UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

TOKIO MARINE & NICHIDO FIRE INSURANCE CO. LTD.,

Plaintiff,

-v-

Case No.: 2:12-cv-1057
JUDGE GEORGE C. SMITH
Magistrate Judge Deavers

FLASH EXPEDITED SERVICES, INC.,

Defendant.

OPINION AND ORDER

Plaintiff Tokio Marine & Nichido Fire Insurance Co. Ltd. ("Tokio Marine") brings this action as subrogee for its insured, Nikon, Inc. ("Nikon"), against Defendant Flash Expedited Services, Inc. ("Flash") pursuant to the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706, *et seq*., after a truckload of digital cameras were stolen while being transported by Defendant. This matter is before the Court on Defendant's Motion for Partial Summary Judgment (Doc. 12). This matter is fully briefed and ripe for review. For the reasons that follow, the Court **GRANTS** Defendant's Motion for Partial Summary Judgment.

I. BACKGROUND

Plaintiff Tokio Marine is a corporation organized and operating at 230 Park Avenue, New York, New York. Plaintiff was the cargo insurer of Nikon. Defendant Flash is a corporation organized and operating at 4255 Meek Road, Powder Springs, Georgia. Defendant is engaged in business as a common carrier of goods for hire.

In October 2010, Tokio Marine's insured, Nikon, sold to Costco Wholesale U.S. in Jamesburg, New Jersey, 1,392 digital cameras. The cameras were located at a UPS Logistics facility in Louisville, Kentucky. Nikon had a written contract with Ground Freight Expeditors, LLC ("Ground Freight"), entered into in December 2006, to provide for transportation related services. (Def.'s Ex. C). Nikon contacted Ground Freight to arrange for shipment of the cameras. Ground Freight brokered the shipment to Forward Air, Inc. Then, a representative of Forward Air contacted Israel Hernandez, a dispatcher for Defendant Flash to inquire as to Flash's ability to transport the cargo from Kentucky to New Jersey. Forward Air and Flash had an existing relationship in which Forward Air brokered shipments to Flash for transportation pursuant to a Broker/Carrier Agreement dated May 6, 2008. (Hernandez Depo. at 19-23). According to Hernandez, that Agreement was still in effect. (Hernandez Depo. at 22-23). To confirm acceptance of the shipment of cameras, Israel Hernandez faxed a "load confirmation" to Forward Air. (Hernandez Depo. at 38, Ex. 7). However, at no time did Hernandez ask Forward Air the value of the goods tendered for shipment. (Hernandez Depo. at 45-48). Hernandez described that "mainly what we ask is the weight. First because – because that has a lot to do with the rates and fuel consumption. And – but we will ask where it's going from and where it's going to. Again, since we have – we have a contract with Forward Air, up to 100,000, we, you know, we would – we would think that we're not going to move a load for them – that they would not allow us to pull a load that is way over value than – than what we are allowed to carry." (Hernandez Depo. at 45-46).

The Broker/Carrier Agreement provided with respect to liability of Flash for loss of or damage to cargo transported by Flash:

> . . . Carrier's [Flash] liability for loss or damage to cargo shall be the invoice value or, in the absence of an invoice, the wholesale destination market value for the lost or damaged cargo subject to a maximum liability of $100,000 per truckload Shipment. . .

(Pl.'s Ex. 5 at 4). Based on this Agreement, Hernandez stated that the limitation is $100,000 and "we don't move a load over $100,000." (Hernandez Depo. at 48).

As set forth in the Confirmation, the rate charged by Flash to Forward Air was $1,748.40, based on the origin and destination of the shipment, as well as the $100,000 limitation. (Hernandez Depo. at 32-33, 39).

