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SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 662

REVIEW OF LIABILITY OF MOTOR COMMON CARRIERS  
OF HOUSEHOLD GOODS

Decided: August 9, 2006

The Board has conducted a review, as directed by Congress, and as a result of that review, the Board: (1) proposes to make three revisions to the current released rates orders (in MC-999, Released Rates of Motor Common Carriers of Household Goods) to improve the protection of consumers whose belongings are lost or damaged in interstate household moves; and (2) recommends a revision to a regulation of the Federal Motor Carrier Safety Administration to conform the regulation to a statutory amendment.

BACKGROUND

Prior to the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59, 119 Stat. 1144 (2005), on August 10, 2005, motor carriers of household goods (HHG) were generally held liable, under 49 U.S.C. 14706, for the actual loss or injury they caused to the property they transported and, because most HHG are “used,” the carrier’s liability historically applied to the depreciated value of the goods. However, under 49 U.S.C. 14706(f), HHG carriers could, with the permission of the Surface Transportation Board (the Board), limit their liability by offering “released rates” (rates under which the carrier is released from the statutory level of cargo liability, and the carrier’s liability for a shipment of property is limited to a value established by written declaration of the shipper or by written agreement). The Board has issued orders authorizing HHG carriers to adopt released rates that follow a certain format.

The Board’s current released rates orders—Released Rates of Motor Common Carriers of Household Goods, 5 S.T.B. 1147 (2001), and Released Rates of Motor Common Carriers of Household Goods, Amendment No. 4 to Released Rates Decision No. MC-999 (STB served Apr. 22, and July 26, 2002)<sup>1</sup>—authorize HHG carriers to limit their liability for damage or loss of the goods in their care through a written declaration of the shipper. Under these orders, HHG carriers may offer their shippers two options concerning the level of cargo liability to be assumed by the carrier, depending upon the level of the rate that the shipper wishes to pay for the transportation of its goods. Under one option, the carrier’s cargo liability may be limited to 60

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<sup>1</sup> Board decisions and notices are available on the Board’s website at “WWW.STB.DOT.GOV”. We will refer to these orders collectively as “Released Rates Orders.”

cents per pound per article, if the shipper writes a valuation of “60 cents per pound” on the bill of lading. In that event, the shipper pays only a base rate for the shipment. Alternatively, for an additional charge, the shipper may obtain “full value protection” for the shipped goods, meaning that the carrier is liable for the replacement value of the lost or damaged goods (up to the pre-declared value of the shipment) or, at the carrier’s option, for restoring damaged goods to their prior condition.

## REVIEW

Introduction. In section 4207 of SAFETEA-LU, Congress changed the statutorily prescribed, standard liability of HHG carriers for loss or damage to the replacement value of the goods, up to the pre-declared total value of the shipment, unless the shipper waives in writing that level of protection. See 49 U.S.C. 14706(f)(2), (3). Thus, the standard cargo liability of a HHG carrier is now the replacement value of the goods (for example, the value of a new television to replace a used television that was lost in a household move, rather than the depreciated value of the used television).

Also in SAFETEA-LU, at section 4215, Congress directed the Board to review the current Federal regulations regarding the level of cargo liability protection provided by motor carriers that transport HHG and revise the regulations, if necessary, to provide enhanced protection in the case of loss or damage. Specifically, Congress sought a determination of three issues:

- (1) whether the current regulations provide adequate protection;
- (2) the benefits of purchase by a shipper of insurance to supplement the carrier’s limitations on liability; and
- (3) whether there are abuses of the current regulations that leave the shipper unprotected in the event of loss and damage to a shipment of household goods.

In order to obtain insight into these issues, we asked for public comment on them in a notice served and published on May 23, 2006 (71 FR 19709). We received three comments. One was filed jointly by American Moving and Storage Association and its autonomous committee, the Household Goods Carriers’ Bureau Committee. They are the moving industry’s trade association and its rate bureau, and will be referred to jointly as “HHG Committee.” The other two comments were filed by the Inland Marine Underwriters Association (“the Insurance Association”), a trade association for companies that, among other things, provide cargo insurance to motor carriers of HHG; and by the Consumer Protection Division of the Office of the Attorney General of Maryland (“Consumer Protection Division”).

