

Stephen B. Carlson  
PO Box 655  
Wayzata, MN 55391  
612/745-0577  
email: sbcarlson@earthlink.net

DEPT. OF TRANSPORTATION  
DOCKET SECTION  
98 JUL 14 PM 4:11

SP 37406

10 July 1998

Docket Clerk  
U.S. Department of Transportation  
Room PL-401  
400 7th Street SW  
Washington, D.C. 20590-0001

Re: Docket # FHWA 97-2979 - 15

Dear Madam or Sir:

I purchased insurance from United Van Lines, Inc. ("United") (home office located in Fenton, Missouri) to cover me for any loss or damage that occurred while United was moving my household possessions from Idaho to Minnesota this past October 1997. The insurance I purchased was to cover any claim up to \$100,000.00 in value with a \$500.00 deductible. The type of insurance I purchased was called "For All its Worth" which "provides for repair, replacement or reimbursement (whichever is less) at today's replacement cost of the lost or damaged goods." I purchased this insurance in good faith to protect me from any unforeseen damage or loss. I believed that I was dealing with a reputable and professional moving company, and that the insurance I was purchasing from them would provide me with "peace of mind" with respect to the care and security of my possessions. This belief could not have been farther from the truth.

When my household possessions arrived in Minnesota, many were severely damaged and others were simply missing from the shipment. I filed a formal claim with United on December 23, 1997 and a police report on January 6, 1998 to report certain items which were missing from the shipment and presumed stolen. I did not receive any response from United until January 30, 1998 when a claim representative for United, James Stinebaker, returned my phone call (after five attempts by me to contact him in the preceding week). In my conversation with Mr. Stinebaker (which was our first), he informed me that he was "denying" the loss portion of my claim because, in his opinion, I had no proof that certain items had been lost or stolen from the shipment. I took issue with Mr. Stinebaker on this point, and informed him that I had already filed a police report with the authorities and had listed employees of United as suspects. Mr. Stinebaker refused to acknowledge that I had followed time honored and customary practices in the insurance industry for the filing and substantiation of the loss portion of my claim and instead implied that I had "lied" to

United and fabricated that portion of my claim. Mr. Stinebaker then abruptly terminated our conversation.

The week of February 9th, 1998, I met with a representative of Ackerman's Furniture repair who United had sent as their de facto insurance adjuster to assess my damaged and lost/stolen household items. Ackerman's informed me that they would submit a written report to United and that United would be in contact with me regarding settlement of my insurance claim. On February 24, 1998 I contacted John Ackerman, owner of Ackerman's, about the status of the report that he had previously submitted to United and he informed me that though he had not heard back from United, he had advised them that the cost (not including the loss portion of the claim) of labor and materials to repair my damaged and broken items was \$4,500.00 and that this figure did not reflect the additional and far more monetarily substantial diminution in value of certain antique pieces which United had damaged. On February 25, 1998, I received the enclosed letter from Mr. Stinebaker at United which callously and dishonestly attempted to settle my original \$77,200.00 claim for \$965.00 (after a \$500.00 deductible). I immediately placed a call to Mr. Ackerman to inquire about why I had not received a facsimile copy of the report he had already submitted to United (which stated that the repair portion alone would cost \$4,500.00) and that he had previously promised to send to me. Mr. Ackerman declined to accept my call, but his assistant informed me that she could not fax me the report as previously promised because "my file" had already been sent back to United at Mr. Stinebaker's urgent request (that same morning). These actions smack of deception and fraud at the expense of the unwitting consumer.

I believe that United, their agents and representatives have dealt with me in a dissembling, dishonest and fraudulent manner with respect to their handling, response, and disposition of my insurance claim. United should be compelled to make me whole on my claim as well as be held accountable for their unscrupulous actions. I believe United's conduct in this matter is not unique to my situation, but instead represents a recurring pattern of fraudulent behavior in their handling of certain claims; specifically such claims where the claimant is not a large corporation (like Monsanto), but is an individual who represents little residual value to United in the form of repeat business. United's willful intent, deliberate misrepresentations and deceptive conduct in their sale of insurance to me and their subsequent "efforts" to settle my claim have been nothing short of fraudulent and deserve a firm and punitive rebuke of significant consequences.

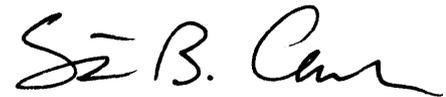
I have been forced to retain legal counsel, sue United in district court here in Minnesota, and spend thousands of dollars to enforce my rights as a consumer. My current legal fees on this matter now equal 1/2 of the cost of my original move and we are still in the preliminary stages of litigation. United has taken a "win at any cost"

approach to settling our litigation and it appears I will spend many multiples of my original cost to move (\$12,000.00) before I can expect any economic justice from them.

