

FHWA-97-2979-32

37583

DEPT. OF TRANSPORTATION
DOCKET SECTION

98JUL 16 PM 4: 57

Leesburg, July 13, 1998

Federal Highway Administration
Docket Clerk
U. S. DOT Dockets, Room PL-401
400 7th Street, S.W.
Washington, D.C. 20590-0001

RE.: United Van Lines, Inc. (U. V. L.)
March 15, 1995 move
Consumer Complaint # CF-97-01717

Attn.: Docket Clerk:

Please be advised that the Attorney General of Missouri has asked me to contact you, as the FHWA is soliciting comments for the purpose of establishing new rules and regulations concerning the household goods moving industry.

Although I do not contend to support more rules and regulations for businesses conducting their free enterprises in an honest and legitimate manner, I do believe that it is incumbent upon me to help eradicate the fraudulent business practice by U. V. L.

For this reason, a four page legal narrative was submitted to the Attorney General of Missouri on June 2, 1997, per his own request, following the Consumer Complaint submitted on February 21, 1997.

Should you require copies of same, please do not hesitate to let me know so that I can bring this matter to a justifiable closure.

Sincerely,



Barbara Krajewska
P. O. Box 1845
Leesburg, VA. 20177



CONSUMER COMPLAINT FORM

send to

JAY NIXON

Attorney General of Missouri
Consumer Complaint Unit
P. O. Box 899
Jefferson City, MO 65102
1-800-392-8222

The Attorney General of the State of Missouri has the authority to investigate business or trade practices and to take legal action on behalf of the State of Missouri in order to stop fraudulent or deceptive practices.

Attorney General Jay Nixon does not have the legal authority to assert your individual private rights.

The Attorney General is **PROHIBITED BY LAW** from providing legal advice to you. To preserve any private legal rights you may have, you may wish to see a private attorney and, in appropriate circumstances, assert those rights in the Small Claims Court.

- Be sure to complain to the company or individual before filing this complaint.
- Type or print clearly in dark ink.
- Incomplete or unclear forms will be returned to you.
- Enclose *copies* of important papers concerning your transaction such as contracts, invoices, brochures and cancelled checks. Do *not send originals* that you would like returned.

After we receive this completed form, we will review it to determine if the Attorney General has legal authority to proceed.

CF-97-01717

Barbara

Kra Jauska

United Van Lines



CF-97-01717

1/23/97

Describe the Transaction

IMPORTANT: Enclose *copies* of all documents relevant to your complaint including advertising material, contracts, warranties, receipts, cancelled checks, etc. Include any false or fraudulent statements made to you, either in writing or verbally. (Provide as much detail as possible. If this complaint involves a vehicle, please indicate the make, year and vehicle identification number.)

- U.V.L.'s bait and switch of purchased service is best described by the following exhibits:
1. Exh. A: Non-binding estimate includes requested info. on in-van transportation of auto;
 2. B: In-van transportation service sold under the bait of DAS open car carrier rates. At no time is shipper informed of a similar service @ UVL at a higher price;
 3. C: Binding proposal (requested 2/28/95) for in-van transportation on 3/15/95;
 4. D: Faxed binding proposal (contract) giving auto and household goods contractual consideration under one and the same order number, which shipper endorses as is;
 5. E: Car wash receipt of 3/14/95 in preparation for in-van transportation under order # 181-55-5 upon which shipper justifiably relies;
 6. F: At fruition period, unauthorized UVL switch to open car carrier service and no appearance of driver on 3/15/95, contrary to UVL letter postmarked 3/17/95;
 7. G: Photo (copy) of another shipper's auto (beige van) transported in lieu of shipper's under same tariff, making shipper believe a preference was intended;
 8. H: Owner's Copy, Descriptive Inventory shows auto transport to UVL warehouse under order # 181-55-5, constituting a deficiency in the term agreed-upon;
 9. I: Severable open car carrier Bill of Lading under # 181-64-5 culpably in the possession of order # 181-55-5 driver, suggesting false cargo capacity estimate;
 10. J: Surface transportation of auto to warehouse in derogation of UVL guarantee of platform availability door-to-door, subject to separate consideration;
 11. K: Destination Inventory, warranting additional mileage to be marked (proving no inspection was allowed herein) was altered as to condition of auto after driver secured signature and payment; suggesting forgery of an executed document.
 12. L: Disclaimer by UVL despite 9 months in which to file claim under entire shipment;
 13. M: Denial of oral requests for damage claim forms and negligence in providing shipper with same. Written original request returned perforated in derogation of Hilldrup's correspondence attached;
 14. N: Correspondence to UVL and from UVL;

