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August 20, 2021

**VIA ELECTRONIC MAIL**  
**(danny\_fonte@yahoo.com)**  
**(pastranacuba@hotmail.com)**  
**AND FEDERAL EXPRESS**

L&P Best Trucking Corp.  
Attention: Pablo Pastrana and Danny Fonte  
1490 West 42<sup>nd</sup> Place #306  
Miami, Florida 33012

**VIA ELECTRONIC MAIL**  
**(molly@trinityunderwriters.net)**  
Molly Thurner  
Claims Specialist  
American Inter-Fidelity

Re: **Brothers Logistics, Inc. / L&P Best Trucking Corp.**  
**Claim Amount: \$42,222.00 plus interest**  
**Date of Loss: August 9, 2021**  
**Cargo Insurance Policy No.: Z178324-001MTC-11680**

To All of the Above:

Please be advised that the undersigned represents Brothers Logistics, Inc. (“Brothers Logistics”) in connection with the above-referenced claim against L&P Best Trucking Corp. (“L&P”). Please direct any and all future communications regarding this matter to my attention.

As you know, on or about August 4, 2021, Brothers Logistics and L&P entered into a Broker-Carrier Agreement (the “Agreement”) whereby Brothers Logistics, a freight broker, retained L&P, a motor carrier, to transport certain goods from time to time. Ultimately, Brothers Logistics was engaged by Cal-Maine Foods, Inc. to broker the transportation of a valuable load consisting of eggs (the “Cargo”) from Carolina Egg Companies in Nashville, North Carolina to Cal-Maine Foods, Inc. in Medley, Florida. Pursuant to the Agreement, Brothers Logistics engaged L&P to perform the actual transportation of the Cargo.

On August 7, 2021, L&P arrived at the point of origin for loading of the Cargo. The Cargo was in good condition upon being tendered to L&P as memorialized in the Shipping Order and even more expressly in the Rate Confirmation. The Rate Confirmation, signed by L&P, also makes clear that the temperature of the Cargo must remain at 38 degrees Fahrenheit and that the trailer must remain sealed during transit.

Although L&P has not shared detailed information about precisely what happened after picking up the load, Brothers Logistics understands that the trailer in question was allegedly stolen from L&P on August 9, 2021. L&P filed a police report that day with the Hialeah Police Department, who eventually located and recovered the trailer. L&P then hauled the recovered trailer to destination, but the seal had been broken by the apparent thieves, and the temperature of the Cargo was at a non-compliant 54 degrees Fahrenheit. Naturally, the consignee rejected delivery of the Cargo due to its condition (which of course also creates safety risk to human health) and associated branding concerns. L&P has retained possession of the Cargo but has refused to use reasonable efforts to mitigate damages and reduce the overall loss.

The value of the Cargo itself is Forty Thousand Nine Hundred Fifty Dollars (\$40,950.00) as demonstrated by the invoice previously shared with L&P. In addition, Brothers Logistics provided L&P with a fuel advance in the amount of One Thousand Two Hundred Seventy-Two Dollars (\$1,272.00). As a result, L&P owes to Brothers Logistics the aggregate amount of Forty-Two Thousand Two Hundred Seventy-Two Dollars (\$42,272.00), plus interest.

**A. L&P Is Liable for Breach of Contract.**

L&P is plainly liable for its undisputed breach of contract. L&P has violated numerous sections of the Agreement. Among other things:

- L&P has refused to honor its contractual commitment to assume liability for, and to pay L&P, the market value of the Cargo in the event that the Cargo was lost, damaged, or destroyed. *See* Agreement at § 8. No question exists that the Cargo has been damaged. Indeed, the Cargo will imminently have virtually no value in that the Cargo is obviously perishable.
- L&P has not cooperated with Brothers Logistics in connection with salvage. *See* Agreement at § 8.1. Indeed, Brothers Logistics had an opportunity to salvage a portion of the Cargo, but L&P would not release the Cargo. Likewise, when L&P represented that it could salvage the load, it unreasonably demanded that Brothers Logistics sign a “release letter” without actually providing the so-called “release letter” or even explaining exactly what it needed to see in such a letter.
- L&P has not performed its obligation to defend and indemnify Brothers Logistics for the theft of and damage to the Cargo. *See* Agreement at § 7.

Moreover, as noted above, L&P also violated various provisions of the Rate Confirmation, such as the obligation not to break the seal on a trailer. *See* Rate Confirmation at § 3. Likewise, under the Rate Confirmation, L&P reiterated its promise to indemnify Brothers Logistics for any and all claims of any nature arising out of the transportation of the Cargo. *See* Rate Confirmation at § 6.