United's past, present and foreseeable conduct is predatory, shameless and illicit. They are committing a fraud of monumental proportion on the individual consumer, such as myself, who is not immunized by a connection to a large corporation or similar entity with whom United regularly transacts business. I beseech you in your legislative capacity to pass new rules and regulations to not only protect the consumer from such fraudulent practices, but to also punish United for their conduct. I hope any new rules or regulations will be retroactive to the extent they are permitted under the law.

If I can be of any further assistance please don't hesitate to contact me at 612/745-0577.

Sincerely,

A handwritten signature in black ink, appearing to read "S. B. Cameron". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

c.c.: Jaret B. Decker, Esq.  
James Stinebaker, United Van Lines  
Ron BockenKamp, MO Atty. Gen'l Office

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Reply to: St. Paul  
Writer's Direct Dial: (612) 229-2903

May 22, 1998

**HAND DELIVERED**

Thomas G. Whaley, Esq.  
Whaley Law Office  
300 Lake Calhoun Executive Center  
3033 Excelsior Boulevard  
Minneapolis, MN 55416

Re: Stephen B. Carlson v. United Van Lines, Inc.  
U.S. District Court File No. 98 CV 1221 DSD/JMM

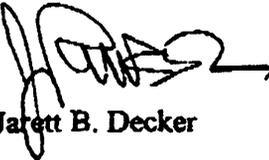
Dear Mr. Whaley:

Thank you for your courtesy in extending my time to **serve** a responsive brief until today, as **you** acknowledged in your phone **message** of last Friday, May 15, 1998 (I believe that Local Rule **7.1(b)(2)(B)** expressly **allows** the parties to extend the time for **response** without **leave** of court).

Enclosed and personally **served** upon you are an original and three copies of the **Plaintiff's** Memorandum in Opposition to Motion for Dismissal and **Affidavit** of **Jarett B. Decker**. Pursuant to Local Rule **7.1(b)**, I trust you **will** keep a copy for yourself and file the **original** and **two** copies with the court.

If **your client** decides to put an offer on the table, please contact me.

Very truly yours,

  
Jarett B. Decker

JBD:jma  
Enclosures  
cc: Stephen B. Carlson

S:139562.1:JBD:05/22/1998

A  
**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION**

Stephen B. **Carlson**,

Civil No. 98-1221 DSD/JMM

**Plaintiff,**

v.

**AFFIDAVIT OF  
JARETT B. DECKER**

United Van Lines,

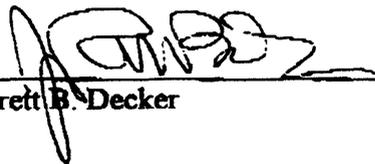
**Defendant**

STATE OF **MINNESOTA** )  
 ) ss.  
COUNTY OF **RAMSEY** )

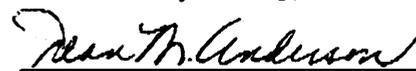
**Affiant, Jarett B. Decker, being duly sworn,** deposes and says:

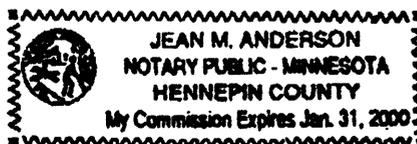
- I. I am counsel for the plaintiff, **Stephen B. Carlson**, in the above action.
2. **Mr. Carlson** has been contacted by Senior Investigator **Ron Bockenkamp** in connection with an ongoing investigation by the Missouri Attorney General's **Office** of consumer **fraud** by the **Defendant**, United Van Lines, against its customers.
3. Attached hereto as **Exhibit A** is a true and correct copy of a letter to UVL memorializing the contacts **Mr. Carlson** has received from the Missouri Attorney General's Office.

**FURTHER YOUR AFFIANT SAYETH NOT.**

  
\_\_\_\_\_  
Jarett B. Decker

Subscribed and **sworn** to before me  
this 22nd day of **May**, 1998.

  
\_\_\_\_\_  
Notary Public



UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH **DIVISION**

---

Stephen B. **Carlson**,

Civil No. 98-1221 DSD/JMM

**Plaintiff,**

v.

