

# The secret of *valuation*; creating a win-win situation for movers and shippers. How movers may legally limit their liability for loss or damages while offering shippers full value protection *insurance*.

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Damaged or lost property is an unfortunate reality when undertaking the complex task of transporting household goods across great distances. Many shippers may accept and expect a reasonable degree of damage. Movers also understand that despite their best efforts in packing and securing property; damage and loss occurs. Damage and loss can be mitigated through comprehensive *valuation* and/or *insurance* coverage.

An inherent conflict seems to exist between movers who wish to substantially limit their liability and shippers who wish to have their property transported with the highest levels of coverage. The competing interests of movers and shippers can be overcome by combining both *insurance* and *valuation* as a means of providing coverage for damage or loss to property.

## I. Insurance vs. Valuation

To accomplish the win-win situation of limiting the mover's liability while providing the shipper with full value coverage it is important to understand the legal distinction between *valuation* and *insurance* in the context of interstate transportation of household goods.

Generally, *insurance* is "an agreement by which one party assumes a risk faced by another party in return for a premium payment."<sup>3</sup> In most states *insurance* is regulated and may only be sold by state licensed *insurance* agents. To legally sell *insurance* a mover must issue an actual *insurance* policy to the shipper identifying the level of coverage and exceptions; have in place a legally published tariff providing for liability *insurance* coverage; and have the appropriate state license to sell *insurance*<sup>4</sup>.

Alternatively, when a shipper requests *insurance* coverage a mover should refer the shipper to a third party insurance provider such as Baker Moving Insurance<sup>5</sup>, MovingInsurance.com<sup>6</sup>, or Unirisc, Inc.<sup>7</sup> These entities can help provide the shipper with actual insurance coverage protecting their property from loss or damage. Generally, these entities can provide professional claims representatives and high quality customer service to process the shipper's claims in a more efficient manner.

In comparing *valuation* to *insurance*; the primary point to understand is that *valuation* is not *insurance*. *Valuation* is "the degree of worth of the shipment. The *valuation* charge compensates the mover for assuming a greater degree of liability than is provided for in its base transportation charges."<sup>8</sup> In practical application, valuation is the memorialization of the

agreement between the parties as to the mover's limitation of liability in the event of any loss or damage. The most common level of *valuation* coverage is the standard basic liability option of \$0.60 cents per pound per article.<sup>9</sup>

The confusion between *insurance* and *valuation* is compounded when movers tell shippers that they provide "basic insurance" when in fact they are only providing "basic valuation" of \$0.60 per pound per article. Movers should be aware that this practice may be classified as statutory insurance fraud and could subject the mover and the mover's sales agent to civil and criminal penalty.

In short, it is advised that movers not use the word "insurance" when in fact they mean to say "valuation."

## II. Generally, Movers may not release themselves from total liability.

Federal law governing the interstate transportation of household goods generally prohibits a mover from contracting with the shipper to release itself from all liability<sup>10</sup>. At a minimum the mover will always be liable for the basic valuation of \$0.60 per pound per article for any loss or damaged goods.

This prohibition against global releases of liability presents real world problems in situations where shippers refuse to have articles wrapped in protective blankets or to purchase professional packing services. Since the law generally makes limited exceptions the mover must either undertake the risk of transporting unprotected goods or pack the item despite the shipper's refusal to pay additional packing charges.

Although, the above cited federal law prohibits the use of global releases of liability in regard to damaged goods; the use of a release of liability in regard to the damage *real property* such as floors, walls, ceilings, landscaping, driveways, walkways, etc. may be outside the scope of the federal law restricting the use of liability release. As such, a mover could include as a term in the bill of lading a release of liability for damage to such *real property*<sup>11</sup>.

Other exceptions to the prohibition against releasing a mover's liability include limiting liability where a shipper packs perishable, dangerous, or hazardous materials without the mover's knowledge. A shipper who packs such items without the mover's knowledge may be subject to civil and criminal penalties including imprisonment for up to five years<sup>12</sup>.

A mover will also be released from liability where a shipper fails to notify the mover by way of written declaration of the items of extraordinary value to be transported. Items of extraordinary value are generally classified as items valued at more than \$100.00 per pound such as jewelry, laptop computers, and other such valuables<sup>13</sup>. Where a shipper fails to declare items of extraordinary value a mover's liability may be limited to the released value valuation of \$0.60 per pound per article.

## III. Full Replacement Valuation Default.

Many movers are under the misguided belief that the basic limited liability level of property damage coverage of \$0.60 per pound per article is the industry standard default level of protection afforded to shippers. This is not the case. The default level of coverage is not \$0.60 per pound per article, but in fact, full replacement value<sup>14</sup>. The default level of valuation becomes effective where movers do not take the appropriate legal steps to limit their liability.

Federal law requires that moving companies provide a customer with at least two valuation levels<sup>15</sup>. Generally, the two options are (1) 60 cents per pound per article; and (2) full replacement value. A shipper must be provided with a reasonable opportunity to select between the two choices. If the customer selects “60 cents per pound per article” then certain steps must be taken to make it a legal choice. Failure to correctly follow the requirements will automatically change the selection to full replacement value even if the shipper did not pay additional money for the higher valuation level.

