Scotlynn v. Titan Trans, a Beef About Beef: The Middle District of Florida Digs into the Carmack Amendment, Shipper and Broker Responsibility, and Contract Indemnity

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On August 20, 2021, the U.S. District Court for the Middle District of Florida issued an extensive, 59-page opinion and order concluding a five-year saga over a cargo claim involving a truckload of beef that shifted in transit. The decision by Judge John L. Badalamenti in *Scotlynn USA Division, Inc. v. Titan Trans Corp.*[1] provides guidance on the full cycle of issues in a suit for cargo loss, including taking responsibility for loading and securing cargo, handling the rejection of a shipment, inspecting and assessing damages, and mitigating damages. The lawsuit was brought by transportation broker Scotlynn USA Division, Inc. ("Scotlynn") against Titan Trans Corporation[2] ("Titan Trans") as (1) a Carmack Amendment[3] claim on assignment, and (2) a breach of contract claim for failure to indemnify Scotlynn for cargo loss and damage. After a three-day hearing, conducted virtually by Zoom in April 2021, the court found for Titan Trans on all counts.

Because the cargo in this case is beef, we have inserted a little raw humor throughout this case note. Please don't have a cow over it.

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The Raw Facts

On September 21, 2016, a driver for motor carrier Titan Trans (based out of Illinois) picked up a full truckload of fresh beef from a Georgia meat processing plant, FPL Foods, LLC ("FPL"). The load was brokered to Titan Trans by Scotlynn, which had a contract with Cargill Inc. ("Cargill") to transport raw beef it was purchasing from FPL. FPL loaded the 42,147 pounds of raw beef trim onto the trailer at its facility from a refrigerated dock. The raw beef was packaged in twenty-one cardboard bins called "combos," each of which was placed on a pallet and loaded onto the trailer by forklift. The combos stay together by the weight of the meat. The bottom of a combo is four interlocking flaps, and the combo is lined with plastic before the beef is placed inside. A top plastic sheet is placed over the beef after it is put into the combo and secured with straps at the top. FPL arranged all of the combos full of beef on the trailer.

During loading by FPL, the driver was not allowed in FPL's enclosed loading area for safety reasons. After FPL loaded the combos, it instructed the driver to pull away from the loading dock. The driver was able to exit his cab and view the loaded combos for a moment while the doors were being closed and sealed. According to the driver, he could not see well into the truck, and he did not know what was inside the containers. The driver did not attempt to inspect the combos after they were loaded because "(1) he believed the FPL employee intended for him to close the doors immediately; (2) he would have had to enter the trailer and believed that was not allowed by FPL; and (3) he did not think the circumstances required him to inspect the manner in which the Cargo was loaded because experienced FPL employees performed the task and did not allow him to participate or even observe as the Cargo was loaded."[4]

The bill of lading was not marked "shipper load and count." It also was not signed by the driver. Regardless, Titan Trans conceded that all twenty-one combos were loaded in good condition when it received them. Nothing except gravity secured the combos in place–each weighing about one ton.

The driver left FPL in Georgia to deliver the twenty-one combos of beef to Cargill's facility in Butler, Wisconsin. During the trip, some of the combos tipped forward inside Titan Trans' trailer. Little is known about the actual trip itself. The driver testified that nothing unusual occurred during the trip. There were, understandably, no witnesses of the drive outside of the driver. The driver, who was from Poland, was unavailable for the trial but gave testimony by affidavit and deposition. He never felt anything shift during transit, and he denied hard braking.

On Friday, September 23, 2016,

between noon and 1 p.m., the Titan Trans driver arrived at Cargill. When Cargill opened the trailer at the receiving dock, it saw that many of the combos had shifted forward. At least one combo had not shifted forward, obvious because it was in the rear of the trailer and immediately visible. Several of the cardboard boxes had split open at the bottom, seen because they were tilted forward, but the court was not convinced that the beef ever leaked from the plastic lining inside the boxes or that the plastic had been torn or punctured.

Due to the shifting, Cargill refused to take delivery and rejected the entire load. Cargill had no evidence that the beef inside the combos was tainted, damaged, or unable to be repackaged. Indeed, one of Cargill's subsequent actions after rejection was to order the beef to be returned to FPL and repackaged.[5] Cargill did not conduct a formal inspection of any kind related to its rejection of the entire load. Cargill testified that the state of the combos made it difficult to move the beef without further damaging the packaging or risking contamination of the beef. Ultimately the court concluded that Scotlynn proved damage to the combo packaging, but it did not present any evidence "that the beef inside any of the combos was damaged as a result of the damage to the packaging."[6]

Scotlynn instructed Titan Trans to return the load that Friday. But when they asked for the load to be returned, Titan Trans informed Scotlynn that their driver could not leave Wisconsin for Georgia with the beef until the following Monday due to the Federal Motor Carrier Safety Administration's hours of service restrictions. Titan Trans had no other drivers available to help. Scotlynn permitted Titan Trans to store the beef in its refrigerated trailer and issued a rate confirmation for Titan Trans to return to Georgia on Monday, September 26, 2016.