**PLAINTIFF'S MEMORANDUM  
IN OPPOSITION TO MOTION  
FOR RULE 12 DISMISSAL**

United Van Lines,

**Defendant**

---

**SUMMARY OF THE PLEADINGS**

**The Plaintiff**, Stephen B. **Carlson** (“**Carlson**”), has alleged that in September of 1997 he contracted with the **Defendant**, United Van Lines, Inc. (“**UVL**”) to store and then move valuables, including antiques and heirloom-quality items. Complaint at ¶¶ 3-4. He specifically **asked for**, and was **promised, appropriate handling** for his valuables, and paid **UVL** a premium for special insurance protection **under** a plan called “**For All Its Worth (“FAIW”)**”, which a **UVL representative** promised was the “best in the **industry.**” *Id* at ¶¶ 4-6. **When Carlson** took receipt of his valuables in **approximately** October and November of 1997, he found that numerous antique **furnishings** had sustained **major** damage **while** in transit or in storage, and a valuable painting with an antique **frame** was missing. *Id* at ¶ 7. **Carlson** has repeatedly asked **UVL** to reimburse him for his losses, but **UVL** has **refused** to do so. *Id* at ¶ 8.

## ARGUMENT

L **CARLSON HAS** VALIDLY STATED A **CLAIM**, REGARDLESS OF THE CORRECT **STATUTORY CITATION OR LABEL FOR THE APPLICABLE CAUSES OF ACTION**.

A complaint should not be dismissed for failure to state a claim unless it **appears** beyond doubt that the plaintiff can prove no **set of facts** in support of his claim which would entitle him to **relief**. Conley v. Gibson, 355 U.S. 41,456; 78 S.Ct. 99, 101-2; L-Ed.26 80 (1957). A motion to **dismiss for** failure to state a claim is not an appropriate vehicle for challenging an **inartful** pleading. Worthington v. Subaru-Isuzu Automotive, Inc., 868 F. Supp. 1067, 1068 (N.D.Ind. 1994). Consequently, a complaint cannot be dismissed just because the plaintiff did not identify the **correct statute** under which his cause of action arises, or mislabeled the legal basis for his **claim**, as long as the **facts** as pleaded would provide the plaintiff with a basis for relief under any statute or right of action that legally exists- U.S. v. Provident National Bank, 259 F. Supp. 373, 375 (D.C.Pa. 1966) (“The reference to a statute as being the basic ground upon which an action is brought, even if completely **incorrect**, is no ground for the dismissal of the action where there is a statute in existence which would warrant a valid cause of action”); U.S. v. Thurston County, Neb., 54 F. Supp. 201,204 (D.C.Neb.), **aff ed**, 149 F.2d 485 (8th Cir. 1944) (same).

**Here, the defendant does** not dispute that **Carlson** will be entitled to recovery if he proves the facts he has **alleged**, but claims that **Carlson** should have cited the Carmack Amendment, 49 U.S.C. § 14706, instead of common-law causes of action, as his legal basis for relief. The short **answer** is that, on a Rule 12 motion for **failure** to state a **claim**, it is irrelevant whether the **plaintiff's causes** of action are **properly labeled**; the complaint cannot be dismissed if the facts **alleged could** provide any basis for relief.

**Furthermore**, the defendant is **incorrect** in claiming that the **Carmack** Amendment preempts **all** potential state and **common-law claims** for relief here. The **Carmack** Amendment's

preemption applies **only to claims** arising **from a carrier's shipment of goods** in interstate commerce, as the **Defendant's own** citations reveal. See, e.g., 49 U.S.C. § 14706; **Moffit v. Bekins Van Lines Co.**, 6 F.3d 305, 306-7 (5th Cir. 1993) (**Congress intended by the Carmack Amendment to provide a uniform national remedy against carriers for breach of the contract of carriage**).

But here, viewing the Complaint in the **light most favorable** to the Plaintiff, **Carlson has alleged** that **UVL** not only entered into a **contract for carriage** but sold him insurance—the **FAIW plan—and** then reneged on the insurance agreement, which imposed **additional** duties beyond its responsibilities as an interstate carrier. Insurance, of **course**, is governed by state law of contracts, not by **federal** transportation law. **UVL** also contracted with **Carlson** to provide intrastate **storage** services, which are not subject to any federal law, and it could be that the damages and losses **occurred** during storage. In short, the **Carmack** Amendment does not preempt all state-law claims here, **and** even if it did, **Carlson** is at Least **entitled** to pursue his remedies **under the Carmack Amendment. Thus, the Defendant's Rule 12 motion is infounded** and should be rejected.