Existing Consumer Protection Regulations. Consumer Protection Regulations governing motor carriers of interstate shipments of HHG were originally promulgated by our predecessor agency, the Interstate Commerce Commission (ICC). After enactment of the ICC Termination Act of 1995 (ICCTA), Pub. L. No. 104-88, 109 Stat. 803 (Dec. 29, 1995), those regulations were adopted by an administering agency within the Department of Transportation (DOT) and now are administered by DOT's Federal Motor Carrier Safety Administration (FMCSA).

The regulations, found at 49 CFR part 375, subpart B, provide numerous protections for consumers concerning motor carriers' liability for cargo loss and damage. In particular, those regulations require the motor carrier to disclose to an individual shipper, in a clear and concise manner, the limits of the carrier's cargo liability. The regulations also provide that, if a motor carrier sells liability insurance, the carrier may have additional liability if it fails to issue to the shipper a copy of the insurance policy or other appropriate evidence of insurance. 49 CFR 375.201.<sup>2</sup>

Another consumer protection provision—both statutory and regulatory—is the requirement of carrier participation in binding arbitration of consumer claims for loss or damage below a specified amount, as a condition to the carrier's authority to transport HHG in interstate commerce. See 49 U.S.C. 14708; 49 CFR 375.211. This typically provides a less costly alternative to litigation when the shipper and motor carrier cannot settle the dispute themselves. In section 4208 of SAFETEA-LU, Congress increased the specified amount from \$5,000 to \$10,000.

An important consumer protection is the regulation requiring HHG carriers to give individual shippers a copy of the FMCSA publication, "Your Rights and Responsibilities When You Move," reproduced at 49 CFR part 375, Appendix A. This publication, which was updated recently<sup>3</sup> to reflect changes necessitated by SAFETEA-LU, contains information about a motor carrier's liability for loss and damage and the actions that consumers may take that would limit the carrier's liability. The publication advises consumers to be sure that they understand the mover's responsibility and to request an explanation of the difference between valuation (which can limit the carrier's liability) and actual insurance. It is available on FMCSA's website, where there is additional useful information for consumers who ship HHG at [www.protectyourmove.gov/consumer/awareness/rights/Rights1.htm](http://www.protectyourmove.gov/consumer/awareness/rights/Rights1.htm).

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<sup>2</sup> Other sections of the regulations protect motor carriers by providing that certain actions taken by a shipper will have the effect of limiting the liability of the carrier: including perishable, dangerous, or hazardous articles in a shipment without the carrier's knowledge; or failing to notify the carrier in writing of articles valued at more than \$100 per pound. 49 CFR 375.203.

<sup>3</sup> See 71 FR 17945 (Apr. 7, 2006).

Need for more protection. The Consumer Protection Division states that consumer protection currently is inadequate under the 60 cents-per-pound-per-article limitation on carrier liability that moving companies are authorized to offer under the Board's released rates orders. According to the Consumer Protection Division, each year it receives a significant number of complaints from consumers who claim that they were not aware that their mover's liability was limited to 60 cents per pound per article until after they filed claims with the mover for property that was lost, stolen, or damaged during the move. According to the Consumer Protection Division, consumers often are unaware of limitations on liability because these provisions routinely are "buried" in carriers' contracts. The Consumer Protection Division has found that it has been the rule, rather than the exception, for moving companies to include in their basic contracts a waiver of the consumer's right to full value protection unless the consumer specifically elects to pay the higher price associated with that protection, and that consumers sign contracts without understanding that they are agreeing to limit the moving company's liability.

Supplemental Insurance. When a consumer chooses to ship HHG under the full value protection rates offered by motor carriers, there usually would be no benefit from purchasing additional insurance because the carrier would be liable for the replacement value of the items lost or damaged (or full repair, at the carrier's option), up to the declared value of the shipment.<sup>4</sup>

When, on the other hand, a shipper chooses to pay the lower rates associated with the option of releasing the carrier's liability to 60 cents per pound per article, it is essential that the shipper have some form of insurance to reimburse for loss or damage, because nearly all of a person's belongings are worth more than 60 cents per pound per article. The pamphlet "Your Rights and Responsibilities When You Move" gives a good example and sound advice concerning the effect of a consumer's choosing this limitation on liability: "if your mover lost or destroyed a 10-lb. (4.5-kilogram) stereo component valued at \$1,000, your mover would be liable for no more than \$6.00. Obviously, you should think carefully before agreeing to such an arrangement."