On Monday morning, September 26, 2016, just before Titan Trans left to return the shipment to Georgia, Cargill asked Scotlynn for an ETA of the beef. Scotlynn informed Cargill that the driver was about to leave. Quickly, Cargill checked with FPL, and FPL said that would be too late and not to return the load. Scotlynn then tried, but was unsuccessful, in finding a buyer for the meat. The following day, Scotlynn told Titan Trans that it was responsible for the beef and that Scotlynn would be submitting a full claim for the loss–roughly $90,000–against Titan Trans. Titan Trans was able to sell the beef to a salvager, the net recovery being $4,636.17.

The Broker Failed to Meat Its Burden of Proof

After a three-day bench trial, Judge Badalamenti ruled in favor of Titan Trans on all counts and denied Scotlynn's claim entirely. In the findings of fact, the court determined:

(1) FPL was responsible for packaging and loading of the cargo;

(2) Titan Trans was not negligent in its delivery of the shipment;

(3) the only damage shown by Scotlynn was damage to the packaging, and not the beef;

(4) Cargill did not have the beef inspected for contamination, and Scotlynn did not prove any contamination to the beef at the time of delivery by Titan Trans;

(5) most of the beef could have been redelivered after reworking the packaging by FPL, had it been returned to FPL earlier, and it was not Titan Trans' responsibility to ensure the beef was redelivered timely–its work was completed when it tendered the shipment for delivery;

(6) Scotlynn was not aware of the need to return the beef quickly to FPL and did not inform Titan Trans of the same;

(7) Scotlynn abandoned the beef after FPL refused redelivery of the load and claimed that Titan Trans was liable for the full loss; and

(8) the loss was ultimately caused by FPL for failure to follow its standard loading method and by having an empty space to exist at the nose of the trailer, which was not FPL's standard loading practice and allowed the combos to shift forward.

Failure to Prove Damages Can Be a Fatal Mis-Steak

Scotlynn, the broker, never proved how much of the beef was actually lost. To prevail on a cargo claim against a motor carrier under the Carmack Amendment, the claimant (typically the shipper or the transportation broker on assignment from the shipper) must prove: (1) it delivered the goods to the motor carrier in good condition; (2) the goods were delivered in a damaged condition; and (3) *the amount or value of the damage to the goods*.[7] The Carmack Amendment claim fails if any of these elements are missing. In this case, Titan Trans admitted the first of the *prima facie* elements. Scotlynn established the second *prima facie* element by showing that the combos of beef had shifted, which was sufficient to show that the goods were delivered in a damaged condition, even if it was only damaged in part.[8]

Scotlynn missed the third element, however. It did not show the *amount* of its alleged damages. The court held:

> Even though the Cargo sustained some damage during transit, due to Cargill's immediate rejection of the Cargo as worthless, Cargill's failure to have the load inspected at its facility by its on-site USDA inspector, and Cargill and Scotlynn's other stumbling actions over the next several days, the Court is without a sufficient evidentiary basis to ascertain the extent of the damage to the beef when the Cargo arrived at Cargill's facility. Simply stated, Scotlynn has failed to establish a specified amount of damages here.[9]

Although the beef was technically damaged because it arrived shifted, the fact that FPL agreed to accept it for repackaging showed at least some of the beef was still good. Scotlynn, however, did not show the amount of lost beef, if any. The court indicated that it was looking to Scotlynn for some basis to determine a specified amount of damages. Because it could only speculate as to the amount of actual damage to the shipment as a result of the shifting, the court found that Scotlynn failed to show any amount of actual damage.

Be Careful When the Shipper Loads and Secures: If You Mess with the Bull, You Could Get the Horns

The court also found that a relatively little-invoked exception to the Carmack Amendment applied[10] and held Titan Trans harmless for the damage (whatever it was). Titan Trans showed that the shipper was responsible for loading and securing the beef, and that Titan Trans' driver was free from negligence. One of the exceptions to Carmack Amendment liability of motor carriers is where the shipper takes responsibility for loading and securing the cargo. In this case, even though the bill of lading did not note "shipper load and count," there was sufficient evidence to prove that the shipper had taken full responsibility for loading and securing the beef. Expert testimony supported the errors FPL made in loading the beef (leaving a space at the nose of the trailer), and that those errors were hidden from the driver when he helped shut the doors of the trailer.