#### **II DISMISSAL OF THE CLAIMS FOR ATTORNEYS' FEES IS INAPPROPRIATE.**

A claim **for relief should** be dismissed **under** Rule 12 only if there are no possible facts under which the relief could be granted. **Conley**, 355 U.S. **will be entitled to** attorneys' fees if the opposing party violates Rule 11 of the Federal Rules of Civil Procedure or if the opposing party **"vexatiously multiplies the proceedings"** in violation of 28 U.S.C. § 1927.

The Defendant has failed to show that no set of facts could entitle **Carlson to an** award of attorneys' fees in this case. Indeed, **Carlson** intends to prove that **UVL's** conduct, in selling him insurance **and** then reneging on its **promises** to cover his **losses**, is part of a pattern of similar

**conduct** by **UVL** against customers, now under investigation as **consumer fraud** by Senior **Investigator** Ron **Bockenkamp** of the Missouri Attorney General's **Office**, who **has been in touch** with **Carlson** as part of his investigation. **Affidavit** of **Jarett** B. Decker at ¶ 2. **Thus, depending** on the results of the investigation, **Carlson may** be able to prove that **UVL's** continuing **refusal** to reimburse his legitimate losses, and burdensome maneuvers in this lawsuit, are part of a pattern of vexatious posturing, thus entitling **Carlson** to an award of attorneys' fees.' **Thus**, the request to dismiss the prayer for attorneys' fees should be denied.

**CONCLUSION**

The Motion to Dismiss should be denied in its **entirety**.

**Dated:** May 22, 1998

**Respectfully submitted,**

**MAUN & SIMON, PLC**



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**Jarett B. Decker (#214309)**  
**2300 World Trade Center**  
**30 East Seventh Street**  
St. Paul, Minnesota **55101-4904**  
(612) **229-2900**

**ATTORNEYS FOR PLAINTIFF**

S:139542.1:JBD:05/22/1998

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<sup>1</sup> We do not mean to suggest that **UVL's Minnesota** counsel is aware of, or in any way responsible for, **UVL's apparent** pattern of **conduct**, now being investigated by the Missouri **Attorney General**.

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Writer's Direct Dial: (612) 229-2903

April 21, 1998

**N. Gregory Beachem, Esq.**  
Transportation Services Company  
One United Drive  
PO Box 26342  
Fenton, MO 63026-1542

Re: **Stephen B. Carlson** v. United Van Lines, Inc.

Dear Mr. Beachem:

This letter will acknowledge receipt of your letter dated March 30, 1998, which "Crossed in the mail" with the Complaint that we served on United Van Lines, initiating a legal action.

After initiating the lawsuit, my client, Steve Carlson, was contacted by an investigator for the Missouri Attorney General's Office named Ron Bockenkamp. Mr. Bockenkamp informed Mr. Carlson that United Van Lines is currently under investigation for consumer fraud, misrepresentation, and related conduct committed against its customers, in circumstances similar to Mr. Carlson's. Obviously, if the treatment of Mr. Carlson was part of a broader pattern of fraudulent conduct against customers, Mr. Carlson will be able to invoke an array of statutory and common-law remedies not listed in the Complaint, and will stand to obtain far more substantial relief against United Van Lines. Mr. Carlson intends to pursue all available remedies.

We are, however, willing to entertain an appropriate offer for redress of Mr. Carlson's losses. If you are prepared to make a reasonable offer, please contact the undersigned.

Very truly yours,



Jarett B. Decker

JBD:jma  
cc: **Stephen B. Carlson**

S:138650.1:JBD:04/21/1998

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# MAUN & SIMON PLC

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Reply to: St. Paul  
Writer's Direct Dial: (612) 229-2903

March 6, 1998

**VIA U.S. MAIL AND FACSIMILE (314) 349-7289**

David Bengston  
Customer Claims  
United Van Lines  
One United Drive  
Fenton, MO 63026

Re: Damage to Property of Stephen B. Carlson, #525 00031 7

Dear Mr. Bengston:

This law firm represents Stephen B. Carlson in connection with the loss and damage to property he entrusted to your care for shipment from Idaho to Minnesota. Mr. Carlson has been trying unsuccessfully to resolve these matters with your representatives, but his concerns have not been addressed in good faith, so he was forced to seek counsel.

In making arrangements for his move, Mr. Carlson notified United Van Lines ("UVL") that he would need transport for many valuable antiques, and your representative in Idaho, Kevin Whitesides of Bell Moving and Storage, filled out a descriptive inventory acknowledging his receipt of these valuable items. Because he was shipping valuables, including a number of heirloom-quality items that have high market and sentimental value, Mr. Carlson opted to go beyond the "Standard Transit Protection" you offered and instead paid extra for your "For All Its Worth (FAIW)" insurance coverage, which you represented in your materials as "the best protection in the industry."