Homeowners' liability policies may offer residence-to-residence moving coverage at an additional cost. In addition, there are insurance companies that offer cargo insurance to individuals who ship HHG under rates releasing the liability of the carrier to 60 cents per pound per article. If the HHG motor carrier offers to assist a consumer in obtaining insurance, the carrier must maintain tariff provisions describing the service and comply with the FMCSA consumer protection regulations, including providing the consumer with a copy of the insurance policy or similar evidence of insurance. See 49 CFR 375.303. That regulation also requires that the carrier's tariff include the carrier's assumption of full liability for the value of the shipment.

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<sup>4</sup> As long as the consumer selects a declared value that is at least as high as the replacement value for the shipment of HHG, the consumer should be able to recover fully for loss or damage to those goods.

To protect themselves, carriers often purchase insurance to cover their liability for loss or damage claims. According to the Insurance Association, many HHG carriers (other than the largest, national moving companies) purchase cargo liability policies from insurance companies based on the actual cash value of the damaged or lost cargo. For HHG, actual cash value is usually depreciated value; it was the standard liability of HHG carriers prior to SAFETEA-LU, but now replacement value is the standard carrier liability under the statute. Although this difference between a carrier's liability and its insurance coverage does not leave the consumer completely unprotected, it complicates the consumer's process for obtaining full payment for damaged, lost, or stolen HHG. (As the Insurance Association points out, if insurance companies reissue the carrier-purchased cargo-liability policies to cover replacement value, the insurance companies presumably would charge more and motor carriers would pass on the increased cost of insurance to consumers.)

Abuses. HHG Committee asserts that, to the extent abuses of the regulations occur, the perpetrators are "rogue" entities that choose to ignore or deliberately violate the regulations. It argues that amending the regulations to provide additional consumer protections would not solve the problem of bad actors that routinely ignore or violate the existing regulations. Instead, HHG Committee argues that consumers are best protected by their carefully evaluating the reputations of prospective movers before contracting for their services.

Other. Under the Board's current Released Rates Orders, if a shipper fails to select either full value protection (replacement value) or the low liability limit of 60 cents per pound per article, the default liability for the carrier is approximately the actual (depreciated) value of the HHG that are damaged or lost—the standard level of liability under the statute prior to SAFETEA-LU. Because the standard statutory level of liability has changed, the Board's Released Rates Orders need to be updated.

## PROPOSED REVISIONS AND RECOMMENDATIONS

Revisions. To reflect the changed liability standard in the statute, the Board will promptly amend the Released Rates Orders to provide that, when the consumer does not select either full value protection or the 60-cents-per-pound option, the default liability of the carrier will be (as now provided under SAFETEA-LU) the replacement value of the damaged or lost goods. With this amendment, even when there is an error in the paperwork, the carrier would be liable for replacement value.

The Board also proposes to adopt suggestions made by the Consumer Protection Division that should serve to alert consumers to the availability of full value protection for their shipments of HHG. Specifically, we will initiate a proceeding in the Released Rates Orders docket (No. MC-999) to (1) require HHG moving companies to include a provision for full value protection in all of their contract forms and estimates provided to consumers, thus making this level of protection the norm rather than the exception, and (2) require any written waiver of full value protection by consumers to be made in a document separate from the moving contract/bill of

lading and in clear and understandable language that is designed to ensure that the waiver has been made knowingly.

Recommendation Concerning a FMCSA Regulation. As mentioned by HHG Committee, one of the regulations governing claims for damage or loss of any type of cargo, at 49 CFR 370.9(b), currently requires all motor carriers to settle claims based on the depreciated value of goods. This regulation needs to be amended by FMCSA for claims relating to HHG, to reflect the new statutory level of liability (replacement value) for HHG.<sup>5</sup> No change is needed for claims relating to shipments of other types of property.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams  
Secretary

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<sup>5</sup> We anticipate that FMCSA will propose any additional revisions to the regulations governing loss and damage to HHG necessary to conform its regulations fully to SAFETEA-LU.