The purpose of this filing is to exercise the duty of eradicating fraud or commercial impropriety which may be of concern not only to the atty. gen. and shipper but also to other widows and daughters deprived of their head of household. (Add additional pages if necessary) necessitated to contemplate an interstate move on their own.

Action You Have Taken

Have you contacted the merchant about the problem? Yes No

If so, what is the name of the person you contacted? Al Koenes, Diane Paquin, Rosie Fields, Karen Grinnan, Lynn Comstock, Diane Strodman, Robert Baer, Rich Manna, Chris Wynn et al.

Explain what happened when you contacted the merchant: The shipper tieredly repeats the facts recounted by Exhibits A-N herein and incorporates them by reference as set forth herein, that the employees acting within the purpose and scope of the UVL Inc., viz. Koenes, Paquin, Manna, Wynn, exhibited inaccessibility, non-cooperation and consorted to prevention, hindrance and wrongful non-performance of contractual obligation proximately and directly resulting in disclaimer of otherwise recoverable damages, causing shipper to bear the entire burden of the damages sustained.

(Add additional pages if necessary)

Consumer Protection Unit

REFERENCES TO EXHIBITS A - N OF THE CONSUMER COMPLAINT SUBMITTED 2/21/97:

- Ref. 1. On 2/22/95 agent (Al Koenes) acting within the purpose and scope of the U. V. L. incorporation and employment, makes a free price estimate at the premises of potential shipper in the city of Los Angeles, California. The non-binding proposal (Exhibit A) includes requested information on in-van transportation of auto with the household goods, which purports to assure full value insurance, no deductible, for the price of \$1,100.
- Ref. 2. Agent sells this service under the guise of DAS open car carrier transportation prices, merchantable at \$725-855 (Exhibit B).
- Ref. 3. This so forcibly appeals to the mind of first time interstate shipper, who is assured in-van transportation of auto (in protection of garage-kept auto with antique potential) upon which she justifiably relies, that a binding proposal is requested to be drawn on 2/28/95 which expressly includes in-van transportation of auto (Exhibit C). At no time is shipper informed that open car carrier services are available at U.V.L. and therefore does not enter into a contractual relation with the agent regarding open car carrier transportation.
- Ref. 4. The bare acknowledgement of contract to stipulate for the truth of the binding proposal (wherein the binding efficacy is executed by U. V. L. agent on 3/8/95 which shipper endorses as is) is faxed on 3/8/95 (Exhibit D) with a final hard copy confirming same (Exhibit C) giving the total shipment (household goods and auto) contractual consideration under one order number 181-55-5 only.
- Ref. 5. On 3/14/95 shipper washes and waxes auto at the Melrose Car Wash in Hollywood (Exhibit E) and unloads gasoline for in-van shipment on 3/15/95 with the household goods, expecting contract obligation to be fulfilled as a bona fide purchaser of such service, hence ignorant of any falsity of U.V.L.'s representation of the binding proposal.
- Ref. 6. At the fruition period, the express condition of in-van transportation of auto in the binding proposal is not met by U. V. L. which fails to render agreed-upon performance and conducts transaction different from the usual method of doing business.

This disablement, invoked by the conduct of Merit Moving Systems, repudiates the agreed-upon in-van transportation of auto, just few hours prior to moving (on 3/15/95), when shipper receives a severable oral proposal that the household goods and the auto are now assigned two separate order numbers. The agent is telephoned and paged about this impairment and the significance thereof, if any, but no calls are returned.

