

Legal Line



By Kent J. Pagel

SCOPE OF LIMITED LIABILITY OFTEN MISUNDERSTOOD: One of the most important reasons that most truss companies operate as either corporations, limited liability companies or limited partnerships, is that of limited liability.

What limited liability means is that the owners, directors and officers of the company are shielded from liability for the company's debts and obligations, including any judgment or court order. For the shareholders of a corporation, this means their losses, if any, should be that which is invested and no more.

Limited liability also exists for limited liability companies and limited partnerships. These are offsprings of the partnership and corporation and are intended to provide the benefit of limited liability that the corporation offers within the framework of a partnership structure.

Too often, the scope or effect of limited liability is misunderstood. Corporate shareholders, directors and officers blindly assume they do not have meaningful exposure to personal liability. The reality of today's uncertain legal environment is quite the opposite.

Courts are increasingly refusing to recognize the "shield of limited liability" and have allowed claimants under various circumstances to pierce the "shield" and recover against owners, directors, and officers, individually. Those successful claimants include company employees, regulatory agencies, competitors, customers, creditors and others dealing with, or affected by, company conduct.

Here are some suggestions to follow to help preserve the benefits of limited liability:

1. Make sure all corporate formalities are followed.
2. Conduct regular meetings of the board of directors and shareholders and keep written records of the proceedings of the meetings.
3. Issue stock certificates to shareholders in exchange for their contribution of money or property to the corporation.
4. Conduct all business in the name of the corporation.
5. Document loans to owners, directors, or officers with promissory notes.
6. File all income, franchise, payroll and sales tax returns and reports on a timely basis.

7. Do not tell third parties that you are personally liable for company debts or that your company is conducted individually or as a partnership.
8. Do not divert corporate funds or assets to personal use.
9. Do not allow the corporate shield to be used as a "sword" or as an inequitable mechanism.
10. Use care in transacting business between two or more companies of the same business location, especially if the companies utilize the same employees.

Kent J. Pagel, a senior share-holder with the Houston firm of Pagel, Davis & Hill, P.C., acts as outside general counsel for WTCA. This information is to foster discussion of legal issues for today's truss manufacturer and is not intended to provide specific legal guidance.