Hard braking may occur during normal transit. This was the conclusion the court reached when it determined that there was no evidence showing the truck driver operated the vehicle in any improper manner. The court concluded that FPL, the shipper, was responsible for loading and securing the load and that Titan Trans' driver was not negligent or otherwise at fault in failing to discover the loading error or in transporting the beef. The responsibility for the damage, therefore, fell on the shipper. Scotlynn, as a broker bringing the claim on assignment, was therefore not able to recover on the Carmack Amendment claim.

Failing to Meatigate Your Damages

Not having been moved by the Carmack Amendment claim, the court then discussed how even if it had found for Scotlynn on the damages claim, such damages would be limited because Cargill, or Scotlynn acting on Cargill's behalf, did not mitigate damages. When Cargill saw the beef had shifted, it could not declare a total loss and force the carrier to handle it. The carrier's responsibility ended when it delivered the goods–regardless of whether they were in good or bad condition–as long as the goods were not "totally worthless."[11] This beef was anything but worthless. FPL had agreed to reprocess it. Importantly, the judge wrote that the broker and receiver were responsible for knowing how to properly take care of the beef after it was rejected for shifting. This included knowledge of shelf life. Judge Badalamenti was critical of the shipper and broker's "stumbling actions" during the salvage efforts. He ruled that these miscommunications and errors in the hours after the rejection caused the situation to go from bad to worse, placing responsibility on Scotlynn, not Titan Trans.

Cut to the Chase

The court found that Scotlynn had not proven any amount of damages and that, even if it did, the shipper was responsible for the damage. Having found no damages, the court rejected the corresponding contract indemnity claim for fees and costs by Scotlynn, based upon a broker-motor carrier transportation agreement. One may not be indemnified unless damages exist to indemnify. Moreover, in Florida (the state governing the contract action) there is no recovery on an indemnity clause for the claimant's self-created liability.[12] Even though there was a loss, it was not Titan Trans' liability, and it was not recoverable by Scotlynn against Titan Trans.

The court summed it up best: "With this order, the case may finally come to an end. Following a bench trial and extensive review of the thousands of pages of record evidence, the Court finds that Titan is not liable to Scotlynn for the loss of the Cargo or indemnification as to attorney's fees and costs."[13] Or perhaps it is best left said: It is medium-rare to litigate some of these matters, even rarer to get such a well-done opinion.

Endnotes

1 -- F. Supp. 3d --, No. 2:18-CV-521-JLB-NPM 2021, WL 3704087 (M.D. Fla. Aug. 20, 2021).
2 Taylor Johnson PL represented the carrier, Titan Trans, in this case. This case note reports the Opinion and Order of the court and is neutral in its presentation.
3 49 U.S.C. § 14706.
4 *Scotlynn USA Div., Inc.*, 2021 WL 3704087 at *6.
5 The court found that, "[i]n addition to the absence of evidence showing damage to or contamination of the beef, the record includes evidence affirmatively showing that the beef was not damaged when it was delivered to Cargill," due to FPL's willingness to repackage the beef. *Id.* at *9.
6 *Id.* at *8.
7 *A.I.G. Uruguay Compania de Seguros, S.A. v. AAA Cooper Transp.*, 334 F.3d 997, 1003 (11th Cir. 2003).
8 *Fuente Cigar, Ltd. v. Roadway Express, Inc.*, 961 F.2d 1558, 1560-61 (11th Cir. 1992). The court noted that showing damaged goods is a low evidentiary bar, requiring little direct evidence of *some* damage.
9 *Scotlynn USA Div., Inc.*, 2021 WL 3704087, at *20.
10 *See* 49 C.F.R. § 392.9(b)(4); *see also United States v. Savage Truck Line, Inc.*, 209 F.2d 442, 445 (4th Cir. 1953) (shipper responsible for latent and concealed defects if it assumes responsibility for loading); *Ala. & V. Ry. Co. v. Am. Cotton Oil Co.*, 249 F. 308, 311 (5th Cir. 1918) (carrier not liable for hidden defect).
11 *Oak Hall Cap & Gown Co., Inc. v. Old Dominion Freight Line, Inc.*, 899 F.2d 291, 294 (4th Cir. 1990); s*ee also Fraser-Smith Co. v. Chi., Rock Island & Pac. R.R. Co.*, 435 F.2d 1396, 1401 (8th Cir. 1971) ("We are unaware of any rule that a carrier must attempt to mitigate the consignee's damage once the consignee has given notice to the carrier that it intends to abandon the shipment.").
12 *Houdaille Indus., Inc. v. Edwards*, 374 So. 2d 490, 492-93 (Fla. 1979).
13 *Scotlynn USA Div., Inc.*, 2021 WL 3704087, at *25.