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#### Court Sides with Motor Carrier in Food Cargo Dispute

The following article appeared in the October 2008 edition of the Transportation Industry Newsletter by the Smith Moore Leatherwood law firm. This firm is an ATA Allied Member with several attorneys focusing on transportation issues and this article was written by attorneys Rob Moseley and Matt Staab, both of their Greenville, South Carolina office. Rob can be reached at Rob.Moseley@smithmoorelaw.com or (864) 240-2443 and Matt can be reached at Matt.Staab@smithmoorelaw.com or (864) 240-2468.

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#### **Federal District Court in the Dairy State Rejects Food Contamination Argument and Sides with Motor Carrier in Food Cargo Dispute**

Recently, the United States District Court for the Eastern District of Wisconsin addressed the issue of under what circumstances an entire food shipment should be deemed contaminated and therefore unusable when the motor carrier is involved in a motor vehicle accident. In *Land O'Lakes v. Superior Serv. Transp. of Wisc, Inc.*, Plaintiff, Land O'Lakes brought a Carmack claim against, *inter alia*, a motor carrier and its insurer arguing that it was entitled to the full value of a cargo load of butter when the motor carrier was involved in an accident in Pennsylvania. Despite the accident, the trailer remained intact with the refrigeration unit still operational. As for the actual cargo, the cargo was still in its cardboard containers wrapped in plastic, but some of the boxes had become dented or deformed. Nevertheless, because the cargo appeared to be in its original condition, the motor carrier's insurer suggested the Land O'Lakes take it back for resale. Land O'Lakes refused the request and demanded payment for the full value of the cargo. In responses, motor carrier's insurer sold the cargo as salvage for roughly \$40,000 less than its retail value.

Ultimately, Land O'Lakes moved for summary judgment arguing that there were no genuine issues of material fact in its Carmack claim and therefore it was entitled to the full value of the cargo. In short, Land O'Lakes argued that its internal policy precluded it from accepting the product after the accident. Land O'Lakes internal policy dictated that if there is any question as to whether a load had been tampered within in route, the load must be refused. In arguing that it could not ensure the integrity of the cargo because of the accident, Land O'Lakes made the following argument:

We live in a time of biohazard when producers of food products must exercise remarkable care to ensure that products are not tampered with, contaminated with organisms, or otherwise become unsuitable for consumption.

Accordingly, because it could not guarantee the integrity of the load, Land O'Lakes claimed that its actions in refusing the offer to resell the product were reasonable. The Court rejected Land O'Lakes contention that as a matter of law its actions were reasonable entitling it to the full value of the cargo. In reaching its decision, the Court found that there was evidence that only 20% of the cargo was deformed, there was no evidence that the actual butter had been exposed, and the proper temperature for the cargo was maintained despite the accident. Consequently, the Court concluded:

Based on this evidence, a jury could find that most of the butter was not damaged at all in the accident and the 20% that was deformed could have been resold at or near the market price. If despite this fact, LOL [Land O'Lakes] elected for policy reasons or otherwise to reship a fresh load out of an overabundance of caution and in the absence of a genuine risk to either the public or its reputation, a factfinder could reasonably conclude that it failed to mitigate its damages.

The federal court's decision in Land O'Lakes represents a clear victory for motor carriers. In short, the Court was unwilling to accept the bald assertions by the shipper that it believed the cargo became contaminated simply because it was involved in a motor vehicle accident. Moreover, the Court rejected the argument that adherence to Land O'Lakes strict contamination policy was enough to entitle it to damages in the full value of the load. Motor Carriers, and their insurers, confronting a Carmack claim involving alleged food contamination should take comfort in the Land O'Lakes decision in that a court will not blindly follow a shipper's claim of food contamination. Instead, the Court will demand some evidence that such evidence of contamination actually exists before damages are recoverable under Carmack.