Israel Hernandez dispatched the shipment of the load to Hector Pinto, a driver that worked for Flash. Pinto also employed a co-driver, Marcos Gomez, to share the driving responsibilities. On October 28, 2010, both Pinto and Gomez arrived at Ground Freight's facility in Louisville, Kentucky to pick up the paperwork associated with the shipment. Mr. Pinto and Mr. Gomez both signed a Ground Freight "Asset Protection Plan – Driver Checklist" (the "Asset Protection Plan"). The Asset Protection Plan stated in pertinent part:

> Driver(s) will not stop before traveling 200 miles from origin, unless at final destination.
> Driver(s) has fueled before pick-up.
> Drivers driving as a team will not leave their truck unattended at any time – one member of the team will stay with the truck at all times.
> * * *
> Driver(s) acknowledges receipt of High Value/High Risk (HVHR) security load.
> * * *
> Driver(s) will not make unauthorized stops.
> * * *
> DRIVER(S) AGREE TO COMPLY WITH ALL OF THE ABOVE CHECKLIST ITEMS BY AFFIXING SIGNATURE(S) BELOW

(Pl.'s Ex. 10).

After signing the Asset Protection Plan, Pinto and Gomez drove to the UPS facility to

pick up the shipment. The trailer was loaded with 29 skids of digital cameras. After loading, Pinto signed the bills of lading which identified the cargo as "cameras, digital." (Pl.'s Exs. 8 and 9). The Bills of Lading provided in pertinent part:

> NOTE Liability Limitation for loss or damage in this shipment may be applicable. See 49 U.S.C. 14706(c)(1)(A) and (B).
>
> RECEIVED subject to the individually determined rates or contracts that have been agreed upon in writing between the carrier and shipper, if applicable, otherwise to the rates, classifications and rules that have been established by the carrier and are available to the shipper, on request, and to all applicable state and federal regulations.

(Pl.'s Exs. 8 and 9). Additionally, the Bills of Lading make the shipment:

> subject to . . . contracts that have been agreed upon in writing between the carrier and shipper, if applicable, otherwise to the rates, classifications and rules that have been established by the carrier and are available to the shipper, in request, and to all applicable state and federal regulations.

(*Id*.).

There was a space on the Bill of Lading for Nikon to declare the value of the shipment, however, Nikon chose to leave that space blank. (*Id*.).

During the transport, Pinto and Gomez stopped the truck at a Flying J truck stop near Jefferson, Ohio, which was within 170 miles of where the load was picked up. They filled up the truck with gas and then parked the truck to go inside to eat and shower. The truck was left unattended for approximately 2 hours. When they returned to where the truck had been, both the truck and trailer were gone. The cargo inside the trailer was never recovered. (Pl.'s Ex. 4, Pinto Depo. at 25-27). Plaintiff Tokio Marine paid a loss in the amount of $361,864.32, the invoice value of the stolen cameras.

Plaintiff initiated this case on October 17, 2011 in the United States District Court for the

District of New Jersey, asserting breach of the agreement to transport and store the cargo, material deviation from the contract and other shipping instructions, and breach and violation of its duties and objections as a carrier. On November 15, 2012, the case was transferred to this Court as the proper venue. Defendant filed its Motion for Summary Judgment while the case was still pending in New Jersey. This Court asked the parties to brief the issues including applicable Sixth Circuit law and the Motion was ripe in January 2013.

II. STANDARD OF REVIEW

The standard governing summary judgment is set forth in Rule 56 of the Federal Rules of Civil Procedure, which provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

Summary judgment will not lie if the dispute about a material fact is genuine; "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment is appropriate, however, if the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. *See Muncie Power Prods., Inc. v. United Techs. Auto., Inc.*, 328 F.3d 870, 873 (6th Cir. 2003) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)); *see also Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986).

When reviewing a summary judgment motion, the Court must view all the facts, evidence and any inferences that may permissibly be drawn from the facts, in favor of the nonmoving party. *Matsushita*, 475 U.S. at 587. The Court will ultimately determine whether "the evidence

presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Liberty Lobby*, 477 U.S. at 251-53. Moreover, the purpose of the procedure is not to resolve factual issues, but to determine if there are genuine issues of fact to be tried. *Lashlee v. Sumner*, 570 F.2d 107, 111 (6th Cir. 1978). The Court's duty is to determine only whether sufficient evidence has been presented to make the issue of fact a proper question for the jury; it does not weigh the evidence, judge the credibility of witnesses, or determine the truth of the matter. *Liberty Lobby*, 477 U.S. at 249; *Weaver v. Shadoan*, 340 F.3d 398, 405 (6th Cir. 2003).

