Who’s Liable for a Fire Caused by Flammable Waste?

SITUATION

A US furniture manufacturer generates waste, including lacquer dust, which is classified as a flammable solid. It hires an experienced waste disposal agent to pack the waste into barrels and ship it to Alberta through a knowledgeable Canadian waste broker. The barrels containing lacquer dust are marked ‘flammable solid.’ The broker delivers the waste, which it describes as non-hazardous and non-regulated, to an incinerator facility owned by one party and run by an operator. The broker also gives the facility, which isn’t licensed to handle hazardous waste, waiver forms indicating it’s familiar with the waste’s materials and that the waste complies with all relevant laws. But it doesn’t give the facility waste profile sheets provided by the manufacturer. As per policy, the facility inspects the load and asks the broker

questions about tests on it. The broker says the material is suitable for incineration at the facility. Neither the facility’s contract nor the law require it to test the waste itself. As the first load of the waste is loaded into the hopper to be incinerated, a fire breaks out that causes extensive damage to the facility. An investigation concludes that the fire was caused by the ignition of the lacquer dust in the furniture waste. The facility owner sues the waste broker and the facility operator. The operator in turn sues

the furniture manufacturer.

QUESTION

Who’s liable for the damage caused by the fire’

A) The furniture manufacturer
B) The facility operator
C) The waste broker
D) All of the above

ANSWER

C. The waste broker is liable for the fire and its resulting damage because it failed to satisfy the standard of care expected of an experienced broker.

EXPLANATION

This fact pattern is loosely based on an actual case from Alberta in which the court concluded that two Canadian waste

brokers were liable for the damages suffered by an incinerator facility after furniture waste from the US caught fire. The court explained that the waste brokers owed a duty of care to the subsequent handlers of waste they transported, such as the facility. That duty was to fully understand and disclose the nature of the waste and take reasonable steps to advise the next recipient of the waste of any risks related to it.

In this case, the brokers knew the facility wasn’t licensed to handle hazardous waste, such as lacquer dust. Nonetheless, a broker delivered this hazardous material to the facility. In addition, the first broker didn’t give the second broker the waste profile sheets that described the composition of the

waste. And neither gave those sheets to the facility. Lastly, the court found that it was reasonably foreseeable that the introduction of waste containing a flammable component’the lacquer dust’into an incinerator would result in a fire. So the court ruled that the brokers didn’t meet the standard of care expected of knowledgeable waste brokers and ordered them to pay the facility nearly $1.4 million in damages.

WHY WRONG ANSWERS ARE WRONG

A is wrong because the furniture manufacturer wasn’t negligent. The manufacturer knew that part of the waste it generated was flammable and that this waste would have to be transported and incinerated. Thus, there was a risk of fire to anyone who might come in contact with the waste, including all handlers, transporters, brokers, inspectors, storage facilities and disposers. So the manufacturer had a duty to fully disclose the nature of the waste and its hazards. It satisfied this duty by hiring an experienced agent to dispose of the waste, providing waste profile sheets that fully and accurately described the waste’s contents and labeling the barrels of lacquer dust. Thus, it took all reasonable steps to provide complete and accurate information about the nature of the waste it generated.

B is wrong because the facility operator wasn’t negligent. The operator owed a duty of care to the facility’s owner. It met that standard of care by complying with its policies on the receipt of new waste. It also reasonably relied on the information and advice received from the broker. Although the facility could’ve tested samples of the waste, such tests weren’t required either under its contract with the owner or under the law. In short, the operator took all reasonable measures when it accepted the furniture waste.

D is wrong because only the broker is liable for the fire as it failed to meet the standard of care expected of experienced waste brokers. However, the furniture manufacturer and acility

operator weren’t negligent because they *did meet* the standards of care imposed on them.

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Wainright v. G-M Pearson Environmental Management Ltd., [2007] ABQB 576 (CanLII), Sept. 28, 2007