April 30, 2025

Gantry Trucking Ltd.
7453 124 Street
Surrey, BC V3W 3X2

TSD Holdings Inc.
7453 124 Street
Surrey, BC V3W 3X2

Commissioner's Decision
Gantry Trucking Ltd. and TSD Holding Inc. (CTC Decision No. 11/2025)

Introduction and Background

1. Gantry Trucking Ltd. ("Gantry") and TSD Holding Inc. ("TSD") (together the "Companies") are each licensees within the meaning of the *Container Trucking Act* (the "*Act*").

2. Under sections 22 and 23 of the *Act*, minimum rates that licensees must pay to truckers who provide container trucking services are established by the Commissioner ("Rate Order"), and a licensee must comply with those rates. In particular, section 23(2) states:

> A licensee who employs or retains a trucker to provide container trucking services must pay the trucker a rate and a fuel surcharge that is not less than the rate and fuel surcharge established under section 22 for those container trucking services.

3. Under section 31 of the *Act*, the Commissioner may initiate an audit or investigation to ensure compliance with the *Act*, the *Container Trucking Regulation* ("*Regulation*") and the Container Trucking Services ("CTS") license whether or not a complaint has been received by the Commissioner.

4. As part of the random audits initiated by the Commissioner, an auditor was directed to audit Gantry and TSD records to determine if their directly employed operators ("Company Drivers") were being paid the required minimum rates. Since the Companies have an integrated fleet and share employees, the auditor combined the audits of Gantry and TSD even though each is a separate licensee. The Companies have 21 Company Drivers between them.

5. On September 27, 2022, the auditor requested that the Companies provide payroll records in accordance with their CTS licenses. The auditor requested driver records for the pay periods in August 2018, October 2019, October 2020 and November 2021 (the "Audit Period"). The auditor issued an audit report ("Audit Report") on June 16, 2023 and determined, *inter alia,* that the Companies had not kept payroll records sufficient to establish that the 24 drivers considered in the Audit Period had performed less than 2,340 hours of service on behalf of any licensee. Based on a sample of 15 different drivers in each month of the Audit Period, the auditor determined those drivers were owed a total of $5,790.74 because the auditor was unable to determine that each of the

drivers had worked less than 2,340 hours.

6. The Companies were provided a copy of the Audit Report and given an opportunity to respond but did not provide a response by the deadline. Subsequently, in Gantry Trucking Ltd. and TSD Holding Inc. (CTC Decision No.13/2023) dated October 12, 2023 ("Original Decision"), the Companies were found to be in violation of the *Act*, the *Regulation* and their CTS licenses when they failed to keep proper records for 24 of their drivers during the Audit Period such that the auditor was unable to establish that the 24 drivers had performed less than 2,340 hours of service on behalf of any licensee.

7. There was insufficient evidence to determine if the amount assessed by the auditor as owing ($5,790.74) was correct. Accordingly, and pursuant to section 9 of the *Act,* I ordered the Companies to review the circumstances of the 24 drivers identified in the Audit Report as receiving the Lower Regulated Rate during the Audit Period, confirm in writing and with documentation the previous work experience of each driver, and recalculate the wages owing to each driver based on the actual date those drivers reached the 2,340 hour threshold within three months of the Original Decision (by January 25, 2024) ("Order"). I also proposed an administrative fine of $5,000.00 each.

8. The Companies did not respond substantively to the Original Decision within the prescribed period of time. Accordingly, I issued a Decision Notice on October 25, 2023 upholding the proposed administrative fines, which the Companies paid.

Compliance Audit

9. On October 22, 2024, the auditor advised the Companies that she had not received the confirmation and documentation required by the Order. On the same day, the Companies provided the auditor with copies of cheques totaling $5,790.74 issued to 15 drivers on or around July 19, 2023. There was no evidence provided that any payment was made to the other 9 drivers who were identified as receiving the Lower Regulated Rate during the Audit Period.

10. Still on the same day, the auditor responded by advising the Companies that she had not received the documentation related to the previous work experience of the 24 drivers or the calculation of any outstanding amounts owing beyond the Audit Period. The Companies did not respond to the email.

11. On October 31, 2024, the auditor prepared a "Compliance Audit Report" confirming that the Companies had paid the 15 drivers identified in the Audit Report $5,790.74 and noting that the total amount was based only on a sample of the drivers who were paid the Lower Regulated Rate and only during those months covered by the Audit Period. The auditor concluded that the Companies had not complied with the Order when they failed to provide any evidence that they had reviewed the circumstances of other drivers who were paid the Lower Regulated Rates and for periods not covered by the Audit Period.

12. A copy of the Compliance Audit Report was provided to the Companies who were invited to provide a submission no later than December 12, 2024. The Companies did not provide a response by the deadline.