#### **IV. How to legally limit liability to \$0.60 per pound per article.**

Movers may limit their liability, with agreement of the shipper, to the minimum valuation of \$0.60 per pound per article. Under this valuation option the mover assumes liability of no more than \$0.60 per pound per article. For example, if a 50 pound plasma TV, valued at \$2,000, was lost or destroyed the mover would be liable for no more than \$30.00. To legally limit its liability to this basic *valuation* level the mover must take necessary and specific steps such as<sup>16</sup>:

##### **A. Offer at least two valuation options to the shipper.**

The surface transportation board through its Released Rates of Motor Carrier Shipments of Household Goods has established two different valuation options: (1) Full Value Protection Valuations and (2) Released Value Valuations of \$0.60 per pound per article. Both options must be offered to the shipper.

**B. Provide the shipper with a reasonable opportunity to select between the options.** It is important that shippers be provided a clear choice between the two levels of valuation protections. Generally, a shipper must be provided a copy of the booklet entitled *Your Rights and Responsibilities When you Move* prior to the signing of an order for service<sup>17</sup>. Additionally, the bill of lading and/or order for service should include a written explanation of the valuation choices as provided by the Surface Transportation Board<sup>18</sup>.

C. The shipper must write in their own handwriting their statement declaring the value of the shipment. To release the shipment to the basic valuation level the shipper must write the words “**60 cents per pound per article.**” Movers should be advised that abbreviations such as “60 ¢ p.p.a.” or “.60/lbs.” do not hold the same force and effect as the writing of the complete phrase “**60 cents per pound per article**” and may not be enforceable in a court of law.

**D. Maintain a properly published and up-to-date interstate tariff<sup>19</sup>.** A tariff is a legal document, unique to each mover, issued in whole or part which contains the rates, rules, regulations, classifications, terms and conditions by which the interstate transportation of goods is governed by. The tariff must be published, maintained, and made available to shippers and representatives of the US DOT/ FMCSA upon reasonable request.

**E. Issue a proper interstate bill of lading<sup>20</sup>.** The bill of lading is the contract of carriage between the mover and the shipper. Each interstate shipment must be accompanied by a properly formatted bill of lading listing rates and charges corresponding to the applicable tariff provisions.

#### **V. Combing Valuation and Insurance to create a win-win scenario.**

As described above an inherent conflict appears to exist between movers who wish to substantially limit their liability and shippers who wish to have their property transported with the highest levels of coverage. The competing interests of movers and shippers can be overcome by combining both *insurance* and *valuation* as a means of providing coverage for damage or loss to property.

When a shipper purchases full coverage *insurance* from a third party insurance agent; the shipper is still required to declare their valuation level to the mover. The win-win scenario is created when the shipper purchases full coverage *insurance* and they release the mover’s liability to the limited liability valuation level of \$0.60 per pound per article.

Under this scenario should the property be damaged the shipper will have full replacement coverage *insurance*, less any deductible, which they purchased from a third party insurer. The insurer will then exercise its right to subrogation and seek reimbursement from the mover. The benefit to the mover is that the third party insurer exercising its right to subrogation is bound by the *valuation* selection made by the shipper.

When all the steps are followed a scenario can be created whereby the shipper is fully covered for their lost or damaged goods and the mover is protected by the \$0.60 per pound per article limitation of liability; a win-win situation for the shipper and mover.

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<sup>1</sup> This document is provided for general informational purposes and is not intended to and does not provide legal advice or counsel. The authors of this article are offering general information about the law cited and are not offering specific legal advice. Laws and procedures change frequently, and they can be interpreted differently by different people. For specific advice and answers to specific questions regarding your situation you are advised to consult an attorney for specific legal counsel.

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<sup>3</sup> Black’s Law Dictionary, 7<sup>th</sup> Edition, Ed. Garner, West Group, St. Paul, Minn., 1999, page 802.

<sup>4</sup> See 49 CFR Section 375.303(c).

<sup>5</sup> Baker International, 3501 FM 2181 Suite 230, Denton, TX 76210, (800) 356-0093, www.bakerintl.com.

<sup>6</sup> MovingInsurance.com™, Moving Insurance, LLC, 209 Cooper Avenue, Suite #7, Montclair, NJ 07043, 888-893-8835.

<sup>7</sup> Unirisc, Inc., 205 Robin Rd. Suite 230, Paramus, NJ 07652, Tel: (201) 967-7810, www.unirisc.com.

<sup>8</sup> See 49 CFR section 375 Appendix A

<sup>9</sup> See Surface Transportation Board’s Released Rates of Motor Carrier Shipments of Household Goods.

<sup>10</sup> See 49 CFR section 375.701(a).

<sup>11</sup> Be advised that such releases of liability may be subject to State law restrictions.

<sup>12</sup> See 49 USC section 5124 providing for a maximum of five years imprisonment and a \$250,000 penalty.

<sup>13</sup> See 49 CFR section 375.203(b).

<sup>14</sup> See 49 USC section 14706(f)

<sup>15</sup> See 49 CFR section 375.203.

<sup>16</sup> See generally: *Allison-Erwin Co. v. Saturn Freight Sys.* 106 F. supp. 2d 1328, 1330 (N.D. Ga. 2000) (quoting *Bio-Lab, Inc. v. Pony Express courier Corp.*, 911 F.2d 1580, 1582 (11<sup>th</sup> Cir. 1990)).

<sup>17</sup> See 49 CFR section 375.213(a)(1).

<sup>18</sup> See 49 CFR sections 375.501(a)(10) and 375.505(a)(12).

<sup>19</sup> See 49 USC section 13702(c)(1)

<sup>20</sup> See 49 CFR section 375.505.