Your handling of Mr. Carlson's valuables was disastrous. An original oil painting from the 1920's by artist W. H. D. Koerner was lost or stolen in transit and never delivered to Mr. Carlson. The original (and irreplaceable) fabric on an English sofa was torn, an antique Austrian bookcase was broken, and numerous other antiques and other valuables were scratched, gouged, lost, or broken, as described in the attached "Presentation of Claim for Loss and Damage."

Mr. Carlson followed the instructions you provided in your standard-form Presentation of Claim by filing a claim on December 23, 1997. He has provided the particulars of the damages and losses, kept the damaged valuables available for inspection, and contacted UVL to secure appropriate inspections and estimates. However, your adjuster James Stinebaker of Transprotection Service Company ignored Mr. Carlson's claim and did not return his repeated

March 6, 1998

Page 2

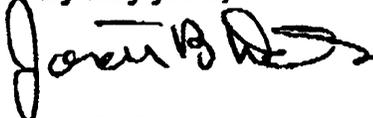
phone calls until January 30, 1998. And then, he flatly refused to provide any reimbursement for the lost or stolen items and since then has refused to offer anything for repair of the majority of the damaged items. Indeed, Mr. Stinebaker will not even pay the damages estimated by the appraiser UVL retained to inspect Mr. Carlson's valuables.

John Ackerman of Ackerman's Furniture Repair was retained by UVL to inspect Mr. Carlson's damaged goods and estimate the cost of repairs. After his representative's inspection during the week of February 9, 1998, Mr. Ackerman told Mr. Carlson that he estimated repair costs to be \$4,500.00, an amount which he said did not take into account the (irreparable) diminution in value to the damaged items (and, of course, the amount does not include lost or stolen items). Mr. Ackerman told Mr. Carlson that he had communicated his estimate in a report to UVL.

However, in a February 28, 1998 letter to Mr. Carlson, attached here, Mr. Stinebaker stated that UVL would acknowledge only \$1,465.00 in repair costs, and enclosed a check for \$965.00 (after the \$500.00 deductible). Mr. Stinebaker offered no explanation for why he was assessing repair costs at less than one-third the amount suggested by UVL's own appraiser; in fact, Mr. Stinebaker made no mention whatsoever of Mr. Ackerman's appraisal. Furthermore, Mr. Stinebaker offered no justification for his itemized repair estimates, totaling \$1,465. After receiving the letter from Mr. Stinebaker, Mr. Carlson tried to get a copy of the Ackerman report estimating \$4,500.00 in repair costs, but Mr. Ackerman's office told him that Mr. Stinebaker had insisted that the entire file be sent to him. Thus, it appears that UVL is trying to repudiate and suppress the assessment of its own appraiser.

The course of conduct in this matter has forced Mr. Carlson to conclude that his concerns are not being addressed in good faith. He is prepared to take all legal action necessary to recover his losses. I hope and expect, however, that Mr. Stinebaker's handling of this matter is an aberration and does not represent the policy of United Van Lines. I am therefore writing to provide an opportunity for you to rectify the losses to your customer, Mr. Carlson. Please contact the undersigned with a prompt and good-faith offer of settlement.

Very truly yours,



Jarett B. Decker

JBD:jbd  
Enclosures

cc: Steve Carlson

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

---

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

CASE TYPE: CONTRACT

Court File No. \_\_\_\_\_

Stephen **B. Carlson**,

Plaintiff,

v.

COMPLAINT

**United** Van Lines, Inc., a Missouri corporation,

Defendant.

---

**Plaintiff Stephen B. Carlson (“Carlson”),** for his complaint against the **defendant United Van Lines, Inc. (“UVL”),** states and alleges as follows:

#### PARTIES

1. Plaintiff **Carlson** is a Minnesota resident who lives at 128 Babcock Lane, Wayzata, Minnesota.
2. Defendant **UVL** is a corporation with headquarters at One United Drive, Fenton, Missouri. UVL provides moving services to customers nationwide, and has regular, systematic, and extensive business dealings in the State of Minnesota and the County of Hennepin. **Upon information** and belief, **UVL** is incorporated in Missouri.

#### FACTS

3. In or around September of **1997, Carlson** contracted with **UVL** to store his home finishings and other valuables for a short time and then move them **from Idaho to his new home in Hennepin** County, Minnesota.

4. **Carlson** told a **UVL** representative that he would need appropriate handling **for many** valuable antiques and **other heirloom-quality items**.