Decision

13. As described above, the circumstances of this case are:

- The Companies failed to establish that 24 drivers of their drivers had performed less than 2,340 hours of service on behalf of any licensee.
- On June 15, 2023, the auditor issued the Audit Report and determined that a sample of the 24 drivers that had performed less than 2,340 hours of service on behalf of any licensee during the Audit Period were owed $5,790.74 for select months in the Audit Period.
- On or around July 19, 2023, the Companies paid $5,790.74 to the 15 select drivers identified in the Audit Report but did not advise the OBCCTC of this until October 22, 2024 and in response to an inquiry from the OBCCTC.
- On October 10, 2023, in the Original Decision, the Companies were ordered to review the circumstances of the 24 drivers identified in the Audit Report as receiving the Lower Regulated Rate during the Audit Period, confirm in writing and with documentation the previous work experience of each driver and recalculate the wages owing to each driver based on the actual date those drivers reached the 2,340 hour threshold.
- The Companies did not comply with the Order.

14. In cases where orders involving payment of wages to drivers have not been followed, suspensions of a license has been proposed because of the seriousness of not following a Commissioner's order and the need to ensure the licensee pays its drivers the money its owes - *see* Can American Enterprises Ltd. (CTC Decision No. 12/2020), Pro West Trucking Ltd. (CTC Decision No. 14/2024), Embassy Transportation Inc. (CTC Decision No. 13/2024). I adopt this analysis.

15. Section 34 of the *Act* provides that, if the Commissioner is satisfied that a licensee has failed to comply with the *Act*, the Commissioner may impose a penalty or penalties on the licensee. Available penalties include suspending or cancelling the licensee's license or imposing an administrative fine. Under section 28 of the *Regulation*, an administrative fine for a contravention relating to the payment of remuneration, wait time remuneration or fuel surcharge can be an amount up to $500,000. In any other case, an administrative fine can be up to $10,000.

16. The seriousness of the available penalties indicates the potential gravity of non-compliance with the *Act*. The *Act* is beneficial legislation intended to ensure that licensees pay their employees and IOs in compliance with the established rates. Licensees must comply with the legislation, as well as the terms and conditions of their licences, and the Commissioner is tasked under the *Act* with investigating and enforcing compliance.

17. In keeping with the above-described purpose of the legislation the factors which will be considered when assessing the appropriate administrative penalty include the following as set out in Smart Choice Transportation Ltd. (CTC Decision No. 21/2016):

- The seriousness of the respondent's conduct;
- The harm suffered by drivers as a result of the respondent's conduct;
- The damage done to the integrity of Container Trucking Industry;

- The extent to which the licensee was enriched;
- Factors that mitigate the respondent's conduct;
- The respondent's past conduct;
- The need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of having a CTS licence;
- The need to deter licensees from engaging in inappropriate conduct, and
- Orders made by the Commission in similar circumstances in the past.

18. At paragraph 5 and 6 of the Original Decision, I set out the Companies' previous administrative penalties for failing, *inter alia*, to maintain proper records. I specifically noted that in the most recent audit the Companies' inadequate record-keeping had complicated an assessment of whether the Companies are appropriately paying the Lower Regulated Rate. Now the Companies have not complied with the Order that would address these issues. While the Companies may have assessed they do not have sufficient payroll records to justify paying the 24 drivers the Lower Regulated Rate, their decision to pay the $5,790.74 was not compliant with the Order. This dollar amount represents what is owed only to 15 of the 24 drivers and only for select months of the Audit Period. It does not include amounts owing to the remaining drivers or for whole of the Audit Period.

19. Since the Companies did not provide a response to the Audit Report or the Compliance Audit Report, I am unable to determine why they have not complied with the Order. The fact is they have not. Based on the Companies' decision to pay the $5,790.74 – even though it is not the full amount – I am satisfied that they took some – albeit insufficient -- steps to correctly pay their drivers by the deadline. However, the Companies have not provided a substantive response to the Compliance Audit Report and I find that their lack of compliance with the Order and failure to provide any explanation is sufficient for me to find they have not taken any further steps to correct the issues identified in the Original Decision. It is important that licensees read and comply with orders. The failure to comply with the Order has compounded the delay in payment to these drivers who have already been affected by the Companies' original failure to keep proper payroll records. I find that another monetary penalty appropriate but insufficient for failing to comply with the Order. I will therefore also order a suspension of the Companies' respective licenses until such time as they comply with the Order or one week, whichever is sooner.

20. In the result and in accordance with section 34(2) of the *Act*, I hereby order and give notice as follows:
    a. I propose to impose another administrative fine against Gantry in the amount of $5,000.00.
    b. I propose to impose another administrative fine against TSD in the amount of $5,000.00.
    c. I propose to impose a suspension of the Companies' CTS licences (24-042 and 24-038) until such time as the Companies have complied with my Order or for one week– whichever is sooner;

21. Should they wish to do so, the Companies have 7 days from receipt of this notice to provide the Commissioner with a written response setting out why the proposed penalty should not be imposed;
    - If the Companies provide a written response in accordance with the above, I will

consider that response and I will provide notice to the Companies of my decision to either:

- Refrain from imposing any or all of the penalty; or
- Impose any or all of the proposed penalty.

22. This decision will be delivered to the Companies and will be published on the Commissioner's website (www.obcctc.ca).

Dated at Vancouver, B.C., this 30 day of April 2025.

Glen MacInnes
Commissioner