In responding to a summary judgment motion, the nonmoving party "cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must 'present affirmative evidence in order to defeat a properly supported motion for summary judgment.'" *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir. 1989) (*quoting Liberty Lobby*, 477 U.S. at 257). The existence of a mere scintilla of evidence in support of the opposing party's position is insufficient; there must be evidence on which the jury could reasonably find for the opposing party. *Liberty Lobby*, 477 U.S. at 252. The nonmoving party must present "significant probative evidence" to demonstrate that "there is [more than] some metaphysical doubt as to the material facts." *Moore v. Phillip Morris Companies, Inc.*, 8 F.3d 335, 340 (6th Cir. 1993). The Court may, however, enter summary judgment if it concludes that a fair-minded jury could not return a verdict in favor of the nonmoving party based on the presented evidence. *Liberty Lobby*, 477 U.S. at 251-52; *see also Lansing Dairy, Inc. v. Espy*, 39 F.3d 1339, 1347 (6th Cir. 1994).

Moreover, "[t]he trial court no longer has a duty to search the entire record to establish that it is bereft of a genuine issue of material fact." *Street*, 886 F.2d at 1479-80. That is, the

nonmoving party has an affirmative duty to direct the court's attention to those specific portions of the record upon which it seeks to rely to create a genuine issue of material fact. *In re Morris*, 260 F.3d 654, 665 (6th Cir. 2001).

III. DISCUSSION

Defendant Flash has moved for partial summary judgment on Plaintiff's claim for the loss of a cargo of digital cameras valued at $361,864.32. Defendant seeks to limit its liability to $1,566.00 based on the agreements of the parties involved and the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706. Defendant argues that the parties are bound by the damages limitation in the Shipper's Contract. However, Plaintiff argues that Flash cannot establish a limitation on liability and that Flash committed a material deviation and is fully liable for the loss. The Court will address these arguments in turn.

A. Nikon and Ground Freight's Contract

Defendant asserts that Plaintiff is bound by the contract between its insured, Nikon, and the shipper, Ground Freight. (Def.'s Ex. C to Attachment #4). The Carrier's Liability as set forth in the contract provides:

> 7. In consideration of GFE's rate for transportation of any shipment which is in part dependent upon the declared value of the shipment, GFE's liability of any kind whatsoever shall be the lesser of:
>
> A) The actual value of the goods lost or damaged, or
>
> B) $0.50 per pound (where no value is declared) multiplied by:
>
> i. the number of pounds of the shipment, or
>
> ii. in the case of a partial loss or damage the average weight of the part lost or damaged from the total shipment.
>
> C) With a declared value:
>
> i. the declared value of the shipment, or
>
> ii. in the case of a partial loss or damage the average declared value per pound of the shipment which is lost or damaged, unless the shipper declares different values on the pieces which are tendered to GFE as separate identifiable units by so indicating on

> the airbill and specifically and completely describing the contents thereof as to the articles, weights, and number of pieces.

(*Id*. at 1).

Ground Freight then contracted with Forward Air for transportation of the Nikon shipment, and then Forward Air brokered the shipment to Defendant Flash.

Defendant argues that as the "downstream" carrier, it should receive the benefit of the limitation of liability in the Nikon/Ground Freight Contract. Defendant relies on two United States Supreme Court cases, *Kansas Southern Railway v. Carl*, 227 U.S. 639, 648 (1913), and *Oregon Washington Railroad and Navigation Co. v. McGinn*, 258 U.S. 409, 413 (1992), in support of its argument. In *Oregon Washington Railroad*, the Supreme Court looking at the entire transaction applied the shipper's agreed-upon limitation of liability to the delivering carrier because the shipper had agreed to that limitation. The Court held:

> The connecting carrier is not relieved from liability by the Carmack Amendment, but the bill of lading required to be issued by the initial carrier upon an interstate shipment governs the entire transportation and thus fixes the obligations of all participating carriers to the extent that the terms of the bill of lading are applicable and valid.

Id. at 413.

Additionally, the Carmack Amendment governs the liability of carriers of interstate cargo. It states:

> A carrier… shall issue a receipt or bill of lading for property it receives for transportation. That carrier and any other carrier that delivers that property and is providing transportation or service… are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (A) the receiving carrier, (B) the delivering carrier, or (C) another carrier over whose line or route the property is transported in the United States.