5. **UVL** assured **Carlson** that his valuables would be handled **carefully** and delivered intact to **Hennepin County, Minnesota**.

6. **Furthermore, Carlson** agreed to pay an additional charge **for insurance** coverage through **UVL** for his valuables, under a coverage arrangement described by **UVL** as **“For Ail Its Worth” (“FAIW”)**, which **UVL represented** in written materials as **“the best protection** in the industry.”

7. When **Carlson** took receipt of his **valuables** in approximately **October** and November of 1997, he found that numerous antique furnishings and other valuables had sustained major damage while in transit or in storage, and a valuable painting with an antique **frame** was missing.

8. **Carlson** has repeatedly asked that **UVL** reimburse him for his losses, but **UVL** has **refused** to do so.

## **COUNT I**

### **Bailment**

9. **Plaintiff** incorporates **all foregoing** allegations in the Complaint as though specifically set forth here.

10. **UVL** acted as a **bailee** for remuneration when it contracted with **Carlson** to store his valuables and **transport** them **from Idaho** to Minnesota.

11. **UVL breached** the **standard** of care required of it as a **bailee**.

12. **Carlson** has sustained damages as a result of **UVL’s** lack of due care in an amount **greater** than \$50,000 but less than \$75,000.

COUNT **II.**

**Breach of Contract**

13. Plaintiff incorporates all **foregoing** allegations in the Complaint as though **specifically** set **forth** here.

14. **UVL contractually** agreed to handle Carlson's valuables **in** a safe and appropriate **manner** to **protect** them from harm or loss while in storage and in transit **from** Idaho to Minnesota.

15. **UVL** breached its **agreement to** store and **transport Carlson's** valuables to Minnesota **safely**.

16. **As a result** of **UVL's** breach of contract, **Carlson** has sustained damages in excess of **\$50,000** but less than **\$75,000**.

COUNT **III.**

**Negligence**

17. Plaintiff incorporates **all** foregoing allegations in the Complaint as though specifically set forth here.

18. **WL** had a duty to use due care in transporting **Carlson's** valuables **from** Idaho to **Minnesota** and holding them for his retrieval.

19. **UVL** breached its duty to use due care in transporting and holding the valuables.

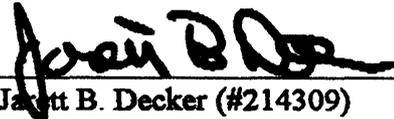
20. As a result of **UVL's** negligence, **Carlson** has sustained damages in excess of \$50,000 but less than \$75,000.

**WHEREFORE, Carlson** prays for relief and judgment in his favor and against UVL as follows:

1. **For an** award of damages **in** excess of **\$50,000** but less than **\$75,000**;
2. For all attorneys' **fees** and **costs** incurred herein;
3. For such other and **further** relief as the Court deems just and proper.

Dated: **March 31, 1998**

**MAUN & SIMON, PLC**

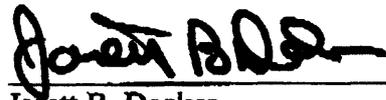


**Jarett B. Decker (#214309)**  
**2300 World Trade Center**  
**30 East Seventh Street**  
St. Paul, Minnesota 55 101-4904  
(612) 229-2900

**ATTORNEYS FOR PLAINTIFF**

**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and **witness** fees may be awarded **pursuant** to Minn. Stat. §549.21, **Subd. 2**, to the party against whom the allegations in this **pleading** are asserted.



**Jarett B. Decker**

9:138047.1:JBD:04/01/1998

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

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Stephen B. Carlson,

Plaintiff,

v.

United Van Lines, a Missouri corporation,

Defendant.

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CASE TYPE: CONTRACT

Court File No. \_\_\_\_\_

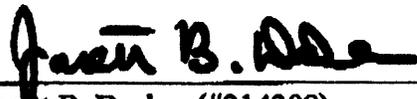
SUMMONS

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANT:

You are **hereby** summoned and required to **serve** upon plaintiffs attorneys an answer to the **Complaint** which is herewith **served** upon you, within twenty (20) days **after service** of this **Summons upon** you, exclusive of the date of **service**. If you **fail** to do so, judgment by **default will** be taken against you for the relief demanded in the Complaint.

