



WEEKLY LAW RESUME™

Issue By: Dirk Larsen

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## Interstate Transport- Carmack Amendment In Absence Of Declared Value, Carrier Liability for Lost Goods Limited to Regulated Rate

*Pacific Indemnity Company v. Pickens Kane Moving & Storage*  
Ninth Circuit Court of Appeals (April 20, 2011)

The Carmack Amendment, 49 U.S.C. § 14706, regulates the liability of shippers and carriers for household goods lost or damaged in interstate transport. In this case, the Ninth Circuit Court of Appeals addressed an issue of first impression in the circuit: the respective liability of shipper and carrier for lost or damaged goods where the shipper neglected to declare a value of the goods.

Ina and Murray Manaster desired to move their household goods, consisting mainly of fine arts and antiques, from Chicago to Phoenix. They requested a quote from Pickens Kane Moving & Storage ("Pickens") which, through the freight broker TCI, contracted with Atlas Van Lines, Inc., to transport the goods. The Manasters requested \$1 million in insurance coverage, and Pickens adjusted its rate accordingly. However, Pickens never informed TCI or Atlas of the \$1 million valuation.

On November 2, 2006, Atlas picked up the Manasters' goods from the Pickens warehouse. The Atlas bill of lading was signed by Pickens' representative as shipper and by Atlas' driver as carrier. The bill of lading included a valuation section with a space for Pickens to declare the value of the property. Pickens' representative left this section blank.

**San Francisco Office**

505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

**Monterey Office**

2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

**Web:** [www.lowball.com](http://www.lowball.com)



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A fire destroyed the Manasters' goods while in Atlas' possession en route from Chicago to Phoenix. Pacific Indemnity Co. paid the Manasters' claim in full for \$1 million, and filed a subrogation suit in federal court against both Pickens and Atlas for carrier liability under the Carmack Amendment. Pickens and Atlas cross-claimed against each other, also for carrier liability. The parties filed cross-motions for summary judgment, and the district court held that Atlas was liable to both Pacific and Pickens for \$52,500, or \$5.00 per pound, and that Pickens was liable to Pacific for \$1 million. Pickens appealed.

The Ninth Circuit affirmed the district court's decision. Crucial to its reasoning was the language of 49 U.S.C. §14706(f)(2), which Congress added in 2005. That section provides that a carrier's maximum liability for lost or damaged household goods is "an amount equal to the replacement value of such goods, subject to a maximum amount equal to the declared value of the shipment and to rules issued by the Surface Transportation Board and applicable tariffs."

Based on this language, Pickens argued that Atlas, as the carrier, was liable for the full "replacement value" of the goods, or \$1 million. The court rejected this argument, noting that the replacement value is subject to a maximum amount equal to the declared value of the shipment and rules issued by the Surface Transportation Board. Because Pickens failed to declare a value of the shipment, the court looked to the Board's rules. The relevant Board rule provided that, where a shipper "neglects to write a valuation figure on the bill of lading or contract," the carrier is liable for an assumed valuation based on an adjusted rate of \$5.00 per pound. The Ninth Circuit concluded that the Board's rule was a reasonable implementation of the Carmack Amendment and thus entitled to the court's deference. Accordingly, Pickens was liable to Pacific for the full \$1 million, but Atlas' liability was limited to the assumed valuation of \$5.00 per pound, or \$52,500.

In a twist that can provide little comfort for Pickens, Atlas was required to pay Pickens' litigation costs of \$74,402.35. The Ninth Circuit noted that the Carmack Amendment imposes strict liability on carriers: if the loss or damage occurred while in the carrier's possession, the carrier is liable for the loss, regardless of fault. In addition, under § 14706(b), the carrier in possession

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is required to pay the reasonable litigation expenses of the shipper in a civil action. Atlas argued that, given the court's apportionment of damages for the loss, Pickens cannot be considered the prevailing party and thus should not be awarded expenses. The court rejected this argument, noting that the Carmack Amendment does not speak of a "prevailing party." Instead, it speaks of the carrier over whose line or route the goods were damaged. Because that carrier was Atlas, Atlas must pay Pickens' litigation expenses.

In sum, Atlas was the party liable for Pacific's loss and would have been responsible for the full \$1 million if Pickens had declared a value for the goods. But because Pickens failed to declare that value, Atlas' liability was limited to the rate set by the Surface Transportation Board, and Pickens must pay the rest.

## COMMENT

This case demonstrates that the advantages of the Carmack Amendment, such as limited liability and streamlined litigation, are only available if carriers know and meticulously follow the statute and the Surface Transportation Board's rules. The case also illustrates the supreme importance of ongoing employee training and effective communication within an organization. One employee's failure to declare a value on a bill of lading-whether through inattentiveness, lack of training or lack of communication-was a mistake costing Pickens nearly \$950,000.

For a copy of the complete decision see:

[HTTP://WWW.CA9.USCOURTS.GOV/DATASTORE/OPINIONS/2011/04/20/09-17824.PDF](http://www.ca9.uscourts.gov/datastore/opinions/2011/04/20/09-17824.pdf)

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