing that never intended to fulfill any of their obligations under the contract. The very formation of Oasis was designed to mislead the public in general and Landstar in particular.

The trial court erred in holding that Frank Samrow is not personally liable for the obligations of Oasis as a matter of law. Frank Samrow is a licensed pilot car operator and a certified pilot car instructor. He entered into a Master Independent Contractor Agreement (“Agreement”) and a Route Survey Indemnity Addendum (“Addendum”) with Appellant Landstar to provide pilot car services and routes for Landstar when Landstar transported oversized cargo within Washington State. Frank Samrow signed both the Agreement and the Addendum as a partner of Oasis Pilot Car Service LLC.

The Agreement signed by Frank Samrow required Oasis to submit proof of commercial automobile liability insurance limits of at least one

million dollars (\$1,000,000) and required Landstar to be named as an additional insured on the policy. Frank Samrow submitted the certificate of insurance on his own personal Chevrolet Uplander pickup truck with the requisite coverage listing Landstar as an additional insured. The Agreement and Addendum each contain indemnity provisions requiring Oasis to reimburse Landstar for any damages incurred as a result of damage to any property or cargo caused by the route provided by Oasis or the pilot car service provided by Oasis.

On October 14, 2009, Landstar requested the services of Oasis to provide a route for an oversized load from the Canadian border to Idaho. Landstar also requested that Oasis provide pilot car services to escort the oversized cargo. Oasis provided the route taken by the pilot car driver and Samrow subcontracted to provide the pilot car service. The pilot car driver went under the New York Street overpass and did not notify Landstar's driver that his cargo would not fit under the overpass. The underlying lawsuit was for the property damage claims caused as a result of the route provided by Samrow and the pilot car driver Samrow selected to perform the pilot car services. Landstar settled the property damage claim brought by the Washington Department of Transportation for the damage to the overpass, and Landstar reimbursed the owner of the property it was shipping for the property damage sustained as a result of

the collision. Landstar then filed suit against Oasis, Frank Samrow and C.J. Car Pilot, the pilot car service hired by Frank Samrow.

After discovery commenced, Landstar discovered for the first time that: 1) Frank Samrow and Terrence Walker never had insurance to cover pilot car service operations; 2) Frank Samrow knew that he would not provide pilot car services with the vehicle on which he submitted proof of insurance; 3) Frank Samrow only considered Oasis to be a dispatching service that did not provide either route surveys or pilot car service; 4) Oasis did not ensure that the pilot car drivers to whom it dispatched jobs were adequately insured; and 5) Oasis was specifically formed because Frank Samrow and Terrence Walker were unable to obtain insurance. These facts, and the evidence Landstar would have been able to present had the case not been dismissed during the discovery process, clearly show that there are genuine issues of material fact sufficient to preclude the dismissal of Frank Samrow as a matter of law.

## **II. ASSIGNMENTS OF ERROR**

### *Assignments of Error*

1. The trial court erred in failing to make all reasonable inferences from the evidence in favor of Landstar Inway, Inc.

2. The trial court erred in failing to view the facts in a light most favorable to Landstar Inway, Inc.

3. The trial court erred in holding that Frank Samrow is not personally liable for the obligations of Oasis Pilot Car Service, LLC as a de facto admitted “partner.”

4. The trial court erred in holding as a matter of law that Frank Samrow is not personally liable for the damages sustained under the independent duty doctrine.

5. The trial court erred in ruling that there are no genuine issues of material fact regarding piercing the corporate veil.