Dated: March 31, 1998

MAUN & SIMON, PLC



Janet B. Decker (#214309)  
2300 World Trade Center  
30 East Seventh Street  
St. Paul, Minnesota 55101-4904  
(6 12) 229-2900

ATTORNEYS FOR PLAINTIFF

# **TRANSPROTECTION SERVICE COMPANY**

**Claims Attorney**

March 30, 1998

James B. Decker, Esq.  
Maun & Simon, St. Paul Office  
2300 World Trade Center  
30 East Seventh Street  
St. Paul, MN 55101-4904

**RE: Stephen B. Carlson  
Order No.: 525-31-7**

Dear Mr. Decker:

This will confirm receipt of your letter dated March 6, 1998, wherein you expressed concern over the settlement position taken by our Senior Claims Adjuster, James Stinebaker. The undersigned and the Director of Claims, Dave Bengston, have undertaken a complete review of Mr. Carlson's claim file. We have provided an explanation of the position taken by Mr. Stinebaker for your consideration below.

### Factual Background

The paperwork surrounding your client's move reveals his household goods were initially delivered into storage at Bell Moving & Storage Company. A descriptive inventory was prepared relative to your clients' household goods on September 25, 1997, by Kevin Whiteside. United Van Lines, Inc. ("United") was contracted to perform an interstate move which loaded on October 23, 1997, with a leave-over shipment loaded on November 1, 1997. The goods were transported from Idaho to Minnesota and delivered to your client in Minnesota. Exceptions were taken relating to certain damaged goods at the time of delivery. No exceptions were taken for lost or stolen goods at the time of delivery. Subsequently, Mr. Carlson submitted a claim which was evaluated and adjusted. Mr. Stinebaker retained an inspection and repair company, an independent contractor, Ackerman's Furniture Repair, to affect repairs to the items identified as being damaged at delivery as evidenced by exceptions taken on the Descriptive Inventory. Items not identified as being damaged on delivery were denied.

### Carmack Amendment

As you may or may not be aware, since your client's household goods moved through interstate commerce, the liability of the carrier, if any, is governed exclusively by federal law. 49 U.S.C. 14706. Specifically, the Carmack Amendment to the Interstate Commerce Act controls the carrier's liability for loss or damage to household goods moving through interstate commerce and preempts all state law claims for loss or damage to household goods. 49

TransProtection Service Company is the claims service agency for United Van Lines, Inc. and is authorized to adjust or otherwise administer claims for United Van Lines, Inc.

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Fenton, Missouri 63026-1542 • (800) 325-9970

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U.S.C. 14706. Adams Express Co. v. Croninger, 226 U.S. 491, 505 (1913); Southeast Express v. Pastime Amusement, 229 U.S. 28 (1936); Underwriters at Lloyds of London v. North American Van Lines, 890 F.2d 1112 (10th Cir. 1989); Hughes v. United Van Lines, Inc., 829 F.2d 1407 (7th Cir. 1987); and Suarez v. United Van Lines, (D.Colo. 1992).

In order to state a cause of action under the Carmack Amendment, the shipper (Carlson) must plead and prove the following elements

- (1) That the goods were tendered to the carrier in an undamaged condition;
- (2) That the goods were delivered in a damaged condition; and
- (3) The amount of damages resulting from transit related damage.

Taft Equipment Co. v. Ace Transportation, Inc., 851 F.Supp. 1208 (W.D.Ill. 1994); Joseph Schlitz Brewing Co. v. TransCon Lines, 757 F.2d. 71 (D.Wis. 1985); Hams Express v. Joseph Land & Co., 506 F.Supp. 209 (E.D. PA. 1980); Missouri Pacific RR v. Elmore & Stall, 337 U.S. 184, 188 (1964).

An interstate motor carrier is authorized to limit its liability through the released valuation system established by the Interstate Commerce Act. 49 U.S.C. 14706(f). The released value declared by the shipper on the bill of lading represents the carrier's maximum liability for loss or damage to household goods moving through interstate commerce. Suarez v. United Van Lines, Inc., 791 F.Supp. 815 (D.Colo. 1992).

#### Analysis

Based upon the foregoing, the goods identified by Mr. Carlson as being damaged on the delivery inventory were addressed and inspected. We offered to repair these items, as per the itemized breakdown provided by Mr. Stinebaker. The items claimed as damaged which were not noted at delivery were denied as there is no way for the carrier to determine if the damage was transit related. The shipping documents reveal there were no damages upon delivery to the items denied. In addition, above your client's signature on the delivery inventory appears the following language:

"I have checked **all** the items listed **and numbered** and **acknowledge** that this is a **true** and complete **list of** goods tendered and **of** the goods relocated... **Before** signing, **check** shipment, count items, describe loss or damage in space on the right above."

Given this acknowledgment and tack of exceptions, we are confident that our position is correct and supported by the objective evidence currently available.