The full effects thereof are first known when in-van transportation of auto is not available to shipper when the driver of the total shipment under order #181-55-5 arrives nor does an open car carrier materialize for auto pickup, contrary to the implication in U. V. L. letter (Exhibit F) postmarked 3/17/95 which misleads the true facts of the situation, and the false impression it thus causes is basis of a decision to render it unreliable.

This novation by U. V. L. extinguishes the old agreement with a new agent changing the quorum (after the fact) necessary to transact the business without the original agent, who negates his responsibilities by constructing an excuse and alibi in his defense of breaching the original contract and performance of legal duty owed shipper under the binding proposal of 3/8/95, which appears to depend upon the mere will of said agent. [This takes place just hours prior to shipper's leaving for LAX.]

Ref. 7. **The sudden substitution of performance and the destruction of the written agreement without the consent of shipper and without in-van transportation of auto offered under the \$1100 tariff (cf. Exhibit.F), constituted a deficiency in the essential term agreed upon particularly when auto transportation was not secured prior to shipper's departure at LAX under the contracted-for agreed-on term, but U.V.L.'s action alone, working forfeiture, confused the goods because another shipper? auto (van) was transported instead (Exhibit G), making shipper reasonably believe a preference was intended or unforeseeable difficulty posed U. V. L. (by the unexpected shipment of the van) to the detriment of shipper.**

At no time was shipper given the courtesy of the option to re-schedule the total shipment (household goods and auto in-van) at a more convenient date for U. V. L. as if in-van auto transportation was not part of U.V.L.'s service but merely part of a good sales job. Neither was a re-scheduling of in-van transportation of auto suggested in Exhibit F, which would have been logical, considering shipper's concern as a single woman for her garage protected auto. No statement was ever made by UVL in consideration of that.

Because reformation only deals with written contracts incorrectly stating a prior agreement, the action taken by U. V. L. therefore cannot be contested as a mere removal of a contractual provision to which shipper has never agreed. Reformation of a binding proposal can only be decreed upon a clear and convincing showing of mutual mistake or unless the mistake, causing hardships (and auto damage, in this case) on one side was caused by the other party's (U. V. L. ?) fraud.

Ref. 8-10. **The attempt to eliminate the freedom of contract rights of shipper by enforcing the new open car carrier contract on 3/15/95 instead of the one intended and expected to be executed, and thereby lessen the agreed-to obligation under the binding proposal for in-van transportation of auto, is supported by the lack of identity and disparity between the Descriptive Inventory (Exhibit H), reflecting transportation of auto to the warehouse under order #181-55-5 and the Bill of Lading under order #181-64-5, culpably in possession of driver #78-164 performing under order #181-55-5 but without platform availability for auto (Exhibit F & J).**

The severable Bills of Lading with their divisible elements are generally supported by such separate consideration as e.g. the total absence of the open car carrier and driver to exercise his duties and involve separate action for breach of duty and performance obligation - such as U.V.L.'s guarantee of platform availability for auto in prevention of adding on mileage on auto during transportation to the warehouse, if indeed the Bill of Lading #181-64-5 (Exhibit I) was to have legal efficacy.

It can thus be said with reasonable certitude that the Bill of Lading #181-64-5 was falsely **procured because** in-van auto transportation was **quoted on 3/15/95 at a tariff \$200 higher than on 3/8/95, viz. \$1,300 in comparison to \$1,100 when the binding proposal was written up.**

The material altering of the original contract with the intent to **pass the Bill of Lading #181-64-5, known to be falsely procured,** to be valid, can reasonably be said to infer the **deceitful arrangement of facts in such a manner as to create a false inference of validity in the minds of those who observe them**

Despite the **erroneous** impression the transaction gave, it **cannot be diverted from the undisputable fact that the reciprocal rights to demand performance and mutuality of contractual obligation only applied to the shipper in question who, in exchange for extinguishment of the debt owed under one binding contract (Exhibits C & D) #181-55-5, was legally held to answer for said debt. As only shipper answered the performance under the original agreement, while the agent undertook an independent interest of his own, shipper's payments for services not contracted for (open car carrier transportation) do not suffice as a part-performance by U. V. L. under the new Bill of Lading and legally lacks consideration under the binding proposal under one order #181-55-5. Thus the express promise under the binding proposal is in equity applicable where U. V. L. received payment without giving shipper a fair opportunity to default on the new contract #181-64-5 which in good conscience ought to be refunded.**