6. The trial court erred in ruling that the corporate veil could not be pierced as a matter of law.

### **III. STATEMENT OF THE CASE**

Landstar is a motor carrier engaged in the business of transporting cargo. CP 86. Prior to the formation of Oasis, Landstar used the tandem of Frank Samrow and Terrence Walker to provide the pilot car service to escort cargo. CP294. At all relevant times, Frank Samrow was a licensed pilot car driver and a certified pilot car instructor. CP110. At all relevant times, Oasis was listed on the Washington State Department of Transportation website as a business providing pilot car services. CP260. Based on its prior dealings with Terrence Walker and Frank Samrow, Landstar entered into the Master Independent Contractor Agreement and Route Survey Addendum with Oasis on July 20, 2009. CP102-108. Under

the Agreement, Oasis is listed as the “Contractor.” CP102-108. The Agreement clearly calls for Oasis to *perform* the escort services contemplated in the Agreement. CP102-110. The Addendum clearly calls for Oasis to *provide* route survey services for Landstar. CP102-108. The Agreement and the Addendum were both signed by Frank Samrow as a “partner” of Oasis, not as an officer or member of the LLC. CP 102-108. Section 9(B) of the Agreement expressly stated that the rights and obligations under the Agreement were not assignable. CP 105.

On October 14, 2009, Landstar agreed to transport a large piece of industrial equipment called a “crystallizer” from British Columbia, Canada to Virginia. CP117. The crystallizer was to be hauled by the Landstar trailer driven by Gerald Frederick. CP117. Due to the size of the crystallizer, Landstar needed a pilot car service to escort the cargo and to provide a route survey for the transport of the crystallizer. CP118. The purpose of the route survey was to guide Landstar’s driver Gerald Frederick around any overpasses with insufficient clearance for the load. CP119.

Based on the Agreement and Addendum between Landstar and Oasis, Landstar contacted Samrow to provide the pilot car service and route survey for the portion of the transport in Washington State. CP120. The Agreement contained several provisions that were essential to

Landstar entering into the contract. Section 4(B)(1) of the Agreement required Oasis to maintain commercial automobile liability insurance coverage of at least one million dollars (\$100,000,000) for damage to personal property in the care, custody and control of Landstar Inway while the Landstar trailer was escorted by Oasis. CP103. Oasis was also required to name Landstar as an additional insured for claims and liabilities arising out of Oasis' work or services performed under the Agreement. CP 103. Section 5 of the Agreement contained an indemnification and hold harmless provision under which Oasis agreed to indemnify and hold Landstar harmless from any and all claims, judgments, costs expenses and losses by reason of any clam or damage to property caused by the negligence or breach of contract of Oasis or its agents in the performance of or pursuant to work under the Agreement. CP104. The Addendum contained a similar provision for property damage resulting from any route survey services undertaken by Oasis. CP108. Both documents were signed by Samrow as a "partner" of Oasis.

Pursuant to the July 20, 2009 Agreement and Addendum, Landstar requested pilot car escort service and a route survey from Oasis for the transport of the crystallizer from the Canadian border to Idaho. CP120. Driver Gerald Frederick contacted Oasis because Oasis was a pilot car service operator approved by Landstar. CP118. Frank Samrow never

informed Landstar or its driver that Oasis would not perform any of the pilot car services as required under the Agreement. CP 118-119.

The pilot car involved in this case was operated by Phil Kent. CP 119. Phil Kent was personally trained and certified as a pilot car driver by Frank Samrow. CP 124. Frank Samrow hired a former student that he personally trained to perform the pilot car service for the transport of the crystallizer. CP 124. According to Phil Kent, Frank Samrow provided him with the route taken during the trip and the height of the load that he was to guide. CP125. Phil Kent performed the pilot car service with “Oasis Pilot Car” signs affixed to both sides of his pickup truck. CP126. Phil Kent affixed a pole to his truck that extended six inches above the height of the crystallizer as given to him by Frank Samrow. CP126. The height of the pole was set at six inches above the height of the crystallizer so that the pole would strike any overhang that did not provide enough clearance for the crystallizer.

This lawsuit arises from the October 14, 2009 collision between the crystallizer transported by Landstar and the New York Street overpass located around milepost 124 on I-5 South in Tacoma, Washington. CP1-9. The accident occurred after Phil Kent failed to notify Gerald Frederick that the overpass was too low to allow the safe passage of the crystallizer.