James B. Decker, Esq.  
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March 30, 1998

However, in the event your client is dissatisfied with our position, United participates in an arbitration program, at no expense to the shipper, which we have found is a cost effective method for resolving disputes.

If, during the claims process, matters are disputed or cannot be agreed upon, be advised United participates in an arbitration program administered by the American Arbitration Association. This program is available to our customers at no cost. However, United will not arbitrate only part of the claim. Therefore, it is necessary that you submit your entire claim for arbitration. You may request arbitration by writing to the American Moving and Storage Associations ("AMSA"), Attention: Dispute Settlement Program, 1611 Duke Street, Alexandria, Virginia 22334. Your letter may also be sent by facsimile to fax number 703-683-7521. Your letter of notification to the AMSA must be received within 60 days from the date of this letter:

Along with your name, address and telephone number, the following information should be included in your letter of notification to the AMSA:

- name of the carrier and the identification number of your shipment;
- Any assigned loss and damage claim number;
- The name the shipment moved under;
- The dates and location of pickup and delivery; and
- The monetary value of the loss and damage claim involved.

Documents supporting your position on the claim should not be sent at this time, but kept for us later when the actual arbitration forms are submitted to the MA.

If you have any additional questions or would like to discuss the issues set forth above, please contact Dave Bengston at 314-349-2525.

Very truly yours,



N. Gregory Beachem, Esq.

NGB/mgm

# **TRANSPROTECTION SERVICE COMPANY**

February 20, 1998

Mr. Stephen Carlson  
128 Babcock Lane  
Wayzata, MN 55391

Re: Order No. 525-31-7

Dear Mr. Carlson:

We have completed a review of your Presentation of Claim for Loss and Damage as well as the delivery documents pertaining to your move and have computed settlement of your claim as follows:

<b>#37 - Dining Table - Amount allowed per estimated cost to repair the gouged condition from Ackerman's Furniture Service</b>	<b>\$30.00</b>
<b>Chest - Amount allowed to repair the broken foot</b>	<b>40.00</b>
<b>Sofa - Ackerman's Furniture Service reports that the labor to replace the fabric in order to completely reupholster the front rail is \$400.00. The cost of the material is unknown and we are allowing \$100.00 for the material. Total amount allowed</b>	<b>700.00</b>
<b>#247 - King Size Bed - Amount allowed per estimated cost to repair the scratched condition only</b>	<b>195.00</b>
<b>#301 - Queen Size Bed - Amount allowed to repair the scratched condition</b>	<b>150.00</b>
<b>#78 - Umbrella Stand - As claimed</b>	<b>250.00</b>
<b>#63 - Clothes Hamper - Amount allowed per estimated cost to repair</b>	<b>100.00</b>

We must respectfully decline responsibility for the items reported as stolen on the basis that we can find no information or evidence that any part of the shipment was stolen while in the custody of United Van Lines.

TransProtection Service Company is the claims service agency for United Van Lines, Inc. and is authorized to adjust or otherwise administer claims for United Van Lines, Inc.

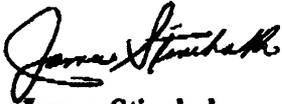
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Mr. Stephen Carlson  
Order No. 525-31-7  
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**We must decline responsibility for all other items claimed on the basis that there were no notations at the time of delivery that these items were damaged in transit, unlike the items noted above.**

**The total amount above is \$1,465.00. After application of the \$500.00 deductible, we are enclosing our settlement check in the amount of \$965.00. Acceptance and negotiation of this check will be considered a full and final payment for all items and matters as itemized above in this settlement letter.**

sincerely,



**James Stinebaker  
Senior Claims Adjuster**

**JS:rw**

**CC: 525-Bell Moving & Storage Co.  
307-Topeka Transfer & Storage, Inc.**



ONE UNITED DRIVE, FENTON, MISSOURI 63026

4-3/810

767606

DATE	ORDER NUMBER	ADJ	SHIPPER NAME	CHECK NO	AMOUNT
02/19/98	525 00031 7		SCARLSON	767606	965.00

CLAIM ACCOUNT

STEPHEN CARLSON

*Robert J. Baer*

⑈ 767606 ⑈ ⑆081000032⑆ 100101214449⑈

Endorsement of this check constitutes a full  
**release** of any claims whatsoever against  
United Van Lines, **Inc**, its parent company,  
subsidiaries and Agents, arising from or related  
to **the** settlement of the claim for, or the  
**dealing**, shipment, storage, or other handling of  
**property** moved under the order number on the  
**face of** this check.

\_\_\_\_\_

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