In short, L&P is unequivocally liable to Brothers Logistics for breach of contract in the amount of Forty-Two Thousand Two Hundred Seventy-Two Dollars (\$42,272.00), plus interest.

**B. L&P is Liable under the Carmack Amendment for Rendering the Cargo Adulterated.**

In the alternative, L&P is also liable to Brothers Logistics and its customer, Cal-Maine Foods, under the Carmack Amendment, 49 U.S.C. § 14706, *et seq.* (the “Carmack Amendment”), for rendering the Cargo adulterated.<sup>1</sup> The Cargo was tendered to L&P in good condition at origin. However, the Cargo was ultimately delivered to the destination in a damaged and adulterated condition, as confirmed by the consignee’s inspection of the trailer temperature. L&P’s actions have caused Brothers Logistics to suffer damages in the amount of Forty-Two Thousand Two Hundred Seventy-Two Dollars (\$42,272.00), plus interest. Accordingly, L&P is liable for the full amount claimed under the Carmack Amendment. *See*, 49 U.S.C. § 14706; *et seq. Missouri Pacific R.R. Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964); *Taft Equip. Sales Co. v. Ace Transp., Inc.*, 851 F. Supp. 1208 (N.D. Ill. 1994) (allowing broker to maintain Carmack Amendment action against carrier); *TRG Holdings, LLC v. Leckner*, 2006 U.S. Dist. LEXIS 70781, at \*2 (E.D. Va. July 20, 2000). This is especially true given the perishable nature of the Cargo. *See e.g., Mecca & Sons Trucking Corp. v. White Arrow, LLC*, 2016 U.S. Dist. LEXIS 127260, \*11-14 (D.N.J. Sept. 16, 2016) (holding a carrier liable under the Carmack Amendment for failing to maintain the required temperature for food product during transport); *see also Oshkosh Storage Co. v. Kraze Trucking LLC*, 65 F. Supp. 3d 634, 637 (E.D. Wis. 2014) (finding that a decrease in value of food product or having to salvage food product “unquestionably” constitutes damages under the Carmack Amendment).

Based upon the Certificate of Insurance that Insurance Center of Dade issued, and which was provided by L&P to Brothers Trucking at the time that Brothers Trucking onboarded L&P, I understand that American Inter-Fidelity is the cargo insurer for L&P and that at least One Hundred Thousand Dollars (\$100,000.00) in coverage exists under Policy No. Z178324-001MTC-11680. Therefore, I have directed this letter to Ms. Thurner, who I understand is handling this claim on behalf of American Inter-Fidelity (despite her e-mail domain of trinityunderwriters.net). I have also copied L&P’s insurance broker, Insurance Center of Dade, on this letter out of an abundance of caution.

In short, Brothers Logistics will proceed with litigation in the event that L&P does not deliver a check to my attention, made payable to Brothers Logistics or Cal-Maine Foods (for delivery to Cal-Maine Foods), in the amount of Forty-Two Thousand Two Hundred Seventy-Two Dollars (\$42,272.00) or does not otherwise propose a reasonable alternative before the close of business on or before **August 24, 2021**. Please understand that, if Brothers Logistics proceeds with litigation, suit will be filed not only for the substantial principal amount of the claim plus interest, but also accruing attorneys’ fees and costs.

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<sup>1</sup> 21 U.S.C. § 342(i) provides that food shall be deemed adulterated if it is transported or offered for transport by motor vehicle under conditions that are not in compliance with the food safety regulations under the Act. Food that has been held under unsanitary conditions whereby it *may* have been rendered injurious to health is considered adulterated under 21 U.S.C. § 342 (a)(4). By tendering to the consignee a load that had been stolen, unsealed, and kept at a high temperature, L&P has also violated the Sanitary Transportation of Human and Animal Final Rule, 21 C.F.R. § 1.900 *et seq.*

Of course, we hope to be able to resolve this claim promptly and cooperatively short of litigation. I look forward to receiving prompt payment or otherwise hearing from you very soon and certainly no later than the close of business on **August 24, 2021**.

Very truly yours,



Marc S. Blubaugh

cc: Sergio Fonte (insurancesolutions01@yahoo.com)  
Insurance Center of Dade at 11980 SW 144th Ct., Suite 204,  
Miami, Florida 33186

Jeffrey Rosenfeld (via e-mail only)  
Vice President/CFO  
Brother Logistics, Inc.