

5. Internationales

EUMOS SYMPOSIUM

LADUNGSSICHERUNG | TRANSPORTVERPACKUNG | SICHERE LOGISTIK

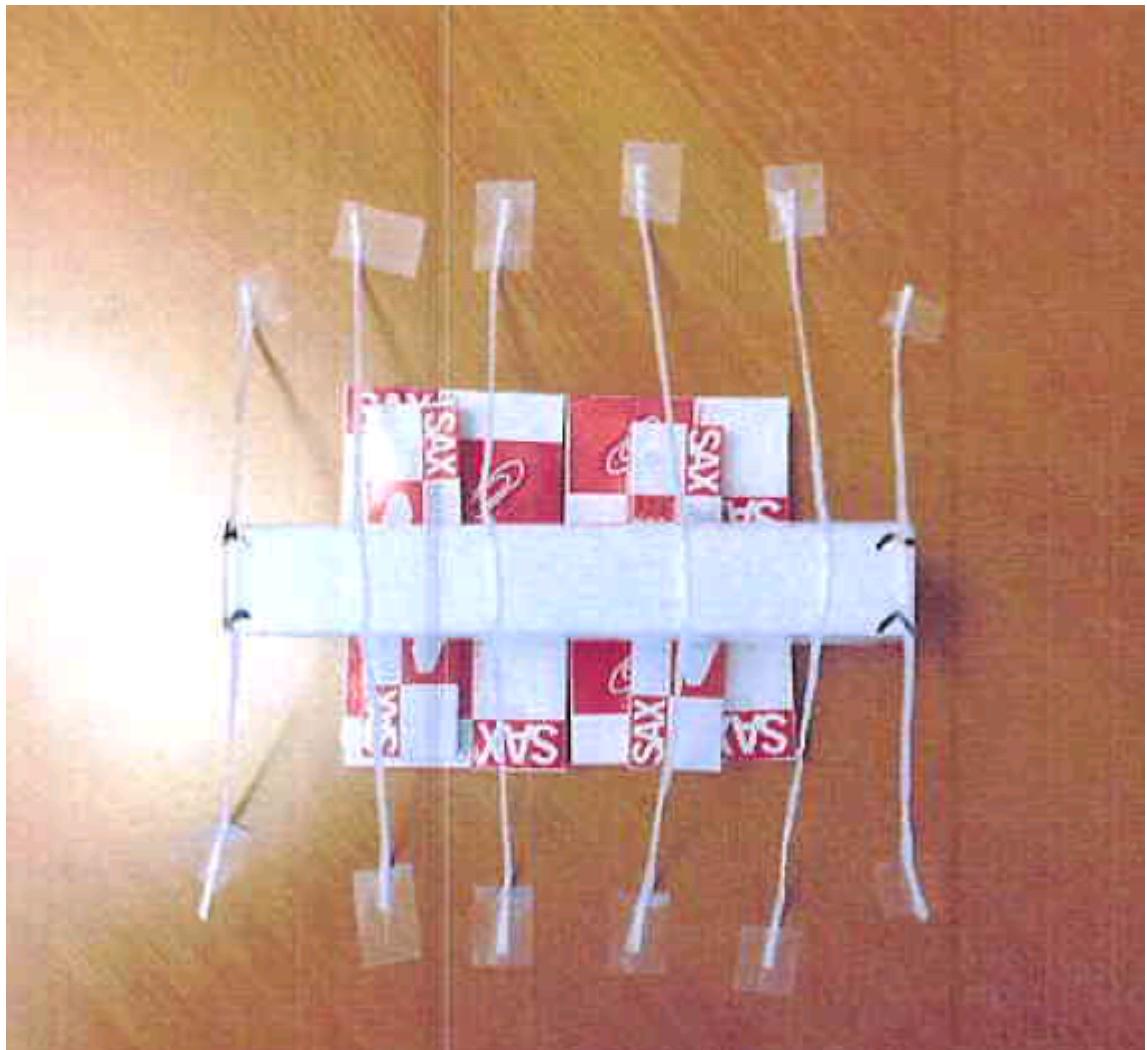
**Loading secured by the Supreme Court of
Justice!**