Furthermore, a termination of the binding proposal could only be brought about by the **mutual consent of both U. V. L. and the shipper** by the conduct of the parties to voluntarily go through with a new contract. **The infraction construed by the two separate Bills of Lading (Exhibits H & I), drawn in exclusion of the shipper and the binding proposal (Exhibits C & D), gave a different expression to the stipulation and condition agreed-upon, which appears so non-restrictive of U. V. L. while so restrictive of the shipper that doubts arise as to its representation as a voluntary agreement.**

The modus operandi of U. V. L. to bait and switch the original obligation under the binding proposal when it was too late for shipper to default on the agreement on moving day (3/15/95), can reasonably be inferred to perpetrate fraud or legal activity having an illegal end in mind (such as quoting \$1,300 for in-van transportation of auto and \$1,100 for open car carrier on 3/15/95) designed to unjustly enrich U. V. L. at the expense of shipper which encroached upon the rights of shipper to terminate the defeasance due to constraint of time on moving day.

The U. V. L.'s practice to disclose to interested shipper only the lowest bid and in so deceiving consumer (shipper) by advertising an attractive package in an effort to bring shipper in, following disparagement of the service, causes shipper to switch without volition to an open car carrier transportation because in-van transportation is tariffed higher on moving day. It is an insincere technique used to sell the more expensive service (comparable to \$725-855 elsewhere) which U. V. L. in truth does not intend to sell or perhaps cannot sell as is.

The agent's implied and express promise, made both orally and in writing, and the act of omission, nevertheless upholds the right of recovery for services not rendered because no breach by shipper was present during the entire duration of the transaction and because the transaction was enforceable at equity by shipper required to perform under contract (Exhibit C & D), circumstances under which the agreement generally would be basis for termination due to U.V.L.'s non-performance under it and during the period the contract was in force.

Ref. 11-12. U.V.L.'s multifarious means of ingenuity devised to get an advantage over shipper by surprise, trick and unfair way, was also prevalent during the post-move stages in that the nine month policy in which to notice damages and file claim (Exhibit L) was denied shipper, an action concerted with the open car carrier driver #39 who on 3/27/95 materially altered the Bill of Lading with the intent to prejudice shipper's rights to claim damages. Please see enclosed copies of letters to and from U. V. L. (Exhibits O,P,Q), dated April 30, May 13 and May 20, 1996.

After securing shipper's signature and payment, driver #39, departing in haste and permitting shipper no inspection of damages, incorrectly checked the "condition" space on the Bill of Lading (Exhibit K), a fact most visible on the carbon copy as the word "none" appears in a harder pen pressure than the signature and no mileage is taken note of at destination, giving proof of the fact that the damage to the head moulding above the driver side door of the auto was perhaps deliberately not inspected because it was caused during the handling of the auto during transit, as was the brown liquid spill on the carpet.

Ref. 13. U.V.L.'s attempt to pass this forged document as genuine and final and failure to take into consideration the oral and written requests for claim forms (Exhibit M) and non-response to letters as well as by words that the instrument is valid by inclusion of a provision that "no exceptions were taken" (Exhibit P) in derogation of the original letter from the claims adjuster, which changed the good faith effort to estimate probable damages and suggests concealment and non-disclosure of actual damages caused to auto during the period it was not in the hands of shipper between 3/15/95 and 3/27/95.

This deliberate attempt to defraud shipper became an effective (but non-justifiable) defense to U. V. L., taking away the effectiveness of the contract law, an action which upholds the duty of damage awards apportioned in accordance to the degrees of relative fault.

It can thus be concluded, that under the actionable deceit, U. V. L. ? bad faith to respond to plain well-understood contractual obligation under the binding proposal #181-55-5, proved absence of honesty in the contract during the entire transaction concerned, from its inception - by U. V. L. ? ignorance of the truth and legal duty owed shipper. In equity, it is shown by facts and circumstances from which it is proved in law by the documents (exhibits) submitted by shipper.

**Leesburg, Virginia
April 14, 1997**