49 U.S.C. 14706(a)(1). The Carmack Amendment has been interpreted to preempt all state law

claims against a carrier for loss or damages to interstate shipments. *North American Van Lines v. Pinkerton Security Systems, Inc.*, 89 F.3d 452, 458 (7th Cir. 1996); *W.D. Lawson & Company v. Penn Central Co.*, 456 F.2d 419, 421 (6th Cir. 1972). Pursuant to the Carmack Amendment, 49 U.S.C. § 14706, if a shipper fails to declare the value of its cargo, the shipper is bound by the lowest released value. *See also, Mechanical Technology Inc. v. Ryder Truck Lines, Inc.*, 776 F.2d 1085 (2d Cir. 1985), and *W.C. Smith, Inc. v. Yellow Freight System*, 596 F. Supp. 515 (E.D. Pa. 1983).

> In *Anton v. Greyhound Van Lines, Inc.*, 591 F.2d 103, 108 (1st Cir. 1978), Judge Miner acknowledged that "shippers are charged with notice of terms, conditions, and regulations contained in the tariff schedule. . .." The tariff expressly provides that failure to designate a rate results in a released rate of $5.00 per pound. By leaving the spaces blank, MTI effectively selected the lowest freight rate and its corresponding low level of liability. Having had the opportunity on its own form to secure greater protection, MTI "cannot complain about the consequences of leaving the applicable spaces blank. . .." *W.C. Smith, Inc. v. Yellow Freight Systems, Inc.*, 596 F. Supp. 515, 517 (E.D. Pa. 1983). We recently reached a similar conclusion in *Ruston Gas Turbines, Inc. v. Pan American World Airways*, 757 F.2d 29 (2d Cir. 1985).

Mechanical Technology, 776 F.2d at 1087. Accordingly, Defendant argues that the shipper, Nikon, failed to declare a value for the shipment and is therefore bound by the limitation of liability in its own contract. Defendant asserts that Nikon sought to have the shipment transported for a low freight rate and in exchange received a limitation of liability. The freight rate charged by Flash for transporting the shipment weighing 3,132 lbs. was $1,748.40. Defendant argues that the weight, 3,132 lbs, multiplied by the $.50 per pound limitation of liability yields a maximum cap on damages in the amount of $1,566.00.

Defendant Flash argues that had Nikon entered the value of the shipment, $361,000, then

all the carriers would have been on notice of the value and potential risk involved in the shipment. But the higher value would have meant a higher freight rate. Flash asserts that had that value been declared, it would have either declined to carry the shipment, would have charged a much higher freight rate, or would have purchased an insurance rider at an increased cost to the shipper. (Hernandez Certif.).

Plaintiff, however, argues that well-established Federal law holds a carrier strictly liable for loss or damage in interstate motor carriage, and in select circumstances where limitations on liability are permitted, the burden of establishing limited liability is on the carrier. *See Carmana Designs Ltd. v. North American Van Lines, Inc.*, 943 F.2d 316, 319 (3d Cir. 1991); *Asset Management & Control, Inc. v. ABF Freight Systems, Inc.*, 18 F. Supp.2d 187, 191 (N.D.N.Y. 1988). But, if such limitation is imposed, Plaintiff claims that the Broker/Carrier Agreement between Flash and Forward Air dated May 6, 2008, which has a $100,000 limitation of liability governs and not the contract between Nikon and Ground Freight. Therefore, Plaintiff states that at a minimum, Flash should be held to the $100,000 limitation and not the $1,556 limitation of liability.

Plaintiff's argument, however, is not persuasive as the Broker/Carrier Agreement between Flash and Forward Air did not include the shipper, Nikon. Nikon entered into an agreement with Ground Freight that specifically includes a limitation of liability of $0.50 per pound. And, the Bill of Lading incorporates by reference the contract between Nikon and Ground Freight. Further, well-established law states that the amount of liability of "any carrier" is "measured by the original contract of shipment." *Kansas Southern Railway v. Carl*, 227 U.S. 639, 648 (1913). It is important to note that Plaintiff is not suing on the Broker/Carrier

Agreement between Forward Air and Flash because it cannot. Plaintiff, or its insured Nikon, was not a party to that contract. Therefore, it should not be surprising that the Court will not apply the terms of that contract to this case.