CP 1-9; CP 127. This was caused by the incorrect information provided to Phil Kent by Samrow.

Frank Samrow claims that Oasis was merely a dispatch company that did not provide route information or provide pilot car escort services. CP142. However, Phil Kent testified in his deposition that he was given the route to take by Frank Samrow. CP125. Phil Kent also testified that Frank Samrow and Terrence Walker, the co-owners of Oasis, often performed the actual pilot car service operations themselves. CP125. Frank Samrow admitted that he drove pilot cars under the trade name Black Sands, and that Terry Walker also performed pilot car services for a separate entity while operating Oasis. CP140 – 142; CP 145. At no point was Mr. Frederick or anyone at Landstar informed that Oasis acted merely as a dispatch service. CP224. Frank Samrow was the only signatory to the contract that was a licensed pole car operator, and he signed the contract as a partner, not as a member or officer of the LLC.

At all relevant times, Defendant Frank Samrow was a licensed pilot car operator who marketed himself as an experienced pilot car operator. CP110. Frank Samrow served as the pilot car driver for Landstar at least two times prior to the October 14, 2009 accident that is the subject of this lawsuit. CP 294. Although Frank Samrow signed the Agreement stating that Oasis would maintain the required levels of

insurance, *he never even attempted* to obtain insurance on behalf of Oasis. CP139. Samrow knew that Oasis did not have any assets other than a telephone, computer and a fax machine. CP145. Oasis never checked to ensure that the pilot car drivers it hired were covered by adequate insurance for the loads they were hired to pilot. CP 125. It is undisputable that Oasis was grossly undercapitalized in terms of providing coverage for the loads it was agreeing to escort or in having sufficient assets to otherwise cover liabilities it was incurring.

Frank Samrow admits that the Washington Administrative Code requires pilot car operators to have insurance. CP 139. He further admits that he never sought insurance for Oasis and that he never intended to perform the pilot car services for Landstar. CP139. Although Samrow knew that he would not perform the pilot car services for Landstar when he entered into the Agreement, he submitted the certificate of insurance on the personal vehicle that he used to perform pilot car services to Landstar as proof that Oasis was insured and that the crystallizer would be covered by adequate insurance while being escorted by Oasis. CP143; CP275. After the October 14, 2009 accident, Landstar was informed for the first time that Oasis did not have any assets and was not covered by any insurance policies. Frank Samrow also acknowledges that Oasis was formed specifically because insurance could not be obtained for pilot car

services and that he felt the corporate form would provide him with more protection. CP 138. Frank Samrow was dismissed as a matter of law prior to Landstar obtaining the financial information for Oasis and its two partners.

The Honorable Susan Serko acknowledged that whether to pierce the corporate veil is a question of fact, but determined that there were insufficient facts to warrant piercing the corporate veil as a matter of law.

The whole purpose of setting up corporations is to limit liability. So to say that they did that to limit their liability, well, that's why most corporations are set up. LLCs are set up for that purpose, so I don't think that that, in and of itself, raises the issue of fact. The closest, I think, that the plaintiff gets to an issue of fact on whether there are material misrepresentations or fraud, quite frankly because that's what you have to raise, an issue on those issues in order to raise an issue as to whether or not the Court should ultimately, as fact finder, pierce the corporate veil, is whether or not he's setting up a corporation just because he can't get insurance. I don't think that gets to raising an issue of fact on piercing the corporate veil; especially in light of the contract which was ultimately signed by the parties, the master contract which talks about, in essence, the responsibility being on, I think, both sides to ensure that there's insurance.

VRP (June 22, 2012 17:8-25).

For the reasons set forth below, Appellant Landstar Inway, Inc. respectfully submits that the trial court erred in ruling that Frank Samrow could not be found personally liable as a matter of law.