**Dr. Christian Spendel
General Manager
PETSCHL-TRANSPORTE Österreich GmbH & Co KG**

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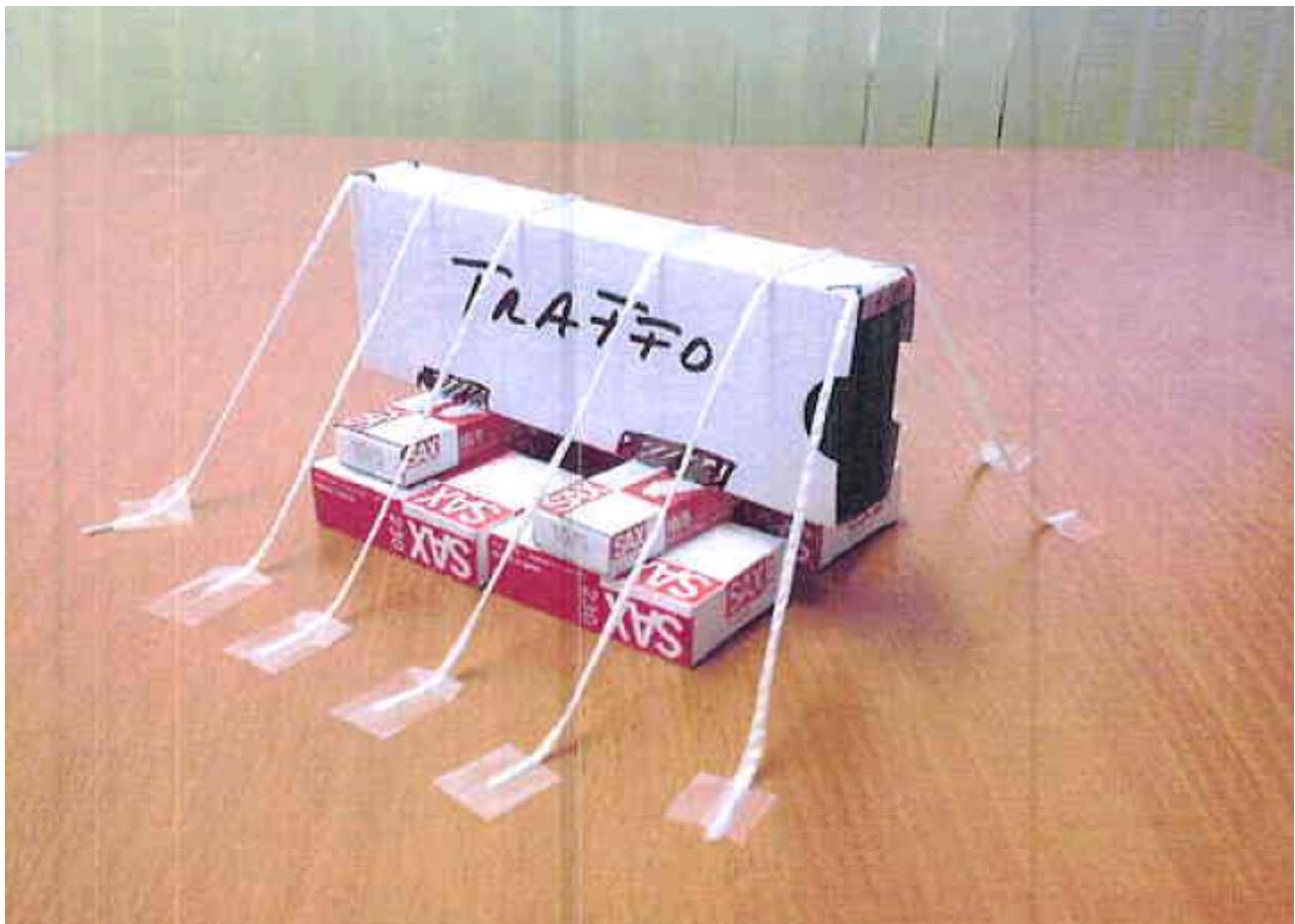
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What is this?



This is:

**OGH 7 Ob
105/16s**



OGH 7 Ob 105/16s

“A violation of auditing duties according to legal traffic/motoring provisions by the driver of the carrier is not related in terms of risk to a transport contract which transfers the responsibility of loading and storage to the sender.”

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Transportschaden Transformatorkern

Sehr geehrter Herr Prok. Dr. Spendel,

zum Unfall vom 07.10.2013, welcher polizeilich unter der Aktenzahl C2/8661/2013 erfasst und bearbeitet wird, teilen wir Ihnen mit, dass wir jegliche Haftung als unbegründet zurückweisen.

Für sämtliche Schäden am Transportgut sowie auch für alle daraus resultierenden Folgeschäden werden Sie als Frachtführer haftbar gemacht.

Selbstverständlich erfolgte umgehend die Schadensmeldung an unseren Haftpflichtversicherer.

Mit freundlichen Grüßen

“Regarding the accident on 07/10/2013, which was recorded and processed by the police as reference number C2/8661/2013, we inform you that we reject any liability as unfounded.

For any damages to the transport goods and all damages resulting from this, you as the carrier will be made liable.

The damage report has of course been sent to our liability insurer.”

Transport of a transformer

Loading was the responsibility of the sender. Due to improperly conducted loading, the transformer fell off the truck.

→ Trailer = write-off



The transport company demanded compensation for the damage to the trailer. The lower courts (Regional Court (LG), Higher Regional Court (OLG)) only approved 50% of the loading agent's liability.

REASON: Because the driver, in terms of motoring laws, would have been responsible for the objective negligence of beginning the journey with insufficiently secured cargo, he violated a protection law (§102 par. 1, KFG).

→ This means: Contributory negligence on the part of the transport company (50 : 50)

The Supreme Court of Justice did not share this legal point of view.

Within the shipping relationship, the liability for loading and storage follows the contract and the CMR, and thereby also the agreed definition of duties and risk distribution.

A violation of the auditing duty by the driver of the carrier is not unlawful in terms of the shipping contract which transfers the responsibility for loading to the sender.

In the context of the shipping relationship, the violation can therefore not be attributed to the carrier as negligence.

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THANK YOU for your attention!



Dr. Christian Spendel