After careful review of the applicable cases in this area of law, as well as the testimony in this case, there is no dispute that the shipping charge of $1,748.40 to carry over 3,000 pounds for approximately 750 miles was a bargained-for rate and was not based on a specific value of the shipment. Plaintiff's insured, Nikon, chose not to fill-in the value of the shipment. Had that value been disclosed, this would be a different case. But as testimony from Mr. Hernandez with Flash established, Flash would have taken steps to ensure that a shipment with that high of a value would have been insured. But that cost would have been passed along to Nikon. Nikon wanted a low-cost rate for shipping and that is exactly what it got. Plaintiff's insured, Nikon, received the benefit of its bargain in the form of a low shipping rate based on the limitation of liability.

Plaintiff also argues that neither Ground Freight, nor Forward Air acted as a motor carrier in connection with this shipment. Flash was the initial and only motor carrier of this shipment. Plaintiff asserts that Flash did not issue a bill of lading and therefore should not be entitled to limit its liability. The Supreme Court held in *Missouri, Kansas & Texas Railway Co. of Texas v. J.H. Ward*, 244 U.S. 383 (1917), that the bill of lading required to be issued by the initial carrier governs the entire transportation.

Defendant Flash, however, argues that well-established law proves that the shipper is bound by its contract regardless of who was the initial carrier. Ground Freight was a broker and was also a freight forwarder. In *Gulf & Western Industries, Inc. v. Old Dominion Freight Line,*

Inc., 688 F. Supp. 688 (M.D.N.C. 1986), the plaintiff shipper had a contract with a freight forwarder. The freight forwarder had a contract with a motor carrier. Relying on the United States Supreme Court precedent in *Chicago, Milwaukee, St. Paul & Pac. R. Co. v. Acme Fast Freight*, 366 U.S. 465 (1949), the *Gulf & Western* court held that plaintiff was bound to its contract with the freight forwarder. Similarly, in this case, merely because Ground Freight brokered the shipment for Nikon, does not mean that Nikon is not bound by the terms of the contract between it and Ground Freight.

Plaintiff also attempts to attack the limitation of liability based on *Toledo Ticket Co. v. Roadway Express, Inc.*, 133 F.3d 439 (6th Cir. 1998). In *Toledo Ticket*, plaintiff shipper contracted with defendant carrier to deliver a shipment of tickets and a portion of the shipment was stolen. The district court ruled that defendant carrier had limited its liability to $34 in accordance with the Interstate Commerce Act. On appeal, the Sixth Circuit reversed, holding that the carrier was required to bring to the shipper's attention its option to choose between levels of liability even though the shipper was sophisticated. Further, the Court noted that the shipper's failure to fill in the value of the shipment was not an affirmative act of agreement to a limitation on liability.

However, unlike *Toledo Ticket*, the parties in this case entered into a written agreement with a limitation of liability. As set forth above, Nikon entered into an agreement with Ground Freight who ultimately brokered the shipment. Therefore, there was a written agreement that clearly contains a limitation of liability. Further, recent decisions question the holding of *Toledo Ticket* because that case was based on events prior to the recent changes to the Carmack Amendment. *See EFS National Bank v. Averitt Express, Inc.*, 164 F. Supp. 2d 994 (W.D. Tenn.

2001) ("Given the recent changes in the law, the four factors used by the Sixth Circuit in earlier cases interpreting the pre-1996 Carmack Amendment may no longer be completely relevant."). There is no question that the Carmack Amendment as amended allow a carrier to limit its liability "to a value established by . . . written agreement between the carrier and shipper. . .." 49 U.S.C. §14706(c)(1)(A). The Eleventh Circuit found that the bill of lading, which the shipper prepared and both parties signed, was a sufficient "written agreement" under the statute to allow a carrier to enforce its tariff since the bill of lading made reference to the tariff's liability-limiting provision. *See Siren, Inc. v. Estes Express Lines*, 249 F.3d 1268, 1271-73 (11th Cir. 2001). The Eleventh Circuit specifically stated that when the shipper was the one to fill out the bill of lading, it was not necessary to "protect shippers from themselves." *Id.* at 1271.