#### IV. ARGUMENT

##### A. Standard of Review.

This Court reviews a summary judgment order de novo, engaging in the same inquiry as the trial court. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000). Summary judgment is proper if the court, viewing all facts and reasonable inferences in the light most favorable to the non-moving party, finds no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Ellis*, 142 Wn.2d at 458. A material fact is one upon which the outcome of the litigation depends. *Kim v. O'Sullivan*, 133 Wn. App. 557, 559, 137 P.3d 61 (2006), review denied 159 Wn.2d 1018 (2007). When determining whether an issue of material fact exists, all reasonable inferences are construed in favor of the moving party. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).

To successfully move for summary judgment, a party must demonstrate a complete lack of evidence of a material fact that cannot be rebutted. *Weatherbee v. Gustafson*, 64 Wn. App. 128, 132, 822 P.2d 1257 (1992). Even when evidentiary facts are not disputed, a motion for summary judgment will be defeated if different inferences may be drawn from the evidence in the record as to ultimate facts. Philip A. Trautman,

*Motions for Summary Judgment: Their Use and Effect in Washington*, 45 Wash. L. Rev. 1, 4 (1970).

**B. *There are Genuine Issues of Material Fact Regarding the Personal Liability of Frank Samrow.***

When the evidence is viewed in a light most favorable to Landstar, there are genuine issues of material fact sufficient to preclude summary judgment regarding the personal liability of Frank Samrow. It is undisputed that Oasis is liable for the damages sustained by Landstar based on its contractual obligations and under the independent duty doctrine. Frank Samrow is a member of Oasis. RCW 25.15.060 reads in pertinent part:

Members of a limited liability company shall be personally liable for any act, debt, obligation, or liability of the limited liability company to the extent that shareholders of a Washington business corporation would be liable in analogous circumstances. In this regard, the court may consider the factors and policies set forth in established case law with regard to piercing the corporate veil...

The established case law holds piercing the corporate veil is appropriate when two factors are present: 1) the corporate form must be intentionally used to violate or evade a duty; and 2) disregard must be necessary and required to prevent unjustified loss to the injured party. *Meisel v. M&N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 410, 645 P.2d 689 (1982).

To satisfy the first element, the abuse of the corporate form generally involves fraud, misrepresentation, or some form of manipulation of the corporation to the stockholder's benefit and to the creditor's detriment. To satisfy the second element, the wrongful corporate activities must actually harm the party seeking relief so that corporate disregard is necessary. *Meisel*, 97 Wn.2d at 410.

***1. Frank Samrow intentionally used the corporate form of Oasis to evade contractual duties.***

When the evidence is viewed in a light most favorable to Landstar, there is substantial evidence that Frank Samrow intentionally used the corporate form of Oasis to evade his contractual duties. First, Frank Samrow entered into the Master Independent Contractor Agreement ("Agreement") with Landstar as a partner of Oasis. This indicated that he would be personally liable for any damages independently as a partner. See, RCW 25.05.120. The Agreement stated that Oasis would provide route survey information and pilot car services for Landstar. According to Frank Samrow's deposition testimony, he never intended for Oasis to provide Landstar with either route survey information or pilot car services.

**Q. Okay. Now, when you set up Oasis LLC with Mr. Walker, did you go and also attempt to get insurance?**

A. Not from Janke.

**Q. Who did you get insurance from?**

A. We didn't get any?

**Q. So Oasis Pilot Car LLC, as far as you know, never had insurance?**

A. Correct.

**Q. Did you know whether the Washington Administrative Code required that pilot car operators have insurance?**

A. It does require.

**Q. Okay. Now, was Oasis Pilot Car LLC, was that a pilot car business?**

A. No, it was not.

**Q. What was it if it wasn't a pilot car business?**

A. It was a dispatch service.

...

**Q. What is this document; it's entitled "Master Independent Contractor Agreement," what is that; do you recognize it?**

A. That's the agreement we worked up with Landstar.

**Q. And at the time, was Oasis Pilot Car Service LLC, was that a business authorized to operate pilot cars?**

A. It was always a dispatch service, that all it was.

CP 139.

Instead, he considered Oasis to be only a dispatching company that would broker out the pilot car assignments to other pilot car operators. This was an intentional misrepresentation and a violation of the non-assignability clause contained in Section 9(B) of the Agreement.

The Agreement required Oasis to maintain an automobile commercial liability policy with at least one million dollars (\$1,000,000) to cover property damage for cargo escorted by Oasis. Landstar was also required to be named as an additional insured on the policy. Frank Samrow submitted the insurance policy on his personal vehicle (that he used to perform pilot car services) that listed Landstar as an additional

insured as proof that this requirement was satisfied. Frank Samrow did this knowing that he would not be using his personal vehicle to provide pilot car services because he never intended for Oasis to provide pilot car services. This was another intentional misrepresentation and violation of the contract he signed with Landstar on behalf of Oasis. Frank Samrow's fraudulent submission of his certificate insurance prevented Landstar from knowing that the cargo was uninsured while being transported. The fact that Frank Samrow provided Landstar with proof of what would have been sufficient insurance to cover the cargo prevented Landstar from obtaining its own insurance to cover the cargo that was supposed to be piloted by Oasis. Frank Samrow's intentional misrepresentations left Landstar uninsured for the cargo being escorted and prevented Landstar from taking the necessary precautions to obtain insurance.

Frank Samrow made numerous misrepresentations to Landstar. Frank Samrow (and Terrence Walker) listed Oasis Pilot Car Services, LLC on the Washington State Department of Transportation website as a company authorized to provide pilot car services. Frank Samrow knew that Oasis never obtained any insurance to cover cargo that was escorted by Oasis. Despite knowing that Oasis never had insurance, Samrow signed the Agreement agreeing to provide at least one million dollars in commercial automobile liability coverage. Frank Samrow then submitted

the certificate of insurance on his Chevrolet Uplander showing the required amount of coverage and that Landstar was named as an additional insured in order to fulfill Oasis' obligation under the Agreement. He never informed Landstar that the vehicle listed would not be used to provide the pilot car service or that Oasis would not provide the pilot car service. Frank Samrow also signed the route survey addendum although he allegedly never intended for Oasis to provide routes for the transport of cargo. He then subcontracted or dispatched Landstar's pilot car request to Phil Kent without verifying that Phil Kent was covered by adequate insurance.

**2. *Frank Samrow intentionally used the corporate form to evade his extra-contractual duties under the independent duty doctrine.***

Frank Samrow contracted with Landstar to perform professional pilot car services by signing the Agreement as a partner of Oasis. Frank Samrow is a licensed pilot car operator who trains and certifies other pilot car drivers. Landstar entered into the contract with Oasis because of the expertise of Frank Samrow as a professional pilot car operator. Landstar had a history of using Frank Samrow as a pilot car operator and relied on his skill when requesting Samrow to perform the pilot car services to escort the crystallizer. Samrow is independently liable to Landstar in tort under the independent duty doctrine.

A breach of contract can simultaneously be a breach of a tort duty when an independent tort duty arises independently of the contract's terms. *Eastwood v. Horse Harbor Foundation, Inc.*, 170 Wn.2d 380, 241 P.3d 1256 (2010). Professional pilot car operators have a duty to exercise reasonable skill and judgment in operating pilot cars. WAC 468-38-100; RCW 46.44.090. Frank Samrow had a duty to operate the pilot car (or to ensure that the driver of the pilot car hired by Samrow operated the pilot car) with reasonable skill and judgment. The duty imposed by statute arises independently of the contract between Landstar, Oasis and Samrow. *Donatelli v. D.R. Strong Consulting Engineers, Inc.*, 163 Wn. App. 436, 261 P.3d 664 (2011).

By agreeing to undertake professional pilot car services and by holding himself out as a professional pilot car operator, Frank Samrow bore a tort law duty of reasonable care encompassing the risks of physical damage to cargo transported by Landstar and the general public operating vehicles on I-5 and the New York Street overpass. The duty of care required for pilot/escort vehicle operations is outlined in part by Washington Administrative Code 468-38-100. The requirement of pole cars for the transport of oversized cargo underscores the severe safety risks in play when oversized cargo is transported on the interstate. At all relevant times Frank Samrow was aware of the duty of care required of

pilot car drivers. Consequently, Landstar also has a tort claim of negligence directly against Frank Samrow under the independent duty doctrine. See *Affiliated FM Insurance Co. v. LTK Consulting Services, Inc.*, 170 Wn.2d 442, 453, 243 P.3d 521 (2010).

Frank Samrow owed Landstar the duty of reasonable care equal to that of a reasonably prudent pilot car operator in Washington State acting in the same or similar circumstances. *Affiliated FM Insurance Co. v. LTK Consulting Services, Inc.*, 170 Wn.2d 442, 453, 243 P.3d 521 (2010). Frank Samrow intentionally evaded the duty he owed to Landstar by failing to perform the pilot car services himself (as he was obligated to do under the Agreement) and by failing to ensure that the pilot car driver he hired would exercise reasonable care. There is no question that the scope of the duty Samrow owed to Landstar extended to the safety risks of physical damage to the property Samrow was to escort and to the public in general. *Affiliated FM Insurance Co.*, 170 Wn.2d at 455. Given the safety interest that justifies imposing a duty of care on pilot car drivers (see WAC 468-38-100), Samrow was obligated to act as a reasonably prudent pilot car operator would with respect to safety risks of physical damage. *Affiliated FM Insurance Co.*, 170 Wn.2d at 456.

When the facts and evidence are construed in the light most favorable to Landstar, there is substantial evidence that Frank Samrow

deliberately used the corporate form of Oasis to evade and violate his contractual duty under the Agreement and the extra-contractual duty imposed under the independent duty doctrine. At the very minimum, it cannot be argued that the fraud and misrepresentations of Frank Samrow do not warrant piercing the corporate veil as a matter of law. See, RCW 25.15.060 and *Chadwick Farms Owners Association v. FHC, LLC*, 166 Wn.2d 178, 207 P.3d 1251 (2009) (holding in part that it is reversible error to dismiss the personal liability claims against members of and LLC when there is evidence to support piercing the corporate veil).

**3. *Frank Samrow should not be dismissed as a defendant when he personally made the misrepresentations that resulted in Landstar's harm.***

Frank Samrow should not have been dismissed as a defendant in this case because he personally made the misrepresentations that resulted in harm to Landstar. Frank Samrow signed the Agreement and Addendum with Landstar when he knew that Oasis would not uphold any of the contractual provisions when he signed them. Oasis never had any insurance, but Frank Samrow submitted his certificate of insurance to Landstar as proof that Oasis had insurance in place to cover potential escort services.

When an officer or director personally commits a tortious act against a third-party – even while acting within the scope of his/her duties – the officer or director is personally liable. *Johnson v. Harrigan-Peach Land Dev. Co.*, 79 Wn.2d 745, 489 P.2d 923 (1971). The Washington Supreme Court has held that if a corporate officer participates in wrongful conduct, or with knowledge approves the conduct, *then the officer*, as well as the corporation, is liable for the penalties. (emphasis added). *Johnson v. Harrigan-Peach Land Dev. Co.*, 79 Wn.2d 745, 489 P.2d 923 (1971); *State v. Ralph Williams' N.W. Chrysler Plymouth*, 87 Wn.2d 298, 322, 553 P.2d 423 (1976). In *Johnson*, the court stated:

[i]ncorporation does not in law shield the actor from the legal consequences of his own tort. Where individuals carry on a business or enterprise by means of a corporate structure but in such relationship to the corporation that it can be said as a matter of fact that the acts of the corporation are the acts of the individuals and vice versa, then the same conclusion should be reached as a matter of law, i.e., that the acts of the corporation are in law as well as fact the acts of the individuals and vice versa.

*Johnson*, 79 Wn.2d at 752.

Although Washington law provides protection from liability to members of limited liability companies, the protection is not absolute. Members of a corporation who participate in, or authorize, the issuance of false statements concerning the financial condition of the corporation are personally liable to persons who, relying upon such statements, sustain

loss. *Crescent Mfg. Co. v. Hansen*, 174 Wash. 193, 198, 24 P.2d 604 (1933). According to Frank Samrow, Oasis was never anything more than a dispatch company. Frank Samrow misrepresented the nature of Oasis by entering into the Agreement and Addendum with Landstar to **provide** pilot car service and route surveys, by signing the Agreement and Addendum as a “partner of Oasis, and by fraudulently providing Landstar with proof of insurance that he knew Landstar would rely on to its detriment. Samrow’s misrepresentations prevented Landstar from taking measures to obtain its own insurance. Frank Samrow knew the misrepresentations were false when he made them and they induced Landstar to act to its detriment. Frank Samrow should be held personally liable for the intentional misrepresentations he made as a partner of Oasis.

***4. Piercing the corporate veil is necessary to prevent unjustified loss to Landstar.***

Piercing the corporate veil is necessary to prevent unjustified loss to Landstar. Landstar incurred its loss because of Frank Samrow’s misrepresentations. Frank Samrow actively prevented Landstar from obtaining its own insurance and negligently provided Phil Kent with the route directing him under the New York Street overpass. Frank Samrow failed to comply with WAC 468-38-100 and failed to ensure that Phil Kent complied with the applicable standard of care for pilot car operators and was in compliance with the terms of the Agreement. Frank Samrow should not be able to hide behind the corporate form of Oasis when it is

Frank Samrow who personally provided the misrepresentations on which Landstar relied to its detriment.

5. *Piercing the corporate veil is a question of fact that should not be decided as a matter of law.*

The very question of whether the corporate form should be disregarded is a question of fact that precludes summary judgment. *Truckweld Equip. Co. v. Olson*, 26 Wn. App. 638, 642, 618 P.2d 1017 (1980). Whether to pierce the corporate veil should not have been decided as a matter of law when there are disputed material facts and Frank Samrow would not be entitled to prevail as a matter of law on the facts construed most favorably to Landstar. Counsel for Frank Samrow did not rely upon any case law holding that summary judgment is appropriate without testimony being fully developed at trial. There is no case law that supports Frank Samrow's contention that he should be dismissed as a defendant as a matter of law when his misrepresentations caused Landstar's loss. The trial court erred in holding that Frank Samrow was not personally liable for his misrepresentations as a matter of law.

**VI. CONCLUSION**

For purposes of Respondent Samrow's motion for summary judgment, the evidence should be construed in a light most favorable to Landstar. Plaintiff Landstar Inway, Inc. has shown that there are genuine issues of material fact pertaining to both criteria necessary to pierce the corporate veil of Oasis to hold Frank Samrow personally liable for the obligations of Oasis. Landstar has also shown that Frank Samrow should

be personally liable for his personal misrepresentations and actionable conduct. For the foregoing reasons, Plaintiff Landstar Inway, Inc. respectfully requests that this Court reverse the trial court's granting of Frank Samrow's motion for summary judgment and remand this case for trial on the issue of the personal liability of Frank Samrow.

RESPECTFULLY SUBMITTED this 22 day of January, 2013.

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CERTIFICATE OF MAILING

I hereby certify that on this 22<sup>nd</sup> day of January, 2013, I caused a true and correct copy of the foregoing to be delivered to all counsel of record in the following manner:

Richard W. Lockner Krilich & Lockner, P.S. 524 Tacoma Avenue South Tacoma, WA 98402 lockner@524law.com Phone: (253) 383-4704	[xx] Via U.S. Mail
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Kim Fergin, Legal Assistant

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