



Liability for a Shipment of Food or Pharmaceuticals that Is or May Be Contaminated or Adulterated

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There has been a recent increase in cargo loss and damage litigation involving food products (and other cargo, such as high value pharmaceuticals), traveling in trailers, in which the seal on such a load has either broken or malfunctioned. At the docks, this phenomenon is manifested by consignees rejecting entire truckloads of goods if there is a missing or broken seal or a malfunctioning refrigeration or temperature control device. The bases for this rejection are often stated as fear of contamination and concern over violation of food safety laws. The issue becomes whether, in the event of a broken or missing seal, a consignee can automatically reject an *entire* shipment, regardless of whether only some of the goods are damaged.

Ordinarily, a consignee has a duty to accept delivery of goods. That duty is typically not excused by the fact that the goods are damaged. However, a consignee need not accept delivery, where "such damage renders the property practically valueless, having regard to the expense of acceptance and use, and to the purpose for which it was intended." In the event a consignee receives damaged goods, the consignee should conduct a careful inspection, produce an inspection report jointly with the carrier's driver, segregate the damaged goods, and immediately notify the owner or shipper of the cargo. A consignee should *not* automatically reject the load without further inquiry or inspection.

Under some circumstances, however, courts have found consignees to have *reasonably* rejected an entire shipment of goods, where some but not all of the goods have been damaged during transport, or some of the goods are salvageable, particularly when food products are involved.

"The Secretary of Health, Education, and Welfare shall, by regulation, require shippers, carriers by motor vehicle or rail vehicle, receivers, and other persons engaged in the transportation of food to use sanitary transportation practices prescribed by the Secretary to ensure that food

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is not transported under conditions that may render the food adulterated [impure from the addition of a foreign or inferior substance]." 21 U.S.C. § 350e. The purpose of a statute prohibiting food from being held in unsanitary conditions when it **may** become contaminated is to safeguard the consumer from the time the food is introduced in interstate commerce until it is delivered to the ultimate consumer. When unsanitary conditions are adjacent to food, there exists a reasonable possibility that the food **may** become contaminated within the meaning of the Food, Drug and Cosmetic Act. **The Act does not require actual contamination of food for it to be considered adulterated but, rather, only its exposure to conditions that may result in contamination.** "Filth" as that term is used in the Food, Drug, and Cosmetic Act is given its common meaning and, thus, is defined as foul matter, offensive or disgusting.

Under the Federal Food, Drug, and Cosmetic Act, food is deemed to be adulterated if:

1. any valuable component has been in whole or in part omitted or removed;
2. any substance has been substituted wholly or in part;
3. damage or inferiority has been concealed in any manner; or
4. any substance has been added, mixed, or packed with it so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

In addition, food is considered adulterated when it fails to meet the standard set by law as to its ingredients, if it is otherwise unfit for food, or when any foreign substance, wholesome or unwholesome, is added to it.

A food will also be considered adulterated if:

1. it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or
2. it has been prepared, packed, or held in unsanitary conditions where it may have become contaminated with filth, or where it may have been rendered injurious to health.

Ultimately, a motor carrier is only liable under the Carmack Amendment for the actual loss or damage to the cargo. If a motor carrier is confronted with a situation where an entire shipment of food or pharmaceuticals is rejected, the motor carrier should immediately retain an expert to inspect the load to demonstrate that the shipment in question has not been adulterated or contaminated. Unfortunately, too many times a shipper simply destroys the entire load before any testing is done and the parties are left to litigate the matter in court.

If you have any questions about a motor carrier's potential liability for food or pharmaceuticals that is or may be contaminated or adulterated, you can contact Dirk Beckwith at (248) 539-9918.