B. Material Deviation Doctrine

Plaintiff Tokio alleges that in violating the Asset Protection Plan, Defendant Flash committed a "material deviation" which voids any limitation on Flash's liability. Plaintiff references this Court's decision in *The Limited, Inc. v. PDQ Transit, Inc.*, 160 F. Supp.2d 842 (S.D. Ohio 2001), in support of its argument that the material deviation doctrine should apply to this case. The "material deviation" doctrine is derived from admiralty law. *The Sarnia*, 278 F. 459, 459 (2nd Cir. 1921). The doctrine provides that a contractual limitation of liability will not restrict shipper's recovery if the carrier has breached a material provision. *Id.* It has been held to have no application in the context of regulated interstate commerce. *Rocky Ford Moving Vans, Inc. v. United States*, 501 F.2d 1369 (8th Cir. 1974); *Rafaella Gallery v. United Parcel Service*, 818 F. Supp. 53 (S.D. N.Y. 1993).

The doctrine has been applied in limited circumstances, however, where the shipper has

paid an additional charge to ensure specialized safety measures to reduce the risk of damage to its cargo and the carrier fails to perform those very measures which resulted in damage to the cargo. *Praxair v. Mayflower Transit Inc.*, 919 F. Supp. 650, 656 (S.D. N.Y. 1996); *Nippon Fire & Marine Insurance v. Skyway Freight Systems*, 67 F. Supp. 2d 293 (S.D. N.Y. 1993). In *Praxair*, the plaintiff had paid for a higher transportation rate for specialized care, specifically air-ride and blanket wrapping. 919 F. Supp. at 654. A higher fee for a specialized care is what distinguishes *Praxair* from *Rafaella*, *Rocky Ford*, and other federal cases that rejected the application of the doctrine. *Id.*

Plaintiff Tokio in this case does not allege that its insured Nikon paid a higher fee for a specialized service. This Court acknowledged in *The Limited* case that "[t]he only specialized service that they requested is that the trailer should not be left unhooked and the PDQ drivers were instructed to at all times stay with the LDS' loaded trailers. There was no higher fee paid for this service so *Praxair* is not applicable here." *The Limited*, 160 F. Supp. 2d at 845. Similarly, in the case at bar, the drivers were not supposed to leave the truck unattended, but there was no higher fee paid in consideration for this service. Therefore, like in *The Limited*, *Praxair* is not applicable here.

Plaintiff also references *NipponKoa Ins. Co. v. Watkins Motor Lines, Inc.*, 431 F. Supp. 2d 411, 418 (S.D.N.Y. 2006), in which the court held that the carrier was unable to limit its liability when the loss resulted from a breach of the carrier's promise to use a high security lock on unattended trailers and monitor the trailers by CCTV. Defendant argues, and the Court agrees, that there was no such promise in this case. Plaintiff relies on the Asset Protection Plan – Driver Checklist between Ground Freight and Flash, but there was no such agreement or specific

promise made to Nikon. There is no question that the parties in *NipponKoa* negotiated the safety measures and had a separate agreement which included these additional safety measures. The contract between Nikon and Ground Freight does not mention anything about additional safety measures, but only "ordinary care in handling." (Def.'s Ex. C). The lack of any additional safety measures, combined with the fact that no additional consideration was paid, results in no application of the "material deviation" doctrine in this case.

In conclusion, the Court finds that Plaintiff Tokio Marine is bound by the terms of the contract its insured Nikon entered into with Ground Freight who ultimately brokered the shipment to Defendant Flash. By the terms of the contract between Nikon and Ground Freight, the limitation of liability is $0.50 per pound. Therefore, the maximum cap on damages is $1,566.00 based on the total weight of the shipment, 3,132 pounds. Defendant Flash's Motion for Partial Summary Judgment is hereby granted.

IV. CONCLUSION

Based on the foregoing, the Court **GRANTS** Defendant's Motion for Partial Summary Judgment.

The Clerk shall remove Document 12 from the Court's pending motions list.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT